IN THE SUPREME COURT
OF THE STATE OF FLORIDA

Lizzie Harris, et al.,

Petitioners,

v.

Dale Wilsen, et al., etc.

Respondents.
_____/

Supreme Court
Case No.: 861210

District Court of Appeals
1st District No. 93-3445

BRIEF OF AMICUS CURIAE FLORIDA LEGAL SERVICES, INC.

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STATEMENT OF INTEREST OF AMICUS CURIAE

Florida Legal Services, Inc., (FLS), provides statewide support for all the legal services and legal aid offices and clinics serving Florida's poor. Florida Legal Services is committed to providing leadership and support in the delivery of quality legal services to the poor residents of this state.

Florida Legal Services is dedicated to providing support to the network of legal services providers throughout Florida and is especially active in working on issues that have a significant statewide impact on the poor. To this end, Florida Legal Services is directly involved in addressing special assessment issues around the state, and believes that its best efforts require that it bring to this Court's attention the hardships and enormously damaging impact unrestrained special assessments will have on Florida's poor and the dramatic potential that exists for loss of homeownership in this state.

STATEMENT OF THE CASE AND FACTS

Amicus Curiae adopts the statement of the Case and Facts of the Petitioners, Lizzie Harris, et al.

ARGUMENT

ISSUE: SPECIAL ASSESSMENTS SHOULD NOT OBLITERATE THE CONSTITUTIONAL HOMESTEAD PROTECTONS

The key factor in limiting the power of special assessments has always been the value and benefits that attach to private property as a result of the service or improvement being funded. City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992). Although a special assessment is a forced contribution, the homeowner is not considered to have lost anything because increased value to a particular parcel of property is received in return. If services that benefit homeowners and the community alike are allowed to be funded through the mechanism of special assessments, there is no limit to the services that will be funded by assessments imposed on homestead property.

If special assessments are restrained by the requirement that the property owners who are forced to bear the expense receive in proportion some special or peculiar benefit in the enhancement of the value of their property as a result of the service or improvement being funded, then the homestead remains protected in Florida. This limitation on the special assessment funding mechanism is in line with and supported by Florida's long tradition of protecting homeownership.

But, if special assessments are not limited and there is no longer a requirement of special benefit or fair apportionment, the assessment loses its special character and becomes indistinguishable from a tax, except there is no

longer any milage cap to contend with and the buffer provided by the constitutional homestead exemption evaporates and becomes nothing more than an illusion. So. Trail Fire Control District of Sarasota County v. State, 273 So.2d 380, 385, Fla. 1973. There is no logical reason to relax the application of the special value and fair apportionment standards that set the boundaries for special assessments. The only reason to stretch the definition of special assessments is to accommodate governmental needs for funding of services and to abandon the traditional and constitutional controls that protect homeownership.

Special assessments are derived solely from the taxing power of the State. Article VII, Section 6 of the Florida Constitution provides:

> "Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner . . . shall be exempt from taxation thereon, except assessments for special benefits . . . "

There is no other source of power for the enactment of special assessments. Thus, this case presents a direct confrontation between government's ability to raise revenue and the constitutional limitations that protect the homestead. At its very essence, the homestead exemption, found in Florida's Constitution, preserves homeownership by exempting the first $25,000.00 of a home's value from taxation. Eliminating this protection by easing the stiff requirements for special assessments will force Florida's poor homeowners to forfeit their

homes. Dispossessing poor families from their homes will become an everyday occurance for the sheriffs of this state.

It is against public policy to condone the characterization of a funding mechanism such as the Clay County fees as a "special assessment" when the benefits generated by the assessment are not special, but community-wide and when the distribution of the cost targets one class of property owners (residential) to the exclusion of the others (commercial, etc.). The bottom line in Clay County is that the homestead exemption does not apply; homeownership has lost its protected status and the homeowner who cannot pay will lose their home. The judiciary cannot abdicate its responsibility to review "assessments for special benefits" -the only debt that can invade the homestead.

Preserving the family home is a hallmark of Florida jurisprudence and Florida's courts have staunchly protected the homestead exemptions set forth in the Constitution. No court has ever validated a special assessment for municipal services where the protected status of the homestead was at stake. Florida's homestead laws give a constitutional dimension to the concept of shelter and deem homeownership to be of paramount importance. Bigelow v. Dunphe, 143 Fla. 603, 197 So. 328, Reh'g denied, 198 So.13 (Fla. 1940). Florida courts have consistently construed the constitutional provisions concerning the homestead liberally with an eye toward protecting and preserving homeownership across the state. Cain v. Cain, 449 So.2d 1161 (Fla. 4th DCA 1989); See also, White v. Posick, 150 So.2d 263 (Fla. 2d DCA 1963); Schooley v. Judd, 149 So.2d 587, 589 (Fla. 3d DCA 1963); Olesky v. Nicholas, 82 So. 2d 510 (Fla. 1955).

Preservation of homeownership is also the reason why

exceptions to the homestead exemptions are strictly construed. Quigley v. Kennedy, 207 So.2d 431 (Fla. 1968); Monson v. First National Bank of Bradenton, 497 F.2d 135, 138 (5th Cir. 1974).

Indeed, with the pressure on municipal governments to find new and ever increasing funding sources, the only restraint is judicial interpretation of Florida's constitutional homestead protections. Were the courts to forgo careful examination and scrutiny, the maxim that all power corrupts and absolute power corrupts absolutely would quickly come to be associated with the concept of special assessments.

Families living at or below poverty level simply cannot afford to pay additional sums for community-wide benefits just because the municipal government decides to fund a municipal service through a special assessment. Florida's low-income homeowners stand to lose their ability to maintain homeownership when they are forced to pay upon pain of forfeiture. This is why Florida courts have always given careful consideration and scrutiny of any attempt to circumvent the homestead exemptions. Van Diver v. Vincent, 139 So.2d 704, 707 (Fla. 2d DCA 1962).

Florida has 568,256 very low income families that own homes. Of those, 47% (267,080 families) have housing costs that exceed 50% of their meager income. Elderly homeownmers make up more than 62% (354,395 families) of Florida's very low income homeowners. See, State of Florida Consolidated Plan, 1995-1999, Fla. Dept. of Community Affairs, (Table 4-5).

The Clay County assessment at issue in this case creates an

oppressive burden on its poorest homeowners, those most at risk of losing their homes because they cannot afford to pay the assessment for the county's waste disposal services. Families that are already unable to meet their cost of living and to provide for life's basic necessities are surely unable to pay additional annual assessments. An increase in a family's fixed annual housing expense by as little as the $63.00 assessed in this case can be devastating to a household with an annual gross income of $15,000.00 and a home valued at $25,000.00.

Special assessments, if left to grow unfettered will grow like weeds and will financially oppress the very low and low income homeownmers until ultimately these families will lose their homes and become part of the increasing homeless population dependent on government to provide housing and other basic assistance.

History teaches that the use of special assessments to fund governmental services on the backs of poor homeowners creates financial ruin. During the great depression, the indiscriminate use of special assessments led to wide-spread defaults and foreclosures. Shoup, Financing Public Investment by Deferred Special Assessment, Volume 23, No. 4, National Tax Journal, 413, Dec. 1980. The Florida Advisory Council on Intergovernmental Relations finds that defaults in special assessments are so high as to make the use of special assessments a high risk venture. Florida Advisory Council on Intergovernmental Relations Report-N-Brief,

Special Assessments: Current Status in Law and Application, (January 21, 1992).

The significance of the constitutional limitations on the power of the government to levy special assessments must be preserved by the courts. Otherwise, the potential for abuse is overwhelming and the call from municipalities to homeowners to pay for the services it seeks to fund will be deafening.

CONCLUSION

It is the constitutional safeguard afforded to Florida's homeowners that this Court should focus upon in determining that Clay County's assessment for garbage disposal is nothing more than a tax imposed on residential property to fund a municipal service that benefits all property owners in the County.

This Court must look to the facts as they truly exist, otherwise, Clay County's legislative declaration of special benefit and fair apportionment will equal a judicial declaration of a false truth.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this document has been furnished to Gloria Einstein, Esq., Jacksonville Area Legal Aid, Inc., 550 Kingsley Avenue, Orange Park, Florida 32073, attorney for Petitioners; Mark H. Scruby, Attorney for Clay County, P. O. Box 1366, Green Cove Springs, Florida 32043; Gregory T. Stewart, Esq., Nabors, Giblin & Nickerson, P.A., 315 South Calhoun Street, Barnett Bank Building, Suite 800, Post Office Box 11008, Tallahassee, Florida 32302, Attorneys for Respondents; and Robert Butterworth, Esq., Attorney General, the Capitol, Tallahassee, Florida 32399-1050, by First Class United States Mail, this 27th day of January, 1996.

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