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Message from the publisher

j. stanley marshall



“We hold these truths to be self-evident,” wrote the author of the Declaration of Independence, “. . . that among these [unalienable rights] are life, liberty and the pursuit of happiness.” And while several generations of Americans have recited those words with pride and purpose, it is remembered by some that the language in an earlier draft was different, that it borrowed on the writings 80 years earlier of John Locke, the British philosopher and statesman. In his “Second Treatise of Government,” Locke wrote in 1690 that “The state of nature has a law of nature to govern it . . . that no one ought to harm another in his life, health, liberty, or possessions.” Jefferson, it is said, preferred “pursuit of happiness” to “pursuit of property” and few among us would take exception to the insertion of that ringing phrase.

But citizens sometimes overlook the importance of property rights in a free society, especially those who believe that a democratic form of government is a guarantor of freedom. Not so, says Thomas Sowell, the political philosopher at the Hoover Institution, in his recent book, *The Quest for Cosmic Justice*. “Democracy alone is insufficient for society to be truly free and prosperous,” Sowell writes, adding that “private property rights are far and away the most important bulwark protecting freedom and insuring prosperity.”

Sowell adds:

Private property is *the* indispensable protection from the arbitrary will of others, even when this arbitrary will results from the majoritarian election. Private property gives to each of us not only the assurance that others will employ themselves and their resources in ways that create prosperity for all, but also that each of us has a space that others cannot violate.

Indeed, this right was so important that James Madison reached back to the Magna Carta of 1215 and used nearly identical language in what became the Fifth Amendment in our Bill of Rights.

Florida, too, has long recognized the importance of this ideal. Sanctity of property is today to be found among the basic rights guaranteed to all Floridians in our state constitution.

In socialist states, the concept of private property is unknown and, as communism has retreated recently from the nations in Central and Eastern Europe, private property ownership has been restored. This has fueled and hastened the return of both freedom and prosperity in those countries.


Schoolchildren are often taught that freedom is synonymous with

democracy and those of us in the West have been bombarded with paeans to democracy. But private property, more so than democracy, is the key to prosperity and freedom around the world. Examples abound. Sowell points to India and


Hong Kong. In India, free elections have been held for years but property rights are weak. Hong Kong, by contrast, has had no democracy but property rights have been among the strongest in the world. Indians are among the poorest people on the planet and are shackled by a corrupt govern-

ment, but the people of Hong Kong are wealthy and free.

The James Madison Institute has, from the beginning, been concerned with the infringements of government on the rights of property owners and our agenda in the period ahead is likely to reflect that concern. The lead article in this issue by Senior Policy Analyst Peter Doherty initiates a renewed effort to focus on property rights and, in the months ahead, we hope to initiate a course of action that will examine public policy and perhaps propose changes to vouchsafe our constitutional guarantees to the ownership of property. ❧



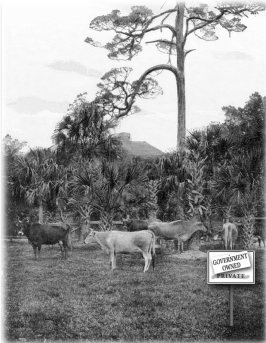
Sanctity of property is among the basic rights guaranteed to all Floridians in our state constitution.



COVER STORY

property rights infringements: Three Cases

by peter doherty



The property rights most Floridians take for granted are disappearing little by little.

Priate ownership of real property in Florida is, almost without our noticing it, becoming a myth. Every year what individuals may do with their property becomes more circumscribed. More and more agencies and regulations restrict owners, while at the same time the taxes they pay for the privilege of ownership increase. Something is wrong with this picture.

Examples abound from every corner of Florida. Consider the following:

Canopy Roads

Tallahassee in Leon County is proud of its reputation as an urban area that maintains the feeling of a much more rural one. This has been achieved in no small part by ordinances designed to save and protect trees. Of particular pride in the community are what are known as the “canopy roads” that lead out from town and that boast canopies of mature trees, usually oaks. The canopy roads are narrow, twisty, former wagon paths and, at points, some canopy trees crowd so close to the road itself that some people might consider them overly dangerous to traffic. Tallahassee, however, chooses to cherish them. Virtually the entire community agrees that, despite the potential dangers, the canopy roads are worth preserving.

However, in the name of protecting the trees, the county has adopted ordinances that go far beyond

reason. Without really considering the ramifications, regulations have been adopted that grant the county dictatorial control over all properties bordering any canopy road for a distance of 100 feet from the centerline of the road. Since the road itself measures approximately 20 feet from centerline to the edge of the pavement and since the county owns an additional 10 feet from the pavement edge, this ordinance means that property owners may pay taxes on, but, absent permission from the government, may not use the first 70 feet of their tract.

This may not be critical for those who own many acres that partially front a canopy road, but what about those who do not? The short answer is that these people are in a fix. Consider the case of one gentleman who leased a seven-acre tract along one of the canopy roads from his longtime employer. The tract was undeveloped and the lessee wished to do three things with it: (1) create a driveway into the property, (2) clear some brush from the property, and (3) construct a home.

There would be no story here had he gotten as far as step three, but he never did. As soon as he made application to build a dirt driveway and clear the brush, the regulators descended. Multiple agencies began reviewing his application, but nothing happened until he secured the services of an attorney. Only then—


very grudgingly—did the authorities grant him permission to construct the driveway. He never got permission to clear any brush and at length he gave up, despite the offer of free legal representation if the matter were taken to court.

The gentleman's attorney in the matter found himself running into regulatory brick walls and spinning through bureaucratic revolving doors. Along the way, though, he determined that Leon County claimed total control of all property within 100 feet of the


centerline to protect the root structure of the canopy trees. However, despite his assertions that no canopy tree on the affected property had anywhere near that large a root structure and that the last thing his client sought to do was harm any canopy tree, no permit was ever within reach. The attorney remains convinced that it would have taken legal action to force the issuance of a permit, and though he wanted to take the matter to court, his research indicated only 5 percent of such suits are successful.

Life's a Beach

If there is trouble for property owners on canopy roads in Leon County, you can bet there are problems elsewhere in the state, especially for those who are on or near a body of water, particularly the ocean. Consider this case from Brevard County on Central



What individuals may do with their property becomes more circumscribed every year.



Florida's Atlantic Coast.

Some years ago as the result of the construction of jetties near Port Canaveral and the Kennedy Space Center, the normal southward flow of beach sand was permanently interrupted. Properties to the south of the jetties began to experience erosion of their beachfronts and with time and hurricanes, this loss in some places became significant. In response, the federal and state governments have developed programs to provide money for a beach renourishment program. The U.S. Army Corps of Engineers plans to dredge clean sand from the sea floor and deposit it on the beach. Hardly anyone in the affected area is opposed to this in concept.

In the first stage of the project, a letter from Brevard County was sent to every beachfront property owner to be affected. The letter described the renourishment plan, and asked owners to agree to grant a 50-year easement on their beach property to accommodate the project. This seems straightforward enough, and, indeed the Corps of Engineers says it is standard practice. So far, so good. One property owner, whose deed grants her title to everything landward of mean high water, inquired what exactly the requested easement entailed. The letter she and others received, and the terms of the easement mentioned in it, she believed to be vague. Though not a suspicious person (at least not then), she was not comfortable granting an easement that could easily extend beyond her lifetime on the basis of assumptions about what exactly the

easement holder could and could not do during the 50 years. In addition, she had questions about what she could or could not do with her beach property once she gave her consent.

Despite several attempts, however, she could not get what she considered to be adequate answers to her questions from Brevard County officials and, as a result, she refrained from signing the easement document. This is where the trouble began, and, ironically, where she began to feel justified in not signing anything on the basis of assumptions about what the result would be.

The letter she and her fellow property owners received was, on its face, a request. As a professional writer, her reading of it left the impression that she had a choice: to sign and grant the easement or to refuse and so withhold the easement. In addition, there seemed from the text of the letter to be no deadline for replying. This gave her a false feeling that there would be adequate time for her concerns to be addressed, and for her to decide whether or not to take part in the beach renourishment program.

Unfortunately, the reality of her situation proved quite different from the impression given her by the letter. First, after repeatedly requesting information and getting none, she was asked to phrase all her questions specifically and to put them in writing. Answers, she was told, would then be provided to her by the office of the Brevard County Attorney. Not being a lawyer and wanting to be thorough, she began to

formulate her specific questions, but doing so took several months.

While still at work on her letter, she received a call from an assistant county attorney who asked when the letter would be forthcoming. She replied she was anxious to be thorough and was still in the process of getting it together. She also told the official that she had to make time to work on it when she could. The attorney answered that the county was facing a deadline and the letter was overdue. This was news to the property owner who had never before been apprised of any deadline. In an effort to be helpful, she offered to relay the substance of her questions orally to the attorney, but the latter declined, saying that she did not “feel comfortable” taking notes. It was at this point that the property owner sensed something much more serious was afoot than a desire to provide her with answers.

Her fears were confirmed a few days later in a conversation with another county representative. This bureaucrat told her that granting the easement was not an optional act and if she continued to refuse or to delay, the county would take her to court and seize her beachfront property through eminent domain.

Now, at least to this one landowner, the entire character of the beach renourishment program changed. In an instant it changed from being something beneficial but confusing


to a mandatory program in which those who did not volunteer would be pressured into compliance. Property owners who for whatever reason chose to exercise a right they *thought* they had to decline to participate were being told that asking had been a courtesy only. The time had come for them to obey, and failure to do so would result in their property being taken from them through the legal condemnation process.

From upland tracts containing property the owner cannot touch except with permission of government, to beachfront property that owners find


they do not own if the government decides differently (though the government expects both groups to continue to pay taxes on the property), consider the next case—one that proves no person high or low, dead or alive, is immune from the effects of a bureaucratic state.

From Cookshack to Crypt

On the occasion of his second inaugural in January 1995, the late Florida Governor Lawton Chiles delivered a personal message. The speech was built around his experience as a citizen facing the power and obstinacy of government bureaucrats, and in his story, the fact that he happened to be the governor of the state did not make any difference. Though it was, he said, a good thing that he was treated no differently from the average citizen, the frustration he felt at how



No person high or low, dead or alive, is immune from the effects of a bureaucratic state.



he was handled was not mitigated.

The story Chiles told his listeners concerned his desire to build what he called a “cookshack” on his 350-acre farm north of Tallahassee. The governor, an avid outdoorsman, wanted a place where he and his hunting and fishing buddies could gather. The perfect vehicle for doing this, he figured, was a cookshack, a kind of glorified “clubhouse for big boys” where fish and game could be cleaned, prepared, and eaten, and where he and his cronies could enjoy each other’s company.

But moving concept to reality proved to be much more difficult than the governor anticipated. In the speech, he detailed the maze of agencies that claimed jurisdiction and the redundant and annoying bureaucratic red tape he had to navigate on his way to getting approval for his little project, and the time he had to expend in coping with it. Then, he wondered aloud, if it was that hard for him—a skilled lawyer and the state’s governor—to get permission from the authorities, how must traversing the same process seem to the average citizen?

His answer to this question became one of the chief programs of his second term. In his inaugural address, the governor said he would direct Lieutenant Governor Buddy MacKay to form a high-level inter-agency task force whose chief aim would be to look for ways to reduce the rules, regulations, and red tape faced by Floridians. Though the speech did not restrict the rule reduction effort to matters concern-

ing land use and property rights, there could be no doubt from the context of the speech that these were to be high on the agenda.

Almost four years passed. The MacKay effort yielded some fruit, but bureaucracies are clever and stubborn, and by the time the second Chiles administration was drawing to a close, much work was left to be done. How *much* work has, in part, been illustrated by the stories appearing earlier, but no story illustrates it as well as events since Chiles’ death. For on a Saturday morning two weeks before Christmas 1998, the governor retreated to the pool house at the mansion for a few hours of solitude and sometime during the day, in the company of his dog, he died.

For Chiles, being laid to rest did not mean finding peace with the bureaucracy. A few months after his death, as had been his request, his remains were moved from an in-town cemetery to a spot very nearly in the center of his 350-acre farm near the famous cookshack, and overlooking a small pond. The pond had been constructed by a previous owner of the property as a place for watering animals. It was, and is, simply a depression scooped out of the ground that receives all of its water from runoff. There is no stream flowing into or out of the pond. It is completely closed.

Part of his family’s plan for the site was to deepen the pond (which, as may be expected, tends to dry up during certain months), contour its banks, and add landscaping. No government money was to be in-

volved in any of this, and, in fact, most of the work and supplies were to be donated or given at cost by friends and admirers of Chiles. Moreover, since the cookshack, pond, and crypt are near the geographic center of the property, no other property owner would be affected, nor would anyone, except invited guests of the Chiles family, likely even *see* the site. So far this seemed simple: Improve and beautify an isolated rain-fed pond in the center of a large tract of land. Simple, however, is not the stock-in-trade of bureaucracy.

Consistent with the plan, the governor's widow, Rhea Chiles, applied for the necessary permits to undertake the work, and found to her amazement that within a very short time, five governmental agencies had become involved. Agency-specific paperwork, bewildering demands for information, and countless inspectors and agency experts descended upon her. Dealing with it all required the services of some of the best lawyers in the capital. Despite this, and despite the fact that absolutely no agency claiming jurisdiction had any real (or at least expressed) reasons why the project should not be approved, months have dragged by and no permit has been issued. Further, as of this writing more than a year after the governor's death, there is still no estimate about when a decision might be made.

Conclusion

The right to possess, control, and enjoy private property, particularly

real property, is and always has been absolutely central to the success of the American experiment. No one, at least no responsible person, would seriously propose abolishing private property. Yet at the same time, a series of small steps—all of them taken for reasons that nearly all people would support, such as beach restoration or preservation of wetland areas for the use of wildlife—are leading us toward the day when we may be allowed to own property in name only. Actual control over that property will reside elsewhere.

So what to do? It is not likely that the right of landowners to control and enjoy their property will be restored to them of its own accord. Governments rarely concede power voluntarily. So if the property rights most of us take for granted are to be restored, government at all levels will have to be forced through public outcry, legislative initiative, or court action—or perhaps all three—to do so.

Our property rights are disappearing little by little. It is a little bit like boiling a frog. Put a frog in boiling water and he will jump out fast. Put a frog in cold water and raise the temperature gradually, and he will be boiled before he knows what is happening.

But we are smarter than frogs.

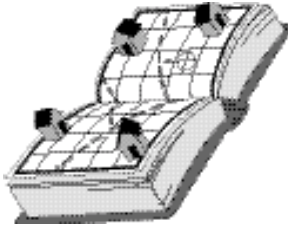
Aren't we? ☺

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breakthrough at pembroke pines

by kimble f. ainslie



One Florida city is creating a mini-school district by privatizing key design, construction, and education functions.

The city of Pembroke Pines, a South Florida municipality with 115,000 residents, has launched a national groundbreaking series of innovations in education through its municipal charter school system.

In August 1998, the city opened two campuses of an elementary charter school in south Broward County that accommodated 750 students. This was followed in August 1999 by the expansion of the elementary school by 250 students and the opening of a charter middle school with 672 students. Later this year, a 1,200 student charter high school will open in conjunction with a regional library and a branch of Broward Community College at a new academic village, also in the municipality. Thus, a student in Pembroke Pines can now potentially enter at the preschool level and obtain an elementary, secondary, and postsecondary education without registering at a traditional county public school. As Pembroke Pines Mayor Alex Fekete says, “We are the public alternative to public education.”¹

The Pembroke Pines elementary charter school was the first open-enrollment, municipally sponsored charter in the United States. (Charter schools are “on contract,” publicly funded, privately operated, flexible-curriculum schools legislated by the state and

monitored by district school boards.) Indeed, Pembroke Pines represents the next stage in the development of charter schools, beyond the early stage of small, mom-and-pop schools educating failing or at-risk students. Any student from the municipality or Broward County can apply to these charter schools. The only barrier is space and selection by a lottery.

At Pembroke Pines charter schools, the curriculum emphasizes student-centered, higher-level learning. It is interactive, media-focused, and technologically assisted. Initially, students are tested for strengths and weaknesses and a curriculum is designed to assist their progress through the grades. Each elementary classroom has six computer stations with adjacent media centers. The learning environment is disciplined, a dress code is enforced, and respectful behavior is required. The principal of the east campus elementary school, Jayne Hall, proudly describes the “manners and good deeds” component of the school’s character education program, in which students are rewarded for courteous and generous acts of kindness.


At Pembroke Pines charter schools, parents take a prominent role in the education of their children and are heavily involved as teachers and as school administrators. They also have majority voting rights in a governing body of the elementary school and participate in more than

a dozen school committees. Parents also teach basic math skills at home under the guidance of the charter teachers, and this work is followed up with instruction on higher level math skills in the classroom. Parents contract with the school and municipality to provide 30 hours per year of volunteer time.


Class sizes are small. No more than 25 students are in the elementary school classes and a maximum of 28 students are in the middle school, compared with 35 to 40 students in classes of regular Broward County schools.

A New Design, a Flexible Curriculum

The facilities in Pembroke Pines were built for one-third less per student than other schools through the innovative design and construction methods offered by the Haskell Company of Jacksonville, Florida. Haskell provided effective safety measures including self-contained classrooms and glass walls between every two classrooms for teacher viewing and monitoring. To prevent subterfuge of illegal substances and firearms, the middle school has no lockers. Haskell Educational Services (HES), a subsidiary of the Haskell Company, and its strategic partner Cambridge Academies, act as management and education consultants on the Pembroke Pines project. HES and Cambridge assisted in writing both the charter application



Pembroke Pines represents the next stage in the development of charter schools.



and a \$300,000 Annenberg Challenge grant proposal, which was awarded in 1998. They also helped design the curriculum, hire the principals and teachers, and manage and review the acquisition of educational software for the elementary school. While the municipality remains the employer of record, HES and Cambridge perform these key management functions, along with nine-member, parent-dominated advisory boards for the elementary and middle charter schools.

Overcrowding Leads to Charter School

And why did Pembroke Pines get into the education business? Municipal involvement can be traced to a hurricane, subsequent shifting population in South Florida, related overcrowding in the schools, and the impetus of local leadership.

Hurricane Andrew in 1992 devastated south Dade County. As a result, many of its residents moved into Broward County over the course of two to three years, and the population of Pembroke Pines rose from 70,000 residents to 100,000. A residential building boom took place, and as Paul Wattles, assistant city manager, tells the story, the impact of this population pressure on school facilities was extraordinary.

I went to meet a school construction supervisor. We did our business and then I said, "How many students is

this school designed for?" He said, "One thousand." I said, "How many will it have when it opens?" He said, "Twelve hundred and seventy-five." But, of course when it opened, it had 1,475.²



The Florida Senate Education Committee is encouraging the conversion of public schools into charter schools.



In many cases, Broward County schools were 190 percent of capacity, according to Wattles. The Broward school board could not keep up with the demand for school construction, given the problems of backlogged demand, the behind-the-curve annual state appropriation cycle, and a county voting population reluctant to approve more spending. In September 1995, voters emphatically turned down a referendum request for a 1 percent, seven-year increase in county retail sales taxes earmarked for school construction.

In response, Pembroke Pines municipal officials took up the challenge of finding alternative and innovative ways to fund school construction. Because of concurrency requirements in the 1985 Growth Management Act, the absence of school spaces was beginning to have slowdown effects on residential development and economic development in general. To relieve the pressure, city officials, led by City Manager Charles Dodge and with the assistance of developers, arranged to acquire and finance a local property for school construc-

tion, which was handed over to the Broward school board for a new school. But when this approach was tried a second time, the Broward County Commission resisted and the initiative was dropped.

Frustrated, Dodge and Fekete met representatives from the Haskell Company at a local school board workshop and eventually started talking about the charter school option. Haskell had just successfully completed a middle school in Broward County, and in 1996 the state legislature had passed a bill giving financial support to charter schools. As Ed Vandergriff, executive vice president of the Haskell Company and HES chief executive officer said, "The planets just started lining up on this initiative. Pembroke Pines said, 'Here's what we need' and we said, 'We can deliver that and it can be a charter school.'" After the mayor and city manager organized sufficient political and administrative support back at city hall, the project started to take off.

County School Officials Now Cheerleaders

The next big battle could have been with the Broward school board. But state charter school legislation was in place and Republican front-runner Jeb Bush, already a prime mover on a charter school in Liberty City, was likely on his way to the governor's mansion. Even Democratic-dominated Broward County politicians saw the writing on the wall and did not reject the Pembroke Pines

initiative. While the local teachers union president made some modest effort to question the project, he and his colleagues soon acquiesced.

Haskell submitted its charter school proposal to the Pembroke Pines City Commission in November 1997 with a request for construction to start by January 1998, and a promise of completion by August 1, 1998. The two elementary campuses were completed on time and under budget.

As might be expected, the attractiveness of the education innovations did not go unnoticed by parents. They lined up at the Pembroke Pines City Commission offices in the Spring of 1998 to fill out registration forms. Going into the 1999-2000 school year, Dodge reported a waiting list of 700 students for elementary and middle schools. Demand was so high that city officials decided to set up a lottery system to avoid potential unfairness of a first-come, first-served policy contemplated earlier. Parents outside of Pembroke Pines also applied in droves. Indeed, 25 to 30 percent of Pembroke Pines charter students live outside the municipality, some traveling as many as 20 to 25 miles in carpools and vans.

By November 1999, even county school board officials had become cheerleaders for charter schools, once the matter of a shared capital construction funds formula was settled. South Broward Area Superintendent Ben Arculeo endorsed the charter school plan for helping to relieve school overcrowding in the

county. “Our biggest challenge remains growth,” he said. “While we’re still busting at the seams, we hope other municipalities will follow suit [with charter schools].”

Mixed Media Messages

Reactions from the news media have been mixed. The Fort Lauderdale *Sun-Sentinel* has generally been supportive, acknowledging the problem of overcrowding. The *Miami Herald* has been more skeptical, stereotyping charters as “no more than centers for a wealthy educational elite” and suffering from highly variable testing results.³

While the latter may be true for some at-risk schools, the Pembroke Pines charter schools are top-ranked compared to county schools, outscoring most other Broward competitors in their first year of operations. And a recent Florida Senate report states categorically that “charter schools are not being designed to serve predominantly affluent families; 45 percent of charter school students are black or Hispanic.”⁴ Indeed, the Florida Senate Education Committee, led by Sen.

Anna Cowin (R-Leesburg), is encouraging charter schools to share innovative curriculum knowledge they have gained with traditional public schools, and for county school districts to consider converting standard public schools to charter status. The Senate committee expects many more municipally operated charter schools and charter schools-in-the-workplace starting this year. ∞

Kimble Ainslie is president of a market research and public affairs consulting firm in Sarasota, Fla., and a research associate of The James Madison Institute.

Endnotes

¹*Education Week on the Web*, May 13, 1998. The cities of North Lauderdale, Coral Springs, and Kissimmee also operate charter schools.

²Interview with respondent, Dec. 1, 1999.

³Daniel de Vise, “Performance erratic at charter schools, test scores show,” *Miami Herald*, June 21, 1999.

⁴Committee on Education, *Review of Florida Charter Schools*, The Florida Senate, Nov. 1999.

Note: For more information on charter schools-in-the-workplace, see “At Work-Site Schools, Kids Learn While Parents Earn” in the March/April 1999 issue of The Journal.

deciding the future of the past

by richard l. stroup and matthew brown



Conflicts between landowners and preservationists over archeological treasures can be resolved successfully.

The long struggle to preserve the Miami Circle seems to be nearing an end. After more than a year of political and legal wrangling, the one thing everyone might agree on is that they never want to go through this again. There has to be a better way to learn about the past and to preserve it.

The 37-foot limestone bedrock was unearthed in September 1998 in the middle of a \$126 million high-rise construction project in downtown Miami. Owner-developer Michael Baumann, who paid \$8 million for the land, offered to move the stone carvings, but some preservationists considered the mysterious circular formations sacred. Indian advocates, environmental groups, and the mayor of Miami-Dade County demanded that the project not disturb the historically valuable site. County officials sought and won a temporary injunction preventing any further development while the case proceeded and scientific work at the site was frozen by legal action. On September 27, 1999, Miami-Dade County, with commission approval, agreed to pay \$26.7 million to Baumann to buy the Miami Circle. Florida Gov. Jeb Bush and the cabinet agreed to contribute \$15 million for the purchase. The county obtained most of its \$11.7 million share with a loan from the San Francisco-based Trust for Public Lands.

According to two of the world's leading archaeologists, Lord Colin Renfrew and Paul Bahn, "More

ancient remains have been lost in the last two decades than ever before in the history of the world.” In Miami, as elsewhere, the big question is: What happens next time? Will the county commission, whose share of saving the Circle could run to \$9 million, be willing to ante up again? Will the state cabinet fork over another \$15 million to buy the next great site that is discovered? Fifteen million here and \$9 million there, and soon you’re talking about a lot of money.

Access to Cultural Property

But there is a way to raise the money necessary to preserve historic treasures. As Renfrew and Bahn point out, “The past is big business.” There are currently about 25,000 museums in the world, 7,000 in North America alone. And while they all seek money from governments and private foundations, they sit on a treasure trove of unused artifacts. For instance, the Natural History Museum in Los Angeles can display only 1 percent of the more than 33 million artifacts in its collection. Why not use some of those treasures, wasting away in basements, to raise money to support research and discovery? This idea is anathema to many archaeologists, but it can clearly raise needed revenue to help save archaeological sites such as the Miami Circle.

Laws and current archaeological practices that prohibit the sale of artifacts from properly investigated

sites have led to a vast market in looted objects and others that are not properly researched. Law enforcement officials claim this market, which is worth \$1 billion a year, is second only to the drug trade in value. But having this trade underground is a loss to science and society. Consider the potential benefits of bringing this market out into the open.

The collector who buys an ancient artifact now has to worry about where it came from and

whether it was obtained legally, so its value is reduced. But if archaeologists, museums, and collectors worked together, they could all benefit. Archaeologists need money to fund their research, museums need cash to conserve and display their collections, and collectors have money to spend on artifacts. A legal and fully sanctioned market would encourage collectors to cooperate with archaeologists. “Such cooperation invariably enhances the value of the object and the prestige of the collector,” notes one archaeologist.

The proper study of artifacts, before and after they are taken out of the ground, helps to develop their scientific and historical significance, allowing current and future generations to better understand and enjoy past civilizations. The collectors who finance such discoveries would enjoy the greater rewards of their investments.



The big question is: What happens next time?



A Better Plan for Land Developers

Even the relationship between archaeologists and developers would improve. Regulations that inhibit developers' access to their property inevitably make finding archaeological relics costly to landowners and developers. As Bob Carr, an archaeological consultant on the Miami Circle project pointed out, "I suspect that if we find more, he [Baumann] would consider it detrimental to his plans." In similar situations, attempts to bribe archaeologists not to report a find have even been reported. In the current situation, landowners and developers may well dread archaeological finds, despite their value to society. A system that rewards landowners would be good for archaeology.

A market for properly researched artifacts could allow landowners and developers to gain by working with archaeologists, just as they could benefit by bringing in drillers if oil were found. An archaeological team, like a drilling firm, would contract with developers to research a site. Once the findings were properly recorded, the artifacts

could be used as they are now, but many could also be sold after the information is wrung from them in context. The market revenue would go partly to the landowner-developer, and partly to the archaeological team to help finance its research.



Attempts to bribe archaeologists not to report a find have been reported.



Preserving the Past
Everyone is happy that the Miami Circle will be preserved. But the key question lies ahead: How will future preservation efforts be financed? More political and legal tangles will discourage developers from cooperating with archaeologists and valuable discoveries will be lost. But allowing a market in properly explored and recorded artifacts to develop would foster economic growth, scientific and historical understanding, and peace in Miami. ∞

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the problem with bob

by joseph l. bast



Why does government seem to twist and corrupt those who pass through its portal?

There once was a typical politician in a typical state who ran a typical campaign for governor and won. The story of this typical politician—whom I will call “Bob”—illustrates the fundamental problem affecting all levels of government in the U.S. today.

Not a Risk Taker

Bob was once a relatively successful small business owner in a typical small city. He managed the business (which he inherited from his father) competently enough, but he did little to build it. While others might have been tempted to create branches or expand into other types of business, Bob devoted his spare hours to public service, first as a volunteer and later by running for and getting elected to local offices.

Public service suited Bob. He shared the values and tastes of the average man, which put those around him at ease. In meetings, he was quick to compromise and reach deals with other elected officials. While he never would have said it of himself, Bob was comfortable with the notion that the ends justify the means. While some might call his behavior unprincipled, to Bob it was just a matter of making practical concessions to get the job done. “Politics,” he liked to say, “is the art of the possible.”

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The Culture of Spending

Bob ran as a conservative in his first race for state legislature. Being a small business owner, he felt the heavy burden of taxes and grated under regulations written and enforced by people who knew less than he did about his business.

Government programs, Bob knew, usually spent much more to accomplish what private businesses could do for much less.

In countless hours spent listening to testimonies and in meetings with constituents, Bob repeatedly heard requests for a new law, a larger appropriation, or a new legal privilege. Rarely did he hear from someone opposed to higher taxes or more government spending. The steady drumbeat of special interest pleading gradually wore down Bob's conservative resolve (which was hardly granite to start with).

Soon, Bob was siding with those who called for higher taxes—not big or unnecessary tax increases, just little and badly needed ones on gasoline, telephone calls, things like that. Bob also warmed up to the idea that in some areas, government is too small to do the job right, so more spending would be a good thing. Schools, prisons, roads, protecting the environment—after a while, Bob was on record supporting more spending on all these things.


The Last Campaign

When Bob decided to run for governor, a generation of compromising and deal making with his peers ensured that he did not face opposition from a current office-


holder in the primary election. Bob called himself a conservative during the primary campaign, even though his voting record was suspect. The liberal journalists who covered the race were happy to label him a conservative and his opponent an ultraconservative. Bob won the primary handily.

In the general election, Bob's rival opposed abortion and favored the Second Amendment's protection of gun ownership. Bob himself once embraced those positions, but polling and focus group meetings showed them to be unpopular among likely voters. So Bob featured his opponent's votes in negative ads, saying his opponent was "out of the mainstream." Bob's background of compromise and deal making made it impossible for his opponent to similarly accuse him of believing in anything.

To finance his last campaign, Bob tapped the teachers and road builders to whom his past votes had delivered billions of taxpayers' dollars, as well as the doctors and manufacturers for whom his votes had preserved privileges and subsidies worth billions more. He



Bob got elected because he shared common values and interests in his community, his district, and his state.



outspent his opponent by a wide margin.

In the end, Bob won his last campaign by a narrow margin amid record low voter turnout. Congenial to the end, Bob pledged to put the divisive campaign behind him and work to “bring opposing sides together.” Important public works projects once sidetracked by “partisan bickering,” such as a new publicly financed sports stadium and more money for teacher pensions, could now move forward.

The Problem with Bob

Bob, as I said at the outset, is a typical politician. Our legislatures and governors’ mansions are filled with people just like him.

Bob chose to run for office to avoid the risks that come with growing a business in the private sector. Bob got elected because he shared the most common values and interests in his community, his district, and then his state—not because he was exceptionally smart, brave, or honest. Our legislatures, which oversee budgets counted in the tens of billions of dollars, are filled with such risk-averse people of average talent. Any corporation with a board of directors similarly composed would be in serious trouble.

Bob is a follower rather than a leader, and he moved up the political ladder because he was willing to surrender his principles to those of others. A governor and a legislature comprised of followers doesn’t drift about aimlessly (even though that too would be a bad thing). Rather, it

moves resolutely toward more spending, more regulation, and higher taxes, a direction dictated by the interest groups that demand to be appeased and the unelected career bureaucrats whose jobs and prestige require constant expansion of the state.

Bob’s willingness to allow ends to justify means cut him off from the moral code that governs the rest of his life and the lives of those he represents, just as his many years in office cut him off from the values and aspirations of the common man he once knew so well. Elected officials become an elite, not because of their extraordinary skills or high values, but because they are spared the unpleasant consequences that the rest of us endure when we violate moral laws.

Bob used the resources at his disposal to entrench himself in office, to reward his friends and allies, and to lay up an inventory of favors owed that would one day help him fulfill his greatest political ambition. To accuse him of being unethical or even selfish would be unfair. Put in the same situation, most of us would act the same.

The Biggest Problem

The problem with Bob is not that he is dishonest, incompetent, or hungry for power. It is, instead, that he is none of those things, yet politics like a giant meat grinder turned him into those things, or rather made his actions indistinguishable from those of a person who is those things.

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people with impact: t. willard fair

by brett organ



T. Willard Fair
cofounded Miami-
Dade County's first
community and
parent-run public
school in a poor
urban neighborhood.

We are all familiar with the saying, “If you want something done right, you’ve got to do it yourself.” Most of us instinctively realize that little maxim is true, yet somehow we forget its message when it comes to solving many of the pressing social and cultural problems of today.

One man who knows this truth is T. Willard Fair, president and chief executive officer of the Urban League of Greater Miami, Inc. He has been a tireless worker in his community for more than 30 years. Although he doesn’t like to dwell on his accomplishments, Fair has received more than 100 service and recognition awards.

One might be tempted to borrow the catch phrase used so often by the media and refer to him as part of the “black leadership.” But Fair would almost certainly disagree with that label, at least in its typical connotation. That is because Fair parts company with Jesse Jackson, the Rev. Al Sharpton, *et al.*, on many of the hot-button issues of the day. He believes that most modern civil rights “leaders” and publications focus too much on the misery and suffering in the black community, thus allowing supposed victims to remain motionless due to anger and frustration. Fair would much rather look forward and direct his attention to the challenges of the future. He is not a proponent of affirmative action; in fact, he considers it to be reverse discrimination. Furthermore, he supports Gov. Jeb Bush’s One Florida initiative.

When I interviewed Fair, it was clear that he cares about many things. But, above all, he cares about children, especially those who live in a section of Miami called Liberty City.

Liberty City's Children

Liberty City would appear to outsiders as the typical inner city. Any of the police dramas we watch on television might have been set there. Its residents have been ravaged by all of the same social pathologies that have plagued many American urban areas in the last 30 or 40 years. The community has also been beset by many of the same "solutions" that have exacerbated these problems. A culture of dependency and a sense of hopelessness go hand-in-hand here. Many of the schools in Liberty City, as in other American communities today, are perennially low-performing. In 1995, Fair and other like-minded members of the Liberty City community decided to roll up their sleeves and solve their own problems.

On August 26, 1996, after many months of planning, lobbying, and praying, the Liberty City Charter School opened its doors to expectant students and parents. That day was the culmination of a joint effort between the Foundation For Florida's Future and the Urban League of Greater Miami. Of course, no one was prouder than founders Bush and Fair, who were there to

greet the students.

Fair decided that the children of Liberty City deserve a first-rate education that stresses not only the three Rs, but also the three Ps.

Today, many might say that it is rare enough when any school stresses "reading, 'riting, and 'rithmetic," and rarer still to speak of power, prosperity, and prayer. Contrary to the conventional wisdom, Fair knows that education has a critical moral component. So, in addition to lessons in the basics, the school rooms are filled with posters that remind the students of the basics of good character.

Fair is a practical, no-nonsense man. He believes in doing what is right and what works. Therefore, when faced with the fact that so many kindergartners and first-graders come to school with no breakfast and little sleep, the administration provided a common sense solution. Children start the day by eating breakfast together, then they sleep for an hour and a half. Strangely enough, when the students wake up, they are in better condition to learn.

Liberty City's Parents

The success of the Liberty City School is dependent on parental involvement. Prior to the start of school, each parent signs an agreement promising to get their children to school regularly and to make sure



*He cares
about children,
especially those
who live in
a section of
Miami called
Liberty City.*



that they do their homework. Additionally, each parent agrees to volunteer at least 30 hours each year at the school. Many studies over the years have proven that parental involvement is the primary determinant in a child's success in school. As Fair said to me, "The achievement level will not dramatically increase in Liberty City until the adults get a fire in their bellies for the value of education."

Anyone who meets or has worked with Fair knows that he indeed has a fire in his belly. I asked him what he considers to be the most important thing that adults can provide for their children. A sense of hope

was his answer. According to Fair:

If you think small, you will rob the gas station. If you think large, you can be the president of the nation.

Liberty City's Future

There are 55 schools in Liberty City. The charter school is only the first step as far as Fair is concerned. He considers it a personal challenge to make all 55 schools successful.

No one who knows T. Willard Fair would doubt that he will try to make it happen. ∞

Brett Organ is a freelance writer living in Tallahassee, Fla.

the problem with bob (Continued from page 20)

How can we rein in government and make it more accountable and less burdensome, when it seems to operate with an invisible force that twists and corrupts those who pass through its portal? That, surely, is the biggest problem we face.

The situation is not hopeless. Term limits would have required Bob to return to the private sector from time to time, reminding him of the burden of big government and interrupting his accumulation of political power. Constitutional amendments could have capped taxes and spending, limiting Bob's ability to meet the demands of bureaucrats and special interest groups.

Since states and local governments compete with one another for businesses and productive residents, forcing tax and spending authority back down the federalism ladder

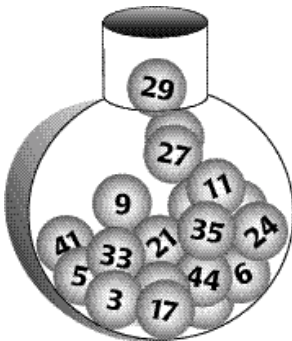
would limit the amount of damage Bob could inflict. So too would restoring constitutional limits on government's regulatory powers. Persuading the media to cover elections as debates over important issues, rather than as races to predict the winner, also would help.

Taking the actions needed to restore true democratic control over government isn't easy, as advocates of term limits lately discovered. The "Empire" often strikes back, and the closer we come to hitting its heart, the more furious will be its reaction. But with no less than our lives, liberties, and estates in the balance, we have no choice but to join the fight. ∞

Joseph L. Bast is president and chief executive officer of The Heartland Institute.

a tax on those who failed math

by peter schorsch



Participation in the state lottery works like a regressive tax to the detriment of low-income individuals who are heavy users.

The bumper sticker reads: “The Lottery: A Tax on Those Who Failed Math.”

For nearly 15 years, the state has been in the gambling business with a voter-approved lottery that is nothing less than a tax—albeit voluntary—on those who failed math. Unfortunately, many lottery players are the least fortunate among us, often poor and poorly educated.

The lottery’s negative impact on Florida’s citizenry is re-igniting the debate over why the state participates in the gambling industry to begin with. Even libertarian conservatives are forced to wonder if state-sanctioned gambling is the limited government envisioned by Madison and the other Founders. It’s doubtful.

More dubious is the future of state-sanctioned gambling in light of incriminating evidence, documenting the predatory nature of the Florida Lottery. According to research conducted by the *Palm Beach Post*, the Florida Lottery relies overwhelmingly on sales to lower income, poorly educated individuals. What may be worse, the lottery concentrates its sales outlets in the state’s impoverished neighborhoods.

Lottery Secretary David Griffin disagrees: “The studies we have seen . . . don’t support the notion [that lotteries prey on the poor].”¹

But the numbers disagree with Griffin.

- Florida’s least-educated citizens spend an average

of \$221 a year on lottery tickets, which is twice what the best-educated spend.²

- With income statistics factored into the analysis, the lottery's regressive nature becomes all the more apparent.

Florida's least-educated spend nearly seven times as much of their income on lottery tickets as the best-educated, 2.35 percent compared to 35 percent.³

Lance deHaven-Smith, a professor at Florida State University and associate executive director of the Florida Institute of Government in Tallahassee, questions the validity of the *Post's* findings. However, he does concede that "low-income groups may indeed spend more of their income on lottery tickets than those with middle and upper incomes."⁴

Statistics Provide Insight

There is the danger, according to deHaven-Smith, that the *Post's* methodology of linking lottery sales figures in certain neighborhoods to aggregate demographic characteristics is flawed. The newspaper's data is as much inference as it is correlation.

Nevertheless, the sales-to-neighborhood relationship "gives you a rough idea of what's going on," according to Phillip Cook, a professor of economics and sociology at Duke University and an expert on state lotteries.⁵

There is a certain logic to the *Post's* methods. "You've got a lot of wealthy people driving into poor neighborhoods to buy tickets?" said Tom Grey, an antigambling activist. "Most people avoid those neighborhoods,"

Grey told *Post* reporter Shirish Daté.

The fact is, 77 percent of players buy their tickets close to home, with 11 percent purchasing them near work and the remainder buying them at either location, according to an internal lottery survey.⁶

But there can be no doubt that the highest

concentration of lottery sales outlets are in neighborhoods made up of the disadvantaged and poorly educated.

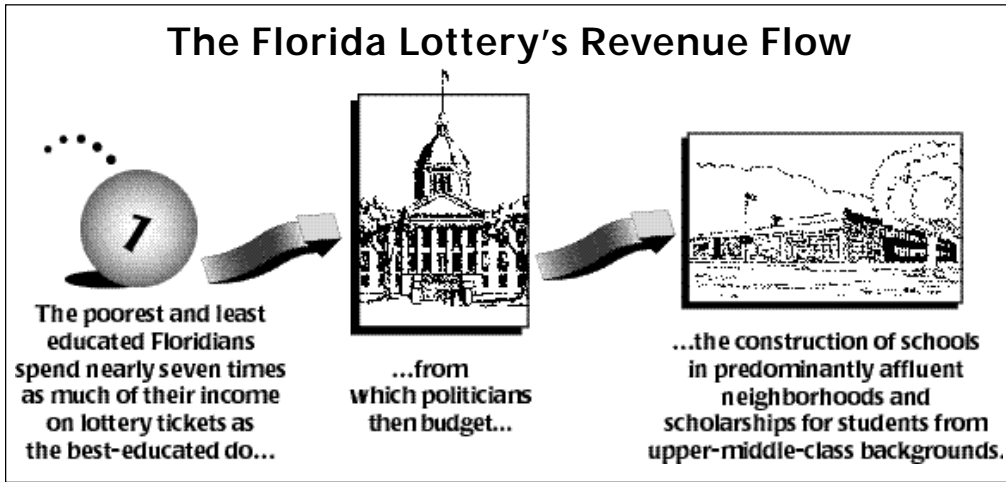
In Florida's 25 least-educated neighborhoods, there are 973 residents per lottery outlet, while in the 25 best educated neighborhoods, there are 2,521 residents per vendor. Throughout the rest of the state, there are three times the number of lottery vendors in the neighborhoods of the less educated as there are in the neighborhoods of the better educated.⁷

But It's for the Kids!

The irony is that lottery proponents promoted the program by duping the electorate with the promise that lottery revenues would be dedicated to improving the state's education system.

Instead, what has resulted is a formula not even a rocket scientist could understand.

The lottery concentrates its sales outlets in impoverished neighborhoods.



The lottery's revenue, disproportionately reliant on low-income, undereducated Floridians, funds the Bright Futures college scholarship recipients, of whom 90 percent are students from middle-class and affluent backgrounds.⁸

Lottery sales also finance the construction of Florida's public schools, the overwhelming majority of which, according to the *Post*, are being built in upper-middle-class suburbs.⁹

The bottom line is that the state's least-fortunate citizens are bankrolling mostly the education of the upper middle class, all in the hopes of winning a game whose odds are stacked 23 million-to-1 against them.

The Politics of Gambling

The late Governor Chiles said it best: "It's a sucker's bet."

His successor, Republican Jeb Bush,

inherited the same double-edge sword of his predecessor—acknowledge and disapprove of the lottery's something-for-nothing ethic, yet still build the revenue into his budget.

Bush's public comments about the lottery, and gambling in general, have not been favorable. In fact, the Bush administration has already taken on the day cruise industry. On the other hand, the governor requested the Florida Lottery to increase its revenues by nearly one-half billion dollars.

This kind of dilemma is similar to situations in other states. Ballot initiatives in Oregon and South Dakota are designed to repeal those states' lotteries. But many politicians in those states are hooked on gambling revenues. That's because, just as in Florida, those lotteries fund education programs valued by voters.¹⁰

If Florida decides to reject gam-

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MADISON OP-ED SERIES

osha releases alligators into sewer system

by peter doherty

Legend says alligators live in New York City's sewers; Long ago, New Yorkers traveling to Florida purchased baby alligators, but after returning home they discovered alligators make poor pets. Most died, but some were tossed into toilets and storm drains alive. The alligators liked the sewers. They live there today and every once in a while, they gobble somebody up.

The story is rubbish. It may contain a crumb of fact—it's possible an alligator was found in a sewer—but no people-gobbling colonies exist. Yet, the story persists.

The alligator legend seems apt here because the Occupational Safety and Health Administration (OSHA) has released into the American business world a rumor that may have as much staying power as the alligator myth, but which may do a great deal more harm.

In response to questions from a Texas computer firm eager to move some sales executives from offices to home-based settings, OSHA, despite

having no regulations covering home-based white-collar workers, sent an "interpretation and compliance letter" to the company.

In the course of six pages, OSHA ordered the employer to exercise "reasonable diligence . . . to ensure that employees are not exposed to reasonably foreseeable hazards created by their at-home employment." The agency spotlighted "unsafe" stairs leading to a basement office as one example. There were many others.

There is no doubt OSHA's letter would have killed telecommuting. No employer would be willing to shoulder the risk or the expense, and no homeowners would want their homes rebuilt to the agency's idiotic standards.

Happily, on January 5, 2000, the decree was "withdrawn" by OSHA who said the letter was just friendly advice given to a single employer. That is baloney. Their use in the letter of "all employers" and "employers must," not to mention

“reasonable diligence” and “foreseeable,” prove it was much, much more.

Publicity and protest greeted OSHA’s pronouncement, but much less attention was given its retraction. So now it sits like alligators in the sewers. OSHA’s control over home

offices may not be real anymore, but for a long time many employers, employees, attorneys, and insurers will believe it is.

What a wonderful way to start the new millennium: Focus on business and wound it. ❧

a tax on those who failed math *(Continued from page 26)*

bling, perhaps it would be best if the lottery were phased out of existence, in the same manner the state is eliminating the intangibles tax, thus allowing lawmakers time to replace the lost revenues.

Selling Sin

But what should change immediately is how the lottery is promoted. Compared to other states, Florida has few guidelines in place for how the lottery is advertised.

Featuring children in lottery ads—an occasional practice in the past but now used more frequently—is a reprehensible practice and should be ended. Imagine using kids to promote other legal vices such as alcohol or smoking.

A second recommendation would be to enact a prohibition on any advertising encouraging people to play. Other

states, including Massachusetts and Virginia, have similar bans, yet still allow point-of-sale displays.

Encouraging citizens to gamble via the lottery, no matter who the beneficiary is, cannot be the intent of the Founders. ❧

Peter Schorsch is a research associate of The James Madison Institute.

Endnotes

- ¹Bill Cotterell, “Lotto chief advocates responsible gambling,” *Tallahassee Democrat*, Dec. 29, 1999.
- ²Shirish Daté, “Lottery draws least educated, poor,” *Palm Beach Post*, Dec. 12, 1999.
- ³Ibid.
- ⁴Interview with deHaven-Smith, January 2000, via e-mail.
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- ⁶Daté, *ibid.*
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- ⁹Daté, *ibid.*
- ¹⁰David Plotz, “The War on Video Crack,” *Slate Magazine*, December 12, 1999.

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