IN THE SUPREME COURT OF FLORIDA

JAMES A. ZINGALE, as Executive Director of the Department of Revenue, etc.,	:	Case No. SC03-1270
	:	L.T. Case No. 4DO2-3754
Petitioner,	:	
-vs-	:	
ROBERT O. POWELL, et al.,	:	
Respondent.	:	

ON DISCRETIONARY REVIEW OF A DECISION
OF THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA

BRIEF *AMICUS CURIAE* OF MORGAN GILREATH, AS VOLUSIA COUNTY PROPERTY APPRAISER, H.W. "BILL" SUBER, AS SEMINOLE COUNTY PROPERTY APPRAISER, SHARON OUTLAND, AS ST. JOHNS COUNTY PROPERTY APPRAISER AND ALVIN MAZOUREK, AS HERNANDO COUNTY PROPERTY APPRAISER, IN SUPPORT OF JAMES A. ZINGALE, AS EXECUTIVE DIRECTOR OF THE FLORIDA DEPARTMENT OF REVENUE, ET AL.

Gaylord A. Wood, Jr.,
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J. Christopher Woolsey

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STATEMENT OF THE CASE AND FACTS

Amici Curiae hereby adopt the Statement of the Case and Statement of the Facts set forth in the Petitioners' Initial Brief.

SUMMARY OF THE ARGUMENT

The determination of the Fourth District Court in this case unreasonably and unjustly burdens a class of constitutional officers. *Amici* are four of the sixty-seven Florida Property Appraisers who, like the Broward County Property Appraiser (Appellee below), are responsible for the orderly application and administration of Florida's ad valorem tax laws, including constitutional and statutory provisions for classification and assessment of property and exemption of property from taxation.

The opinion of the Fourth District Court of Appeal repudiates the long-standing practice of limiting entitlement of homesteaded real property to the "Save Our Homes" cap on assessment increases found in Article VII, section 4, of the Florida Constitution, and section 193.155, Florida Statutes to those property owners who

actually apply for and receive homestead exemption under Article VII, section 6 of the Florida Constitution and section 196.031, Florida Statutes. The Fourth District's decision extends the benefits of the "Save Our Homes" cap not only to those who actually receive the homestead exemption, but to those who might receive it if they were to apply, but who have never made an application.

Under the *Powell* holding as presently constituted, each of the *amici*, as well as their 63 colleagues, will have to determine who is "entitled" to the homestead exemption without the benefit of any information from property owners who putatively maintain their permanent residence on the property, and to make determinations concerning eligibility for the exemption absent any information with which to do so.

Respondents claim that the determination need not be made by the Property Appraisers. They opine that property appraisers will learn which property owners are "entitled" to receive homestead exemption, despite not applying for it, when property owners file suit in circuit court under section 194.171, Florida Statutes. Under that scenario, the Court will take the initial action to apply the benefit – only for those persons who have the resources to take advantage of the Courts. This both ignores policy favoring the resolution of conflicts without court supervision and effectively charges the judiciary with administration of the tax laws. The decision, if implemented,

will strain the resources of property appraisers, the judiciary and other taxpayers. This Court should reverse the decision of the Fourth District Court of Appeal and affirm the judgment of the trial court in all respects.

ARGUMENT

I. The Decision Unreasonably Burdens Florida's Property Appraisers.

Article VII, Section 4 of the Florida Constitution provides that "by general law regulations shall be prescribed which shall secure a just valuation of all property." Section 4(c) limits the percentage of annual increase in just valuation for property owned by persons entitled to a homestead exemption under Article VII, Section 6 of the Florida Constitution. Article VII, Section 6 provides that "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 . . . upon establishment of right thereto in the manner prescribed by law." Entitlement to the benefits of Article VII, section 4(c) of the Florida Constitution is therefore dependent upon the right to a homestead exemption under Article VII, Section 6, established "in the manner prescribed by law."

Chapter 196, Florida Statutes prescribes the manner by which a property owner may establish the right to a homestead exemption. Pursuant to section 196.031(1),

Florida Statutes, every person who on January 1 has legal title or beneficial title to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence is entitled to the homestead exemption. Section 196.015, Florida Statutes, provides that intention to establish a permanent residence is a factual determination to be made, in the first instance, by the property appraiser, and provides nine factors that may be considered by that officer in making the determination of a property owner's intent to establish a permanent residence in Florida.[1] Although these nine factors represent a diverse array of ways that property owners can demonstrate their intent to establish permanent residence in Florida, and therefore their entitlement to homestead exemption, there is one common thread shared by each factor: no property appraiser can possibly be aware of the taxpayer's intent to seek the

[1] Those factors are:

(1) Formal declarations of the applicant.
(2) Informal statements of the applicant.
(3) The place of employment of the applicant.
(4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.
(5) The place where the applicant is registered to vote.
(6) The place of issuance of a driver's license to the applicant.
(7) The place of issuance of a license tag on any motor vehicle owned by the applicant.
(8) The address as listed on federal income tax returns filed by the applicant.
(9) The previous filing of Florida intangible tax returns by the applicant.

exemption or be able to evaluate any of the factors with regard to any given property owner, unless that information is provided to the property appraiser.

Prior to the holding of the District Court of Appeal in this case, property owners claiming exemptions must have filed a timely application for exemption, listing and describing the property for which exemption is claimed and certifying its ownership and use. *See* section 196.011(1)(a), Florida Statutes. Like any other benefit that citizens are eligible to receive from their government, the first step in receiving the Article VII, Section 6, homestead exemption is claiming entitlement to it. That is the "manner prescribed by law" to which Article VII, Section 6 of the Florida Constitution refers. *See Horne v. Markham*, 288 So.2d 196 (Fla. 1973). *See also* the attached application form prescribed for use by the Department of Revenue, which also incorporates disclosure of the information the property appraiser needs to weigh the nine factors in section 196.015, Florida Statutes to determine the taxpayer's permanent residence.

The legislature recognized the interdependence of Article VII, Sections 4 and 6, of the Florida Constitution, when it enacted section 193.155, Florida Statutes, implementing the "Save Our Homes"assessment cap as a benefit dependent upon the property actually receiving a homestead exemption. Section 193.155(1), Florida Statutes, provides:

> Beginning in 1995, or the year following the year the property receives homestead exemption, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such reassessment shall not exceed the lower of the following:
> (a) Three percent of the assessed value of the property for the prior year; or
> (b) The percentage 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.

"The purpose of the ["Save Our Homes"] amendment is to encourage the preservation of homestead property in the face of ever increasing opportunities for real estate development, and rising property values and assessments." *Smith v. Welton*, 710 So. 2d 135, 137 (Fla. 1st DCA 1998). "The 'primary advantage' of the amendment, therefore, is the 'stabilizing [of] annual increases in property taxes, [and] providing protection to the elderly and poor against losing their property due to high taxes. . . .'" *Id.* at 137 n.2 (citing *Constitutional Amendments on the Florida Ballot, Understanding Florida's Issues*, (Fla. Inst. of Gov., Univ. of Fla., Gainesville, FL), Oct. 1992, at 9). The legislature gave effect to this purpose by enacting section 193.155, Florida Statutes.[2]

The law extends the benefits of the "Save Our Homes" amendment to those

[2]The constitutionality of section 193.155, Florida Statutes was not challenged by the Respondents nor mentioned by the Fourth District Court.

property owners who receive the homestead exemption and explains in clear terms to both property owners and property appraisers alike, precisely how Article VII, Section 4 is to be implemented. Once a property owner applies for and is granted a homestead exemption pursuant to Article VII, Section 6 of the Florida Constitution and section 196.031, Florida Statutes, the property appraiser is then required to apply the "Save Our Homes" assessment cap to the following year's assessment. By making an application which is investigated by the property appraiser, who is able to review and grant it, the owner has demonstrated that his property is entitled to the homestead exemption.

The Fourth District Court of Appeal turns this procedure on its head with the decision in this case, leaving the state's property appraisers with absolutely no guidance as to how to implement the decision, how to follow the statute (which has not been declared unconstitutional, although it is in hopeless conflict with the decision) nor how even to identify those taxpayers to whom they have the responsibility to apply the "Save our Homes" limitations.

Irrespective of the fact that the Fourth District Court's rationale effectively removes the words "in the manner prescribed by law" from Article VII, Section 6 of the Florida Constitution, the logistics of the decision place an inordinate burden upon property appraisers. There are many thousands of real estate sales in most counties

across the state every year.[3] Absent notice and information from the taxpayer, how are property appraisers supposed to divine which buyers intend to make their permanent residences on their new property? The determination of the Fourth District Court would require that property appraisers ascertain, without any request made by the taxpayer, who would qualify for homestead exemption but did not apply for it, to not grant such persons an exemption, but to to limit increases in assessment to property owned by such persons. This to be done, of course, without so much as an application or phone call from the property owner.

The decision below creates insurmountable problems for property appraisers because it establishes the "Save Our Homes" assessment cap as a benefit separate from the receipt of the homestead exemption, despite language to the contrary in the very Constitutional provision at issue. There is no application form for the "Save Our Homes" cap separate from the application for homestead exemption. To date, the benefits of the "Save Our Homes" amendment have been dependent upon timely application for and receipt of a homestead exemption for the prior year. Property appraisers automatically apply the 3% assessment cap to properties which enjoy the homestead exemption, and automatically remove the cap when property no longer

[3]Volusia County, for example, has between 25,000 and 30,000 deed transfers each year.

qualifies for the exemption.

Application of the benefit is only part of the problems which arise under the present holding of the District Court: Once the "cap" is applied, how are property appraisers to know when it should be terminated? For example, if a property owner is otherwise entitled to the homestead exemption, but wealthy enough to not want to trouble himself with filing an application for it, yet receives the protections of the "Save Our Homes" cap, how would the property appraiser know that the property owner rented the former homestead property[4] or moved out of the state, abandoning his physical residence on the property? Once the "Save Our Homes" cap is severed from the homestead application process, a property appraiser would never know when to terminate the benefit. It is respectfully submitted that the voters who enacted the "Save Our Homes" amendment knew exactly what they were doing – the first year a property receives the Homestead exemption begins the process, the cap is applied the next year, and when Homestead is removed, its assessment is no longer capped.

In the absence of an ability of the property appraisers to operate with nothing short of administrative clairvoyance, how will the determination of "entitlement" be made? Respondents suggest that it will be done in court. Florida would then be the

[4]Rental of homestead property constitutes abandonment of the exemption. §196.061, Fla. Stat.

first state to create tax administration by lawsuit!

II. Respondents' "Sue First" Method is Not Sound Policy.

Respondents claim in their Jurisdictional Brief that property appraisers can learn which property owners are "entitled" to the Homestead exemption without applying for it when those owners file suit under section 194.171, Florida Statutes. In a rather startling contravention to the Florida Legislature's version of Florida's ad valorem tax laws, which make the determination of "entitlement" to a Homestead exemption a factual decision to be made in the first instance by the property appraiser[5], Respondents suggest that the circuit court is the proper first step for the administration of the "Save Our Homes" amendment. Irrespective of the fact that this ignores the maxim that "[t]he law favors the peaceful resolution of controversies, without necessity for resorting to the courts for solution, if at all possible,"[6] Respondents' suggestion is simply untenable. In Respondents' Reply to Amended Motion for Leave to Appear as *Amicus Curiae*, they claim that administrative remedies ensure that property owners will not "sue first." [Reply, ¶ 5]. That ignores the facts of this case,

[5] § 196.015, Florida Statutes.

[6] *Ball v. Mills*, 376 So. 2d 1174, 1182 (Fla. 1st DCA 1979).

in which Respondents employed the "sue first" policy endorsed by the Fourth District Court, and Respondents' own argument in their Jurisdictional Brief, in which they point to "the clear provisions of F.S. § 194.171(2), which require all who wish to challenge the assessment of their property to do so within 60 days from the date that the assessment is certified for collection." [Respondents' Jurisdictional Brief, p. 8.]

If Respondents' "sue first" policy is upheld, the very people that the "Save Our Homes" amendment was enacted to protect – the elderly and the poor – would be the people least likely to be able to afford to bring a lawsuit. On the other hand, the immediate beneficiaries of the "sue first" policy are those whose wealth mitigates the need to apply for a homestead exemption, but allows them to sue because they want the "Save Our Homes" benefit applied to their property. The end result is that the already strained resources of the courts, as well as property appraisers, will be tortured further by the necessity that they be a first resort rather than a last resort to determine an "entitlement" which should properly be handled administratively.

Other complications arise from Respondents' suggested rush to the courthouse. Rather than having property owners bear the burden of filing a timely application for homestead exemption, Respondents would place the burden upon property appraisers to demonstrate that homeowners are not entitled to exemptions. They would have this

done in court, conveniently ignoring but not challenging a statutory structure that provides otherwise. *See* section 193.155, Florida Statutes.

Even as the Fourth District Court's ruling is burdensome to the State's Property Appraisers, it is also unjust to the assessment officials and unlawful under the tax administration laws as they now stand.

Just as the state's Property Appraisers are charged with administration of the ad valorem assessment process, the entire body of black letter and court-made law requires that, where appropriate, taxpayers must provide them with the information necessary to do that job in order to later seek redress in the courts.

Section 195.027, Florida Statutes charges the Property Appraiser with access to taxpayer information which relates to valuation of property. Personal property taxpayers, pursuant to sections 193.052 and 193.072, Florida Statutes, must file a form each year which identifies the property to be assessed, and are steeply penalized for failure to do so. Section 193.461, Florida Statutes requires that applicants for the benefit of an agricultural classification of property must timely file a form which permits the Property Appraiser to investigate the bona fides of their claims. Pursuant to section 196.011, Florida Statutes, any applicant for exemption must file a timely application, providing the information necessary to identify the right to the exemption. Failure to timely file for a benefit, absent extenuating circumstances, results in loss of

it for that year. The relevant statutes universally and unequivocally require that the taxpayer and the Property Appraiser cooperate – the taxpayer's duty being that of providing the necessary information to the Property Appraiser.

The impact of taxpayer information on an orderly process is significant. Where information or notice is integral to the determination to be made, the courts have been unequivocal in sanctioning the taxpayers' withholding of it. In each case where information has been sought or an application required by a Property Appraiser and refused by the taxpayer, the courts have held that the information withheld may not be a basis for taxpayer redress in the courts. See, for example, *Palm Corp. v. Homer*, 261 So.2d 822 (Fla. 1972). *Pier House Joint Venture v. Higgs*, 555 So.2d 899 (Fla. 3d DCA 1990); *Higgs v. Good*, 813 So.2d 178 (Fla. 3rd DCA 2002) (where information was sought in writing by the Property Appraiser and withheld by the taxpayer, that information cannot be used to seek relief) *Blake v. Miami Jewish Home and Hospital for the Aged*, 361 So.2d 797 (Fla. 3rd DCA 1978, *Jasper v. St. Petersburg Episcopal Community, Inc.*, 222 So.2d 479 (Fla. 2nd DCA 1969) (Failure to timely file an application for exemption waives the benefit.); Doyle v. Askew, 341 So.2d 845 (Fla. 1st DCA 1977), *Jar Corp. v. Culbertson*, 246 So.2d 144 (Fla. 3rd DCA 1971) (Failure to timely apply for agricultural classification results in loss of entitlement for that year.)

In this instance, the holding of the Fourth District Court would require that, absent any notice whatsoever to the Property Appraiser and no determination by him, the taxpayer might go directly to court to seek a benefit never before sought and never before denied. The state's Property Appraisers would receive no notice whatsoever from the taxpayer seeking the benefit of the homestead cap; the Property Appraiser would have no part in the orderly administration of the act from which the benefit would result, in fact, he need have no knowledge of it whatsoever until after the tax roll has been certified! Only then might he be given notice – by Summons and Complaint.

Contrary to the entire statutory scheme, the taxpayer might seek redress in the courts to acquire a benefit never before sought, never denied, and never previously known to the Property Appraiser whose job it is to administer the benefit. While the statutory scheme requires that all other taxpayers cooperate with the assessing officer by way of notice and information, the taxpayer seeking a homestead cap need not even alert the official that he wants the benefit until he sues for failure to get it! As the Red Queen said, "Off with his head!"

Property appraisers are entrusted with a plethora of duties that when properly performed, add up to the efficient administration of our ad valorem tax laws. By Respondents' reasoning, even when the most conscientious property appraisers perform all of their duties properly, they will be dragged into court every time someone

neglects to follow the procedures established by the legislature to get a government benefit and can afford to ask for a judicial excuse of their oversight.

It is bad policy to reward property owners for their neglect and thereby turn the courthouse from a destination of last resort to the first step in the journey to a government benefit. Respondents shrug this off by submitting "that the opinion of the Fourth District deals with such a narrow class of taxpayer that this Court should not exercise its discretion to accept jurisdiction." [Respondents' Jurisdictional Brief, p. 9.] In other words, it is just a few folks who have the resources to neglect to ask for a benefit, then drag conscientious property appraisers into court, so everyone should just wink, nod, and provide the benefit. That is bad policy.

In short, Respondents claim that the "Save Our Homes" cap should be the only government benefit in the nation of which a beneficiary can take advantage without asking for it. As comedian Yakof Smirnoff says, "what a country!"

CONCLUSION

The decision of the Fourth District Court of Appeal should be quashed. The orderly administration of the "Save Our Homes" assessment cap provided by section 193.155, Florida Statutes, should be applied in this case. Respondents should not be afforded the benefits of the "Save Our Homes" cap for the year 2001, neither should

the tax scheme and policy of the state be upset in the manner which the Court's holding would provide.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by mail this 29th day of December, 2003 on Harry S. Raleigh, Jr., P.O. Box 11799, Ft. Lauderdale, FL 33339-1799, Attorney for Respondents, and the Hon. Charles J. Crist, Jr., Attorney General, Christopher M. Kise, Solicitor General, and Louis F. Hubener, Chief Deputy Solicitor General, The Capitol - PL-01, Tallahassee, FL 32399, Attorneys for Petitioner; Melinda S. Thornton, Assistant County Attorney, 111 N.W. 1st Street, Suite 2810, Miami, FL 33128-1030, Attorney for Joel Robbins, as Dade County Property Appraiser; Sherri L. Johnson, Esq., Dent and Associates, P.A., P.O. Box 3529, Sarasota, FL 34230, Attorney for Edward Crapo, as Alachua County Property Appraiser; Eddie Stephens, Esq., c/o Property Appraiser's Office, Governmental Center, Fifth Floor, 301 North Olive Avenue, West Palm Beach, FL 33401, Attorney for Gary Nikolits, as Palm Beach County Property Appraiser; Loren E. Levy, Esq., The Levy Law Firm, 1828 Riggins Road, Tallahassee, FL 32308, Attorney for Florida Association of Property Appraisers; with courtesy copies to Gaylord A. Wood, Jr., 304 S.W. 12th Street, Ft. Lauderdale, FL 33315, Attorney for William Markham, as Broward County Property Appraiser and Mark T. Aliff,

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CERTIFICATE OF COMPLIANCE

I FURTHER CERTIFY that this brief has been prepared using Times New Roman 14-point font.

By:_____