

**BALLOT MEASURES IN THE SOUTHEAST:
A SURVEY OF WETLANDS FOREST CONSERVATION EFFORTS**

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I. Introduction

The Gulf of Mexico is the ninth-largest body of water in the world, and it is surrounded on most sides by the more than thirty thousand miles of coastal shoreline enjoyed by Florida, Alabama, Mississippi, Louisiana, and Texas.¹ Home to some of the most diverse, adaptable, and biodiverse ecosystems in the world, the Gulf Coast also supports a number of highly valuable industries including oil and gas production, commercial fishing, and real estate development.² Nearly 40% of the Gulf coast region is comprised of wetlands and other forest ecosystems.³

Wetland forests are those in which water covers the soil for part of or all of the year comprised of plants and animals that can tolerate these wet conditions or have adapted to survive exclusively within them.⁴ The humans of the region depend heavily on these areas too: nearly 40% of the South relies on drinking water filtered by wetlands.⁵ In 2011, ecotourism and recreation contributed about \$48 billion to the South's economies.⁶ And very importantly, the presence of wetlands and other forests provide an invaluable buffer from the effects of extreme weather.⁷

Wetlands are wonderful, but their existence is precarious. Between 1996 and 2010, the National Oceanic and Atmospheric Administration reported that the Gulf Coast lost 992 square miles of wetlands and 5,795 square miles of forest – on average, around one football field of land cover changed or destroyed *every two minutes*.⁸ This changing landscape is concentrated in large portions of Florida, western Alabama,

¹ National Oceanic and Atmospheric Administration, Office for Coastal Management. “Gulf of Mexico Land Cover Change Report: 1996-2010.” Coastal Change Analysis Program (C-CAP) Regional Land Cover. Charleston, SC: NOAA Office for Coastal Management, www.coast.noaa.gov/ccapftp (Last visited June 3, 2019).

² *Id.*; See also Clinton N. Jenkins et al., US protected lands mismatch biodiversity priorities, 112 Proc. Natl. Acad. Sci. USA 5081, 5081-86 (2015).

³ Wetlands make up 21% of this land cover; forests, 18%. These numbers come from data compiled in 2010; the percentages have likely shifted quite a bit. See NOAA Office for Coastal Management, *supra* note 1; See also Sam L. Davis, Dogwood Forest Alliance, Treasures of the South – the True Value of Wetland Forests, 14 (2016).

⁴ United States Environmental Protection Agency, *What is a Wetland?*, <https://www.epa.gov/wetlands/what-wetland> (last visited June 3, 2019). For hundreds of years, forests in the United States have been considered one of the country's most economically valuable land areas. In addition to the inherent value of timber, carbon storage, and water regulation, forests also provide careers in these areas as well as in recreation and aesthetic enjoyment. Robin L. Chazdon et al., *When is a Forest a Forest? Forest concepts and definitions in the era of forest and landscape restoration*, 45 *Ambio* 540 (2016). See also National Forest Management Act of 1976, 16 U.S.C. § 472A *et seq.*, (1976); Charles F. Wilkinson & H. Michael Anderson, Land and Resource Planning in the National Forests, 64 *Or. L. Rev.* 1, 15-18 (1985). Wetlands forest areas in the Southeastern United States are projected to be worth more than \$500 billion. See generally Davis, *supra* note 3.

⁵ Davis, *supra* note 3, at 48; *Id.* at 9.

⁶ *Id.*

⁷ Davis, *supra* note 3, at 48; *Id.* at 9.

⁸ NOAA Office for Coastal Management, *supra* note 1.

the east coast of Texas, and the Mississippi River Delta.⁹ While deforestation due to the timber industry accounts for a majority of this loss, real estate and land development also plays a supporting role: since 1996, developed land in the Gulf Coast increased by about 17%.¹⁰

Climate change is another contributor to this reshaping of the Gulf Coast, and the South can expect to bear the brunt of what's to come.¹¹ In 2017, SCIENCE magazine published a study that evaluated the likely economic effects of global warming in the United States by 2070-2080.¹²

In nearly every area studied, the South fared the worst.¹³ This study predicted increased mortality rates, higher energy expenditures, fewer opportunities for both high- and low-risk labor, smaller agricultural yields, and vast coastal damage.¹⁴ Poorer counties stand to lose somewhere between 2 and 20% of their income if carbon emissions do not drastically decrease yesterday, and three of the five Gulf Coast states are home to some of the poorest populations in the country.¹⁵

However, even though wetlands and other standing forests are adjacent to some pretty high-risk areas, they have the ability to mitigate some of global warming's detrimental effects.¹⁶ Wetlands behave like "natural sponges," retaining water from the surface, ground, and floods, then slowly filtering and releasing it over time.¹⁷ Trees and dense plant life slow the speed of flooding and reduce erosion.¹⁸ In extreme weather, areas with dense tree cover act as a buffer for destructive wind and rain.¹⁹ Both locally and regionally, areas of forested land remain cooler than areas

⁹ *Id.*; See also Brady R Couvillion et al., U.S. Geological Survey, Land Area Change in Coastal Louisiana from 1932 to 2010, 4-5 (2011).

¹⁰ NOAA Office for Coastal Management, *supra* note 1.

¹¹ Solomon Hsiang et al., Estimating economic damage from climate change in the United States, 356 *Science* 1362-69, 1364 (2017).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* See also Robinson Meyer, The Atlantic, The American South Will Bear the Worst of Climate Change's Costs, June 29, 2017, <https://www.theatlantic.com/science/archive/2017/06/global-warming-american-south/532200/> (last visited June 5, 2019).

¹⁵ Hsiang, *supra* note 10 at 1362; U.S. Census Bureau, Small Area Income and Poverty Estimates (SAIPE) Program, 2017 Poverty and Median Household Income Estimates - States and National (December 2018). Mississippi and Louisiana, respectively, are in first and second place on this list. The poorest populations estimate was measured by the percentage of total population living in poverty. The state with the lowest percentage of impoverished citizens on the Gulf Coast, Florida, is ranked #16. *Id.*

¹⁶ Environmental Protection Agency, *supra* note 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

without tree canopy.²⁰ And wetlands in particular are powerful forces of carbon sequestration, a function which is “essential” to fighting worldwide climate change.²¹

In other words, wetlands are a vital component to life on the Gulf Coast. The more wetlands we lose, the more exposed the Gulf Coast will be to the degradation of the environment when climate change gets hard. Not that it isn’t already measurable: this year, the Mississippi River has been at record highs for record amounts of time.²² The shrinking wetlands surrounding the Mississippi River used to store sixty days of floodwater.²³ Now they can contain just twelve flood days.²⁴ The more that humanity allows these vital ecosystems to disappear, the more humanity risks catastrophic damage to its infrastructure, way of life, and lives.

And this is where the law becomes relevant and capable tool.

Together, Florida, Alabama, Mississippi, Louisiana, and Texas share some 20 million acres of wetland forests.²⁵ This memo exists to serve these millions of acres through two main outcomes: (1) to describe how ballot measures work in the states that border the Gulf, and (2) to point out what works and what doesn’t in the same region when legislating with wetlands conservation in mind. We looked at all ballot measures addressing environmental conservation and land use planning between the years of 2009 and 2019. The results were limited, due in large part to the fact that of these five states, only two allow citizens to propose ballot initiatives; both permit only state constitutional amendments, not statutes.²⁶

Because of these limited results, we subsequently expanded our scope to some other states in the Southeast United States that have wetlands acreage – namely, Arkansas, Missouri, Tennessee, and Virginia. Tennessee and Virginia were essentially dead ends – they neither permit initiatives by voters nor have passed any

²⁰ Ryan Bright et al., Local temperature response to land cover and management change driven by non-radiative processes, 7 *Nature Climate Change* 296, 296-302 (2017).

²¹ Davis, *supra* note 3 at 11.

²² See US Geological Survey, USGS Current Conditions for USGS 07374520 Mississippi River at New Orleans, LA, June 10, 2016, 13:00, https://nwis.waterdata.usgs.gov/usa/nwis/uv/?cb_00065=on&format=gif_stats&site_no=07374510&period=&begin_date=2018-06-03&end_date=2019-06-10 (last visited June 10, 2019).

²³ Environmental Protection Agency, *supra* note 4.

²⁴ *Id.*

²⁵ Davis, *supra* note 3 at 48.

²⁶ These states are Florida and Mississippi. National Conference of State Legislatures, *Initiative and Referendum States*, <http://www.ncsl.org/research/elections-and-campaigns/chart-of-the-initiative-states.aspx> (last visited May 22, 2019).

environmental ballot measures in the previous decade.²⁷ We did not explore Georgia or the Carolinas because those states were the subject of previous research on the topic by the Dogwood Alliance. We did not study other states in the Southeast such as Kentucky or West Virginia because they do not have a similar amount of land cover dominated by wetlands and are not adjacent to large bodies of water.

II. Initiatives Processes in the American South

The general process for passing new legislation and constitutional amendments occurs primarily within the respective governments' legislative assembly. Legislators from either house propose new bills, they are sent to committees for further refinement, and if proposed legislation passes by a majority vote in each house, it heads to the leader of the executive branch to sign (or not) into law. Constitutional amendments must first pass muster by a majority of each of the legislative houses and then they head to the ballot for the electorate have the final word.²⁸ This paper does not go into great detail about this process, both because there is ample literature to describe this basic civics process and because in some states, there's another way for potential laws and amendments to become actual laws and amendments – a process of passing legislation that can begin with the voters themselves.

Ballot initiatives are “a limitation on the full exercise of the legislative function by the legislature.”²⁹ This reservation of direct democracy power for the people often originates in a state's constitution.³⁰ Twenty-four of the United States provide for an initiatives process.³¹ Many voter-initiated ballot measure protocols share a number of similar characteristics, because all of them are modeled after the rules and regulations that guide state legislative assemblies.³² There is case law in state courts to indicate that these initiative structures be broadly construed in the interest of

²⁷ *Id.*; See also Ballotpedia, *List of Virginia Ballot Measures*, https://ballotpedia.org/List_of_Virginia_ballot_measures (last visited May 30, 2019); Ballotpedia, *List of Tennessee Ballot Measures*, https://ballotpedia.org/list_of_Tennessee_ballot_measures (last visited June 10, 2019).

²⁸ See e.g., FL. Const. Art. XI § 1 (1968); AL. Const. § 284 (1901); LA. Const. Art XIII §1 (1974); TX. Const. Art. XVII §1 (2017); MS. Const. Art XV §273 (1890).

²⁹ Norman Singer, 1 *Sutherland Statutory Construction* §4:9 (7th Ed 2018).

³⁰ *Id.*

³¹ National Conference of State Legislatures, *Initiative, Referendum and Recall*, <http://www.ncsl.org/research/elections-and-campaigns/initiative-referendum-and-recall-overview.aspx>, (last visited May 23, 2019).

³² *Id.*

promoting democracy.³³ To begin, an individual or a political group must write their intended legislation.³⁴ Most states designate specific language that must be present in the proposed measure in their constitutions or state codes. Typically, the legislation must include some consideration of how the goals of the amendment or statute will be financed.³⁵ The states in the Gulf that have this requirement also send all initiatives through an independent financing council designated by the state.³⁶

Once the intended law is written, it must be presented to registered voters in the state in a specific format called a petition.³⁷ These petitions must include the language that will be printed on the ballot as well as the full text of the proposed new law or amendment.³⁸ Most states limit the legislation to address just a single issue; a notable exception is Florida, which does not address an issue limitation in its Constitution or state codes.³⁹

The next step is to collect signatures. The exact number of signatures required varies by state, but most are based on a percentage of the votes cast in the last presidential or gubernatorial election in that state.⁴⁰ There must be signatures from a certain number of counties or voting districts, to ensure that voters from the entire state support the measure instead of a lot of voters in one concentrated area.⁴¹ Where they are permitted, statutory initiatives typically require fewer signatures than constitutional initiatives.⁴² There are deadlines (which, again, vary by state) both for collecting the required number of signatures and for submitting the signed petitions to the supervisor of elections (typically the Secretary of State).⁴³ The Secretary of State then must verify the signatures against fraud, as well as submit the initiative to the appropriate body for financial review.⁴⁴

³³ *See e.g.*, *Sydow v. City of Grand Island*, 639 N.W.2d 913 (2002); *Rossi v. Brown*, 889 P.2d 557 (1995); *Storegard v. Board of Elections of Cuyahoga County*, 255 N.E.2d 880 (C.P. 1969).

³⁴ *See e.g.*, FL. Stat. Title IX Ch. 100.371.

³⁵ *See e.g.*, FL. State. Title IX Ch. 100.371(5)(a-e); MS Const. Art. XV §273(4).

³⁶ *Id.*

³⁷ This format, like many of the specifics in the initiative process, varies by state.

³⁸ *See e.g.*, FL. Const. Art. XI §3, MS Const. Art. XV § 273(6).

³⁹ *See e.g.*, Missouri Const. Art. III § 50 (2016).

⁴⁰ *See e.g.*, FL. Const. Art XI §3 (year); MS. Const. Art XV § 273 (3) (year); AR. Const. Art. V §1 (year); MO. Const. Art. III § 50 (2016).

⁴¹ *Id.*

⁴² *See* AR. Const. Art. V §1 (year).

⁴³ *See e.g.*, FL. Const. Art. XI §5 (year).

⁴⁴ *See e.g.*, A.C.A §7-9-126 (year); FL. Stat. Title IX Ch. 100.371 (year).

At this point, the initiative process proceeds on one of two different paths: a direct or an indirect process.⁴⁵ States which employ a direct process, like Florida, will place successful initiative petitions on the ballot during the next election.⁴⁶ States that employ an indirect initiative process, like Mississippi, then submit the petition to the state congress.⁴⁷ At this point, the legislature may vote to adopt the initiative, may propose an altered form of the initiative, or may ignore it altogether.⁴⁸ In the indirect process, once the legislature acts (or doesn't), the petition will then go on the ballot for a vote.⁴⁹

The exact number of votes required to successfully pass a ballot measure varies by state, though they all need a majority vote. For example, Mississippi requires that at least 40% of voters voting in the initiative's election cast a vote one way or the other in order to adopt the measure, even if it passes by a majority of votes cast.⁵⁰ Florida has a requirement that the initiative passes only when it is supported by at least 60% of voters.⁵¹ An important note here is that both Florida and Mississippi allow only constitutional amendment initiatives. In the (albeit uncommon) event that two initiatives presenting conflicting goals appear on the same ballot, states will generally adopt the one that received a higher number of votes.⁵²

If the measure passes in the election, then it is enacted according to state law. The enactment date can be one that is proscribed within the text of the petition, within thirty days of the election, or another date that the state requires.⁵³ If the initiative is not successful, some states like Arkansas prohibit similar legislation from being initiated for a certain period of time, typically about two years.⁵⁴

III. Specific Initiatives Regulations in the Gulf Coast States

Of the five states that border the Gulf of Mexico, only Florida and Mississippi allow voter initiatives, and they each allow amendments only to their state

⁴⁵ National Conference of State Legislatures, *supra* note 29.

⁴⁶ FL. Const. Art XI §5 (year).

⁴⁷ MS Const. Art. XV §273 (year).

⁴⁸ *Id.*

⁴⁹ National Conference of State Legislatures, *supra* note 29.

⁵⁰ MS. Const. Art. XV §273(7).

⁵¹ FL. Const. Art. XI §5.

⁵² *See e.g.*, AL Const. Art. V §125 (1901); MS Const. Art. XI § 273; Ballotpedia, Laws governing the Initiative Process in Arkansas, https://ballotpedia.org/Laws_governing_the_initiative_process_in_Arkansas (last visited June 10, 2019).

⁵³ *See e.g.*,

⁵⁴ *See e.g.*, Arkansas Const. Art. V §1 (year).

constitutions.⁵⁵ Florida permits direct ballot measures; Mississippi has an indirect initiative process.⁵⁶ Alabama permits their legislatures to bring constitutional ballot measures, which go to voters for ratification and then to the Governor to sign or veto.⁵⁷ Louisiana and Texas do not have a statewide system for initiatives, but do permit cities and parishes that are organized by a charter system to establish an initiative scheme for local ordinances and resolutions.⁵⁸

a. Florida

To bring a constitutional initiative in Florida, one must form a political group or coalition – individuals may not make proposals.⁵⁹ Amendments may address any issues, and are not limited to a single issue, except they may not limit the state from raising revenue.⁶⁰ The sponsor of the initiative has to collect a number of signatures equal to 8% of the ballots cast in the most recent Presidential election; these signatures must represent at least half of the congressional districts in the state.⁶¹ As soon as the required signatures are collected and submitted, the Secretary of State sends the petition to an Financial Impact Estimating Conference (“FEIC”), which reviews the economic implications of the proposal and makes a determination of whether or not it will limit the state’s ability to raise revenue.⁶² This determination must be made available to the public.⁶³ After the FEIC makes a determination, the Supreme Court reviews the constitutionality of the FEIC’s findings.⁶⁴

Upon the successful completion of this process, the petition must be filed with the custodian of state records no later than the February 1st preceding the next general election.⁶⁵ At that point, the state government has an obligation to circulate

⁵⁵ National Conference of State Legislatures, *supra* note 25.

⁵⁶ *Id.*

⁵⁷ AL. Const. Art. XVIII §284 *et seq.* (1901).

⁵⁸ National Conference of State Legislatures, *supra* note 25; *See e.g.*, St James Parish Council Code of Ordinances Pt. I, Art. VI.

⁵⁹ The term “coalition” generally refers to “a temporary pact or partnership between two or more political parties, for the purpose of gaining more influence or power than the individual groups or parties can hope to achieve on their own.” National Democratic Institute, The Oslo Center for Peace and Human Rights, *Coalitions: A Guide for Political Parties*, 14 (2015).

FL. Stat. Title IX Ch. 100.371; *see e.g.*, Florida’s Water and Land Legacy, <http://floridawaterlandlegacy.org> (last visited May 23, 2019).

⁶⁰ FL Const. Art. XI §3 (1998).

⁶¹ *Id.*

⁶² FL. Stat. Title IX Ch. 100.371(5)(a-e).

⁶³ *Id.*

⁶⁴ *Id.*; *See e.g.* ADVISORY OPINION TO the ATTORNEY GENERAL RE WATER AND LAND CONSERVATION, 123 So.3d 47 (Fla. 2013).

⁶⁵ FL. Const. Art. XI §5.

both the complete text of the proposed amendments and the date of the election in a newspaper of “general circulation.”⁶⁶ For the ballot measure to be successful and to become law, 60% of voters must vote in favor of it.⁶⁷

However, the initiatives process in Florida may change soon. Republican lawmakers are pushing legislation that would make it harder to amend the constitution.⁶⁸

b. Mississippi

Citizens or political groups may make proposals for constitutional amendments to the Mississippi state legislature.⁶⁹ The state requires that the text of the proposed amendment identify both the source and the amount of funding required to bring the amendment to fruition.⁷⁰ Additionally, amendments may not make changes to Mississippi’s Bill of Rights, change the state’s retirement funding scheme, make alterations to labor unions, or modify the initiatives process.⁷¹ For the legislature to receive a petition, sponsors must collect a number of signatures equal to 12% of the ballots cast in the last gubernatorial election.⁷² If both the Mississippi Senate and the House of Representatives vote to adopt the measure, it will appear on the ballot during the next election.⁷³ If one or both houses take no action within four months, make an alternate proposal, or reject the petition, it will still appear on the ballot.⁷⁴ In the event that the legislature makes an alternate proposal, both measures will appear on the ballot.⁷⁵ For the state to adopt the measure, it must win by a majority vote and receive a number of votes equal to 40% of the total amount of ballots cast in the election.⁷⁶

IV. Other States in the Southeast

a. Arkansas

⁶⁶ *Id.* This circulation happens six weeks before the vote and again 2 weeks before the vote. *Id.*

⁶⁷ *Id.*

⁶⁸ See Gary Fineout, Politico, March 28, 2019, 12:40 PM, Ahead of 2020, GOP tries to rein in ballot measures, <https://www.politico.com/states/florida/story/2019/03/28/ahead-of-2020-florida-gop-tries-to-rein-in-ballot-measures-936356> (last visited June 10, 2019).

⁶⁹ National Conference of State Legislatures, *supra* note 25.

⁷⁰ MS Const. Art. XV §273(4).

⁷¹ *Id.* at §273(5).

⁷² *Id.* at §273(3).

⁷³ *Id.* at §273(6).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at §273(7).

Arkansas provides a direct initiative process for both statutes and constitutional amendments, as well as the ability to initiate referendums and approve or reject entire acts or items from appropriations bills.⁷⁷ The state allows a very similar process at the local level. This generous scheme is supported by the fact that neither the Governor at the state level nor a mayor at the local level may veto a ballot measure that originated with the people.⁷⁸

Statutory initiatives may earn a place on the ballot if they are supported by a number of petitions equal to 8% of the votes cast in the previous gubernatorial election; constitutional amendments, 10%.⁷⁹ These signatures must represent voters from at least fifteen different counties throughout the state.⁸⁰ The Secretary of State has a period of time to verify the signatures before they head to the ballot.⁸¹ Initiative proposals have to happen at least four months before the desired election; the text of the bill or amendment must be generally circulated throughout the state at least once.⁸²

b. Missouri

Missouri's initiatives process is very similar to Arkansas. Like Arkansas, Missouri allows direct initiatives of both statutes and constitutional amendments.⁸³ The required signatures (8% of registered voters for constitutional amendments, at least 5% for statutes) must come from two-thirds of the states' congressional districts.⁸⁴ Proposed laws and amendments are limited to a single subject.⁸⁵ If there are two initiatives on the same ballot that have conflicting goals, "the one with the largest affirmative vote shall prevail."⁸⁶ The Governor may not veto successful voter initiatives.⁸⁷

V. Wetlands Forest Conservation Measures between 2009-2019

a. The Gulf Coast

⁷⁷ Arkansas Const. Art. V §1.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ MO. Const. Art. III §49 (2016).

⁸⁴ *Id.* at §50.

⁸⁵ *Id.*

⁸⁶ *Id.* at §51.

⁸⁷ *Id.* at §52(b).

Florida has the most progressive ballot measures process available to the Gulf Coast – not only does it provide for direct proposals; it also does not limit amendments to a single subject. The state has the largest number of acres of wetlands on the Gulf Coast – 5.3 million acres.⁸⁸ The majority of the land cover in Florida is comprised of either wetlands or other forest areas; most of this land is held by the state or federal government or private owners for agricultural and/or residential use.⁸⁹ These truths are certainly one reason motivating Floridians to do more to conserve their wetlands areas than any other state that borders the gulf.

In 2014, Florida overwhelmingly passed a veritable unicorn of conservation legislation entitled The Water and Land Conservation Amendment.⁹⁰ This amendment, proposed by a coalition called Florida’s Water and Land Legacy, earned the support of more than 400 non-profit environmental organizations that operate in Florida.⁹¹ The amendment reallocates one third of the tax revenue collected from real estate transactions into a fund which will provide for the “acquisition and improvement of land, water areas, and related property interests,” which includes water sources and land areas which protect water resources and provide drinking water.⁹² The amendment also finances “resources for conservation lands, including wetlands, forests, and fish and water habitat.”⁹³ Though we won’t know for sure until 2034, Florida’s Water and Land Legacy reports that this fund will raise about \$20 billion for conservation efforts over a twenty-year span.⁹⁴

More recently, Floridians in 2018 passed a ballot initiative which prohibits drilling for oil and gas beneath all state-owned waters (this amendment also prohibited vaping indoors).⁹⁵

Two years prior to the Water and Land Conservation Amendment, an amendment called “Save our Florida,” which had an ambitious agenda of preserving

⁸⁸ Davis, *supra* note 3 at 48.

⁸⁹ Florida Resources and Environmental Analysis Center, Florida State University, Land use or land cover? Visualizing Florida’s Complex Landscape [GIS Shapefile] (2016).

⁹⁰ FL. Const. Art. X §28(b) (2014). About 4.2 million voters – 75% of the electorate – voted in favor of this amendment. *See* Florida’s Water and Land Legacy, About the Water and Land Conservation Campaign, <http://floridawaterlandlegacy.org/> (last visited May 23, 2019).

⁹¹ Florida’s Water and Land Legacy, Non-profit endorsements, <http://floridawaterlandlegacy.org/sections/page/endorsers> (last visited May 22, 2019).

⁹² FL. Const. Art. X §28(b) (2014).

⁹³ *Id.*

⁹⁴ Florida’s Water and Land Legacy, *supra* note 89.

⁹⁵ FL. Const. Art. II §7(c) (2018).

the environment, lowering taxes, limiting spending on non-Floridians, and implementing a “responsible growth management policy,” failed to pass, likely because two of its goals (investing less in Florida’s thriving tourism industry and lowering taxes) violated the portion of the Florida Statutes that prohibit initiatives from limiting the state’s ability to raise money.⁹⁶ Other notable but defeated ballot measures include one attempting to move the state to entirely renewable energy by 2020, an initiative banning all oil drilling, and another banning hydraulic fracking.⁹⁷

Louisiana and Texas are two states right behind Florida in terms of wetlands acreage, with 5.2 million and 3.7 million acres respectively, but neither state has been nearly as active as Florida in prioritizing wetlands conservation via the initiative process.⁹⁸ In 2012, the Louisiana legislature amended the state’s constitution to reallocate up to \$10 million per year of tax revenue earned from severance taxes and royalties to the Atchafalaya Basin Conservation fund, with the provision that the legislature must approve the transfer of any money from this fund for a different use.⁹⁹ While Louisiana has passed limited constitutional amendments related to wetlands conservation, it has not ignored them via statutory legislation.¹⁰⁰ Texas has not passed any legislature specifically focused on wetlands conservation within the past ten years, though jurisdictions in the state have passed initiatives allowing state and local governments to sell bonds in order to fund water resources and recreation planning.¹⁰¹

⁹⁶ See Florida Division of Elections, Save Our Florida, 2012, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=27623&seqnum=1> (last visited June 6, 2019); see also FL. Stat. Title IX Ch. 100.371(5)(a-e).

⁹⁷ See Florida Green Energy Initiative, A Target for Renewable Energy Generation in Florida, 2012, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=51854&seqnum=1> (last visited June 6, 2019); See Florida Division of Elections, Initiatives / Amendments / Revisions Database, <https://dos.elections.myflorida.com/initiatives/> (last visited June 5, 2019).

⁹⁸ Davis, *supra* note 3 at 48. Neither state provides for voter-introduced ballot measures at the state level. See National Conference of State Legislatures, *supra* note 25.

⁹⁹ LA. Const. Art. VII §4(D)(4).

¹⁰⁰ LA. HB No. 426 (2013); See *e.g.*, LA R.S. 49:214.1 *et seq.* (2012) (Hurricane Protection, Flood Control, and Coastal Restoration); LA R.S. 49:214.4.2 (2012) (America’s Wetland Trail); LA R.S. 49:214.6.1 *et seq.* (2012) (establishing the Coastal Protection and Restoration Authority); LA.R.S. 30:2074 (2012) (addressing water quality control; secretary of environmental quality; powers and duties); LA R.S. 41:1702 (2012) (addressing Reclamation of lands lost through erosion, compaction, subsidence, and sea level rise; land acquisition for certain coastal projects; requirements). See also LA R.S. 3:4271-4384 (Chapter 4: Forests and Forestry).

¹⁰¹ National Conference of State Legislatures, Statewide Ballot Measures Database, <http://www.ncsl.org/research/elections-and-campaigns/ballot-measures-database.aspx>, November 7, 2018 (last visited June 5, 2019). The state in 2015 recognized the right of its people to “hunt, fish, and harvest wildlife” so long as those activities took place “subject to laws that promote wildlife conservation.” TX. Const. Art. I §34(a-c) (2015).

Florida remains a unique place in which voters are consistently bringing environmental legislation to the ballot and sometimes meeting success. As the state on the Gulf with the most wetlands to lose, it makes sense to continue paying attention to and to focus conservation efforts there. Though Florida voters overwhelmingly supported Amendment 1, which established a fund intended for the acquisition and protection of wetlands in Florida, the Florida Legislature did not spend the money in the way that voters elected. In 2015, environmental groups filed suit against both houses, claiming that the legislature misappropriated funds set aside by the amendment for unauthorized uses including overhead and administrative costs.¹⁰² There were two cases filed in district court, bringing similar claims, which were consolidated into one on appeal.¹⁰³

The complaint brought by the Florida Wildlife Federation sought a declaratory judgement and supplemental relief that the trial court found appropriate.¹⁰⁴ Specifically, the plaintiffs asked for the court to declare that the amendment did not provide for the appropriations the Florida Legislature made during the 2015 session, that money originating from the land acquisition trust not be co-mingled with general state revenue, and “such other and further relief as the Court may deem just and proper.”¹⁰⁵

The trial court found for the plaintiffs, holding that “undisputed facts” uncovered during the pretrial discovery process showed that the defendants commingled Land Acquisition Trust Funds with money from Florida’s general revenue, among other sources, in direct violation of subsection 28(c) of the amendment.¹⁰⁶ The opinion, penned by Justice Charles Dodson of Leon County, stated that the clear language of the amendment was the reason it was not a difficult case.¹⁰⁷ Judge Dodson cited the text of the amendment, the title, and the initiative petition presented to voters as being clear, consistent, and unambiguous in their

¹⁰² See News Service of Florida, Tampa Bay Times, Judge signs with environmentalists, says lawmakers failed to comply with Amendment 1, <https://www.tampabay.com/florida-politics/buzz/2018/06/15/judge-sides-environmentalists-says-lawmakers-failed-to-comply-with-amendment-1/>, June 15, 2018 (last visited June 17, 2019). The plaintiffs named in the complaint, Florida Wildlife Federation, Inc., St. Johns Riverkeeper, Inc., and Environmental Confederation of Southwest Florida, and Manley Fuller, were represented by attorneys from Earthjustice. Florida Wildlife Federation et al. v. Andy Gardinier et al., No. 2015-CA-1423, slip op. at 1 (D. Fl. June 22, 2015).

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¹⁰⁴ FWF et al. v. Gardinier et al., No. 2015-CA-1423, slip op. at 9-10 (D. Fl. June 22, 2015).

¹⁰⁵ *Id.* at 10.

¹⁰⁶ Florida Wildlife Federation, Inc., et al., v. Negron et al., Case No. 2015-CA-002682, Fl. 2d District Ct, June 28, 2018.

¹⁰⁷ *Id.* at *3.

meaning: the funds set aside are to be used to acquire and protect land for conservation purposes and no other use.¹⁰⁸

This final judgement decreed a number of appropriations unconstitutional, required that agencies spending money from the Land Acquisition Trust Fund track their expenditures to ensure compliance with the amendment, and declared that the Fund may not be appropriated to “any agency or other entity that receives funding from any other source...without clear language limiting the use of the...money to the purposes authorized” by the amendment.¹⁰⁹

The Legislature appealed the two consolidated cases at the end of 2018, alleging that the trial court improperly restricted the uses to which land acquisition trust funds could be put by engaging in a highly semantic argument supported by various state agency amicus curiae.¹¹⁰ The plaintiffs from both trial court cases each filed answer briefs, supported by briefs from amici including Florida Conservation Voters, Inc., The Trust for Public Land, The Everglades Foundation, and Waterkeepers Florida.¹¹¹ The crucial issue in the case is whether the language describing how to allocate the land acquisition trust money – language that the trial court found to be consistent and clear – is as straightforward as the plaintiffs contend it to be. The First District Court of Appeal of Florida will hear oral arguments on the case July 16, 2019.¹¹²

What happens next will be instrumental in determining the proper next steps for environmental advocacy, both in defining how to fund it and in protecting that funding. The trial court’s ruling was supportive of the amendments’ conservation goals for a few reasons, primarily because it found that the amendment contained consistent and clear language about how the money it set aside should be used. If the Florida appellate court affirms the lower court’s ruling, groups can look to the text of the amendment to bring initiatives in other jurisdictions.

Additionally, the amendment contains a lock-boxing provision that mandates money in the trust be used only for the purposes defined in the amendment. The

¹⁰⁸ Id.

¹⁰⁹ Id.

¹¹⁰ See generally Initial Brief of the Legislative Parties, *Olivia et al. v. Florida Wildlife Federation, Inc., et al.*, No. 1D18-3141, slip op. at 19 (1st Fl. Ct. App. December 21, 2018).

¹¹¹ Briefs for Appeals Scheduled for Oral Argument, Case No. 18-3141, Florida First District Court of Appeal, <https://www.1dca.org/Oral-Arguments/Briefs-for-Appeals-Scheduled-for-Oral-Argument> (last visited June 27, 2019).

¹¹² Id.

effectiveness of this provision remains to be seen until the Florida suit runs its course. Third, the amendment does not establish a new revenue source – it merely allocates one third of the money raised from property and real estate taxes for conservation efforts. Florida’s system for evaluating the financial impact of initiative proposals supported this.¹¹³

The concern for misappropriating conservation funds set aside by constitutional amendment is one with which Alabama lawmakers have recently struggled. Though Alabama does not entertain voter-based ballot initiatives, the state has addressed conservation in the past decade, though it is unclear how productive this legislation has been. The state is home to about 2.1 million acres of wetlands.¹¹⁴ In 1992, the state legislature, in recognizing the “rich diversity of natural areas” within Alabama’s boundaries, established a fund called the Forever Wild Land Trust, which set aside money to be used for “identifying, acquiring, managing, protecting, and preserving natural lands that are of environmental or recreational importance.”¹¹⁵ The Trust places a particular interest in conservation as well as the potential for the enjoyment by future generations.¹¹⁶ It mentioned by name certain ecosystems to acquire with funds from the Trust for these purposes, including wetlands, forests, and woodlands.¹¹⁷ In 2012, the state amended its constitution to extend payments into the Forever Wild Land Trust for a twenty year period, through the early 2030’s.¹¹⁸ The amendment passed by a very strong majority.¹¹⁹

However, between 2010 and 2015, Alabama, facing severe budget struggles, moved more than \$30 million from the Alabama Department of Conservation and Natural Resources in order to support “government agencies and programs that the legislature deem[ed] essential.”¹²⁰ The ADCNR lost \$3 million in one fell swoop in 2015, which required the department to raise fees to enter and enjoy the state’s park system.¹²¹

¹¹³ Advisory Opinion to Atty. Gen. re Water and Land Conservation, 123 So.3d 47 (Fla. September 26, 2013).

¹¹⁴ Davis, *supra* note 3 at 48.

¹¹⁵ AL Const. Am. 543 §1 (1992).

¹¹⁶ *Id.*

¹¹⁷ AL Const. Am. 543 §3 (1992).

¹¹⁸ AL Const. Am. 860 (2012); *See also* AL Const. Am. 543 §7 (1992).

¹¹⁹ *See* Alabama State Parks, *State Parks Funding Crisis*, <https://www.alapark.com/alabama-state-parks-funding> (last visited May 29, 2019).

¹²⁰ *Id.*

¹²¹ *Id.*

In an attempt to fix this, 2016 saw the state legislature pass a joint referendum prohibiting the transfer of monies designated to fund the state parks system for any other use.¹²² The referendum included provisions allowing private companies to establish business within the state parks and also provided that once guest revenue reaches a certain level, the following year payments to the state parks from the Forever Wild Land Trust would diminish in proportion.¹²³ Even though this referendum passed, the governor did not sign it.¹²⁴

b. Beyond the Gulf

Despite Arkansas' generous initiatives scheme, and 2.5 million acres of wetlands, the state has not passed any ballot measures or legislation that address wetlands or forest conservation within the last fifteen years.¹²⁵

Since 1984, Missouri has relied on a sales tax of one-tenth of one percent to fund state parks, water conservation, and soil conservation.¹²⁶ Each year, the tax brings in about \$90 million, which is deposited equally into two separate funds: the State Park Sales Tax Fund and the Soil and Water Sales Tax Fund.¹²⁷ The revenue raised by this tax may not be transferred to any other use.¹²⁸

This tax has been renewed every time it's been up for renewal; the most recent occasion was for 10 more years in 2016.¹²⁹ Nearly two-thirds of Missouri voters supported the amendment which provided this extension.¹³⁰ The Soil and Water Fund grants funding to farmers, enabling them to work with soil and water experts to address erosion and run-off.¹³¹ The State Park fund is the primary source of funding

¹²² AL Act No. 2016-145 (2016).

¹²³ *Id.*

¹²⁴ Alabama Secretary of State, *Act Number 2016-145*, <http://arc-sos.state.al.us/cgi/actdetail.mbr/detail?page=act&year=2016&act=145> (last visited May 29, 2019).

¹²⁵ Arkansas Secretary of State, *Initiatives and Amendments 1938-2016*, https://www.sos.arkansas.gov/uploads/Initiatives_and_Amendments_1938-2016.pdf (last visited May 30, 2019)

¹²⁶ Missouri Const. Art. IV § 47(a) (1984).

¹²⁷ *Id.* at §47(b) (2016).

¹²⁸ *Id.*

¹²⁹ *See* MO. Const. Art. IV § 47(a-c).

¹³⁰ Missouri State Parks, *About the State Park System*, <https://mostateparks.com/page/55047/about-missouri-state-park-system> (last visited May 30, 2019).

¹³¹ Missouri Coalition for the Environment, *From Sales Tax to Soil Conservation: How Your Tax Dollars Are Spent*, <https://moenvironment.org/from-sales-tax-to-soil-conservation-how-your-tax-are-applied/> (last visited May 30, 2019).

for the Missouri State Park System, which in 2012 reported a \$26 return for every dollar spent on the state parks.¹³²

VI. Patterns in Conservation Legislation; Conclusion

Voters in the majority of the American South often lack opportunity to engage in direct democracy at the state level, especially voters who reside in the Gulf Coast states. These same states, within the past decade, have not introduced many ballot measures that promote the conservation of wetland forests either. Florida's 2014 Water and Land Conservation constitutional amendment stands out in the crowd of wetlands forest advocacy efforts, a true grassroots affair supported by more than 400 environmental groups that received overwhelming support from voters.¹³³ Floridians have to care about their wetlands – most of the land area in the state is either a wetland or a forest. The fact that Florida has groups within it that are fighting for pro-environmental causes and getting the signatures to match is a good sign for the future of wetlands conservation.

Of the few states within the Gulf Coast that provide for a voter-based initiative process, there appears to be some success regarding the reallocation of tax revenue for conservation purposes, opposed to establishing new revenue streams for wetlands in the states.¹³⁴ On the other hand, when states implement new taxes for conservation, legislators have met with some success limiting easy reallocation of funding. “Lock boxing,” lawmaking slang used to describe the practice of limiting the transfer of appropriated capital for a different use, may present a potential solution to those who play fast and loose with appropriated funds.¹³⁵ Missouri's Soil and Water Sales Tax Fund contains a lock boxing provision.¹³⁶ While it isn't clear if Missouri's government has ever attempted to appropriate the revenue deposited into the Soil

¹³² Missouri State Parks, *Facts and Figures*, <https://mostateparks.com/page/55072/facts-and-figures> (last visited May 30, 2019).

¹³³ See note 89 *supra*.

¹³⁴ *Id.*

¹³⁵ The term “lockbox,” used in reference to lawmaking, originated with Speaker Newt Gingrich in 1995 when he described a proposed amendment to an appropriations bill that would limit the government's ability to cut spending in response to tax cuts. William Safire, *The New York Times*, *The Way We Live Now:11-26-00: On Language, Snippy* November 26, 2000, <https://www.nytimes.com/2000/11/26/magazine/the-way-we-live-now-11-26-00-on-language-snippy.html> (last visited June 3, 2019). In 1999, Representative Bill Archer of the House Ways and Means Committee used the term to highlight his contention that Social Security funds were to be used only for the purpose of Social Security and not to be reallocated for any other use. *Id.* Safire, the author of this *New York Times* article, provided a tongue-in-cheek version of the definition: “a political metaphor for a trust fund that cannot be spent for purposes other than specified in the politician's promise.” *Id.*

¹³⁶ Missouri Const. Art. IV §47(b) (2016).

and Water Sales Tax Fund, the State has enjoyed the uninterrupted benefits of that tax for more than thirty years.¹³⁷ Louisiana's Natural Resources Severance Tax, a legislative referendum that reallocated tax revenue from the state to the parish level and contributes to a fund which benefits the Atchafalaya River Basin, requires legislative approval before any monies from the fund can be appropriated – an interesting modification of the existing lock boxing principle.¹³⁸

Property and sales taxes are used for conservation efforts of governmentally owned land. A couple of the states described in this note issue bonds semi-regularly to raise money for water infrastructure, state parks and recreation.¹³⁹ This pattern is more prevalent when one considers legislation not involved in the ballot measure process. The use of portions of revenue generated by pre-existing taxes to fund conservation instead of adding new taxes logically follows once one considers that the majority of legislatures in the Gulf Coast (and, for that matter, most of Southeast) are majority conservative and Republican.¹⁴⁰ Bonds are powerful ways for governments to raise money quickly because citizens are incentivized to purchase them due to the interest they will eventually collect; unlike a tax, the state must eventually pay back that money.¹⁴¹

It is also worth mentioning that merely passing an initiative, amendment, or new law does not guarantee that the goals or tenets outlined within them will come to fruition or guarantee that the executive body will sign it if she or he is able. For example, the constitutional amendment which promised to allocate funding to the Forever Wild Land Trust survived all of three years before a budget crisis motivated the Alabama legislature to move millions of dollars allocated for state parks to line items that they deemed more “essential” than investment in conservation.¹⁴² When the legislature passed a joint resolution the next year to plead that the monies

¹³⁷ Missouri Const. Art IV §47(a) (1984).

¹³⁸ LA Const. Art VII § 4(D)(4).

¹³⁹ National Conference of State Legislatures, *supra* note 100.

¹⁴⁰ National Conference of State Legislatures, *State Partisan Composition*, <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx> (last visited May 29, 2019); Matthew Bloch, Larry Buchanan, Josh Katz & Kevin Quealy, *The New York Times*, *An Extremely Detailed Map of the 2016 Election*, <https://www.nytimes.com/interactive/2018/upshot/election-2016-voting-precinct-maps.html> (last visited May 29, 2019).

¹⁴¹ Vanguard, What is a bond?, <https://investor.vanguard.com/investing/investment/what-is-a-bond> (last visited June 10, 2019).

¹⁴² *See* AL Act No. 2016-145 (2016).

allocated to the Forever Wild Land Trust be used only in furtherance of that Trust, the governor did not deign to autograph it.¹⁴³

Successfully introducing and enforcing conservation legislation in the Gulf Coast region will be a challenge, though concentrating efforts at the local level in the states that allow it could make a difference. Louisiana and Texas, the states with the second and third most wetlands forest acreage on the Gulf, both allow charter cities to provide for an initiative process to their local ordinances and charters. If individuals and groups pressure the members of their parish- and city councils to be tougher on the industries in their communities that threaten wetlands, it could help the state governments to notice, catch on, and write conservation legislation that could benefit the entire region.

¹⁴³ Alabama Secretary of State, *supra* note 111.