

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC 17-____

TOBY and ROBERT BOGORFF, TIMOTHY FARLEY, BETH
and ROALD GARCIA, DEANNA and JOHN KLOCKOW, LOIS and CHARLES
STROH, NANCY and JOSEPH DOLLIVER, GROSSMAN ROTH, P.A. N/K/A
GROSSMAN ROTH YAFFA COHEN, P.A., ROBERT C. GILBERT, P.A.,
LYTAL REITER SMITH IVEY & FRONRATH, L.L.P., and WEISS SEROTA
HELFMAN COLE & BIERMAN, P.L.,

Petitioners,

vs.

HONORABLE RICK SCOTT, in His Official Capacity as Governor of Florida,
HONORABLE KENNETH W. DETZNER, in His Official Capacity as Secretary
of the State of Florida, and HONORABLE JEFF ATWATER, in His Official
Capacity as Chief Financial Officer of the State of Florida,

Respondents.

PETITION FOR WRIT OF MANDAMUS

BRUCE S. ROGOW
BRUCE S. ROGOW, P.A.
100 N.E. 3rd Avenue
Suite 1000
Fort Lauderdale, FL 33301

ROBERT C. GILBERT
NEAL A. ROTH
GROSSMAN ROTH YAFFA
COHEN, P.A.
2525 Ponce de Leon Blvd.
Suite 1150
Coral Gables, FL 33134

Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF CITATIONS iii-v

PETITION FOR WRIT OF MANDAMUS..... 1

 I. Nature of the Relief Sought.....2

 II. Basis for Invoking This Court’s Jurisdiction3

 III. Statement of the Facts6

 A. The Takings Litigation..... 6

 B. Efforts to Collect Payment on the Takings
 Judgments.....9

 C. The Legislature’s Appropriations and the
 Governor’s Veto..... 12

 IV. Argument..... 14

CONCLUSION 17

CERTIFICATE OF SERVICE 19

CERTIFICATE OF COMPLIANCE 19

TABLE OF CITATIONS

CASES

<i>Brown v. Firestone</i> , 382 So. 2d 654 (Fla. 1980).....	3, 14
<i>Bogorff v. Dep't of Agriculture and The Fla. Comm. of Agriculture</i> , 191 So. 3d 512 (Fla. 4th DCA 2016).....	<i>passim</i>
<i>Chiles v. Phelps</i> , 714 So. 2d 453 (Fla. 1998).....	4, 5
<i>Dep't of Agriculture v. Ayers</i> , 192 So. 3d 68 (Fla. 5th DCA 2016).....	8-9
<i>Dep't of Agriculture v. Bogorff</i> , 35 So. 3d 84 (Fla. 4th DCA 2010) <i>rev. denied</i> , 48 So. 3d 835 (Fla. 2010) <i>cert. denied</i> , 131 S. Ct. 2874 (U.S. 2011).....	8
<i>Dep't of Agriculture v. City of Pompano Beach</i> , 829 So. 2d 928 (Fla. 4th DCA 2002) <i>rev. denied</i> , 845 So. 2d 889 (Fla. 2003).....	8
<i>Dep't of Agriculture v. Dellaselva</i> , 926 So. 2d 1293 (Fla. 2d DCA 2006) <i>rev. denied</i> , 940 So. 2d 427 (Fla. 2006).....	8
<i>Dep't of Agriculture v. Dolliver</i> , 209 So. 3d 578 (Fla. 2d DCA 2016).....	8
<i>Dep't of Agriculture v. Mendez</i> , 98 So. 3d 604 (Fla. 4th DCA 2012).....	9, 10
<i>Dep't of Agriculture v. Mendez</i> , 2016 WL 7405485 (Fla. 4th DCA 2016).....	9
<i>Florida House of Reps. v. Crist</i> , 999 So. 2d 601 (Fla. 2008).....	4, 5

<i>Florida House of Reps. v. Martinez</i> , 555 So. 2d 839 (Fla. 1990).....	3
<i>Florida Senate v. Harris</i> , 750 So. 2d 626 (Fla. 1999).....	3
<i>Haire v. Dep’t of Agriculture</i> , 870 So. 2d 774 (Fla. 2004).....	4, 7, 16, 17
<i>Joseph B. Doerr Trust v. Central Fla. Expressway Auth.</i> , 177 So. 3d 1209 (Fla. 2015).....	9
<i>Moreau v. Lewis</i> , 648 So. 2d 124 (Fla. 1995).....	4
<i>Patchen v. Dep’t of Agriculture</i> , 906 So. 2d 1005 (Fla. 2005).....	4-5, 7
<i>Schick v. Dep’t of Agriculture</i> , 586 So. 2d 452 (Fla. 1st DCA 1991)	9
<i>Thompson v. Graham</i> , 481 So. 2d 1212 (Fla. 1985).....	3

**STATUTES AND
CONSTITUTIONAL PROVISIONS**

Art. I, §9, Fla. Const.....	1, 14-15
Art. V, §3(b)(3), Fla. Const.....	5
Art. V, §3(b)(8), Fla. Const.....	3
Art. X, §6(a), Fla. Const.	<i>passim</i>
Amend. V, U.S. Const.	1, 15
Amend. XIV, §1, U.S. Const.	1, 15
§ 581.1845, Fla. Stat. (2001).....	7, 16

§ 11.066(3), Fla. Stat.....*passim*

§ 11.066(4), Fla. Stat.....*passim*

SECONDARY SOURCES

Senate Bill 2500

<https://www.flsenate.gov/Session/Bill/2017/2500/BillText/er/PDF>3, 12

PETITION FOR WRIT OF MANDAMUS

This petition challenges Governor Rick Scott's line-item veto of two specific appropriations of \$20,941,328.00 and \$16,475,800.00, made by the 2017 Florida Legislature to pay and satisfy constitutional takings judgments that awarded full compensation to Petitioners under Article X, §6(a), Fla. Const. Those judgments, the product of trials and appellate affirmances of constitutional takings cases in Broward and Lee Counties, remain unpaid.

The Governor's line-item veto of those appropriations violates the compensation clauses of the Florida Constitution, Article X, §6(a), and the United States Constitution, Amendment V, and the due process clauses of the Florida Constitution, Article I, §9, and the United States Constitution, Amendments V, XIV, §1.

Petitioners seek to overturn Governor Scott's line-item veto of those specific appropriations, order the Secretary of State to expunge the vetoes from the public records of the State of Florida, and direct the Chief Financial Officer of the State of Florida to pay the sums of \$20,941,328.00 and \$16,475,800.00 to Petitioners to satisfy the constitutional takings judgments entered pursuant to Article X, §6(a), Fla. Const.

I. NATURE OF THE RELIEF SOUGHT

Petitioners are citizens and taxpayers of the State of Florida, and have standing to seek the relief sought herein. Petitioners, Toby and Robert Bogorff, Timothy Farley, Beth and Roald Garcia, Deanna and John Klockow, Lois and Charles Stroh, and Nancy and Joseph Dolliver (the “Homeowners”), and the law firms of Grossman Roth, P.A. n/k/a Grossman Roth Yaffa Cohen, P.A., Robert C. Gilbert, P.A., Lytal Reiter Smith Ivey & Fronrath, L.L.P., and Weiss Serota Helfman Cole & Bierman, P.L. (“Class Counsel”), are court-appointed class representatives and class counsel, respectively, for certified classes of owners of residential properties in Broward and Lee Counties, Florida.¹ Petitioners hold final judgments that awarded full compensation pursuant to Article X, §6(a), Fla. Const., against the Florida Department of Agriculture and Consumer Services and its Commissioner (the “Department”). The final judgments have not been paid or satisfied, in whole or in part.

Petitioners seek to overturn Governor Rick Scott’s line-item veto of two specific appropriations in the amounts of \$20,941,328.00 and \$16,475,800.00,

¹ The certified classes are comprised of the owners of 70,036 residential properties in Broward and Lee Counties, Florida, whose 167,677 healthy, uninfected residential citrus trees were destroyed by the Florida Department of Agriculture and Consumer Services under the Citrus Canker Eradication Program between 2000 and 2006.

made by the 2017 Florida Legislature and incorporated into Senate Bill 2500, the Fiscal Year 2017-18 General Appropriations Act (the “Citrus Canker Final Judgment Appropriations”), to pay and satisfy constitutional takings judgments that awarded full compensation to Petitioners pursuant to Article X, §6(a), Fla. Const., to order the Secretary of State to expunge said vetoes from the official records of the State of Florida, and direct the Chief Financial Officer to issue payments to Petitioners in the amounts of \$20,941,328.00 and \$16,475.800.00 to satisfy the constitutional takings judgments at issue.

Mandamus is an appropriate remedy to challenge the Governor’s veto power. *See Brown v. Firestone*, 382 So. 2d 654 (Fla. 1980). This Court has periodically reviewed the Governor’s veto of appropriations adopted by the Legislature. *Id.* at 668-672; *Thompson v. Graham*, 481 So. 2d 1212 (Fla. 1985); *Fla. House of Reps. v. Martinez*, 555 So. 2d 839 (Fla. 1990); *Florida Senate v. Harris*, 750 So. 2d 626 (Fla. 1999).

II. BASIS FOR INVOKING THE COURT’S JURISDICTION

This Court has jurisdiction to issue writs of mandamus to the Governor, Secretary of State and Chief Financial Officer, as state officers, pursuant to Article V, §3(b)(8), Fla. Const. While this Court’s jurisdiction is discretionary and concurrent with other courts, specific considerations in this case warrant immediate review by this Court, instead of transfer to a circuit court followed by an appeal to

a district court. *See Moreau v. Lewis*, 648 So. 2d 124, 125-26 n.4 (Fla. 1995) (entertaining jurisdiction on a mandamus petition finding that an “immediate determination is necessary to protect governmental functions” and noting that there was no relevant factual dispute which would require “extensive fact-finding”); *Fla. House of Reps. v. Crist*, 999 So. 2d 601, 608 (Fla. 2008) (finding that “importance and immediacy of the issue justifies our deciding this matter now rather than transferring it for resolution in a declaratory judgment action”).

No material facts are in dispute. *Chiles v. Phelps*, 714 So. 2d 453, 457 n.6 (Fla. 1998). The legislative appropriations and vetoes at issue are part of the official records of the 2017 Legislature, and the judgments giving rise to the appropriations are final and no longer subject to appeal, and have been recorded in the public records of the State of Florida. Moreover, the legal issue presented does not turn on any disputed facts. The immediate need for resolution of this issue was created by the fact that, on June 2, 2017, Governor Scott vetoed the Citrus Canker Final Judgment Appropriations that were intended to pay and satisfy final judgments that awarded full compensation to Petitioners in constitutional takings proceedings.

This Court is in a far better position to resolve this petition in the first instance. Based on this Court’s decisions in *Haire v. Dep’t of Agriculture*, 870 So. 2d 774 (Fla. 2004), and *Patchen v. Dep’t of Agriculture*, 906 So. 2d 1005 (Fla.

2005), and the plain language in Article X, §6(a), Fla. Const., there is no need for this Court to require development of the legal analysis in the lower tribunals.

Additionally, in view of the important questions of Florida constitutional law at issue, “this case would in all likelihood ultimately be decided by this Court. Interests of judicial economy favor an immediate resolution.” *Chiles*, 714 So. 2d at 457 n.6. Unless this Court were to transfer this petition to circuit court and the district court of appeal took the unusual step of summarily affirming such an important issue without opinion, there is no question that the lower court’s construction of the relevant constitutional provisions would create additional grounds for this Court’s ultimate review. Art. V, §(3)(b)(3), Fla. Const.

Given that the Fiscal Year 2017-18 General Appropriations Act will go into effect on July 1, 2017, there is no time for this case to work its way through the circuit court, to the district court, and ultimately back to this Court for final resolution. *See Crist*, 999 So. 2d at 608 (“importance and immediacy” of the issue presented justified immediate decision by this Court rather than transferring case to circuit court). The importance of deciding this issue before the commencement of the new budget year cannot be overstated. Absent an immediate decision by this Court, the State will argue that no appropriated funds exist with which to pay and satisfy the constitutional takings judgments held by Petitioners, and Petitioners will

be left holding constitutional takings judgments that cannot be satisfied. The process will continue to recur unless this Court puts an end to it once and for all.

Finally, absent this Court's immediate resolution of this issue, the commandment to pay full compensation for the taking of private property, enshrined in Article X, §6(a), Fla. Const., will be rendered meaningless. The constitutional guaranty that full compensation shall be paid when the State takes private property for a public purpose will ring hollow unless Governor Scott's veto of the Citrus Canker Final Judgment Appropriations is expunged, and the Chief Financial Officer is directed to issue payments of \$20,941,328.00 and \$16,475.800.00 to Petitioners to satisfy the outstanding constitutional takings judgments.

III. STATEMENT OF THE FACTS

The Citrus Canker Final Judgment Appropriations were the result of more than a decade of constitutional takings litigation in Florida courts. The course of the litigation and the Citrus Canker Final Judgment Appropriations is set forth below.

A. The Takings Litigation.

From January 2000 through early 2006, the Department destroyed hundreds of thousands of healthy, uninfected residential citrus trees throughout the State of Florida under the citrus canker eradication program's 1900-foot policy ("CCEP").

In *Haire*, this Court held that the Department’s destruction of healthy, uninfected residential citrus trees under the CCEP was constitutional based, in part, on the fact that the compensation schedule established by the Legislature in §581.1845, Fla. Stat., “sets a floor but does not determine the amount of compensation. When the State destroys private property, the State is obligated to pay just and fair compensation as determined in a court of law.” *Haire*, 870 So. 2d at 785.

In *Haire*, this Court also declared that the availability of funds “does not relieve the State of its obligation to provide full and just compensation” when it destroys private property, and that the “proviso” in §11.066 (3), Fla. Stat., is “not a limit on the State’s obligation to pay compensation for the destruction of exposed citrus trees.” *Haire*, 870 So. 2d at 785-86.

In *Patchen*, this Court answered a certified question and, relying on *Haire*, declared that the compensation schedule adopted by the Legislature did not preclude homeowners from pursuing constitutional takings proceedings in court to recover full compensation for their private property. *Patchen*, 906 So. 2d at 1008. “When the State destroys private property, the State is obligated to pay just and fair compensation as determined in a court of law.” *Id.*

Consistent with *Haire* and *Patchen*, homeowners in Broward, Lee, Miami-Dade, Orange and Palm Beach Counties pursued constitutional takings proceedings under Article X, §6(a), Fla. Const., to recover full compensation from

the Department for the taking and destruction of the homeowners' private property – more than 500,000 healthy, uninfected residential citrus trees – under the CCEP.

The Broward Homeowners sought full compensation for 133,720 healthy, uninfected, residential citrus trees taken and destroyed under the CCEP. Similarly, the Lee Homeowners sought full compensation for 33,957 healthy, uninfected, residential citrus trees taken and destroyed under the CCEP. Both cases were certified to proceed as class actions. *See Dep't of Agriculture v. City of Pompano Beach*, 829 So. 2d 928 (Fla. 4th DCA 2002), *rev. denied*, 845 So. 2d 889 (Fla. 2003); *Dep't of Agriculture v. Dellaselva*, 926 So. 2d 1293 (Fla. 2d DCA 2006), *rev. denied*, 940 So. 2d 427 (Fla. 2006).

In 2008 and 2014, after years of hard-fought litigation that culminated in separate trials determining liability and the amount of compensation, circuit courts in Broward and Lee Counties, respectively, entered final judgments against the Department that awarded full compensation to the Homeowners under Article X, §6(a), Fla. Const. *See Exhibits A - B*. Both judgments were affirmed. *See Dep't of Agriculture v. Bogorff*, 35 So. 3d 84 (Fla. 4th DCA 2010), *rev. denied*, 48 So. 3d 835 (Fla. 2010), *cert. denied*, 131 S.Ct. 2874, 179 L.Ed.2d 1188 (U.S. 2011); *Dep't of Agriculture v. Dolliver*, 209 So. 3d 578 (Fla. 2d DCA 2016).²

² Final judgments awarding full compensation to the Orange and Palm Beach homeowners have also been entered and affirmed. *See Exhibits E – F; Dep't of*

The Broward and Lee circuit courts subsequently entered final judgments that awarded attorneys' fees and costs to Class Counsel based on their decade-plus representation of the Homeowners in the underlying takings proceedings. *See* Exhibits C - D. These judgments are final as well. Attorneys' fees and court costs are an element of the full compensation recoverable for a constitutional taking under Article X, §6(a), Fla. Const. *See Joseph B. Doerr Trust v. Central Fla. Expressway Auth.*, 177 So. 3d 1209, 1215 (Fla. 2015); *Schick v. Dep't of Agriculture*, 586 So. 2d 452 (Fla. 1st DCA 1991).

The final judgments that awarded full compensation to the Petitioners remain unpaid, contrary to the payment commandment embodied in Article X, 6(a), Fla. Const.

B. Efforts to Collect Payment on the Takings Judgments.

The Fourth District Court of Appeal has issued two decisions addressing the Broward Homeowners' and Class Counsel's efforts to collect payment on these constitutional takings judgments. *See Dep't of Agriculture v. Mendez*, 98 So. 3d 604 (Fla. 4th DCA 2012); *Bogorff v. Dep't of Agriculture and The Fla. Comm. of Agriculture*, 191 So. 3d 512 (Fla. 4th DCA 2016).

In *Mendez*, the Broward Homeowners challenged the trial court's refusal to issue a writ of execution on the underlying final judgments based on §11.066(3)

Agriculture v. Ayers, 192 So. 3d 68 (Fla. 5th DCA 2016); *Dep't of Agriculture v. Mendez*, 2016 WL 7405485 (Fla. 4th DCA 2016).

and (4), Fla. Stat., and its conclusion that the statute was constitutional as applied. *Mendez*, 98 So. 3d at 607. The Fourth District held that §11.066(4) “precludes the issuance of a writ of execution against the Department and decline[d] to reach the constitutional issues at [that] time.” *Id.* at 606. The court held that the constitutional issue was not ripe until the Broward Homeowners unsuccessfully sought to secure an appropriation to pay the full amount of the underlying judgment, resulting in a constitutional deprivation. *Id.* at 608-09.

Consistent with *Mendez*, the Broward Homeowners and Class Counsel unsuccessfully sought an appropriation from the Florida Legislature to pay and satisfy the constitutional takings judgments awarded to them. *Bogorff*, 191 So. 3d at 514. The Broward Homeowners and Class Counsel returned to Broward circuit court for relief, which was again denied. *Id.* They appealed to the Fourth District and urged that, because they had unsuccessfully sought an appropriation to pay the full amount of the underlying judgments, they satisfied the mandate in *Mendez* and, therefore, §11.066(3) and (4), Fla. Stat., should be declared unconstitutional. *Id.* The Department argued that the Broward Homeowners had not properly sought an appropriation to pay the underlying judgments. *Id.*

The Fourth District held that the Broward Homeowners and Class Counsel fulfilled the directive in §11.066(3) to seek an appropriation to pay the constitutional takings judgments, that §11.066(3) does not contemplate a claim bill,

that §11.066(4) provides an alternative remedy in the form of a writ of mandamus to enforce the judgments, and that the alleged unconstitutional application of the statute would only materialize if payment of the judgments is not secured through a writ of mandamus. *Bogorff*, 191 So. 3d at 514-16.

As directed by *Bogorff*, in January 2017, the Broward Homeowners and Class Counsel returned to Broward circuit court and filed a Motion (Post-Judgment Complaint) for Writ of Mandamus and to Declare Sections 11.066(3) and (4) Unconstitutional As Applied, seeking to compel the Department to pay the constitutional takings judgments entered in that case.³ *See* Exhibit G. The Broward circuit court has not yet addressed the request for mandamus relief.

C. The Legislature's Appropriations and the Governor's Veto

On May 8, 2017 – while the motion for writ of mandamus was pending before the Broward circuit court – the 2017 Florida Legislature approved the Citrus Canker Final Judgment Appropriations to pay and satisfy the final judgments awarded to Petitioners in the underlying constitutional takings proceedings.⁴ *See*

³ The post-judgment request for mandamus was filed in the same Broward circuit court case where the underlying final judgments were awarded in favor of the Broward Homeowners and Class Counsel. Respondents/defendants in that case are the Department and its Commissioner. Governor Scott is not a party in that case. The Broward circuit court recently denied Respondents' motion to transfer the case to Leon circuit court.

⁴ As indicated above, although constitutional takings judgments have been awarded to homeowners in Orange and Palm Beach counties, those judgments remain

Exhibit H at pp. 222-223.⁵ Release of the appropriated funds was conditioned solely on the recordation of satisfactions of the underlying final judgments. *Id.* The Citrus Canker Final Judgment Appropriations initially appeared to obviate the need for the mandamus proceeding before the Broward circuit court.

On June 2, 2017, Governor Rick Scott vetoed the Citrus Canker Final Judgment Appropriations. *See* Exhibit I at pp. 53-54. Governor Scott did not strike down the Legislature’s appropriation of these funds due to a budget shortfall; in connection with his veto of these (and other) line items, the Governor acknowledged that the “State of Florida has a budget surplus exceeding \$3 billion.” *See* Exhibit J.

In his official veto letter, Governor Scott claimed that the Citrus Canker Final Judgment Appropriations were vetoed “because of ongoing litigation.” *See* Exhibit I at pp. 53-54. But there is no “ongoing litigation” involving the judgments that awarded constitutional compensation to Petitioners, except post-judgment proceedings to collect payment on those judgments. The underlying litigation is over, and the judgments are final and no longer subject to review.

unpaid and the 2017 Legislature did not appropriate funds to satisfy those judgments. *See* Exhibits E - F.

⁵ Senate Bill 2500 is 451 pages in length and can be accessed in its entirety at <https://www.flsenate.gov/Session/Bill/2017/2500/BillText/er/PDF>. Exhibit H includes the Table of Contents and Introduction, as well as Section 5, encompassing appropriations for Natural Resources/Environment/Growth Management/ Transportation/Agriculture and Consumer Services.

The only “ongoing litigation” involves the Miami-Dade homeowners’ class action lawsuit in Miami-Dade circuit court, where a bench trial on liability was concluded in June 2016, and the parties are still awaiting entry of a liability order by the trial judge.⁶ If liability is determined in favor of the certified class of Miami-Dade homeowners, a jury will determine the amount of full compensation due for the healthy, uninfected residential citrus trees destroyed in that county. Regardless of the eventual outcome of the Miami-Dade case, it will not affect the finality of the affirmed final judgments previously awarded to Petitioners or change the amounts due thereunder.

As a result of Governor Scott’s veto of the Citrus Canker Final Judgment Appropriations, the Lee Homeowners and Class Counsel filed a Post-Judgment Motion (Complaint) for Writ of Mandamus or, in the Alternative, to Declare Sections 11.006(3) and (4) Unconstitutional as Applied in Lee circuit court, seeking to compel the Department to pay the constitutional takings judgments entered in that proceeding, and requested that the mandamus proceedings be expedited.⁷ *See* Exhibit K. The Broward Homeowners also notified the Broward

⁶ *In re: Citrus Canker Litigation*, Miami-Dade Circuit Court, Case No. 03-8255 CA 13.

⁷ The post-judgment request for mandamus was filed in the same Lee circuit court case where the underlying final judgments were awarded in favor of the Lee Homeowners and Class Counsel. Respondents/defendants in that case are the

circuit court of the Governor's veto of the Citrus Canker Final Judgment Appropriations, and requested that the court expeditiously proceed with the previously filed request for mandamus relief. To date, neither circuit court has ruled on Petitioners' request for mandamus relief against the Department and its Commissioner.

IV. ARGUMENT

After litigating for more than a decade to vindicate their constitutional rights, Petitioners efforts to collect constitutionally mandated payment under the final judgments has taken on a life of its own.

Governor Scott's veto of the Citrus Canker Final Judgment Appropriations was unconstitutional. *Brown*, 382 So. 2d at 668 (governor must exercise veto power in a constitutional manner). In this case, Governor Scott's veto of the Citrus Canker Final Judgment Appropriations violated Petitioners' constitutional right to payment of full compensation awarded in the constitutional takings litigation, as commanded by Article X, §6(a), Fla. Const.: "No private property shall be taken except for a public purpose and *with full compensation therefor paid to each owner* or secured by deposit in the registry of the court and available to the owner." (Emphasis added). The Governor's veto of these appropriations also

Department and its Commissioner. Governor Scott is not a party in that case. Respondents have moved to transfer the case to Leon circuit court.

denies Petitioners substantive due process guaranteed by Article I, §9 of the Florida Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution.

As the Fourth District declared in *Bogorff*:

We pause to comment on the importance of section 11.066 to provide a means for compensation for the Department's taking of the Class members' property. Since the founding of our nation, the law has recognized, required, and enforced just compensation when government takes private property.

No private property shall be taken except for a public purpose and with ***full compensation paid to each owner*** or secured by deposit in the registry of the court and available to the owner.

Art. X, § 6(a), Fla. Const. (emphasis added). Indeed, the United States Constitution contains a similar provision. Amend. V, U.S. Const. (“[N]or shall private property be taken for public use, without just compensation.”).

The Florida Supreme Court has interpreted the takings clauses of the United States and Florida Constitutions coextensively. *See e.g., Tampa-Hillsborough Cty. Expressway Auth. v. A.G.W.S. Corp.*, 640 So. 2d 54, 58 (Fla. 1994); *Joint Ventures, Inc. v. Dep’t of Transp.*, 563 So. 2d 622, 623 (Fla. 1990).

While the government has the ability to establish procedures for payment of its constitutional obligation, it does not have the luxury of avoiding it. Should the Class fail in obtaining a writ of mandamus, pursuant to section 11.066(4), the constitutional issue will ripen, and the courts will be left with no choice but to enforce Article X, section 6(a), of the Florida Constitution.

Bogorff, 191 So. 3d at 515-16 (emphasis in original).

Governor Scott's veto of the Citrus Canker Final Judgment Appropriations undermines the State's constitutional obligation to pay full compensation for the taking of private property. The constitutional provision does not afford the State the luxury of avoiding payment of the full compensation awarded to Petitioners. *Bogorff*, 191 So. 3d at 516 (“While the government has the ability to establish procedures for payment of its constitutional obligation, it does not have the luxury of avoiding it.”).

In *Haire*, this Court concluded that the citrus canker law was a valid exercise of the State's police power because it provided compensation for trees having value. *Haire*, 870 So. 2d at 782. The Court recognized that the compensation schedule provided under §581.1845, Fla. Stat., did not limit homeowners from pursuing full compensation in a court of law. *Id.* at 785. Indeed, the Court concluded that the schedule established by the Legislature set a “floor but does not determine the amount of compensation. When the State destroys private property, *the State is obligated to pay just and fair compensation as determined in a court of law.*” *Id.* (emphasis added).

In *Haire*, this Court also held that the language in §581.1845, Fla. Stat. – that compensation is subject to the availability of appropriated funds – did not relieve the State of its obligation to provide full and just compensation. *Haire*, 870 So. 2d at 785-86. The Court noted that the “proviso [in section 11.066(3) which

expressly provides that neither the state nor any of its agencies shall pay or be required to pay monetary damages under the judgment of any court except pursuant to an appropriation made by law] is not a limit on the State's obligation to pay compensation for the destruction of exposed citrus trees.” *Id.* (emphasis added).

Based on *Haire* and the clear language of Article X, §6(a), Fla. Const. – requiring payment of full compensation when private property is taken for a public purpose – Governor Scott's veto of the Citrus Canker Final Judgment Appropriations intended to pay the constitutional takings judgments that awarded full compensation to Petitioners cannot pass constitutional muster. Allowing the Governor's veto of these appropriations to stand would effectively relieve the State of its constitutional obligation to pay compensation for the judicially determined taking and destruction of Petitioners' private property.

The constitutional commandment to pay full compensation for the taking of private property, enshrined in Article X, §6(a), Fla. Const., will be rendered meaningless unless Governor Scott's veto of the Citrus Canker Final Judgment Appropriations are overturned and expunged, and the Chief Financial Officer of the State of Florida is directed to issue payments of \$20,941,328.00 and \$16,475.800.00 to Petitioners to satisfy the constitutional takings judgments.

CONCLUSION

Based on the foregoing, this Court should accept jurisdiction, issue the writ of mandamus, overturn Governor Scott's veto of the Citrus Canker Final Judgment Appropriations and order that the Secretary of State expunge them from the public records, and direct the Chief Financial Officer to issue payments of \$20,941,328.00 and \$16,475.800.00 to Petitioners to pay and satisfy the constitutional takings judgments at issue.

Respectfully Submitted,

/s/ Bruce S. Rogow
BRUCE S. ROGOW
Florida Bar No. 067999
brogow@rogowlaw.com
BRUCE S. ROGOW, P.A.
100 N.E. 3rd Avenue
Suite 1000
Fort Lauderdale, FL 33301
Tel: 954-767-8909
Fax: 954-764-1530

/s/ Robert C. Gilbert
ROBERT C. GILBERT
Florida Bar No. 561861
robert@gilbertpa.com
rcg@grossmanroth.com
NEAL A. ROTH
Florida Bar No. 561861
nar@grossmanroth.com
GROSSMAN ROTH YAFFA
COHEN, P.A.
2525 Ponce de Leon Blvd.
Suite. 1150
Coral Gables, FL 33134
Tel: 305-442-8666
Fax: 305-779-9596

Counsel for Petitioners

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing document has been furnished, by electronic mail and FedEx, on June 20, 2017, to: Daniel Nordby, General Counsel, Executive Office of the Governor, 400 South Monroe Street, Suite 209, Tallahassee, Florida 32399, daniel.nordby@eog.myflorida.com, counsel for Respondent Governor Rick Scott; Office of the General Counsel, Florida Secretary of State, 500 S. Bronough Street, Tallahassee, FL 32301, counsel for Respondent Ken Detzner; and Jeff Atwater, Florida Chief Financial Officer, Florida Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399.

By: /s/ Robert C. Gilbert
Attorney

CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that this Brief is in Times New Roman 14-point font and complies with the font requirements of The Florida Rule of Appellate Procedure compliance with Rule 9.100(l).

By: /s/ Robert C. Gilbert
Attorney