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O.A. 11-2-93

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

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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.
_____/

INITIAL BRIEF OF APPELLANT, LARRY FUCHS, AS EXECUTIVE DIRECTOR OF THE FLORIDA DEPARTMENT OF REVENUE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JOSEPH C. MELLICHAMP, III
Senior Assistant Attorney General
Fla. Bar No. 133249

Office of the Attorney General
The Capitol- Tax Section
Tallahassee, FL 32399-1050
(904) 487-2142
Fax: (904) 488-5865

COUNSEL FOR APPELLANT
DEPARTMENT OF REVENUE

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PRELIMINARY STATEMENT

All references to the Record on Appeal will be prefixed with the letter R followed by the appropriate page number, e.g. R-1. References to Amendment 10 or the Amendment or to the amendments to Art. VII, § 4, or Amendment VII, § 4(c)1., (A) and (B), Fla. Const., are interchangeable terms, which mean the same.

STATEMENT OF THE CASE AND FACTS

1. On November 3, 1992, the following amendment to Art. VII, § 4, Fla. Const. (1968), was approved by a vote of the electorate, (R-1), of the State of Florida:

HOMESTEAD VALUATION LIMITATION

> (c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.
>
> 1. Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:
>
> (A) three percent (3%) of the assessment for the prior year;
>
> (B) the percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967 = 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.
>
> 2. No assessment shall exceed just value.
>
> 3. After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein.
>
> 4. New homestead property shall be assessed at just value as of January 1st of the year following

> the establishment of the homestead. That assessment shall only change as provided herein.
>
> 5. Changes, additions, reductions or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction or improvement, the property shall be assessed as provided herein.
>
> 6. In the event of a termination of homestead status, the property shall be assessed as provided by general law.
>
> 7. The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment. (e.s.)

2. This amendment (hereinafter referred to as "Amendment 10"), contained no provision which expressed an effective date for the amendment once approved.

3. After its approval by the electorate, Amendment 10 was the subject of a memorandum issued on November 5, 1992, to all Florida Property Appraisers and Tax Collectors by the Department of Revenue, Division of Ad Valorem Tax (hereinafter "the Division"). R-3.

4. The Division's memorandum advised the Property Appraisers and Tax Collectors that because Amendment 10 did not contain a specific effective date, the effective date of Amendment 10 is January 5, 1993, "since art. XI, sec. 5(c), Florida Constitution provides for the effective date of amendments to the Constitution on the first Tuesday after the first Monday in January if no other date is specified in the amendment." R-3.

5. Amendment 10 was also the subject of an Attorney General Opinion after its adoption by the electorate. See Op. Att'y Gen. Fla. 92-90 (1992). When an amendment to the State's Constitution fails to provide for an effective date then, the effective date is governed by the provisions of Art. XI, § 5(c), Fla. Const.[1]

6. On or about February 1, 1993, Kenneth M. Wilkinson, Property Appraiser of Lee County, Florida (hereinafter "Wilkinson" or "the Appellee"), commenced this action in the Twentieth Judicial Circuit in and for Lee County, Florida (hereinafter "the trial court") seeking a declaratory judgment against Larry Fuchs, Executive Director of the Florida Department of Revenue (hereinafter "the Department"). R-1-3.

7. In his complaint, Wilkinson alleged that Amendment 10 was effective when it was approved by the voters at the general election held on November 3, 1992. R-1.

8. Wilkinson also alleged that since Amendment 10 was effective when it was approved by the voters on November 3, 1992, Amendment 10 should have applied to the January 1, 1993, ad valorem tax year. R-1-2.

9. In the alternative, without conceding the effective date as set forth by Art. XI, § 5(c), Fla. Const., which was determined to be Tuesday January 5, 1993, Wilkinson alleged that:

> January 5, 1993 is so close in point of time to January 1, 1993 that the Plaintiff should

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[1] Kenneth M. Wilkinson, Property Appraiser of Lee County, Florida, requested an official opinion from the Attorney General as to the effective date of Amendment 10 and when the limitation on the increases in homestead valuations contained in Amendment 10 would apply.

> be allowed to apply the amendment to his January 1, 1993 ad valorem tax roll.

R-2.

10. On or about February 22, 1993, the Department timely served its Answer to Wilkinson's Complaint. R-4-5.

11. In its Answer, the Department reiterated the Division's November 5, 1992, memorandum and Op. Att'y Gen. Fla. 92-90 (1992), stating that since Amendment 10 did not contain a specified date that it would become effective, the effective date of Amendment 10 is January 5, 1993, which was the first Tuesday after the first Monday in January following the election as provided for in Art. XI, § 5(c), Fla. Const. R-5.

12. On or about April 13, 1993, Wilkinson moved the trial court for Summary Judgment, (R-20-33), requesting that the trial court construe Amendment 10 in a way that it would take effect as quickly as possible, by either holding:

> (1) that the effective date of the amendment was January 1, 1993, thus capping assessments made after that date . . ., or,
>
> (2) that the cap takes effect as of January 1, 1994, since, under Florida law, homesteads were assessed at just value as of January 1st, 1993.

R-30-31.

13. Subsequently, on or about April 29, 1993, the Department filed its Cross-Motion for Final Summary Judgment. R-35-36.

14. Thereafter, on May 4, 1993, Wilkinson moved the trial court for an order to expedite the cause of action on the grounds that a ruling was needed prior to June 1, 1993. Wilkinson argued that pursuant to § 193.1142, Fla. Stat., Wilkinson's assessment

roll shall be submitted to the Department for approval. Therefore, the trial court's ruling on the effective date of Amendment 10 would determine how Wilkinson's preliminary ad valorem tax roll would be prepared. R-37-38.

15. On or about May 20, 1993, the Department served its Response to Wilkinson's Motion to Expedite and argued that there was no need for expedition of this cause because of the prospective effect of Amendment 10. R-39-42.

16. After notice, On June 21, 1993, the trial court heard Wilkinson's Motion for Summary Judgment and the Department's Cross-Motion for Final Summary Judgment. R-48-62.

17. At the conclusion of the June 21, 1993, hearing the trial court ruled that Amendment 10 could not have a "retrospective effect", stating: "I concur with the view of the Department of Revenue that the amendment cannot have a retrospective effect, so it cannot become effective for the -- in '93. Effective date was January 5th you can't relate back to January 1st." Therefore, the effective date of Amendment 10 is January 5, 1993. R-61.

18. On June 25, 1993, the trial court entered a Final Summary Judgment which provided, in pertinent part, that there is no basis in the language of the amendment for a base year and thus, the "cap" contained in Art. VII, § 4(c)1., (A) and (B), Fla. Const., would be "effective and the limitations in that amendment shall apply as of January 1, 1994." The order made both the effective date and application of the limitation simultaneous. R-76.

19. On July 9, 1993, the Department timely filed its Notice of Appeal. R-77-79. The Appellee filed no cross appeal of the trial court's ruling concerning the retroactive application of Amendment 10 to tax year 1993, or that the amendment was effective on January 5, 1993.

20. On or about July 13, 1993, the Department filed its Suggestion for Certified Review to the Florida Supreme Court, in the Second District Court of Appeal, and on August 2, 1993, the Second District Court of Appeal entered an Order granting the Department's Suggestion for Certified Review to the Florida Supreme Court. R-83.

21. On September 9, 1993, this Court entered an Order accepting jurisdiction of this case, establishing a briefing schedule and setting oral argument.

SUMMARY OF ARGUMENT

This case involves two issues: When does Amendment 10, which limits homestead valuation, become effective; and in which tax year does the limitation (cap) on increases in homestead valuation applies. Amendment 10 provides in pertinent part:

> (c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.
>
> 1. Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following. . . . (e.s.)

Amendment 10 was approved by the electorate on November 3, 1992, and did not contain a specific effective date. Where no effective date is set out in the amendment itself, the provisions of Art. XI, § 5(c), Fla. Const., provided that the amendment shall become effective on the first Tuesday after the first Monday in the January following the election. The first Monday in January following the November 3, 1992 election was January 4, 1993, making the effective day of Amendment 10, Tuesday, January 5, 1993.

The absence of an effective date necessitates that the provisions of Art. XI, § 5(c), Fla. Const., control. Therefore, Amendment 10 took effect on January 5, 1993.

The trial court erred in finding that there is no basis in the language of Amendment 10 for a base year in 1994 on which the "cap on value" would prospectively operate. The trial court erred by concluding that the "cap" contained in Amendment 10 would apply as of January 1, 1994, instead of January 1, 1995.

Since the effective date of Amendment 10 is January 5, 1993, it need only be determined whether there is an intervening base year from which the calculations of the "cap" are to be figured prospectively. The issue and, thus, the case can be resolved within the four corners of the Amendment, without resort to speculation about intent.

Amendment 10 simply states that homestead 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.

We know that Amendment 10 became effective January 5, 1993. The first assessment following the effective date is January 1, 1994. The cap is imposed in the year following the homestead's assessment at full value - January 1, 1995.

Thus, under the clear and unambiguous language of Amendment 10, on January 1, 1994, which is the year following the effective date of the amendment (January 5, 1993) all property entitled to homestead exemption shall be assessed at just value. Thereafter, that assessment of the property entitled to a homestead exemption shall only be changed in accordance with the provisions of Art. VII, § 4(c)1., (A) and (B), Fla. Const. That change cannot begin to take place until tax year 1995. Accordingly, January 1, 1995, is the first tax year that the "cap" would be applicable. The trial court erred when it ignored the legal effect of Art. XI, § 5(c), Fla. Const., and pushed the operation of amendment forward by one year.

Why then is this base year assessment on January 1, 1994, so important? The 1994 base year actually contemplated by the Amendment allows sufficient time for the Department to review the rolls and ensure that each and every homestead property is in fact at just value before the cap is put in place. Thereafter, when the "cap" on valuation is applicable any resulting decrease in value will be a product of the cap, not a preexisting failure to assess at just value. Thus, intra-county uniformity will be maximized by the Department's roll oversight function as it relates to equitable sharing of the tax burden within a county and inter-county uniformity as it relates to equitable allocation of school funds throughout the state. See § 236.081(4), Fla. Stat.

Amendment 10 allows one full two-year cycle necessary for an in-depth review of all 67 counties which the Legislature recognized is the means by which to ensure the fair and equitable assessments of all affected homestead property in every county in the State.

ARGUMENT

I. **THE TRIAL COURT ERRED IN HOLDING THAT THERE IS NO BASIS IN THE LANGUAGE OF AMENDMENT 10 FOR A BASE YEAR VALUATION, THUS THE TRIAL COURT ERRED IN HOLDING THAT THE LIMITATION, OR CAPS ON VALUE, CONTAINED IN AMENDMENT 10 APPLY AS OF JANUARY 1, 1994.**[2]

1. AMENDMENT 10 BECAME EFFECTIVE JANUARY 5, 1993.

2. THE LIMITATION ON INCREASES IN HOMESTEAD VALUATION APPLIES TO THE 1995 TAX YEAR.

HISTORY - BACKGROUND

Prior to being placed on the ballot, Amendment 10 twice underwent judicial review by the Florida Supreme Court. See In Re Advisory Opinion To Attorney General, 581 So. 2d 586 (Fla. 1991), (the Attorney General sought an advisory opinion as to the validity of the initiative petition which proposed Amendment 10.); and, Florida League of Cities v. Smith, 607 So. 2d 397 (Fla. 1992), (association of cities and counties brought a mandamus action seeking the removal of Amendment 10 from the ballot on the grounds that upon its passage a provision of the Constitution would repeal part of the homestead exemption and this was not disclosed on the ballot summary). In both instances the Supreme Court determined that Amendment 10 passed constitutional muster. See 581 So. 2d at 588; and, 607 So. 2d at

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[2] The "cap", "capping" or "limitation" refers to the provisions of Amendment 10 which does not allow the value of a homestead to exceed a specific percentage beginning in the second year after the effective date of the amendment. See Art. VII, § 4(c)1., (A) and (B), Fla. Const.

401. Amendment 10 as presented to the electorate, did not provide for an effective date.[3]

Although Amendment 10 was approved by the electorate on November 3, 1992, it did not contain a specific effective date. Where no effective date is set out in the amendment itself, the provisions of Art. XI, § 5(c), Fla. Const., control. That article and section states that where there is no effective date in the amendment, then the amendment shall become effective on the first Tuesday after the first Monday in the January following the election. The first Monday in January following the election was January 4, 1993, making the effective day of Amendment 10 Tuesday, January 5, 1993.

January 1 is that date on which the taxable status of all property is to be determined for ad valorem tax purposes.[4] As of January 1, 1993, the valuation of real property for 1993, had already been determined and property tax liens had arisen. See § 197.122, Fla. Stat. Since Amendment 10 provides that homesteads shall be assessed at just value as of January 1 of the year following the effective date of this amendment and that "[t]his assessment shall change only as provided herein," the trial court

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[3] Amendment 10 was also the subject of an Attorney General Opinion after its adoption by the electorate. See Op. Att'y Gen. Fla. 92-90 (1992). When an amendment to the State's Constitution fails to provide for an effective date then, the effective date is governed by the provisions of Art. XI, § 5(c), Fla. Const.

[4] See § 192.042(1), Fla. Stat., which requires all real property to be assessed accurately to its just value on January 1 of each year.

erred by failing to recognize the "base year" contemplated by Amendment 10.[5]

1. AMENDMENT 10 BECAME EFFECTIVE JANUARY 5, 1993.

The trial court correctly concluded that Amendment 10 cannot be given retrospective effect to January 1, 1993, since its constitutionally mandated effective date is January 5, 1993. R-61.[6] Amendment 10 fails to provide for an effective date. The effective date is governed by the provisions of Art. XI, §5, Fla. Const., which provides for submission to the electorate of a proposed amendment to, or revision of the constitution, or any part thereof, by "joint resolution, initiative petition or report of revision commission, constitutional convention or taxation and budget reform commission . . . ." Pursuant to Art. XI, § 5(c), Fla. Const.:

> 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 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.

As noted above, Amendment 10 was approved by the electorate on November 3, 1992.

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[5] "Base year" refers to January 1 of the year following the effective date of Amendment 10 (January 1, 1994), where all persons entitled to a homestead exemption shall have their homestead assessed at just value.

[6] See e.g. State v. Lavazzoli, 434 So. 2d 321 (Fla. 1983); See also Hancock v. Board of Public Instruction, 158 So. 2d 519 (Fla. 1963); and, State ex rel. Reynolds v. Roan, 213 So. 2d 425 (Fla. 1968). No cross-appeal was taken on this issue by the Appellee.

Appellee contends that the sponsors intended Amendment 10 to be effective on the date it was approved. No provision supporting this contention is contained in the language of the amendment. Altering the constitutionally prescribed effective date could easily have been accomplished.[7] For example, the amendment to Art. VI, § 4, Fla. Const., which limits political terms of certain elective offices, and is commonly known as "Eight is Enough," was also proposed by initiative petition and was approved during the November, 1992 general election.[8] However, that Amendment explicitly states that "[t]his amendment shall take effect on the date it is approved by the electorate . . . ." See Advisory Opinion to the Attorney General, 592 So. 2d 225, 226 (Fla. 1991).

This Court has ruled that when an amendment does not specify an effective date, it becomes effective on the first Tuesday after the first Monday in January following the election.[9]

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[7] Compare, the proposed initiative petition to amend Art. I, § 21, Fla. Const., to limit non-economic damages in civil actions. Section 3 of the proposed amendment provided that "[t]his Amendment shall take effect thirty days after the date of the election at which is approved." See, In re Advisory Opinion to Attorney General, 520 So. 2d 284, 286 (Fla. 1988).

[8] This Amendment is the subject of a federal action. Plante v. Smith, Case No. 92-40410, Federal District Court, Northern District of Florida.

[9] Compare Correlis v. State, 78 Fla. 44, 82 So. 601 (1919). Amendment to the 1885 Constitution, which by its terms took effect on the first day of January 1919, became effective on that date and rescued the amendment from the provisions of Art. XVII, Fla. Const. (1885), whereby amendments to the Constitution took effect upon receiving the approval of a majority of votes of the electors at the election; See also, Op. Att'y Gen. Fla. 88-60 (1988), stating that inasmuch as the joint resolution to amend Art. VII, § 3, Fla. Const. (1968), to extend the property tax exemption for widows to widowers did not specify an effective

Resolution of this issue does not require judicial construction or interpretation of Amendment 10.[10] The Amendment is silent as to its effective date. The trial court correctly concluded that it had no authority to supply words or additional provisions to Amendment 10 as requested by the Appellee.[11] The absence of an effective date necessitates that the provisions of Art. XI, § 5(c), Fla. Const., control.

Therefore, Amendment 10 took effect on January 5, 1993.

2. THE LIMITATION ON INCREASES IN HOMESTEAD VALUATION APPLIES TO THE 1995 TAX YEAR.

The trial court erred in finding that there is no basis in the language of Amendment 10 for a base year on which the "cap on value" would prospectively operate. The trial court erred by concluding that the "cap" contained in Amendment 10 would apply as of January 1, 1994.

The following chart outlines the important dates involved in the administration of ad valorem tax assessments of a base year

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date, the effective date for the amendment was the first Tuesday after the first Monday in January following the election.

[10] It is well settled that in the construction of provisions of Constitutions, the rules used in the construction of statutes are generally applicable. State ex rel. McKay v. Keller, 140 Fla. 346, 191 So. 542 (1939); City of Jacksonville v. Continental Can Co., 113 Fla. 168, 151 So. 488 (1933); and, Mugge v. Warnell Lumber & Veneer Co., 58 Fla. 318, 50 So. 645 (1909).

[11] A court should not add words to Amendment 10 that the sponsors omitted. See e.g. Metropolitan Dade County v. Bridges, 402 So. 2d 411 (Fla. 1981); and, State ex rel. Harris v. King, 137 Fla. 190, 188 So. 122 (1939).

as related to the implementation of Amendment 10:

EVENT(S)	DATE(S)
At the November 3, 1992 general election, the electorate approved Amendment 10 to Art. VII, § 4, Fla. Const., which contained no effective date provision.	November 3, 1992 (election day).
Section 192.042(1) Fla. Stat., (Supp. 1992)., which requires all real property to be assessed according to its just value.	January 1, 1993 (tax day).
Article XI, § 5(c), Fla. Const., (1968). When an amendment to the Constitution does not specify an effective date, it becomes effective, on the first Tuesday after the first Monday in January following the election.	January 5, 1993 (effective day of Amendment 10).
Amendment 10 provides: (c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as <u>of January 1 of the year following the effective date of this amendment</u>.	January 1, 1994 (assessment day).
<u>This assessment</u> shall change only as provided herein. 1. <u>Assessments</u> subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:	January 1, 1995 (limitation (cap) day).

Since the effective date of Amendment 10 is January 5, 1993, it need only be determined whether there is an intervening base year from which the calculations of the "cap" are to be figured prospectively. The issue and, thus, the case can be resolved within the four corners of the Amendment, without resort to speculation about intent. In fact, the Appellee has already acknowledged "that the literal language of the Amendment indicates a[n] assessment of homesteads "at just value" as of January 1st, 1994. . . ."[12]

Amendment 10 simply states that homestead 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.

We know that Amendment 10 became effective January 5, 1993. The first assessment following the effective date is January 1, 1994. The cap is imposed in the year following the homestead's assessment at full value - January 1, 1995.

The amendment provides:

> All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein. (e.s.)

Nothing could be clearer. The homestead property shall be assessed at just value as of the January 1st following the effective date. The effective date is January 5, 1993, and so,

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[12] "Literal" means in accordance with, conforming to or upholding the explicit or primary meaning of a word or the words of a text. American Heritage Dictionary 762 (New College Edition 1976).

on January 1, 1994, the homestead must be assessed at just value. Thereafter, all assessments shall change only as provided in Amendment 10.

What does the Appellee make of this language? Appellee argued below that "the assessment cap should be held effective as of the 1994 tax year (with no "base year") since at that time all Florida homesteads will already have been "assessed at just value" as of January 1, 1993." R-24. The argument is grounded in speculation concerning intent and is contrary to the words used in Amendment 10. Unlike that intent which might be expressed by the Legislature, or a commission or convention proceeding to amending the Constitution pursuant to Art. XI, Fla. Const., reliance upon after-the-fact expressions as to intent in an initiative process is dangerous. These "statements are cursory, vague and unpersuasive." Florida League of Cities, 609 So. 2d at 400. The initiative process lacks an open, recorded meeting where words, phrases and the effect of a provision can be discussed prior to its adoption.

In such a circumstance it becomes especially important to follow the well settled principles that when constitutional language is precise, its exact letter be enforced and extrinsic guides to construction not be allowed. The trial court erred when it failed to be guided by this principle and deviated from the plain language of Amendment 10.[13] There is no ambiguity in the language of Amendment 10.[14]

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[13] See State ex rel. McKay v. Keller, 140 Fla. 346, 191 So. 542 (1939); and, City of Jacksonville v. Continental Can Co., 113 Fla. 168, 151 So. 488 (1933).

Thus, under the clear and unambiguous language of Amendment 10, on January 1, 1994, which is the year following the effective date of the amendment (January 5, 1993), all property entitled to homestead exemption shall be assessed at just value. Thereafter, that assessment of the property entitled to a homestead exemption shall only be changed in accordance with the provisions of Art. VII, § 4(c)1., (A) and (B), Fla. Const. That change cannot begin to take place until tax year 1995. Accordingly January 1, 1995, is the first tax year that the "cap" would be applicable. The trial court erred when it ignored the legal effect of Art. XI, § 5(c), Fla. Const., and pushed the operation of amendment forward by one year.

While stating at hearing that the Amendment does not have a retroactive effect, the trial court's order nevertheless sets the effective date of the amendment at January 1, 1993, which is what allows the "cap" to be placed in effect during the 1994 tax year.

Why is the effective date of January 5, 1993, so important? Because the year following that date, January 1, 1994, is the base year where all property subject to the homestead exemption shall be assessed at just value. Why then is this base year assessment on January 1, 1994, so important? There are at least two reasons. The 1994 base year actually contemplated by the Amendment allows sufficient time for the Department to review the rolls and ensure that each and every homestead property is in

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[14] See State ex rel. West v. Gray, 74 So. 2d 114 (Fla. 1954); City of Jacksonville v. Continental Can Co., 113 Fla. 168, 151 So. 488 (1933). Ambiguity is an absolute prerequisite to judicial construction. Florida League of Cities, 609 So. 2d at 400. State ex rel. West v. Gray, 74 So. 2d at 116.

fact at just value before the cap is put in place. Thereafter, when the "cap" on valuation is applicable any resulting decrease in value will be a product of the cap, not a preexisting failure to assess at just value. Thus, intra-county uniformity will be maximized by the Department's roll oversight function as it relates to equitable sharing of the tax burden within a county and inter-county uniformity as it relates to equitable allocation of school funds throughout the state. See § 236.081(4), Fla. Stat.

During the proceedings in the trial court, the Appellee argued that the need for a base year to establish just value in 1994 is unnecessary since property is required to be valued at just value each and every year. Appellee's position is overly simplistic. The Appellee is well aware that the process for ensuring "just value" in 67 counties is no simple matter. The Department approves assessment rolls pursuant to §§ 193.114 and 193.1142, Fla. Stat. The Department conducts in-depth reviews of the assessment rolls of each county once every two years.[15] See § 195.096, Fla. Stat. Thus, each county's tax roll is analyzed by the Department every other year, according to statute.

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[15] This year the Legislature approved a new and much more accurate method of conducting these studies. See Ch. 93-132, Laws of Fla. This consultant-recommended procedure uses reports of all property sales to determine market value, instead of basing it on the subjective evaluation of additional assessments. The Department is also working with many Appraisers to find parcels of property which have been improved, without the Appraisers' knowledge, thus increasing their value. Without a base year, those properties which have inadvertently escaped proper assessment will have that advantage made permanent, while the remaining properties are assessed at the full amount prescribed by law.

Pursuant to § 195.096(2), Fla. Stat. (1991), the Florida Legislature has required the following of the Department:

> (2) Beginning with the 1982 assessment rolls, the Division of Ad Valorem shall conduct, no less frequently than once every 2 years, an in-depth review of the assessment rolls of each county. (e.s.)

One of the purposes of such an in-depth review is to ensure that a county's "level of assessment" is proximate to just value. See § 195.096(3)(b), Fla. Stat. Under Fla. Admin. Code Rule 12D-8.020(1), the Department shall review the assessment rolls to determine "if the rolls are indicative of just value . . . ." Under subsection (1)(a) and (b) of Rule 12D-8.020(1), percentage change in the rolls from the preceding year, projections of overall level of assessment and whether assessments are equalized both within and between property classes must be determined. In sum, the above statutory procedure serves as legislative recognition that portions of county assessment rolls can often lag behind just value in any given year,[16] and the Department is given the responsibility to review and direct that corrections be made in the rolls which are not at just value.

The level of assessment is significant regarding implementation of Amendment 10. First, Amendment 10 requires that all homestead property shall be assessed at just value and, thereafter, annual changes shall not exceed either three percent or the percent change in the consumer price index. Thus, it will

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[16] The appraisal of real estate is an art, not a science. Powell v. Kelly, 223 So. 2d 305 (Fla. 1969); Spooner v. Askew, 345 So. 2d 1055 (Fla. 1977); and, GAC Properties, Inc., v. Colding, 308 So. 2d 646 (Fla. 2d DCA 1975).

be necessary to bring each and every homestead property up to just value so that all homestead property owners are on the same "level playing field." Without ensuring that every homestead taxpayer is "equalized" with all others, questions of unequal protection and discrimination may arise. See e.g. Nordlinger v. Hahn, 505 U.S. __, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992); Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989); Zobel v. Williams, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982); Cumberland Coal Company v. Board, 284 U.S. 23, 52 S. Ct. 48, 76 L. Ed. 146 (1931); Sioux City Bridge v. Dakota County, 260 U.S. 441, 445, 43 S. Ct. 190, 67 L. Ed. 340 (1923); and, Hillsborough TP v. Cromwell, 326 U.S. 620, 66 S. Ct. 445, 90 L. Ed. 358 (1946).

Half of the 67 counties in Florida have been reviewed in 1993, while the remaining half will be reviewed in 1994. If homestead property valuations in all counties are limited or capped on January 1, 1994, an inequity may be created. Those properties which have inadvertently escaped proper assessment will have that advantage of being "frozen" at whatever level they are found, without benefit of a uniform tax roll analysis, while the remaining properties will be assessed at the full amount prescribed by law. Amendment 10 allows one full two-year cycle necessary for an in-depth review of all 67 counties which the Legislature recognized is the means by which to ensure the fair

and equitable assessments of all affected homestead property in every county in the State.[17]

CONCLUSION

WHEREFORE, the Appellant respectfully requests this Court to reverse the trial court and remand with directions to enter an order finding that Amendment 10 took effect on January 5, 1993; the first assessment following the effective date is January 1, 1994; and the cap contained in Art. VII, § 4(c)1., (A) and (B), Fla. Const., is applicable beginning with the 1995 tax year.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JOSEPH C. MELLICHAMP, III
SENIOR ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 133249
Office of the Attorney General
The Capitol-Tax Section
Tallahassee, FL 32399-1050
(904) 487-2142

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[17] See Jones v. Department of Revenue, 523 So. 2d 1211 (Fla. 1st DCA 1988).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **William A. Keyes, Jr., Esquire**, Post Office Drawer 790, Fort Myers, Florida 33902-0790; **Michael C. Tice, Esquire**, 2149 First Street, Fort Myers, FL 33901; **Gaylord A. Wood, Jr., Esquire**, 304 S.W. 12th Street, Fort Lauderdale, FL 33315-1549; and **Theodore L. Tripp, Jr., Esquire**, Garvin & Tripp, P.A., Post Office Drawer 2040, Fort Myers, FL 33902; this 24th day of September, 1993.

JOSEPH C. MELLICHAMP, III
SENIOR ASSISTANT ATTORNEY GENERAL