SUPREME COURT
STATE OF FLORIDA

Case No. **SC03-1270**

O R I G I N A L

JAMES A. ZINGALE, etc.,

Petitioner,

Lower Tribunal No.
4D02-3754

vs.

ROBERT O. POWELL and **ANN S. POWELL,**

Respondents.
_____/

BRIEF OF AMICUS CURIAE, PROPERTY APPRAISERS' ASSOCIATION OF FLORIDA, INC. IN SUPPORT OF PETITIONER, JAMES A. ZINGALE

(Opposed by Respondents; Court Order Not Yet Issued)

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PRELIMINARY STATEMENT

Appellant, James A. Zingale, Executive Director of the Florida Department of Revenue, will be referred to herein as the "department." Appellees, Robert O. Powell and Ann S. Powell, will be referred to collectively herein as "Powell." Appellee, Bill Markham, Broward County Property Appraiser, will be referred to herein as the "appraiser." Amicus Curiae, Property Appraisers' Association of Florida, Inc., will be referred to herein as the "PAAF."

This Court accepted jurisdiction on the request of the department, and the PAAF submits this brief in support of the position of the department and of the Broward County Property Appraiser.

STATEMENT OF THE IDENTITY OF THE AMICUS CURIE AND ITS INTEREST IN THE CASE

The Property Appraisers' Association of Florida, Inc. (PAAF), is an association comprised of elected county property appraisers throughout the State of Florida, and is the oldest association of county constitutional officers in Florida. The 2003-2004 membership consists of property appraisers from the following 39 counties: Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Highlands, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Nassau, Okeechobee, Osceola, Putnam, St. Johns, St. Lucie, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, and Washington.

The members of the PAAF are constitutional officers charged with the duty of administering the Florida Constitution and duly enacted laws of the State of Florida pertaining to appraising all real and tangible personal property, assessing same for ad valorem tax purposes, and administering exemptions. The case at bar construes Article VII, Section 4(c), Florida Constitution (the Save-Our-Homes amendment), and directly affects property appraisers' duties administering the constitutional provision and the duly enacted statutes implementing same.

The PAAF's amicus curiae brief addresses the issue of entitlement to the Save-Our-Homes limitation cap without having filed an application for homestead tax exemption and received the exemption in the prior year. The PAAF's members have an interest in informing this Court of their position on this issue and how it affects the performance of their duties. The PAAF urges this Court to reverse the decision in Powell v. Markham, 847 So.2d 1105 (Fla. 4th DCA 2003), which held that property owners are entitled to the Save-Our-Homes limitation cap without having filed an application for homestead exemption and received that exemption in the prior year.

SUMMARY OF ARGUMENT

The PAAF respectfully urges this Court to reverse the Fourth District Court of Appeal's holding in Powell.

The PAAF's members vigorously express their support for the position of the department. Property appraisers administer homestead exemption primarily through review of applications filed as required by section 196.011, Florida Statutes (2003). Through annual examination of the applications or other documents in those counties which have elected to use the automatic renewal procedure authorized in section 196.011(9)(a), Florida Statutes (2003), property appraisers can ascertain if a person is claiming to be a person residing on real

property in Florida and in good faith making same his permanent home. This is the only way a property appraiser has of annually being placed on notice that property is claimed to be used and occupied as a homestead. The district court's holding leaves no statutory mechanism for a property appraiser to identify which property is claimed as a homestead for Save-Our-Homes amendment implementation.

The PAAF's position is that the Save-Our-Homes amendment was intended to "piggyback" homestead tax exemption. Receipt of homestead tax exemption is a fundamental prerequisite to Save-Our-Homes protection.

STANDARD OF REVIEW

The issues presented are questions of law, and the standard of review is de novo. Armstrong v. Harris, 773 So.2d 7 (Fla. 2000); Execu-Tech Bus. Sys. v. New Oji Paper Co., 752 So.2d 582 (Fla. 2000).

ARGUMENT

PROPERTY OWNERS ARE NOT ENTITLED TO THE SAVE-OUR-HOMES LIMITATION CAP WHEN HOMESTEAD TAX EXEMPTION WAS NOT APPLIED FOR AND RECEIVED IN THE PRIOR YEAR.

At issue before the court is the intent of the framers of the constitution in the adoption of the "Save-Our-Homes" constitutional amendment now found in and made a part of Article VII, Section 4, Florida Constitution, as Article VII,

Section 4(c), Florida Constitution. The purpose of the Save-Our-Homes amendment was to protect homestead property from large increases in value and hence assessments from one year to the next and to limit increases in the assessed value of homestead property to either the percentage reflected on the cost of living index or 3 percent, whichever is less. See Smith v. Weldon, 710 So.2d 135 (Fla. 1st DCA 1998), aff'd in part, 729 So.2d 371 (Fla. 1999). The Save-Our-Homes amendment which arose by constitutional initiative, and which was overwhelmingly approved by the voters of the State of Florida made clear the peoples' intent to maintain relatively stable assessments and, hence, taxes for homestead property so long as the homestead property is owned by the same person or persons.

The primary difference of opinion between the parties relates to the proper interpretation to be placed upon Article VII, Section 4(c), which provides in 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.

(Emphasis added.) The district court interpreted the language "entitled" to a homestead exemption as not requiring an actual granting of homestead tax exemption by a property appraiser and the receipt of same by the homeowner. The

district court apparently viewed "entitled to" as totally different from the actual receipt of a homestead tax exemption. The district court isolated this language from the remainder of the amendment and did not address the implementing statutory language either.

The members of PAAF submit that the district court's interpretation of this language was incorrect and flawed. The position of PAAF is that the Save-Our-Homes amendment was intended to "piggyback" the granting and receiving of homestead tax exemption authorized under Article VII, Section 6, Florida Constitution, and that a taxpayer who did not comply with the application requirements for receipt of homestead tax exemption would not be "entitled to a homestead exemption under section (6) . . . ." and, accordingly, the protection of the Save-Our-Homes amendment would not be applicable. The respondents and the district court disagree. That is the critical issue before this court which may be stated as follows:

> Was the Save-Our-Homes Amendment to Article VII, Section 4, which added (c) thereto, intended to piggyback and apply to property which was properly receiving homestead tax exemption?

PAAF suggests that it was so intended and the respondents disagree.

In addition to Article VII, Section 4(c), the following constitutional provisions require scrutiny:

> 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.
>
> * * * *
>
> 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.
>
> * * * *
>
> 6. In the event of a termination of homestead status, the property shall be assessed as provided by general law.

Art. VII, §4(c)1, 3, 4, 6, Fla. Stat. (2003)(emphasis added). Through these provisions, the framers cover what could be expected contingencies which include (1) a change in ownership, (2) new homestead property which could include newly-constructed structures used as homesteads; acquisition and occupancy of

structures not previously used as homestead property by persons intending to establish and use such property as their homestead residential property; and (3) the event of termination of homestead status of property which had previously been homestead property and presumably receiving the benefits of the Save-Our-Homes assessment protection.

The contingency of new homestead property could occur in several different ways. For instance, in one situation a farmer may own a 100-acre farm and be claiming homestead tax exemption on his residence, the farmhouse and the curtilege, but also have located on such property another house which was either unoccupied or rented. If the farmer's son married and wished to move back home his father could deed him the acre of land on which the other house was located and, assuming the son and his family resided thereon and in good faith made it their permanent home, the son would be entitled to tax exemption and could receive same upon proper application. Clearly the constitutional language requires "establishment of the homestead," and this certainly suggests that the son must do something more than simply be the recipient of the one acre from his father and reside thereon. PAAF submits that this is language indicating that the framers intended that such a person must establish his or her right to the homestead in some

manner. Read together with the language in Article VII, Section 4(c), it could be paraphrased as follows:

> All persons owning new homestead property shall be entitled to a homestead tax exemption and the Save-Our-Homes assessment protection following the establishment of such persons' right to homestead tax exemption.

The only way a person can establish a right to entitlement to homestead exemption is through the application procedure provided for in section 196.011.

A second situation which could arise which would cause the existence of new homestead property would be the situation where a person or couple purchased a house or condominium already in existence which previously had been rented. The constitutional language would apply in this situation here as it did in the situation in the example of the farmer's son, and the person or couple by the terms of the constitution, would have to "establish" the homestead before being "entitled" to the homestead exemption under Article VII, Section 6 as required by Article VII, Section 4(c).

A third example would be the situation where a person causes to be constructed a house on land which he or she owns and moves into the house when it is completed. The constitutional language would apply to this new homestead property, following "the establishment of the homestead," on January 1.

Inasmuch as the language in Article VII, Section 4(c) is crystal clear that a person must be "entitled to homestead exemption under section 6" to receive the benefit of the Save-Our-Homes protection, it seems equally clear that in use of the language "establishment of the homestead" the framers are referring to homestead tax exemption under Article VII, Section 6, which was specifically mentioned in Article VII, Section 4(c). Although the respondents have not previously specifically addressed this language in Article VII, Section 4(c)4, Florida Constitution, presumably they would contend that establishment simply means moving onto the property and residing there and that nothing further need be done. However, had the framers of the constitution meant that this language was virtually no different in meaning from the language using the word "entitled," then instead of the language "following the establishment of the homestead" the framers should have used "following entitlement to homestead," instead of following the establishment of the homestead.

PAAF suggests that the framers intended something more than merely moving onto the property. There can be no serious doubt but that the use of the term homestead exemption in Article VII, Section 4(c) is referring to the homestead tax exemption provided in Article VII, Section 6 as opposed to the homestead

protection from forced sale recognized in Article X, Section 4, Florida Constitution. The language says so.

The words "entitled" and "establishment" are defined in *Webster's Encyclopedic Unabridged Dictionary of the English Language*, (1996 Ed.), as follows:

> entitle -tled 1. to give something a title, right, or claim to something; furnish with grounds for laying claim: . . . .
>
> establish * * * * 4. to cause to be accepted or recognized: . . . .
>
> establishment 1. the act or an instance of establishing; 2. the state or fact of being established: . . . .

In construing words and terms used in the constitution, the courts generally give such words their ordinary meaning as is commonly understood by the people who are the framers. "Entitled" means to furnish with grounds for laying claim, or to give a title, right, or claim to something. "Establishment" means the act or an instance of establishing–the state or fact of being established. Since the Save-Our-Homes amendment is expressly tied to homestead exemption under Article VII, Section 6, and since for tax exemption to inure under Article VII, Section 6, an application for exemption must be filed since that is the <u>only</u> way provided by law for a person to establish his entitlement to homestead exemption, the PAAF

submits that the framers of the constitution intended that the Save-Our-Homes amendment "piggyback" entitlement to establishment of, and receipt of the right to receive homestead tax exemption.

In the case at bar, the Powells purchased their home in Broward County in 1990, but never applied for or sought homestead tax exemption until September 17,2001, which subsequently was approved for tax year 2001. The Powells claimed that the Save-Our-Homes amendment protected their home from increases over and above the value for tax year 2000. In their complaint, the Powells did not seek homestead tax exemption for tax year 2000, but did seek homestead protection beginning with tax year 2000.

In the instant case, the Powells did not seek Save-Our-Homes protection for years prior to tax year 2000, but, under the rationale of the Fourth District Court of Appeals, they could have. If they purchased the property during 1990 and moved onto the property and made it their home, then they probably could have been entitled to homestead tax exemption for all the years prior to and after the adoption of the Save-Our-Homes amendment. The trial court ruled that the 60-day jurisdictional time bar found in section 194.171(2), Florida Statutes (2003), did not apply because the Powells were not seeking tax exemption and, hence, were not challenging the assessment. This being so, the only statute of

limitations applicable would be that found in chapter 95, Florida Statutes (2003), possibly section 95.11(3)(m) or (p), Florida Statutes (2003).

The complaint as drafted clearly did not seek homestead tax exemption for the prior years but, if the Fourth District Court of Appeal's reasoning is correct, there is no reason why the Powells or some other taxpayer could not have sought retroactive Save-Our-Homes application subject to the statute of limitation restrictions. According to the district court, if they could show that they were entitled to have received homestead tax exemption for years beginning in 1996, but chose to never apply for same for whatever reason, subject only to the statutes of limitation in chapter 95, the district court's decision would allow retroactive application.

The PAAF submits that this was not the intent of the framers of the constitution. The PAAF further contends that entitlement to the Save-Our-Homes protection was intended to "piggyback" entitlement to and receipt of homestead tax exemption.

The PAAF submits that the following is a proper interpretation of the language used in the Save-Our-Homes amendment: (1) the amendment is intended to apply only to property entitled to homestead tax exemption under Article VII, Section 6, which is the homestead tax exemption provision referenced in Article

VII, Section 4(c); (2) thereafter, every time that the word "homestead" is used after being used in Article VII, Section 4(c), it should be construed as applying to the homestead tax exemption under Article VII, Section 6. [It is used five times after Article VII, Section 4(c)]

As to changes of ownership mentioned in Article VII, Section 4(c)3, this could occur through a sale of the homestead property, loss of same through foreclosure and death. This subsection permits the legislature to define by general law what is intended to be covered thereunder. The legislature has implemented this language in section 193.155(3), Florida Statutes (2003), and generally defines same to mean any sale, foreclosure, or transfer of legal or beneficial title and equity to any person except as provided in the subsection and thereafter lists certain exceptions which would not be considered a change of ownership. Since these statutory changes of ownership result in loss of the Save-Our-Homes protection and, essentially are the only way a person can lose the Save-Our-Homes protection on his property through ownership change, the question then becomes what was intended by the framers by the inclusion of Article VII, Section 4(c)6, which provides for loss of the Save-Our-Homes protection in the event of "a termination of homestead status." How can a homestead status be terminated other than by change of ownership as defined in section 193.155. Since all uses of homestead

exemption refer to homestead tax exemption, the word homestead in Article VII, Section 4(c) means homestead exemption under Article VII, Section 6.

The PAAF submits that the only way that it can otherwise be terminated is by failure to file an application under section 196.011, for homestead tax exemption under Article VII, Section 6. PAAF submits that that is the precise reason for the inclusion of Article VII, Section 4(c)6 in the constitution. Because the framers clearly intended that the Save-Our-Homes protection was intended solely as a "piggyback" homestead tax exemption, and homestead tax exemption is always terminated if a person fails to timely file application for same, had the framers not intended that the Save-Our-Homes protection piggyback entitlement to and receipt of homestead tax exemption there would have been no need to include Article VII, Section 4(c)6 in the provision.

Thus, the constitution itself recognizes that the homestead status may be terminated, and since it is crystal clear that Article VII, Section 4(c) is referring to the homestead exemption under Article VII, Section 6, which requires annual application, this means that the framers must have intended that failure to file application for homestead tax exemption would result not only in forfeiture of entitlement to receive the preferential tax treatment, but also would terminate entitlement to Save-Our-Homes. Since the constitution expressly recognizes

"termination" as an occurrence which causes loss of Save-Our-Homes status, and since the only way termination of homestead status can occur is upon failing to file the application, the framers must have intended that an application be filed to provide for receipt of Save-Our-Homes protection.

To restate:

1. The constitution provides that Save-Our-Homes protection can be terminated.

2. Termination can only be evidenced by some occurrence which brings to a property appraiser's attention that termination has occurred.

3. The only way this could be brought to the property appraiser's attention is failure to file an annual application or other notice document.

4. The framers must have contemplated an application to establish homestead status for Save-Our-Homes purposes, since it provided for termination in some manner other than change of ownership which is covered elsewhere.

In analyzing the language used in the Save-Our-Homes amendment certain fundamental principles of constitutional construction apply. In State ex rel. Dade County v. Dickinson, 230 So.2d 130 (Fla. 1969), this Court addressed the intent of the framers in adopting Article VII, Section 9, Florida Constitution, which contained millage caps limiting taxes levied by counties, school districts, and

municipalities. The question presented was whether Dade County, a home-rule county, was subject to the ten mill cap for non-charter counties. Dade County contended that because it was a home-rule county it could levy 20 mills, which was in addition to the 10 mills levied by cities. This Court disagreed stating:

> The fundamental object in construing a constitutional provision is to ascertain and give effect to the intentions of the framers and adopters, and constitutional provisions must be interpreted in such a manner as to fulfill this intention rather than to defeat it. State ex rel. West v. Gray, 74 So.2d 114 (Fla.1954). In construing particular constitutional provisions, the object sought to be remedied should be kept in mind by the courts, and the provisions should be so interpreted as to accomplish, rather than to defeat such objects. State ex rel. West v. Gray, *supra*; Owens v. Fosdick, 153 Fla. 17, 13 So.2d 700 (Fla.1943).

Dickinson, 230 So.2d at 135.

> Not only should a constitutional provision be construed in its entirety, but all the provisions of a constitution should be interpreted with reference to each other, unless a different intent is manifested.

Amos v. Mosley, 74 Fla. 555, 77 So. 619 (1917); Wheeler v. Meggs, 75 Fla. 687, 78 So. 685 (1918); Scarborough v. Webb's Cut Rate Drug Co., 150 Fla. 754, 8 So.2d 913 (1942).

> Effect should be given to every part and every word of a constitution, unless there is some clear reason to the contrary. Hence, a construction of the constitution that

> renders any provision superlative, or meaningless , or which nullifies a specific clause therein, should not be adopted unless absolutely required by the context.

State ex rel. Wost v. Butler, 70 Fla. 102, 69 So. 771 (1914); State ex rel. McKay v. Keller, 140 Fla. 346, 191 So. 542 (1939).

The district court only addressed the language in Article VII, Section 4(c), which used the word "entitled" and failed to consider the other language used in the remainder of the provision. The PAAF submits that the court should have considered the language employed in Article VII, Section 4(c)3, 4, and 6. If it had properly done so, it would have seen that the framers specifically provided that a homestead must be "established" before Save-Our-Homes protection "kicks-in" for new homestead property. Interpreting the word "entitled" and the word "establishment" together with the word "termination" as used in the provision, should clearly evidence the framers' intent that the Save-Our-Homes amendment was intended to "piggyback" homestead tax exemption which would be established by filing an application and terminated by not filing an application.

Reading all sections together, the PAAF submits that the word "entitled" refers to persons who have applied for and received homestead tax exemption. That way it is compatible with the word "establishment" and is consistent with the intent that homestead status may be terminated and homestead

tax exemption lost. Homestead tax exemption is lost by failure to file. The PAAF submits that considering the entire provision and all parts and words therein reveals a clear intent that the provision was intended to piggyback homestead tax exemption, and that "entitled" to and "establishment" mean receiving same.

A final comment is in order because the construction of a constitution should be reasonable.

> Constitutional interpretation should be actuated by the rule of reason. Constitutional provisions should be controlled by their practical operation and effect; and where the general welfare is involved, constitutional questions should be approached with due regard for their practical consequences and value rather than from a purely legalistic point of view.

Amos v. Matthews, 99 Fla. 1, 126 So. 308 (1930); Latham v. Hawkins, 121 Fla. 324, 163 So. 709 (1935).

> To accomplish this, that construction should be adopted that carries out the real intention of the people.

Tampa v. Tampa Shipbuilding, Etc. Co., 136 Fla. 216, 186 So. 411 (1939).

Without an application being filed, a property appraiser has no way of knowing that a person is claiming that he owns property which he uses as his homestead. The practical effect of the Fourth District Court's holding would mean that tax rolls would be in a state of flux for at least four years without an application

placing property appraisers on notice that persons may have a potential Save-Our-Homes claim.

The PAAF submits that the Save-Our-Homes protection was intended to piggyback homestead tax exemption. Events which trigger loss of homestead tax exemption are changes of ownership and termination by failure to file, both of which are recognized in the amendment as events which also cause loss of Save-Our-Homes protection.

CONCLUSION

Based upon the aforementioned arguments and authorities, the PAAF respectfully urges this Court to reverse the decision in Powell regarding entitlement to the Save-Our-Homes limitation cap without having filed an application for homestead tax exemption and received that exemption in the prior year.

Respectfully submitted,

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The undersigned counsel for amicus curiae, Property Appraisers' Association of Florida, Inc., certifies that the font size and style used in the foregoing brief is 14 Times New Roman and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a).

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