IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

MIGUEL MARTINEZ, an individual,
JORGE ORTEGA II, an individual,
DAYRON LEON, an individual, and
MAYRA SOTO, an individual

Plaintiffs,

v.

HONORABLE JAMES UTHMEIER, in his official capacity as Attorney General of the State of Florida; and **HONORABLE BLAISE INGOGLIA, in his official capacity as Chief Financial Officer of the State of Florida**

Defendants.

_____/

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs MIGUEL MARTINEZ, JORGE ORTEGA II, DAYRON LEON, and MAYRA SOTO (collectively "Plaintiffs") by and through undersigned counsel, sues the Defendants, JAMES UTHMEIER, in his official capacity as Attorney General of the State of Florida, and BLAISE INGOGLIA, in his official capacity as Chief Financial Officer of the State of Florida and (collectively, the "State Officials")[1], and alleges:

I. INTRODUCTION

1. This is an action for declaratory and injunctive relief challenging the constitutionality of Florida's "Construction Materials Mining Activities Administrative Recovery Act," codified in sections 552.32–552.44, Florida Statutes, and in particular section 552.36

[1] None of the named defendants held their current offices at the time the challenged statute was enacted; each is sued solely in his official capacity as a current officeholder.

(exclusive jurisdiction in the Division of Administrative Hearings) and the implementing provisions in section 552.40 (mandatory administrative remedy).

2. The statutory scheme removes a discrete category of classic property-damage tort claims from Article V courts and diverts them (mandatorily) into an executive-branch adjudicatory forum.

3. For property owners like Plaintiffs, that diversion strips the constitutional right to seek redress in an Article V circuit court with a civil jury, and substitutes a typical judicial complaint with a compulsory administrative process that the Legislature itself designed to be exclusive and more difficult than a typical judicial action.

4. Plaintiffs' injury is not theoretical and not generalized. Plaintiffs are Miami-Dade property owners whose properties have sustained substantial structural damage from repeated high-impact blasting associated with construction materials mining activities in Miami-Dade County. Plaintiffs have accrued a common-law property-damage claim that is historically jury-triable and that would ordinarily be filed in this Court where the injury occurred.

5. By operation of section 552.36, Plaintiffs are barred from filing that accrued property-damage claim in this Article V court and are compelled into an executive-branch forum, with bifurcation mandated if any companion claims exist and statewide preemption imposed against local remedies and procedures.

6. The Florida Constitution *guarantees* (a) access to courts for redress of injury (Art. I, § 21), (b) the right of trial by jury as an inviolate right (Art. I, § 22), and (c) separation of powers that preserves the core adjudicatory function of the judiciary (Art. II, § 3). The challenged scheme violates all three of those guarantees on its face and as applied to Plaintiffs' accrued Miami-Dade claim.

7. Plaintiffs challenge the statutory scheme on its face because the challenged provisions necessarily divest Article V courts of jurisdiction over a defined category of historically jury-triable common-law claims and mandate adjudication of private rights and unliquidated damages in an executive-branch tribunal in every case to which they apply. Plaintiffs also challenge the statute as applied to their accrued Miami-Dade County claim, which is presently barred from this Court solely by operation of the challenged provisions.

8. The challenged statutory scheme does not operate in isolation. It applies to blasting activity occurring in Miami-Dade County and, as a result, removes access to circuit courts and civil juries for tens of thousands of property owners whose homes and properties are located within the affected mining region.

9. Furthermore, this case is about a basic constitutional boundary: whether the Legislature may carve out a historically jury-triable common-law tort, divest Article V circuit courts of jurisdiction, and mandate adjudication of private property-damage liability and unliquidated damages in an executive-branch tribunal for one specific industry. The answer should be no, they cannot, and this Court should not allow such a practice.

II. PARTIES, JURISDICTION, AND VENUE

10. Plaintiff MIGUEL MARTINEZ ("Mr. Martinez") is a property owner and a long-time resident of unincorporated northwest Miami-Dade County, Florida

11. Plaintiff JORGE ORTEGA II ("Mr. Ortega"), is a property owner and long-time resident of unincorporated northwest Miami-Dade County, Florida.

12. Plaintiff DAYRON LEON ("Mr. Leon") is a property owner and resident of unincorporated northwest Miami-Dade County, Florida.

13. Plaintiff MAYRA SOTO ("Ms. Soto") is a property owner and resident of unincorporated northwest Miami-Dade County, Florida.

14. Plaintiffs' properties, which are all located in Miami-Dade County, have suffered substantial structural damage, including cracking, roof deterioration, plumbing leaks, and related defects, following blasting associated with construction materials mining activities in Miami-Dade County. The cost to investigate and repair the damage is substantial and has or will exceed $50,000.00.

15. Plaintiffs have accrued common-law property-damage claims arising in Miami-Dade County against one or more entities involved in blasting construction materials and mining activities. Plaintiffs intend to pursue that accrued claim in this Court, where the injury occurred and where Plaintiffs reside, and to have disputed issues of causation and unliquidated damages decided by a civil jury.

16. Section 552.36 purports to divest this Court of jurisdiction over "all claims for damages to real or personal property caused by the use of explosives in connection with construction materials mining activities," and to vest "exclusive jurisdiction" over such claims in the Division of Administrative Hearings ("DOAH"). It further requires bifurcation of mixed actions so that property-damage claims must be adjudicated at DOAH even when other claims proceed elsewhere.

17. Section 552.40 implements the diversion by creating a mandatory administrative process, including a 180-day filing deadline, a petition form, mandatory mediation with cost allocation, formal or summary hearing procedures, final orders determining liability and damages, mechanisms for payment from posted security and entry of a judgment for deficiencies, and fee-shifting provisions.

18. Plaintiffs' constitutional injuries are present and localized: the statutory scheme operates on Plaintiffs in Miami-Dade County by blocking access to this local Article V circuit court for their accrued claim and by conditioning any recovery on submission to the executive-branch process.

19. Defendant JAMES UTHMEIER is sued solely in his official capacity as Attorney General of the State of Florida. The Attorney General is the State's chief legal officer and is responsible for defending the constitutionality of Florida statutes and for representing the State and its officers in actions challenging the validity and enforcement of state law. The Attorney General is therefore a proper defendant in this action for declaratory and injunctive relief.

20. Defendant BLAISE INGOGLIA is sued solely in his official capacity as Chief Financial Officer of the State of Florida. The Chief Financial Officer, through the Division of State Fire Marshal within the Department of Financial Services, exercises regulatory authority over the use of explosives in construction materials mining operations, including the establishment, monitoring, and enforcement of blasting standards and vibration-related compliance. The statutory scheme challenged in this action relies on regulatory determinations, monitoring, and enforcement functions carried out under the authority of the Chief Financial Officer, rendering him a proper defendant for purposes of declaratory and injunctive relief.

21. This Court has subject matter jurisdiction under Article V of the Florida Constitution, section 26.012, Florida Statutes, and section 86.011, Florida Statutes, to declare rights and obligations and to determine the facial and as-applied constitutionality of Florida statutes.

22. Venue is proper in Miami-Dade County under the sword-wielder exception to the home venue privilege because Plaintiff seeks direct judicial protection from a present and imminent invasion of *fundamental*[2] constitutional rights occurring in Miami-Dade County, where the statutory scheme affirmatively restrains their ability to invoke this Court's jurisdiction for an accrued Miami-Dade claim. "The type of constitutional invasions which have supported the application of the sword-wielder doctrine have been asserted by a private party and have been fundamental in nature." *Jacksonville Elec. Auth. v. Clay Cty. Util. Auth.*, 802 So. 2d 1190, 1193 (Fla. 1st DCA 2002)(emphasis added).

23. Plaintiffs' suit is protective in purpose and effect: it is filed as a shield against the State's statutory diversion that prevents Plaintiffs from invoking the jurisdiction of this Court and obtaining a Miami-Dade civil jury. Under the sword-wielder doctrine, venue lies where the unlawful invasion is occurring or is imminently threatened and where the statute's fundamental unconstitutional effects are imposed on the plaintiff.

24. Plaintiffs allege particularized harm in Miami-Dade County: Plaintiffs all reside here; Plaintiffs' property injury occurred here; the potential defendants' actions have occurred here, Plaintiffs' accrued claim would be filed here; and the statute operates here to block that filing and compel diversion.

[2] The right to trial by jury in civil actions existing at common law is a fundamental right expressly preserved by the Florida Constitution and has been recognized as such since Florida's earliest jurisprudence. See *Flint River S.B. Co. v. Roberts, Allen & Co.*, 2 Fla. 102 (1848) (holding that the Legislature may not substitute summary or non-judicial procedures in place of common-law jury trials where the right existed at the time of statehood); see also *Wiggins v. Williams*, 36 Fla. 637, 18 So. 859, 862 (1896) (describing the jury trial right as "inviolate" as to common-law causes of action).

25. Plaintiffs' accrued Miami-Dade claim is a property-damage claim "caused by the use of explosives in connection with construction materials mining activities" within the meaning of section 552.36.

26. By the statute's plain operation, Plaintiffs are barred from filing that accrued property-damage claim in this Court and are compelled instead to file at DOAH and proceed under the statutory administrative process, including mandatory mediation and administrative adjudication of causation and unliquidated damages.

27. The statutory diversion deprives Plaintiffs of the ability to bring their accrued common-law claim in the Article V court of the county where the damage occurred, and deprives Plaintiffs of the right to have a civil jury resolve disputed issues of causation and damages for that common-law claim.

28. Plaintiffs' injury is immediate and ongoing. It exists today because the statutory scheme presently alters Plaintiffs' legal rights and forum for an accrued Miami-Dade claim and conditions any recovery on submission to the executive-branch process.

29. Therefore, venue is proper in this Court.

III. STATUTORY FRAMEWORK AND OPERATION OF THE CHALLENGED SCHEME

30. The Legislature enacted the "Florida Construction Materials Mining Activities Administrative Recovery Act" in Chapter 2003-62, Laws of Florida (CS/SB 472), codified as sections 552.32–552.44.

31. Sections 552.32–552.44 were enacted during a period of sustained public controversy, resident complaints, and pending litigation concerning blasting-related property damage associated with construction materials mining activities, particularly in Miami-Dade County. Contemporary legislative staff analyses reflect that homeowners and commercial property

owners were pursuing common-law tort actions in circuit court seeking recovery for blasting damage to their property, and that these disputes were the subject of active local government attention and judicial proceedings at the time of enactment.

32. Legislative staff analyses further reflect that, in adopting the administrative scheme, the Legislature expressly recognized that the bill altered existing tort remedies, including by imposing a 180-day deadline for initiating an administrative claim, in contrast to the four-year limitations period that otherwise applied to negligence-based property-damage actions under Florida law. The staff analyses acknowledged that, to the extent the bill abrogated common-law tort causes of action, it implicated the constitutional right of access to courts under Article I, section 21 of the Florida Constitution and would be subject to the standards articulated in *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

33. Rather than preserving those judicial remedies or creating a comprehensive, no-fault compensation system for affected property owners, the Legislature elected to establish a specialized administrative process and to declare that process exclusive for a defined category of property-damage claims.

34. The Legislature included explicit findings and a stated "public purpose," including that (a) construction materials mining activities require the use of explosives, (b) such explosives produce ground vibrations and air blasts that may affect neighboring property, and (c) it is in the public interest to provide a "specific administrative remedy" for complaints related to such blasting.

35. The administrative scheme created by sections 552.32–552.44 is expressly limited in scope. It applies only to claims for property damage allegedly caused by the use of explosives "in connection with construction materials mining activities," as that term is defined and regulated

by Chapter 552. The statute does not govern all blasting, all explosive use, or all vibration-related property damage, and it does not apply to other construction, infrastructure, or industrial activities involving explosives.

36. As a result, property owners suffering *identical* structural damage caused by explosive activity are treated differently under Florida law based solely on whether the blasting occurred in connection with construction materials mining, rather than the nature or severity of the injury itself.

37. The centerpiece is section 552.36. It provides that DOAH has "exclusive jurisdiction" over all claims for damages to real or personal property caused by explosives used in connection with construction materials mining activities; it mandates bifurcation if a lawsuit includes both covered property-damage claims and other claims; and it preempts municipal and county remedies and procedures that would otherwise address such damage claims.

38. Section 552.40 supplies the exclusive process. A property owner must file a petition within **180 days**[3] of the "occurrence of the alleged damage," pay a filing fee (subject to an indigency waiver), complete mandatory, nonbinding mediation with cost allocation, and then proceed to a DOAH hearing where an administrative law judge resolves contested issues of causation and unliquidated damages and enters a final order.

39. If the petitioner prevails, the administrative law judge directs payment and may authorize payment from security posted by the blasting user; if security is insufficient, the administrative law judge may enter a judgment for the deficiency. If the respondent prevails, the final order includes findings of non-responsibility. The scheme also includes fee shifting under specified standards, exposing property owners to potentially significant fee risk.

[3] This creates a period that is shortened from 4-years under Fla. Stat. § 95.11.

40. The scheme's operation is self-executing as to forum: it divests Article V circuit courts of jurisdiction over covered property-damage claims and compels adjudication in an executive-branch tribunal as a condition of obtaining any recovery for those claims.

41. The statutory scheme does not create a no-fault compensation system, does not guarantee recovery upon proof of damage, and does not reduce the property owner's burden of proof. To the contrary, the claimant must establish causation and damages in a contested evidentiary hearing, without the benefit of a jury, and within a sharply abbreviated limitations period.

42. The scheme does not provide any commensurate substitute for the common-law rights it displaces. It offers no guaranteed benefits, no schedule of damages, no presumptions in favor of injured property owners, and no administrative expertise uniquely suited to resolving structural property damage caused by blasting vibrations. Instead, it replaces an Article V Court and potential jury trial with adjudication by an executive-branch administrative law judge.

43. Prior to enactment of sections 552.36 and 552.40, property owners alleging blasting-related property damage possessed a common-law strict-liability cause of action governed by Florida's four-year statute of limitations for property damage, adjudicated in circuit court, and triable to a jury. The challenged scheme shortens that limitations period to *180 days*, eliminates the jury, and divests circuit courts of jurisdiction over those claims.

44. Since its enactment more than two decades ago, the administrative scheme has been invoked only sparingly. Public records reflect that only a small number of claims, only *thirteen*, have been filed statewide under the Act, underscoring that the statute does not function as a robust or widely used remedial system, but instead operates primarily to restrict access to courts for affected property owners.

IV. FACTUAL ALLEGATIONS

45. Construction materials mining operations in Miami-Dade County use explosives to fracture limestone and related materials, generating recurring ground vibration and air-blast energy that travels beyond the mining site and into nearby residential communities. These blasting operations occur within approximately two miles of Plaintiffs' homes and involve the detonation of multiple explosive charges in blast holes extending roughly eighty-five feet below the surface into the Biscayne Aquifer, with blasting occurring on a recurring basis, including daily and weekly events.

46. Plaintiffs' properties are in northwest Miami-Dade County in proximity to areas affected by such blasting. Over time, Plaintiffs have observed structural damage consistent with blasting-related vibration impacts, including cracking and related defects, and Plaintiffs have incurred and will continue to incur costs for investigation, engineering evaluation, and repair.

47. Plaintiffs' damages are substantial. The scope of repairs and related costs incurred and anticipated by each Plaintiff are significant and continue to accrue as blasting activity persists.

48. Mr. Martinez's home is located in unincorporated Miami-Dade County and is approximately 1.40 miles from the nearest limestone rock mine.

49. On a weekly to daily basis, Mr. Martinez's home experiences seismic activity resulting from blasting at nearby rock mines.

50. Mr. Martinez has personally witnessed and felt this seismic activity hundreds of times over the past several years, including shaking of windows and walls, rattling of interior items, ground vibration, air pressure effects, and the audible sound of explosions.

51. Mr. Ortega's home is located in unincorporated Miami-Dade County and is approximately 0.70 miles from the nearest limestone rock mine.

52. On a weekly to daily basis, Mr. Ortega's home experiences seismic activity resulting from blasting at nearby rock mines.

53. Mr. Ortega has personally witnessed and felt this seismic activity hundreds of times over the past several years, including shaking of windows and walls, rattling of interior items, ground vibration, air pressure effects, and the audible sound of explosions.

54. Mr. Leon's home is located in unincorporated Miami-Dade County and is approximately 1.40 miles from the nearest limestone rock mine.

55. On a weekly to daily basis, Mr. Leon's home experiences seismic activity resulting from blasting at nearby rock mines.

56. Mr. Leon has personally witnessed and felt this seismic activity hundreds of times over the past several years, including shaking of windows and walls, rattling of interior items, ground vibration, air pressure effects, and the audible sound of explosions.

57. Plaintiff Mayra Soto's home is located in unincorporated Miami-Dade County and is approximately 1.30 miles from the nearest limestone rock mine.

58. On a weekly to daily basis, Ms. Soto's home experiences seismic activity resulting from blasting at nearby rock mines.

59. Ms. Soto has personally witnessed and felt this seismic activity hundreds of times over the past several years, including shaking of windows and walls, rattling of interior items, ground vibration, air pressure effects, and the audible sound of explosions.

60. Plaintiffs seek to pursue the traditional common-law remedy for blasting-related property damage, an action historically triable to a jury, against responsible parties based on strict liability principles applicable to the ultrahazardous use of explosives.

61. Under longstanding Florida common law, blasting and the use of explosives constitute ultra-hazardous activities subject to strict liability, such that a party engaged in blasting is liable for resulting property damage regardless of negligence. *See Morse v. Hendry Corp.*, 200 So. 2d 816, 817 (Fla. 2d DCA 1967); *Poole v. Lowell Dunn Co.*, 573 So. 2d 51, 52 (Fla. 3d DCA 1990).

62. Construction materials mining in Miami-Dade County typically involves drilling blast holes tens of feet into the limestone, loading those holes with explosives, and detonating them in delayed sequences to fracture rock for excavation. Although blast designs are intended to control fragmentation, each detonation releases seismic energy into the surrounding subsurface.

63. Miami-Dade County and much of South Florida are underlain by shallow, highly porous limestone formations, including the Miami Limestone and Fort Thompson formations, which are hydraulically connected to the Biscayne Aquifer. These formations transmit vibrational energy efficiently, allowing blast-induced ground motion to propagate well beyond mine boundaries.

64. That energy manifests as both air overpressure ("air blast") and ground vibration, commonly measured as peak particle velocity ("PPV"). PPV represents the speed at which ground particles move during a blast-induced vibration and is the standard metric used by regulators to measure blast-induced ground vibration

65. Publicly available seismograph records maintained by the Florida Department of Financial Services document repeated blast-induced ground vibrations associated with construction materials mining operations in Miami-Dade County, including vibrations detected in areas proximate to Plaintiffs' homes. These records objectively confirm that blasting activity

produces measurable physical effects extending beyond mine boundaries into residential communities.

66. Even where individual blasting events are reported as compliant with regulatory vibration limits, construction materials mining operations in Miami-Dade County involve repeated detonations occurring over extended periods, resulting in recurring vibrational and air-blast effects experienced by nearby residential communities. Plaintiffs allege that such repeated blasting has caused progressive structural damage to their homes over time.

67. The Florida Department of Financial Services, through the State Fire Marshal, licenses explosive users and regulates certain aspects of blasting activity. However, those regulatory programs focus primarily on permitting, safety procedures, and maximum vibration thresholds, not on preventing property damage or compensating affected property owners.

68. Accordingly, under the existing regulatory framework, blasting operations may continue so long as individual detonations are reported as within regulatory limits, even when residents report ongoing structural damage. Regulatory compliance therefore does not equate to the absence of property damage or provide a meaningful remedy to affected property owners.

69. Public records and long-standing community complaints reflect that residents in northwest Miami-Dade County have repeatedly reported structural damage associated with blasting activity over many years, while mining operations have continued at industrial scale without providing judicially enforceable compensation or relief through regulatory channels alone.

70. In practice, as a result, mining operators may continue blasting operations even when residents report structural damage, so long as individual blasts are reported as "within limits." Compliance with regulatory vibration thresholds does not equate to an absence of property damage, particularly in the unique geological conditions of South Florida

71. Plaintiffs' injuries arise from these alleged blasting-related impacts and give rise to accrued common-law property-damage claims that Plaintiffs seek to pursue in an Article V circuit court with the right to trial by jury, but which are presently barred by operation of the challenged statutory scheme.

72. An actual, present, and justiciable controversy exists between Plaintiffs and Defendants concerning the constitutionality and enforceability of sections 552.32–552.44, Florida Statutes. Plaintiffs have accrued common-law property-damage claims arising in Miami-Dade County that are presently barred from circuit court by operation of the challenged statutory scheme. Plaintiffs therefore have a bona fide, present need for declaratory and injunctive relief to determine their rights and to prevent ongoing and future violations of the Florida Constitution.

V. GENERAL ALLEGATIONS OF CONSTITUTIONAL VIOLATIONS

A. The Common-Law Nature of Blasting Liability and the 1845 Baseline

73. At common law, claims for property damage caused by blasting and the use of explosives are classic civil actions for damages. Such claims arise from private rights, involve disputed questions of causation and extent of damage, and historically (for centuries) have been adjudicated in courts of law, not administrative tribunals. From their earliest recognition, blasting-related property claims sounded in tort and were resolved through the ordinary judicial process.

74. Blasting liability is rooted in the ancient common-law maxim *sic utere tuo ut alienum non laedas*, use your own property so as not to injure that of another.[4] This principle has long governed ultrahazardous activities, including the use of explosives, and forms the foundation

[4] "[E]very person should so use his own property as not to injure that of another…" *Jones v. Trawick*, 75 So. 2d 785, 787 (Fla. 1954); see *Thorpe v. Rutland & B.R. Co.*, 27 Vt. 140, 149–50 (1854) (applying the maxim *sic utere tuo ut alienum non laedas* and recognizing that activities posing inherent risks to others may justify placing the burden of prevention on the actor).

for strict liability where the nature of the activity itself creates an unreasonable risk of harm to neighboring property, irrespective of negligence.

75. Florida's jury-trial guarantee has existed since Florida's earliest constitutional framework. The 1838 Constitution, effective in 1845, declared that "the right of trial by jury shall for ever remain inviolate." Fla. Const. of 1838, Art. I, § 6. That guarantee was carried forward without interruption and remains enshrined in Article I, section 22 of the modern Florida Constitution.

76. The claim Plaintiffs seek to bring, strict liability for blasting-related property damage, is of the same nature as common-law actions for injury to property that were triable by jury at the time Florida's constitutional jury guarantee attached in 1845. It is not a newly created statutory right, nor a public-rights dispute, but a traditional common-law cause of action historically resolved by juries in courts of law.

B. The Separation of Powers Problem in Plain Terms

77. Article II, section 3 requires that judicial power remains with the judiciary. Adjudicating disputed private-rights claims for liability and unliquidated damages is a *core* judicial function.

78. The challenged statutory scheme does not merely create a regulatory permitting dispute or a narrow public-rights determination. It reassigns adjudication of private liability and damages for an established tort category from Article V courts to an executive-branch tribunal and makes that reassignment mandatory and exclusive.

79. As James Madison explained in *Federalist No. 47*, "the accumulation of all powers, legislative, executive, and judiciary, in the same hands … may justly be pronounced the very

definition of tyranny."[5] The point is structural, not political: the concentration of core governmental powers in a single branch is incompatible with constitutional government.

80. Simply put, the Florida Constitution does not permit the Legislature to shift the core judicial function (adjudication of private rights and unliquidated damages) from Article V courts to the executive branch by ordinary statute. To allow such a transfer would erode the separation of powers and upset the balance deliberately embedded in Florida's constitutional structure of three *coequal* branches.

C. Access to Courts and the Kluger Principle

81. Article I, section 21 of the Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury." In *Kluger v. White*, the Florida Supreme Court held that where a cause of action existed at common law or by statute at the time the Declaration of Rights was adopted, the Legislature may not abolish or substantially impair that right unless it either (a) provides a reasonable alternative remedy or commensurate benefit, or (b) demonstrates an overpowering public necessity for the abolition and the absence of any alternative means to address that necessity. *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973).

82. Florida's workers' compensation system is frequently cited as an example of a constitutionally permissible substitute under Article I, section 21 because it reflects a true legislative exchange: employees relinquish common-law tort remedies in return for guaranteed, no-fault benefits, defined compensation, and prompt access to recovery without the need to prove fault.

83. The blasting property-damage scheme bears none of those characteristics. It does not provide guaranteed recovery, no-fault benefits, defined compensation, or any commensurate

[5] James Madison, *The Federalist No. 47* (1788).

substitute for the common-law rights it displaces. Instead, it removes an accrued, historically jury-triable property-damage claim from Article V courts; shortens the limitations period; imposes mandatory administrative procedures and fee-shifting risk; and requires property owners to litigate causation and unliquidated damages in an executive-branch forum without a jury. Whatever label is applied, the scheme is not a "reasonable alternative remedy" within the meaning of *Kluger* for a property owner with an accrued common-law blasting claim.

84. Furthermore, since DOAH lacks jurisdiction to adjudicate constitutional issues or provide the specific legal relief (a jury trial) sought, the Plaintiffs are not required to exhaust the administrative remedy before filing this constitutional challenge in Circuit Court.

COUNT I — VIOLATION OF ARTICLE I, § 22
(Denial of the Inviolate Right to Trial by Jury)

85. Plaintiffs reallege paragraphs 1–84 as if fully set forth herein.

86. Article I, section 22 of the Florida Constitution provides that "the right of trial by jury shall be secure to all and remain inviolate." This guarantee preserves the right to a jury trial in all actions that were triable by jury at common law at the time Florida's constitutional jury right attached in 1845.

87. The Florida Supreme Court has long held that the jury-trial guarantee secures the right to a jury in all proceedings of the same nature as those that were jury-triable at common law, and that the right must be resolved in favor of the party seeking a jury. See *B.J.Y. v. M.A.*, 617 So. 2d 1061, 1063 (Fla. 1993); see also *Hollywood, Inc. v. City of Hollywood*, 321 So. 2d 65, 71 (Fla. 1975)(stating "[q]uestions as to the right to a jury trial should be resolved, if at all possible, in favor of the party seeking the jury trial, for that right is fundamentally guaranteed by the U.S. and Florida Constitutions.").

88. Claims for property damage caused by blasting and the use of explosives are classic common-law tort actions sounding in strict liability, involving private rights, disputed facts, and unliquidated damages. Such claims were historically adjudicated in courts of law and resolved by juries at the time Florida's constitutional jury guarantee attached.

89. Section 552.36 abolishes that jury right by mandating that common-law blasting-damage claims be adjudicated exclusively in the Division of Administrative Hearings, an executive-branch forum constitutionally incapable of impaneling a jury.

90. The Legislature may not eliminate the right to a jury trial for an established common-law cause of action by reassigning adjudication of liability and damages to a non-jury administrative tribunal. See *B.J.Y.*, 617 So. 2d at 1063; *Broward County v. La Rosa*, 505 So. 2d 422, 423–24 (Fla. 1986)

91. This inviolate right to trial by jury for common-law causes of action has been a foundational aspect of Florida jurisprudence since statehood. See *Flint River S.B. Co. v. Roberts, Allen & Co.*, 2 Fla. 102 (1848); *Wiggins v. Williams*, 36 Fla. 637, 18 So. 859, 862 (1896).

92. By diverting Plaintiffs' accrued, historically jury-triable strict-liability blasting claim from an Article V circuit court to a non-jury executive-branch forum, sections 552.36 and 552.40 violate Article I, section 22 of the Florida Constitution on their face and as applied to Plaintiffs.

WHEREFORE, Plaintiffs respectfully request a declaratory judgment that Fla. Stat. § 552.36 violates Article I, section 22 of the Florida Constitution by denying the inviolate right to trial by jury for historically jury-triable common-law property-damage claims, and for such further relief as the Court deems just and proper.

COUNT II — VIOLATION OF ARTICLE I, § 21
(Denial of Access to Courts and Redress for Injury)

93. Plaintiffs reallege paragraphs 1–84 as if fully set forth herein

94. Article I, section 21 of the Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

95. In *Kluger v. White*, the Florida Supreme Court held that where a cause of action existed at common law or by statute at the time the Declaration of Rights was adopted, the Legislature may not abolish or substantially impair that right unless it either (a) provides a reasonable alternative remedy or commensurate benefit, or (b) demonstrates an overpowering public necessity for the abolition and the absence of any alternative means of meeting that necessity.

96. The strict-liability cause of action for blasting-related property damage asserted by Plaintiffs is a long-recognized common-law claim that predates Florida's Constitution and was fully actionable in Article V courts at the time Article I, section 21 was adopted.

97. Sections 552.36 and 552.40 substantially impair and effectively abolish that common-law cause of action by divesting circuit courts of jurisdiction, imposing a drastically shortened 180-day filing deadline, mandating diversion to an executive-branch tribunal, and eliminating access to a civil jury for the adjudication of liability and unliquidated damages.

98. The administrative scheme created by section 552.36 does not provide a reasonable alternative remedy under *Kluger*. It does not create a no-fault compensation system, does not guarantee recovery upon proof of damage, does not provide defined or scheduled benefits, does

not reduce the claimant's burden of proof, and does not supply any commensurate substitute for the common-law rights it displaces.

99. Instead, the statutory scheme worsens the claimant's position by imposing additional procedural burdens, fee-shifting risk, and evidentiary hurdles, while simultaneously eliminating the Article V forum and the constitutional right to a jury trial for a historically jury-triable property-damage claim.

100. Florida courts have upheld substitute statutory schemes under Article I, section 21 only where the Legislature created a comprehensive, no-fault exchange providing guaranteed and defined benefits in return for the loss of common-law remedies, such as the workers' compensation system. See, e.g., *Sasso v. Ram Prop. Mgmt.*, 452 So. 2d 932 (Fla. 1984); *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991).

101. The blasting-damage scheme bears none of the characteristics that rendered workers' compensation constitutional. It selectively removes a single, established common-law tort from Article V courts without providing guaranteed benefits or a meaningful substitute remedy, and therefore fails the *Kluger* test.

102. The administrative scheme's operational failure is demonstrated by the fact that in the twenty-plus years since the Act's enactment, only *thirteen* claims have been filed statewide, less than one claim every two years. This stands in stark contrast to the thousands of homeowner complaints, multiple community organizations formed to address blasting damage, and class-action lawsuits that prompted the Legislature to act. The paucity of filings under the Act does not reflect a reduction in blasting-related property damage, construction materials mining operations have continued at industrial scale throughout this period, but rather marks that the statute's design makes recovery so difficult, uncertain, and risky that injured property owners either abandon their

claims or never file them. A statutory scheme that goes essentially unused over two decades while the underlying harm continues unabated is not a "reasonable alternative remedy" under *Kluger*; it is a barrier masquerading as a remedy.

103. The Legislature has not demonstrated an overpowering public necessity for abolishing access to circuit courts for blasting-related property-damage claims, nor shown that no alternative means exist to address the asserted public interest.

104. Accordingly, Fla. Stat. § 552.36 is unconstitutional on its face and as applied because it abolishes or substantially impairs a common-law cause of action without providing a reasonable alternative remedy or satisfying the strict requirements of *Kluger*, in violation of Article I, section 21 of the Florida Constitution.

WHEREFORE, Plaintiffs respectfully request a declaratory judgment that Fla. Stat. § 552.36 violates Article I, section 21 of the Florida Constitution by abolishing or substantially impairing an established common-law cause of action without providing a reasonable alternative remedy or demonstrating an overpowering public necessity, and for such further relief as the Court deems just and proper

COUNT III — VIOLATION OF ARTICLE II, § 3
(Unconstitutional Delegation and Encroachment on Judicial Power)

105. Plaintiffs reallege paragraphs 1–84 as if fully set forth herein.

106. Article II, section 3 of the Florida Constitution mandates that the legislative, executive, and judicial branches of government remain separate and distinct, and prohibits any branch from exercising powers constitutionally assigned to another

107. The adjudication of private rights, including determinations of liability and the assessment of unliquidated damages in common-law tort actions, is a core judicial function constitutionally vested in Article V courts.

108. Through sections 552.36 and 552.40, the Legislature has removed a discrete category of common-law tort claims from the jurisdiction of Article V circuit courts and vested exclusive authority to adjudicate those claims in the Division of Administrative Hearings, an executive-branch tribunal.

109. This statutory reassignment does not involve a limited regulatory determination or the resolution of public rights. It mandates executive-branch adjudication of private liability and unliquidated damages between private parties, functions that lie at the heart of the judicial power.

110. The Florida Supreme Court has repeatedly held that the Legislature may not reallocate or impair the exercise of core judicial functions by statute. See *Bush v. Schiavo*, 885 So. 2d 321, 330 (Fla. 2004) (holding that "the judiciary is a coequal branch of the Florida government vested with the sole authority to exercise the judicial power" and that the Legislature may not reallocate that power absent constitutional amendment); citing *Chiles v. Children A–F*, 589 So. 2d 260, 262 (Fla. 1991).

111. Florida courts have likewise invalidated legislative attempts to interfere with or eliminate inherent judicial functions, including the adjudication of disputes and the control of judicial proceedings. See *Walker v. Bentley*, 678 So. 2d 1265 (Fla. 1996); *Markert v. Johnston*, 367 So. 2d 1003 (Fla. 1979).

112. The Division of Administrative Hearings is part of the executive branch. Its administrative law judges lack the constitutional independence of Article V judges and are not empowered to provide a civil jury or to exercise the full judicial power reserved to the courts.

113. By mandating that blasting-related property-damage claims be adjudicated exclusively before DOAH, the Legislature has removed a core judicial function from Article V

courts and vested it in the executive branch, in direct violation of Article II, section 3 of the Florida Constitution.

114. Fla. Stat. § 552.36 is therefore unconstitutional on its face and as applied because it impermissibly encroaches upon the judicial power by reallocating the adjudication of private common-law tort claims from Article V courts to an executive-branch tribunal, in violation of Article II, section 3 of the Florida Constitution.

WHEREFORE, Plaintiffs respectfully request a declaratory judgment that Fla. Stat. § 552.36 violates Article II, section 3 of the Florida Constitution by impermissibly reallocating core judicial power from Article V courts to the executive branch, and for such further relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Miguel Martinez, Jorge Ortega II, Dayron Leon, and Mayra Soto respectfully requests this Honorable Court enter an Order:

A. Declaring that Fla. Stat. § 552.36 violates Article I, section 22 (right to trial by jury), Article I, section 21 (access to courts), and Article II, section 3 (separation of powers) of the Florida Constitution, on its face and as applied to Plaintiffs' accrued common-law property-damage claim;

B. Permanently enjoining Defendants, JAMES UTHMEIER, and BLAISE INGOGLIA, in their official capacities, and all persons acting under their authority, from enforcing, invoking, or giving effect to Fla. Stat. § 552.36 in a manner that divests this Court of jurisdiction over Plaintiffs' accrued blasting-related property-damage claim or compels diversion of that claim to the Division of Administrative Hearings in lieu of adjudication in an Article V court with the right to trial by jury;

C. Declaring that Plaintiffs are not required to submit their accrued common-law claim to the administrative process set forth in Fla. Stat. § 552.40 as a condition of seeking judicial relief for the constitutional violations alleged herein; and

D. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

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VERIFICATION

I, MIGUEL MARTINEZ, declare under penalty of perjury that I am the Plaintiff in this action; that I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief; and that the facts stated therein as they relate to me personally are true and correct to the best of my knowledge and belief.

Miguel Martinez (Jan 23, 2026 00:17:34 EST)

Miguel Martinez

Dated Jan 22, 2026

I, JORGE ORTEGA II, declare under penalty of perjury that I am the Plaintiff in this action; that I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief; and that the facts stated therein as they relate to me personally are true and correct to the best of my knowledge and belief

Jorge Ortega II

Jorge Ortega II (Jan 22, 2026 18:22:16 EST)

Jorge Ortega II

Dated Jan 22, 2026

I, DAYRON LEON, declare under penalty of perjury that I am the Plaintiff in this action; that I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief; and that the facts stated therein as they relate to me personally are true and correct to the best of my knowledge and belief

Dayron Leon (Jan 22, 2026 16:43:10 EST)

Dayron Leon

Dated Jan 22, 2026

I, MAYRA SOTO, declare under penalty of perjury that I am the Plaintiff in this action; that I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief; and that the facts stated therein as they relate to me personally are true and correct to the best of my knowledge and belief

Mayra R Soto
Mayra R Soto (Jan 23, 2026 09:55:37 EST)

Mayra Soto

Dated Jan 23, 2026