J.A. 11-2-93 047



IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,303

LARRY FUCHS, as Executive Director of the State of Florida, Department of Revenue,

Appellant,

-vs-

KENNETH M. WILKINSON, as Property Appraiser of Lee County, Florida,

Appellee.

# BRIEF OF AMICUS CURIAE, WILLIAM MARKHAM, AS BROWARD COUNTY PROPERTY APPRAISER

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## STATEMENT OF THE CASE AND FACTS

Amicus Curiae Markham finds no conflict between and is thereby in agreement with the Statements of Case and Facts submitted by both Petitioner and Respondent.

## SUMMARY OF ARGUMENT

"Just Valuation" has always been the standard for assessments in Florida. Amendment 10 does not change this standard, but acts to limit "taxable value". The first sentence of Amendment 10 is cumulative to Art. VII, §4, Const.Fla. 1968. Amendment 10 will certainly be in effect as of January 1, 1994. Nothing in Amendment 10 speaks of a "base year" as argued by the Department of Revenue. The Department of Revenue has done a superb task of carrying out its oversight responsibilities of the assessment rolls of the sixty-seven counties. By its clear language, and giving effect to the intention of Florida's voters, the limitations to increases in assessed value contained in Amendment 10 should be applied to 1994 assessments.

## ARGUMENT

NEITHER THE PLAIN LANGUAGE OF AMENDMENT 10, NOR THE CLEAR INTENT OF ITS DRAFTERS AND THE VOTERS OF FLORIDA, REQUIRES THAT THE PROTECTIONS OF AMENDMENT 10 BE WITHHELD UNTIL JANUARY, 1995.

This Court has long defined the term "Just Valuation" as used in Art. IX, §1, Fla.Const. 1885, to be synonymous with "Market Value", i.e., the amount a willing non-necessitous buyer would pay for cash to a willing, non-necessitous seller. *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965). This Constitutional provision was continued intact in Art. VII, §4, Const.Fla. 1968, which mandates "market value" as the standard for the valuation of all property. After the people approved the 1968 Constitution, this Court reiterated that the just (market) value standard was still the law of Florida. *District School Board of Lee County v. Askew*, 278 So.2d 272 (Fla. 1973) Since enactment of the 1968 Constitution, this Court has frequently held that the Legislature lacks the power to prescribe assessment of property at other than just (market) value. See, e.g., *ITT Community Deveopment Corp. v. Seay*, 347 So.2d 1024 (Fla. 1977), *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So.2d 433 (Fla. 1973). This Court has not hesitated to strike down statutes which purport to require assessments at less than just (market) value. *Valencia Center, Inc. v. Bystrom*, 543 So. 2d 214 (Fla. 1989). This Court has overturned decisions approving assessments at less than just valuation. *Schultz v. TM Florida - Ohio Realty Ltd.*, 577 So.2d 573 (Fla. 1991).

The Property Appraiser is required to make an annual

determination of the just valuation of all property.[1] Of course, just because the Property Appraiser has valued all property at just valuation each year does not mean that a particular owner's tax bill will show millage rates applied to the just value of that person's property. Two other important concepts are "assessed value", defined in §192.001(2), Fla.Stat.1992 as the just or classified use value of property, and "taxable value", which is defined in §192.001(16), Fla.Stat.1992, as the "assessed value" of property minus applicable exemptions such as the Homestead exemption[2], property used for educational, literary, scientific, religious or charitable purposes[3], and exemptions for widows and widowers, the blind and the disabled[4]. Significantly, the Property Appraisers of Florida have always been required to continue appraise all property at just valuation each year, even if its assessed or taxable value is less than that by virtue of an exemption or taxation at a classified use value. The Property Appraiser must show this just (market) value on the tax rolls for all property.[5] For that reason, the first sentence of Amendment 10 is wholly cumulative to Art. VII, §4, Const.Fla. 1968. The real effect of Amendment 10 was to authorize taxable values at less than just value minus Homestead and other exemptions.

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[1] §192.042(1), Fla.Stat.1992

[2] Art. VII, §6, Const.Fla.1968

[3] Art. VII, §3(a), Const.Fla. 1968

[4] Art. VII, §3(b), Const.Fla.1968

[5] §193.114(2)(b) & (d), Fla.Stat.1992

Classified use assessed values are authorized in Art. VII, § 4, Const.Fla.1968, where the Legislature may provide for assessment of specifically described types of property at a classified use or fractional value: (1) Agricultural property; (2) land producing high water recharge to Florida's aquifers; (3) land used exclusively for non-commercial recreation; (4) stock in trade and (5) livestock.

The effect of assessed and taxable values of some properties being at less than "just valuation" has never deprived any taxing district of tax dollars. Instead, the effect has always been to shift the burden of taxes to other property not enjoying exemptions and classifications. Because the taxing bodies establish their millage rates by dividing the dollar amount of taxes they wish to extract from the taxpayers by the aggregate amount of taxable property (i.e., just valuation less deductions for classified use and exemptions), those millage rates are higher than they would be if these exemptions and classifications did not exist.

By overwhelmingly approving Amendment 10 in the 1992 election, Florida's voters approved expanding the assessed/taxable value concept to limit increases in taxable value to property owned by persons qualified for the Homestead exemption under Art. VII, §6, Const.Fla. 1968. As time passes, this will further shift the burden of taxation from property enjoying classifications and exemptions to business and other non-Homestead property. However, since the taxing bodies are free to adjust their millages within

Constitutional limits[6], the passage of Amendment 10 will never result in the loss of a single tax dollar to any county, city or school district. The amendment will eventually protect people such as the writer's 93-year old mother, whose home in the Las Olas Isles in Fort Lauderdale was purchased in 1950 for $30,000, and whose 1992 tax bill was $7,662.97.[7] The just (fair) market value tax system that permitted this sort of taxes was neither just nor fair.

As of January 1, 1993, the Constitution did not authorize the value limitation mechanism of Amendment 10 to lower the taxable value of property below just valuation minus exemptions. Since even the Department of Revenue agrees that Amendment 10 became effective as of January 5, 1993, no one questions whether the Amendment authorizes this value limitation mechanism to affect taxable values as of January 1, 1994. It clearly does. The language of Amendment 10 in no way changes the previous requirement that the Property Appraiser annually determine the just valuation of all property in the County; in fact it reiterates this requirement.

The heart of the Department of Revenue's argument is at pages 17 and 18. It contends that the language of Amendment 10 requires assessment of all Homestead property at just value for the year

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[6] Art. VII, §9, Const.Fla. 1968 provides an aggregate millage limit of thirty dollars per $1,000 of assessed valuation for school, county and municipal purposes and small additional millages for water management purposes.

[7] Broward County tax folio No. 0212-15-025

1994, so the taxable value limitations of Amendment 10 could not possibly be effective in that year. The Property Appraisers were already required to determine the just valuation of all Homestead property as of January 1 of each year from 1969 through 1993. What Amendment 10 did was not to change the concept of "just valuation", but rather to allow the taxable value of Homestead property to be less than just value minus Homestead and other exemptions. Nothing in Amendment 10 says that this redefinition of taxable value cannot be effective as of January 1, 1994.

The Department of Revenue argues at page 17 that assessments, i.e., the taxable values, of Homestead property are required to be at just value for the 1994 tax year. This interpretation cannot be so. The taxable value of Homestead properties is now and has always been their just valuation less applicable exemptions. §192.001(16), Fla.Stat.1992. To adopt the Department's reading of the first sentence of Amendment 10 would be to nullify the Homestead exemption that would be applicable to such properties, and require that the 1994 assessments of Homestead properties be at just valuation, without deduction of any exemptions!

This Court held in *Garner v. Ward*, 251 So.2d 252 (Fla. 1971), that a statute should be construed to give effect to evident legislative intent, even if result seems contradictory to rules of construction and the strict letter of the statute; the spirit of the law prevails over the letter. No one can doubt that the taxpaying, homeowning voters of Florida were fed up with the stratospheric spiral of tax and spend government when they approved

Amendment 10. The Department cannot seriously argue that those persons would have voluntarily postponed the tax relief they were voting to write into our Constitution. The Third District Court of Appeal held in *Ingraham v. Miami*, 388 So.2d 305 (Fla. 3d DCA 1980), that the authority to impose taxes must be strictly construed in favor of the taxpayer and against the taxing authority. Any doubt as to the interpretation of Amendment 10 must be resolved in favor of the taxpayers. See, *Sherwood Park, Ltd., Inc. v. Meeks*, 234 So.2d 702 (Fla. 4th DCA 1970), affirmed *Markham v. Sherwood Park Ltd.*, 244 So.2d 129 (Fla. 1971).

Since Amendment 10 authorizes assessments to be at a taxable value less than just value as of January 1, 1994, the Department argues that measuring the amount of permitted increase as of January 1, 1993 is somehow unlawful because it is retroactive and suggests that the Department of Revenue needs to put the hammer down on the Property Appraisers for the 1994 tax year in order to be sure that a "base year" assessments (a term not found anywhere in Amendment 10 or the Florida Statutes) are at just value.

Nothing in our Constitution or the Federal Constitution prevents retroactive application of tax laws. Congress just passed a massive Federal income tax increase which will be effective for the entire year of 1993 even though it was passed during the year. This Court in *Department of Revenue v. Leadership Housing, Inc.*, 343 So.2d 611 (Fla. 1977) found no Constitutional problems with the provision in Florida's corporate income tax that measured increases in the capital value of assets that occurred prior to the effective

date of the Constitutional amendment that authorized a corporate income tax.

The position the Department takes in this case is very reminiscent of that which it took relative to whether the provisions of the 1968 Constitution which authorized a Homestead exemption for condominium and co-operative owners should be effective for the 1969 tax year. As in this case, the Attorney General ruled in AGO 068-110 that an entire condominium project was but one "dwelling house" for purposes of the Homestead Exemption, and that because the 1968 Constitution did not become effective until January 7, 1969, condominium and co-operative homeowners would not each enjoy a full Homestead exemption until the 1970 tax year. This Court disagreed with the Attorney General's position in *Ammerman v. Markham*, 222 So.2d 423 (Fla. 1969). In the same manner, AGO 92-90 should not be persuasive to the Court in this case.

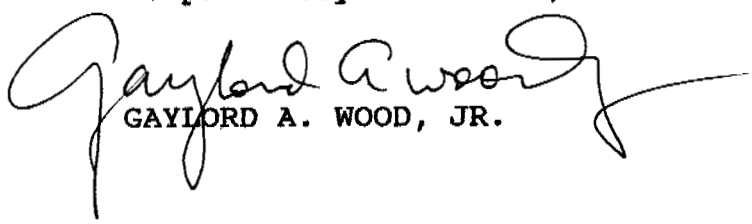
The Department's concern that implementation of Amendment 10 for the 1994 tax year will freeze assessed values at less than just (market) value less exemptions and as limited by Amendment 10, as argued beginning at Page 19, is unfounded. Since enactment of the TRIM law, Ch. 80-261, Laws of Florida 1980, the Department of Revenue has diligently, exhaustively and conscientiously scrutinized each tax roll in Florida using sales to assessment ratios and in depth analyses to ensure that they meet the "just valuation" standard. When the Statewide Grand Jury in 1990 felt

the Department's procedures could be improved[8], the Department responded promptly and positively, sponsoring remedial legislation which was enacted in the 1991 Legislature to address each of the Grand Jury's concerns. Florida is widely acknowledged throughout the United States as having the best and most thorough review of County assessment rolls to ensure uniformity and equality in assessments.

## CONCLUSION

Just as California's voters reacted to runaway property taxes with Proposition 13, Florida's voters have changed our Constitution to shift more of the burden of property taxes from the homeowner to the non-resident and the business property owner. When these voters expressed their will in 1992, nothing suggests that they wanted to delay implementation of the limit of taxable value until 1995. The Constitution permits a limit in taxable value as of January 1, 1994 and it should be given effect as of that date.

Respectfully submitted,



GAYLORD A. WOOD, JR.

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[8] See Presentment of the Ninth Statewide Grand Jury, September 11, 1990; *In Re Investigation of the Department of Revenue, Division of Ad Valorem Taxation*, Supreme Court of Florida, Case No. 74,094.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Amicus Curiae, William Markham, as Broward County Property Appraiser, was served by mail this 11th. day of October, 1993, on HON. ROBERT BUTTERWORTH, Attorney General, Room LL-04 The Capitol, Tallahassee, Florida 32301, Attorney for Appellant, Department of Revenue, on WILLIAM A. KEYES, JR., Esq., Attorney for Appellee, P. O. Drawer 790, Fort Myers, Florida 33902-0790, on Michael C. Tice, Esquire, 2149 First Street, Fort Myers, Florida 33901, on Theodore L. Tripp, Jr., Esq., Garvin & Tripp, P.A., P. O. Drawer 2040, Fort Myers, Florida 33902, and on Larry Levy, Esq., Attorney for Amicus Curiae, Property Appraisers' Association of Florida, P. O. Box 10583, Tallahassee, FL 32302.

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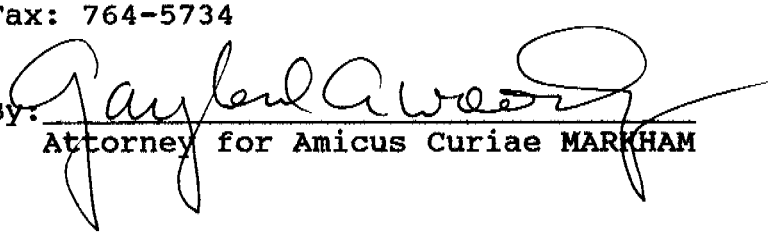
By: 
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