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Statement of Christian R. Cámara
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"Legislative Hearing on H.R. 187, H.R. 277, H.R. 1810, H.R. 1811, H.R. 2057, H.R. 3226, H.R. 3227, H.R. 3572, and H.R. 4222"

House Natural Resources Committee
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs

April 8, 2014

Chairman Fleming, Ranking Member Sablan, and distinguished subcommittee members,

My name is Christian Cámara and I am the Florida director and a co-founder of the R Street Institute. We are a pragmatic, free-market public policy research organization—or "think tank"—that can best be characterized as center-right in orientation. We are based in Washington, D.C. with offices in multiple states.

Our mission is to engage in policy research and outreach to promote free markets and limited, effective government. In Florida, our focus largely has been in the area of property insurance reform. As you can imagine, a flat, tropical peninsula jutting out 500 miles into the world's warmest, most hurricane-active waters cares quite a bit about how it manages its enormous hurricane risk.

In fact, Florida has more hurricane risk than every other "hurricane alley" state combined, due not only to its geographic location, but also the amount of wealth and expensive development concentrated along the coast.

Years ago, Florida established a state-run property insurance company called Citizens Property Insurance Corp. Its mission was to provide coverage only to those legitimately unable to obtain it

from the private, primary insurance markets. Its rates were legally required to be actuarially sound and above the rates charged by the top 20 private insurers in a given region. This pricing structure was to encourage consumers—and their hurricane risk—to remain in the private market, as well as to preserve a competitive market among carriers.

Nevertheless, this guaranteed availability of primary insurance through state-run Citizens, in our opinion, has encouraged development in high-risk areas. Changes pushed through by former Gov. Charlie Crist in 2007 further exacerbated this problem. Having campaigned on a platform to lower insurance rates following the unprecedented back-to-back hurricanes in 2004 and 2005, the then-popular, newly elected governor persuaded the Legislature to send a bill to his desk that arbitrarily lowered Citizens' rates, froze them and allowed the state-run company to provide coverage to anyone who received even one quote from a private carrier that was more than 15 percent higher than those artificially suppressed rates.

This de facto price control drove many private insurers out of the state, eventually leading to the concentration of roughly $515 billion of risk (at the peak) on the backs of taxpayers. In short, Citizens went from a residual insurer of last resort to a primary insurer of first resort.

Citizens is able to underprice the coverage it issues because Florida law authorizes it to unilaterally impose a form of taxation on essentially every insurance policy in the state to cover any shortfall in its surplus should, say, a major hurricane cause hundreds of thousands of claims that consume all of the company's cash reserves. Depending on the severity of the shortfall, these assessments can increase Floridians' overall cost of each insurance product they purchase by up to 45 percent for multiple years.

Thankfully, a hurricane has not struck the state in eight years—the longest such "drought" in recorded history. But had Florida's luck been different, taxpayers would have had to bail out Citizens through enormous assessments on their insurance policies.

The Legislature eventually saw how such a scenario could have a cataclysmic effect on Florida's economy and quite literally bankrupt the state, so it has since taken steps to reverse Citizens' growth, by:

- Unfreezing its artificially-suppressed rates through a "glidepath;"
- Closing eligibility to million-dollar homes;
- Encouraging private company "take-outs;" and
- Setting up a "clearinghouse" to enforce eligibility rules.

Another important Citizens reform enacted last year was a product of a policy recommendation in a report that I authored titled "Coastal Preservation Through Citizens Reform," a copy of which has been submitted to the subcommittee.

This reform prohibits Citizens from covering certain new beachfront construction and new development inside a CBRS unit. It does, however, grandfather those structures built before enactment of the reform. This concept was supported by free-market groups, consumer advocates and environmentalists, who don't regularly work together on such issues, much less see eye-to-eye on most others.

Our reasoning was simple: If people want to build in these, the riskiest of places, they can and should be allowed to—on their own dime. In other words, taxpayers should not subsidize people's risky behavior. If they still want to build there, they have several options:

1. They can build resiliently enough to reduce the risks;
2. They can self-insure; or
3. They can find private coverage whose cost will reflect the actual risk, which would organically encourage proper building and location standards.

As such, removing units from the CBRS will not only force your taxpaying constituents in faraway states to repeatedly cover multi-million dollar beach renourishment projects, subsidize flood insurance and build infrastructure to these high-risk, flood-prone, environmentally sensitive areas; it also would undermine Florida's own public policy goal of slowing the growth of Citizens by reopening some of the state's riskiest areas to the state-run insurer.

Some of the Florida units proposed for withdrawal or "correction" are in particularly high-risk areas. According to a 2012 Florida Department of Environmental Protection (DEP) report on critically eroded beaches in Florida, the Indian Peninsula shoreline within Unit FL-92, whose boundaries H.R. 4222 seeks to change, is eroded. In the case of this unit, the report finds there is no development or any "interests" currently threatened by such erosion. However, that likely would change if it were opened up to subsidies, such as beach renourishment projects, cheap flood insurance and eligibility for Florida's Citizens Insurance.

Even more erosive than the Indian Peninsula is nearby Unit P-30, which H.R. 4222 also seeks to change. According to the DEP report, the St. Joseph Peninsula shoreline within this unit is designated as an area of "critical" beach erosion. In fact, the report singles out Cape San Blas, which also lies within Unit P-30, as having **the highest beach erosion rate in the entire state of Florida**.

Despite this vulnerability, Cape San Blas is one of the two CBRS units in the entire nation that have experienced the most growth and development since being added to the system. According to a 2007 GAO report, Cape San Blas "has continued to experience increased development with

at least 900 new structures—primarily single family vacation homes—being built since the unit's inclusion in the CBRS."

Despite its extreme erosion rate, the GAO report also found that residents could still obtain coverage in the private insurance market, albeit at significantly higher rates than the subsidized National Flood Insurance Program. Given its high-risk location, extreme erosion rate and the fact that residents could still obtain private flood insurance coverage at proper, risk-based rates, my opinion is that Unit P-30 epitomizes the justification behind the CBRS, and should remain in the system.

H.R. 2057 proposes the removal of the entire Unit P-31P, which largely is made up of St. Andrews State Park and Shell Island to the east. Roughly half of the beachfront in this unit is classified as "noncritically eroded," but only because it has no threatened development or interests; otherwise, it would have been classified as "critically eroded." Because Unit P-31P is an "otherwise protected area" of the CBRS due to it largely covering the state park, the only prohibition on federal expenditures under CBRA is flood insurance.

There appears to be a neighborhood in the northwest, non-beachfront portion of the unit called Finisterre that may have been incorrectly included in the system. This may warrant a "comprehensive review" by the U.S. Fish & Wildlife Service to amend the boundaries of the unit to exclude this particular area, but a wholesale removal of the unit from the system is unjustified, in my view.

In conclusion, the Coastal Barrier Resources Act, enacted by President Reagan and a Democratic Congress, does more than protect environmentally sensitive coastal areas and wildlife habitats: It also protects consumers and taxpayers from subsidizing the risky behavior of a few and having to cover their repeat losses. It organically encourages proper building standards, protects inland communities by preserving natural barriers to wind and surge and sends the right price signals to those who would otherwise place life and property in harm's way.

The CBRS has worked. It is a market-based environmental protection program that does not infringe on property rights, impose onerous regulations or cost taxpayer money. In fact, it has saved taxpayers billions of dollars while simultaneously helping preserve low-lying areas that serve as wildlife habitats and vital natural barriers to wind and storm surge.

Thank you and I'd be happy to answer any of your questions.

Attachments:

- "Coastal Preservation through Citizens Reform," by Christian R. Cámara, January 2013. http://www.rstreet.org/wp-content/uploads/2013/01/RSTREET81.pdf

- "Critically Eroded Beachess in Florida," [Florida] Department of Environmental Protection, June 2012. http://www.dep.state.fl.us/beaches/publications/pdf/critical-erosion-report-2012.pdf

- "COASTAL BARRIER RESOURCES SYSTEM: Status of Development That Has Occurred and Financial Assistance Provided by Federal Agencies," Government Accountability Office, March 2007 (GAO-07-356). http://www.fws.gov/CBRA/Docs/GAOCBRAReport2007.pdf

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COASTAL PRESERVATION THROUGH CITIZENS REFORM

By Christian Cámara

ABSTRACT
The 30-year-old federal Coastal Barrier Resources Act has been successful in promoting conservation of natural resources, fiscal responsibility, and the reduction of inappropriate high-risk coastal development by restricting federal subsidies. Restricting insurance coverage from Florida Citizens Property Insurance Corp. for new construction in areas seaward of the Coastal Construction Control Line could yield similar results on the state level by ending subsidies to development that damages Florida's coastal environment and destroys natural storm barriers.

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FEDERAL LEGISLATION

In the 1970s and 1980s, lawmakers, environmentalists and fiscal watchdogs began to recognize that certain actions by the federal government had the unintended consequence of inflicting damage on the environment —and worse, placing life and property at great risk— at taxpayer expense. These included federal initiatives, programs and subsidies that encouraged development in, and consequent destruction of, coastal wetlands, beaches, and dunes that not only are ecologically sensitive and valuable, but that also acted as natural buffers[1] to protect adjacent and upland structures and infrastructure against wind, flood and storm surge.

In 1982, a Democratic-controlled House of Representatives and a Republican-controlled Senate came together with President Ronald Reagan and enacted the Coastal Barrier Resources Act (CBRA). That legislation removed these federal incentives by designating mostly undeveloped wetlands and barrier islands along the Gulf and Atlantic coasts as part of what is now called the John H. Chafee Coastal Barrier Resources System (CBRS). In 1990, the CBRA was reauthorized and expanded to include undeveloped coastal barriers along the Florida Keys, Great Lakes, Puerto Rico, and the U.S. Virgin Islands.[2]

In order to minimize high-risk development in these areas, stop wasteful expenditures and protect coastal resources, the CBRA restricts federal expenditures for activities such as beach nourishment and infrastructure construction and subsidies for flood insurance through the National Flood Insurance Program (NFIP). Despite the prohibition on federal subsidies in these areas, development is allowed by private landowners or other non-federal entities, provided that they bear the full cost while understanding that the federal government may never provide any financial assistance to maintain and/or protect what is developed.

Between 1982 and 2010, the CBRA saved the federal government at least $1 billion.[3] At the same time, it saved many lives and much property that natural disasters like floods and hurricanes would have otherwise endangered.

Congress acted appropriately to restrict subsidies as a way to promote conservation of natural resources, fiscal responsibility, and the reduction of inappropriate high-risk coastal development. Unfortunately, the State of Florida is in conflict with these federal policies by providing subsidized low-cost insurance in extremely high-risk and environmentally sensitive coastal areas, including in the very areas designated under the CBRA within Florida.

FLORIDA

Florida has $2.46 trillion in total coastal exposure, the most of any state. By comparison, the *combined* coastal exposure of the other "hurricane alley" states (Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Texas) is only about $1.83 trillion. While it covers only about 1.5 percent of the lower 48 states' land area (55,000 square miles out of 3 million square miles), Florida has been struck by seven of the ten costliest hurricanes in U.S. history. It is also the site of the single most intense hurricane on record (1935's Keys hurricane) and the second deadliest hurricane (the Lake Okeechobee hurricane, also in 1935).[4] In short, hurricanes will always be a fact of life in Florida, as much as the heat, humidity and mosquitos are.

There is obviously nothing Florida can do to alter weather patterns or alleviate its position as a low-lying peninsula that extends 500 miles into the most hurricane-active waters in the world. As such, the state must cope with its vulnerability by mitigating against its enormous hurricane risk in three major ways:

1. Physically fortifying its built environment to better withstand windstorms and tidal surge;

2. Discouraging development in the riskiest areas along the coast; and

3. Preserving natural coastal buffers that protect inland areas against the effects of storms.

On the surface, the agenda described above might suggest a big government approach, including massive investment of state dollars to retrofit existing structures, the imposition of even stronger building codes and the infringement of private property rights. Obviously, this approach would be unreasonable, not to mention politically impossible, given current budgetary realities.

However, by revising Florida's current property insurance system, the state could achieve these goals without onerous new laws or regulations, all while actually saving taxpayer money.

Just as the federal government offered subsidized flood insurance to high-risk coastal areas before enacting the CBRA, Florida currently encourages development in and migration to some of the state's highest-risk coastal areas by making subsidized and underpriced property insurance available through the state-owned Citizens Property Insurance Corp. (Citizens)

Established as an "insurer of last resort," Citizens was initially open only to those property owners who were legitimately unable to find coverage in the private market. Its rates were required to be actuarially sound and higher than the average of the top 20 private insurers in the state.

However, former Gov. Charlie Crist's 2007 insurance reforms allowed Citizens to offer policies to any Floridian who gets even a single insurance quote more than 15 percent greater than Citizens' rates, which essentially imposed a de facto price control on Florida's property insurance market. Additionally, the 2007 legislation required Citizens to roll back its premiums to 2006 levels and freeze them at that level.[5]

Subsequent legislation eased the rate freeze by replacing it with a "glidepath" that allows yearly rate increases of no more than 10 percent until rates reach an actuarially sound level. With the current 10 percent cap, however, it will take Citizens several years to reach that level[6] and come close to matching the private market, which is required by law to charge adequate rates. As such, in most cases, Citizens charges considerably less than its private market competitors, especially in the highest-risk coastal areas.

Citizens is able to underprice its coverage and still remain in business because not only is it sponsored by Florida's government, but it also has the unilateral authority to impose a form of taxation on nearly every insurance policy issued in the state. When Citizens runs a deficit, it must first impose surcharges on its own policyholders (Citizens Policyholder Surcharge), but may subsequently impose assessments on every property and casualty insurance policy issued in the state except for medical malpractice and workers' compensation policies (Emergency Assessment).[7] This would amount to a "hurricane tax" that could add up to 30 percent to the cost of each insurance policy paid by the 77 percent of homeowners, renters, drivers, boaters, businesses, charities, and civic organizations statewide who derive no benefit from Citizens' subsidized, underpriced rates. These assessments could stretch over the course of several years, during which time the state could be hit by one or more storms, compounding the situation.

Its private market competitors, on the other hand, enjoy no such taxing authority. They are expected and legally required to have enough cash reserves and backup risk-transfer (i.e., reinsurance) to cover their obligations. A private insurer charging anything less than adequate rates would be penalized and eventually shut down by the state.

The Crist insurance reforms of 2007 – essentially requiring Citizens to charge rates below the private market – have had several unintended outcomes, including prompting most large, nationally known insurers to stop writing new coastal coverage in the state. However, an indirect consequence of the availability of underpriced, subsidized insurance is the irresponsible development it promotes in the highest risk areas and the consequent destruction of wetlands, sand

Beachfront houses built atop sand dunes

dunes and other natural buffers that studies have shown help protect inland areas from storms.

Simply put, Florida's insurance policies have had the unintended consequences of forcing residents to indirectly subsidize irresponsible development that create massive future taxpayer liabilities, damage the state's coastal environment and destroy natural storm barriers.

Without the current promise of underpriced property insurance, a developer would have to seriously consider the investment risk of building in an extremely disaster-prone coastal site. At the right price, private insurers would likely step up and offer coverage, as they did when Citizens recently stopped writing coverage for dwellings valued at more than $1 million. Those property owners were able to find coverage in the private market, albeit at risk-based (almost always higher) rates, but those policies were removed from Citizens and thus sizable risk was transferred from the state's taxpayers to private companies.

Without the cheap, subsidized insurance Citizens offers, potential buyers looking to acquire property in high-risk coastal areas might reconsider making such an investment. Developers, in turn, would be encouraged to build stronger structures to bring down the cost (or need) of insurance. This, of course, would increase building costs, eventual sale prices, and thus reduce demand, which may force builders and their investors to reconsider such projects and opt instead for lower-risk inland areas. Either way, the goals of fortifying Florida's built environment and reducing irresponsible, risky development are met by simply making subsidized insurance unavailable in the highest risk coastal areas.

Environmental concerns also would be positively addressed organically without additional property rights-infringing rules and regulations. Florida's taxpayers also would benefit from policies that restrict Citizens' coverage in the highest risk coastal areas, as such risk would be prospectively borne by private companies.

However, given Florida's economic and political realities, it would be utterly impossible to carve out entire sections of the state's coastal areas and suddenly make them ineligible for Citizens coverage on existing properties. There are countless existing dwellings and businesses that currently receive their coverage from Citizens who would not immediately be able to find coverage from the private market. As such, a realistic reform proposal would allow existing structures in designated high-risk coastal areas to be "grandfathered," essentially allowing them to keep their Citizens coverage, or be eligible for future Citizens coverage should they encounter problems renewing coverage through the private market. However, a proposal that would restrict Citizens from cover-

Coastal Construction Control Line segment

ing new construction in certain designated high-risk coastal areas should be examined.

The geographic extent of such coverage restrictions rests with the Legislature, but should at a minimum include areas currently designated within the CBRS. This would essentially harmonize state policy with federal policy by disallowing both state and federally-subsidized property insurance in the CBRS. Beyond that, the Legislature may also consider restricting Citizens coverage for new construction in areas seaward of the Coastal Construction Control Line (CCCL).

Per Section 161.053, F.S., the CCCL is a line of jurisdiction, defining the landward limit of the state Department of Environmental Protection's's authority to regulate coastal construction. The CCCL is not a setback or line of prohibition. New construction -- as well as additions, remodeling, and repairs to existing structures -- are allowed seaward of the CCCL; however, such structures and activities usually require a special CCCL permit.[8]

The CCCL has been established for most of the sandy beaches of Florida, but does not extend into the Florida Keys or to counties in the *Big Bend* area that have mostly vegetated shorelines. The CCCL represents the landward limit of the beach-dune system, which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions. But for a few exceptions, the CCCL and the regulations that it triggers apply only to the seaward-most line of beachfront properties, which are at exponentially higher risk of wind and flood damage than even nearby landward neighbors.

During Florida's 2012 Regular Legislative Session, an amendment was to be filed onto legislation that ultimately did not receive a hearing but would have restricted Citizens coverage for new construction in areas within the CBRS and the CCCL. The Legislature would do well to consider a similar proposal in 2013.

The 2012 language read as follows:

> 627.351(6)a.
> 7. Any major structure[9] as defined in 161.54(6)(a) for which a permit is applied on or after June 1, 2013 for new construction or substantial improvement[10] as defined in 161.54(12) is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by ss. 16 U.S.C. 3501-16 U.S.C. 3510.

The above language would prohibit Citizens from covering new construction within CBRS and any territory seaward of the Coastal Construction Control Line. The risk of building in these storm- and flood-prone areas would therefore be borne by the owners or by private insurers, and not by Citizens or Florida taxpayers. As such, the added risk and expense would likely reduce such development and help preserve these areas' ecological integrity, as well as their ability to protect mainland areas from storms.

CONCLUSION

This year's legislative session offers lawmakers a great opportunity to enact reforms that would bring fiscal conservatives and environmentalists together to safeguard the state's precious coastal environment while protecting taxpayers and encouraging stronger building practices—organically and without new onerous regulations.

A state as disaster-prone as Florida needs to take steps to slow development along its highest-risk areas that could endanger life and property. A sensible approach that does not extend the arm of government, but relies on the free market and individuals making the right financial decisions for

themselves can solve many problems, including those outlined here.

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ENDNOTES

1. Robert Costanza et al. "The Value of Coastal Wetlands for Hurricane Protection," Royal Swedish Academy of Sciences, Ambio Vol. 37, No. 4, June 2008.

2. U.S. Fish & Wildlife Service, "Website of the Coastal Barrier Resources Act," http://www.fws.gov/CBRA.

3. Ibid.

4. Eli Lehrer et al. "Workable Solutions for Florida's Challenging Insurance Problems," The James Madison Institute Backgrounder, Number 70, February 2012.

5. 627 Florida Statutes.

6. Barry Gilway, "Rates" in "Citizens Property Insurance Corporation" presentation before House Insurance & Banking Committee, December 2012.

7. Ibid.

8. Florida Department of Environmental Protection, "The Homeowner's Guide to the Coastal Construction Control Line Program (Section 161.053, Florida Statutes)," February 2006, http://www.dep.state.fl.us/beaches/publications/pdf/propownr.pdf.

9. 161.54(6)(a) "Major structure" means houses, mobile homes, apartment buildings, condominiums, motels, hotels, restaurants, towers, other types of residential, commercial, or public buildings, and other construction having the potential for substantial impact on coastal zones.

10. 161.54(12) "Substantial improvement" means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either:

    (a) Before the improvement or repair is started; or

    (b) If the structure has been damaged and is being restored, before the damage occurred. The total cost does not include nonstructural interior finishings, including, but not limited to, finish flooring and floor coverings, base molding, nonstructural substrates, drywall, plaster, paneling, wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAC grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters, or roof coverings, except when determining whether the structure has been substantially improved as a result of a single improvement or repair. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.