047

O.A. 11-2-93

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

FILED
SID J. WHITE
OCT 12 1993
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

11/5

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

Appellant,

vs.

CASE NO. 82,303

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

Appellee.

_____/

ANSWER BRIEF OF APPELLEE, KENNETH M. WILKINSON, PROPERTY APPRAISER OF LEE COUNTY, FLORIDA

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SUMMARY OF ARGUMENT

In November, 1992, the people of Florida adopted a constitutional amendment, by which they "clearly intended ... to limit increases in the assessment of homestead property." That limitation took effect, in its entirety, and became part of the organic law of Florida on January 5, 1993.

By its terms, Amendment 10 limits any change in the assessment of homestead property subject to its provisions. Under Amendment 10, changes in homestead assessments "shall not exceed ... 3% of the assessment for the prior year[1] ... the percent change in the Consumer Price Index ... or just value" Article VII, § 4(c)(1), Florida Constitution.

The trial court determined that the January, 1994, Homestead Assessment should be at "just value", and that "changes in assessments" after January 5, 1993, beginning with the changes resulting from the January, 1994 "just value" assessment, "shall not exceed ..." the Amendment 10 limitation.[2]

Prior to the voters' adoption of Amendment 10, all homestead property in Florida was required to be assessed at "full value" by Constitution, statute and administrative rule. This "just value" assessment has been subjected to bi-annual reviews by the DEPARTMENT OF REVENUE to ensure a uniform tax roll analysis for over a decade. There is no basis,

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[1]The plain language of Amendment 10 limits increases in assessments over "the prior year", regardless of whether that prior year was, or was not, subject to the provisions of Amendment 10. The voters could have provided that the limitation applied to increases in assessments "for the prior year, provided that such prior year was also subject to the provisions of Amendment 10." They did not.

[2]Under Amendment 10, all limitations are based on assessments "for the prior year", not some specified "base year".

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in law or in fact, to delay the clear intent of the people of Florida, by refusing to implement all provisions of Amendment 10 as of January 5, 1993. Amendment 10's limitations apply to any change in assessments of homestead property which may occur as of January 1, 1994, or any other year which is "subject to the provisions" of Amendment 10. No change in assessment after January 5, 1993 may exceed the prior year's assessment beyond stated limits.

The trial court so held, and should be affirmed.

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IMPORTANT DATES INVOLVED IN THE ADMINISTRATION OF AD VALOREM TAX ASSESSMENTS UNDER AMENDMENT 10

EVENT(S)	DATE(S)
Over 2,400,000 Florida voters approve Amendment 10 to Article VII, § 4 of the Florida Constitution, which provides that "assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the ... " limitations imposed by Amendment 10. Art. VII, § 4(c)(1).	November 3, 1992 (Election day)
All Florida homestead property is required to be assessed at "just value". §192.042(1), Fla. Stat.	January 1, 1993 (Tax day)
Amendment 10 becomes effective pursuant to Art. XI, § 5(c), Fla. Const. (1968)	January 5, 1993
All Florida homestead property is required to be assessed at "just value". §192.042(1), Fla. Stat. Because this is an "assessment subject to [Amendment 10's provisions]", any "changes in assessments shall not exceed the lower of ... 3% of the assessment for the prior year [1993] ... the percent change in the Consumer Price Index ... [or] just value." Art. VII, § 4 (c)(1)	January 1, 1994
All Florida homestead property is required to be assessed at "just value". §192.042(1), Fla. Stat. Because this is an "assessment subject to [Amendment 10's provisions]", any "changes in assessments shall not exceed the lower of ... 3% of the assessment for the prior year [1994] ... the percent change in the Consumer Price Index ... [or] just value." Art. VII, § 4 (c)(1)	January 1, 1995

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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.

On November 3, 1992, almost 2,500,000 Florida voters approved an amendment to Article VII, §4 of the Florida Constitution, by which the "drafters ... clearly intended ... to limit the increases in the assessment of homestead property."[3]

That Amendment offered protection to Florida residents, by assuring that unrealized increases[4] in the "just value" of their homestead property, beyond stated limits, would not result in an increase in the tax burden on Florida voters, without action by their elected representatives.[5]

The Appellee, KENNETH WILKINSON,[6] asked the trial court to declare that Amendment 10's protection against uncontrolled increases in the tax burden properly applied to, and controlled, any increase in just value of homestead property as of January

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[3]***Florida League of Cities v. Smith***, 607 So.2d 397, 401 n.7 (Florida 1992) (Barkett, C.J. concurring). The ballot summary approved by this Court, informed the voters that they were "limiting increases in homestead property valuations for ad valorem tax purposes to a maximum of 3% annually ... " when they voted for, and adopted, Amendment 10. ***Id.*** at 398, n. 2.

[4]Under Amendment 10, all homestead property will be assessed, and taxed, at "just value upon a change of ownership, a loss of homestead status", or a "change, alteration, reduction or improvement of the property." Art. VII, § 4(c)(5), Fla. Const.

[5]Tax levels continue to be controlled by elected representatives through adjustment of the millage rate. Compare Art. VII, § 9, Fla. Const.

[6]KENNETH WILKINSON is the duly elected Property Appraiser of Lee County, Florida, and was the chief proponent of Amendment 10.

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1, 1994[7]. The Defendant/Appellant, DEPARTMENT OF REVENUE[8], argued that the voters should be deprived of the benefits of Amendment 10 for over two years after the November, 1992 election, and asked the court below to delay application of its limitations until January 1, 1995.

The trial court properly rejected the Department of Revenue's argument that this intended limitation on the increase in assessments of homestead property should not be realized by the voters for over two years after their ratification of Amendment 10. The lower court correctly determined that all homestead assessments, after January 5, 1993 were "subject to this provision", and therefore the Amendment 10 limitations. This determination is consistent with the plain language and clear intent of the Amendment, and should be affirmed by this Court.

A. Amendment 10, in its entirety, became effective on January 5, 1993.

Amendment 10, as passed by the voters, did not specify an effective date. Therefore, its effective date is established by applying the provisions of Art. XI, § 5(c) of the Fla. Const.[9]. On January 5, 1993, all of its provisions became part of the organic law of Florida.

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[7]Alternatively, the trial court was asked to apply this protection as early as January, 1993. Mr. WILKINSON asserted that, since the first non-holiday following January 1, 1993 fell on Monday, January 4, 1993, only one day prior to the effective date provided by Art. XI, § 5(c), Fla. Const., the Court could legitimately apply its protections to the January, 1993 assessment. That argument was rejected by the trial court.

[8]The Appellant, LARRY FUCHS, was named as a Defendant in his position as Executive Director of the FLORIDA DEPARTMENT OF REVENUE. The Appellant will be referred to in this brief as the DEPARTMENT OF REVENUE.

[9]Art. XI, § 5(c), Fla. Const. states:

> If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the Constitution of the

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All assessments of homestead property became "assessments subject to [the] provision[s] of" Art. VII, § 4(c), Florida Constitution, and therefore subject to change from the prior year only as permitted by Amendment 10.

When they passed Amendment 10, the Florida voters were aware that they were to "have their homestead assessed at just value as of January 1st of the year following the effective date of [the] Amendment."[10] The voters of the State knew, when Amendment 10 was proposed, and passed, that its provisions continued the existing assessment standard of "just valuation", which had been both constitutionally and statutorily[11] mandated for many years. The clear intent of the voters in 1992 was to limit large "changes" in that just value, brought about by market forces. This potential for unlimited increases in the tax burden, by unanticipated and unrealized changes in "just value", was the evil which Amendment 10 was designed to cure.[12] Therefore, the plain language of the Amendment

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> State on the first Tuesday after the first Monday in January, following the election, or on such other date as may be specified in the amendment or revision.

[10]The Florida Constitution has, for many years, mandated the assessment of homestead property at "just value", subject to defined exemptions. Compare Art. VII, § 4(c), Fla. Const.

[11]Compare §192.042, Fla. Stat. It is hardly "speculation (Appellant's Brief at p. 17) to conclude that homestead property in Florida was assessed at "just value" as of January 1, 1993. Florida law has required assessments at that level for over a decade. Compare §192.001(2), Fla. Stat. (1981), which defines "assessed value of property" as the "just or fair market value of ... property ... pursuant to S.4(a) or S.4(b), Article VII, of the State Constitution ...." §192.011, Fla. Stat., which provides that property appraisers "shall assess all property ... whether such property is ... wholly or partially exempt, ... at its present highest and best use." See also, §193.011, Fla. Stat. (1991).

[12]In construing a constitutional provision, the courts should "constantly keep in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied." ***State ex rel West v. Gray,*** 74 So.2d 114, 115 (Fla. 1954).

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limited any change in assessed value which were reflected in the assessment of just value "as of the year following the effective date of [the] amendment ..." 1994. Article VII, § 4(c). "This [just value] assessment", for 1994 and all subsequent years, was limited by the voters of Florida, and may change "only as provided" in Amendment 10.[13]

The Department of Revenue concedes that the trial court correctly established the effective date of Amendment 10 at January 5, 1993. (Appellant's Brief at p. 11) If that is so, then assessments at "just value" as of January 1, 1994, will clearly be "assessments subject to [Amendment 10's] provision[s]". Art. VII, § 4(c)(1), Fla. Const. It necessarily follows that changes reflected by the January 1, 1994 "just value" assessment, like assessments thereafter, "shall not exceed the lower of 3% of the assessment for the prior year" (1993), ... "the percentage change in the Consumer Price Index ....or just value" Art. VII, § 4(c)(1). The trial court so ruled.

B. Amendment 10's utilization of "just value" as a basis for its limitation on change is not a new concept.

The DEPARTMENT OF REVENUE's analysis, on which it bases it request to withhold implementation of Amendment 10 for over two years, proceeds on the flawed premise that homestead property in Florida was first required to be assessed at "just value" upon the passage of Amendment 10. They then argue that Amendment 10's "cap is

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[13]It is a "firmly settled principle of law that in 'construing and applying provisions of the Constitution, the leading purpose should be to ascertain and effectuate the intent and the object designed to be accomplished' [citations omitted] and the intention to be ascertained must be that of the framers and the people adopting it, for that intention is the 'spirit ' of the Constitution [citations omitted] ***State ex rel West v. Gray,*** 74 So.2d 114, 115 (Fla. 1954).

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imposed in the year following the homestead assessment at full value - January 1, 1995."[14] Obviously, January 1, 1994 is not the first year that homestead property in Florida will be assessed at "just value".

All homestead property in Florida has been required to be assessed at full value for many years. Compare §192.042(1), Fla. Stat., Article VII, § 4, Fla. Const.[15] Indeed, the Appellant, DEPARTMENT OF REVENUE, is charged, by law, with the duty of "ensuring" the assessment of property at just, or full value. For the past ten years, Florida law required the Department to conduct "no less frequently than once every two years, an in depth review of the assessment rolls of each county."[16] Neither the voters of Florida, nor this court, should assume that the DEPARTMENT OF REVENUE has neglected its duty for the past ten years. Rather, the voters of Florida were entitled to presume, as should this Court, that the assessments of homestead property which occurred on January 1, 1993 were, in fact, at "just value".

The January 1, 1994 "just value" assessment, is, obviously "subject to this provision", Amendment 10. Clearly, that January, 1994 "just value" assessment, and the assessment in

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[14]Appellant's Brief at p.8.

[15]§192.042, Fla. Stat. (1991) requires that "all property shall be assessed according to its just value ... on January 1, of each year ...." Article VII, § 4 of the Fla. Const. provides that:

> New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the new homestead. That assessment shall only change as provided herein.

Compare §192.001(2), Fla. Stat.(1991), which defines "assessed value of property" to mean an "annual determination of the just or fair market value of an item or property ....".

[16]§195.096(2), Fla. Stat. (1982)

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every subsequent year, "shall change only as provided"[17] in Amendment 10. All assessments after January 5, 1993, are subject to the limitations which are based upon assessments "for the prior year ..."

In summary, the trial court correctly concluded that all homestead property in Florida was assessed at just value as of January 1, 1993. Amendment 10, by its terms, imposed limits on changes in that just valuation "as of January 1 ... [1994,] the year following the effective date of this amendment". That just value assessment, and all subsequent just value assessments of homestead property "shall change only as provided" in, and are subject to the limitations of, Amendment 10 based upon the prior year's assessment.

C. Amendment 10 contains no provision for a "base year", a term which does not appear, expressly or by implication, anywhere within the text of the Amendment approved by the Florida voters.

Since this Court must conclude that the January, 1993 assessment was at "just value", and because "there is no ambiguity in the language of Amendment 10"[18] , the trial court property rejected the argument that a "base year" with no limitation on changes in "just value" was intended.

THE DEPARTMENT OF REVENUE asks this Court to add, under the guise of interpretation, language which nowhere appears within the four corners of Amendment 10. The Department asks this Court to find that "Amendment 10 ... states that homestead

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[17]Change means "to make different in some particular". Miriam Webster Collegiate Dictionary, 190 (10th Edition, 1993).

[18]Appellant's Brief at p.17, citing ***State ex rel McKay v. Keller***, 140 Fla. 346, 191 So. 542 (1949); and ***City of Jacksonville v. Continental Can Co.***, 113 Fla. 168, 151 So. 488 (1933).

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property will be assessed at its just value on January 1, following its effective date, and that, in subsequent years, this assessment is subject to the cap."[19] The DEPARTMENT reasons that because Amendment 10 became "effective January 5, 1993, ... on January 1, 1994 ... homestead must be assessed at just value. Thereafter, all assessments shall change only as provided in Amendment 10." *Id.* at p. 16-17 [emphasis by the DEPARTMENT].

"Thereafter", and "in subsequent years", is language which appears nowhere in the text of Amendment 10. As the DEPARTMENT concedes, "a court should not add words to Amendment 10 that the sponsors omitted."[20] Yet, their argument cannot succeed unless this Court does exactly that. This Court should not invade the province of the people, and "add words which change the plain meaning" of the Amendment. ***Metropolitan Dade County v. Bridges***, 402 So.2d 411, 414 (Fla. 1981), ***State ex rel Harris v. King***, 188 So. 122 (Fla. 1939).

D. **There is no reason to delay the limitations of Amendment 10 until 1995.**

The DEPARTMENT's argument does not gain support from its "important reason" why the protection afforded by Amendment 10 should not be available until January, 1995, more than two years after its passage by the voters. (Appellant's Brief at p. 8).

The DEPARTMENT's argument is grounded upon its assertion that it should be afforded "sufficient time ... to review the roles and ensure that each and every homestead property is, in fact, at just value before the cap is put in place." (Appellant's Brief at p. 18 - 19) The simple answer to that assertion is that the legislature has afforded the DEPARTMENT not two, but ten (10) years, to achieve this goal before Amendment 10 was

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[19]Appellant's Brief at p. 16 [emphasis added].

[20]Appellant's Brief at p.14, n.11.

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passed. The DEPARTMENT concedes[21] that, for over ten years, "the Florida legislature has required the following of the DEPARTMENT:"

> "(2) Beginning with the 1982 Assessment Rolls, the Division of Ad Valorem Tax hall conduct, no less frequently than once every two years, an in-depth review of the Assessment Rolls of each county. ****** The Division of Ad Valorem Tax ... shall, at a minimum, study the level of assessment in relation to just value of each classification specified in subsection (3). Such in-depth review may include proceedings of the Property Appraisal Adjustment Board."

§195.096(2), Fla. Stat. (1982 Supp.).

Any "intracounty uniformity" provided by the DEPARTMENT's roll oversight function should, therefore, have been achieved in any of the five biennial reviews which occurred between 1982 and the adoption of Amendment 10.[22]

The DEPARTMENT's responsibility to ensure that the level of assessment of homestead property is proximate to just value, both by statute [23] and by rule[24] is not a new charge, imposed by adoption of Amendment 10. The DEPARTMENT has offered no evidence, either before the trial court, or before this Court, in support of its claim that a two year delay is "necessary to bring each and every homestead property up to just value

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[21]Appellant's Brief at p. 20.

[22]Florida law, both prior to and after adoption of Amendment 10, continues to allow the appropriate officials to address any "inequities" in assessments caused by mistake, or inadvertent oversight. §193.092, Fla. Stat. (1991) allows any property which might have been lawfully assessed, but was not, to be retroactively assessed, in an appropriate manner, for up to three years.

[23]See §193.011, §195.032, §195.096, Fla. Stat.

[24]Compare Rule 12 D-8.020(1), Fla. Administrative Code.

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so that all homestead property owners are on the same 'level playing field.'".[25] Even if such evidence existed, that argument was properly addressed by the electorate, who clearly chose Amendment 10's limitations now, not in 1995. This Court should not elevate the claimed potential for administrative error or inconvenience to a basis for delaying implementation of the clear will of the people. "[W]e should keep in mind ... that we are dealing with a constitutional democracy in which sovereignty resides in the people. It is their constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution." ***Gray v. Golden,*** 89 So.2d 785, 790 (Fla. 1956).

"[I]t is a cardinal principal of constitutional law that [this Court] may resort to the history of the times in order to determine the evil sought to be remedied and the purpose to be accomplished" in construing the intent of the constitutional amendment. ***State v. Florida State Improvement Commission,*** 60 So.2d 747, 750-51 (Fla. 1952). Here, the "insight ... gained from historical precedent, from present facts [and] from common sense"[26] makes clear that the evil sought to be prevented by the citizens of Florida was an increase in the tax burden on people's homes. That protection took place upon adoption of Amendment 10, not two years thereafter.

> The conclusion is irresistible that the people of Florida, in adopting [Amendment 10], desired that the [homestead] of the citizens and residents

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[25]Obviously, any question of unequal protection and discrimination (Appellant's Brief at p. 21) is not caused by the timely application of Amendment 10, according to its terms. Such questions, if in fact they exist, exist by reason of other factors.

[26]***State Commission on Ethics v. Sullivan,*** 449 So.2d 315, 316 (Fla. 1st DCA 1984), cert. den. 458 So.2d 271 (Fla. 1984).

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of Florida should not be taxed by the State of Florida [beyond Amendment 10's limitations], and it is [the] duty of this Court to construe this provision so as to effectuate the will and intention of the people.

State ex rel McKay v. Keller, 191 So. 542, 546 (Fla. 1939).

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CONCLUSION

This Court is "obliged to ascertain and effectuate the intent of the framers and the people"[27] in reaching a proper construction of Amendment 10. The Court must, therefore, decline the DEPARTMENT OF REVENUE's invitation to read into that Amendment an intent to delay the implementation of its protections, and allow continued increases in the tax burden on Florida residents, which is contrary to both the plain language and clear intent of the Amendment.

All assessments of Florida homestead property which occur after January 5, 1993 are subject to Amendment 10's provisions. Each of those just value assessments may increase, but only to the extent allowed by Amendment 10, which limits such increases to 3% of the prior year's just value, the increase in the Consumer Price Index, or the just value of the property, whichever is lower.

The trial court must be affirmed.

Respectfully submitted,

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By _____
THEODORE L. TRIPP, JR.
Counsel for Appellee
KENNETH M. WILKINSON

[27] ***Gallant v. Stephens,*** 358 So.2d 536, 539 (Fla. 1978)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to JOSEPH C. MELLICHAMP, III, Senior Assistant Attorney General, Office of the Attorney General, The Capitol-Tax Section, Tallahassee, Florida 32399-1050, GAYLOR A. WOOD, JR., ESQ., 304 S.W. 12th Street, Fort Lauderdale, Florida 33315-1549, LARRY E. LEVY, ESQ., P.O. Box 10583, Tallahassee, Florida 32302, MICHAEL C. TICE, ESQ., 2149 First Street, Fort Myers, Florida, and WILLIAM A. KEYES, JR., P.O. Drawer 790, Fort Myers, Florida 33902 this 11th day of October, 1993.

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