IN THE SUPREME COURT OF FLORIDA

JAMES A. ZINGALE, as the Executive Director of the Department of Revenue, State of Florida,

Petitioner,

v.

CASE NO.: SC03-1207
L.T. Case No. 4D02-3754

ROBERT O. POWELL and ANN S. POWELL,

Respondents.
_____/

ON PETITION FOR REVIEW OF A
DECISION OF THE DISTRICT COURT OF APPEAL,
FOURTH DISTRICT, STATE OF FLORIDA

Brief of Amicus Curiae Ed Crapo, as Property Appraiser of Alachua County, Florida, Ervin Higgs, as Property Appraiser of Monroe County, Florida, Ken Wilkinson, as Property Appraiser of Lee County, Florida, and Timothy "Pete" Smith, as Property Appraiser of Okaloosa County, Florida

SHERRI L. JOHNSON
FBN: 0134775
JOHN C. DENT, JR.
FBN: 0099242
Dent & ASSOCIATES, P.A.
330 S. Orange Avenue
Sarasota, Florida 34236
(941) 952-1070
Attorneys for Amicus Curiae Crapo, Higgs, Wilkinson and Smith

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The Fourth District erred by ignoring the plain language of §193.155, Fla. Stat., which requires a property owner to receive a homestead exemption in order to become entitled to the Save Our Homes Amendment cap on assessment increases in future years. The statute is consistent with and does not materially alter the provisions of Art. VII, §4 of the Florida Constitution, which makes the property owner's right to the SOHA cap dependent on being "entitled to a homestead exemption under Section 6." Like subsection (8), which this Court previously upheld, the other portions of §193.155, Fla. Stat. merely give effect to the obvious intent of the Save Our Homes Amendment.

Furthermore, this statute is consistent with the public policy of the State of Florida in favor of a uniform and efficient assessment process. This Court has previously upheld the constitutionality of requiring exemption applications. In this case, since the entitlement to the SOHA cap is dependent on the use of the property, as opposed to merely the ownership of the property (which is generally a matter of public record), the property appraisers must rely on taxpayers to report the use of their property by filing a timely application for exemption.

Finally, the taxpayers' action in the instant case should have been barred by §194.171, Fla. Stat., which requires all actions to contest a tax assessment to be brought within sixty (60) days of the certification of the tax roll or the rendering of a decision by the Value Adjustment Board. By allowing the taxpayers to seek the retroactive application of the SOHA cap, even though they failed to timely challenge the denial of an exemption in the prior years, the lower court proceeded without subject matter jurisdiction. If taxpayers are allowed to challenge their assessments at any time, despite their failure to file a timely challenge to the denial of a homestead exemption in prior years, this will open the door to an unforeseeable number of refund requests, thus causing the undue disruption of the tax collection process. The Constitution does not require such chaos. The Constitution plainly requires persons requesting the SOHA cap to meet the requirements for a homestead exemption, which include the filing of a timely application. Thus, the chaotic system of tax assessment advocated by the Respondents and sanctioned by the Fourth District's Opinion is entirely unnecessary, as the plain language of the Constitution provides that the SOHA cap shall only be applied to property that has become entitled to the homestead exemption in the manner prescribed by law.

ARGUMENT

I. THE FOURTH DISTRICT ERRED BY DISREGARDING THE PLAIN LANGUAGE OF §193.155, FLORIDA STATUTES WHICH REQUIRES PROPERTY TO RECEIVE A HOMESTEAD EXEMPTION IN ORDER TO BE ELIGIBLE FOR THE CAP ON ASSESSMENT INCREASES OF ARTICLE VII, §4 OF THE FLORIDA CONSTITUTION.

Section 193.155, Fla. Stat. provides for the application of the Save Our Homes Amendment cap on assessment increases to be applied to homestead property beginning with the tax year immediately following the year in which the property *receives* a homestead exemption. In the instant case, the lower court held that receipt of a homestead exemption is not required in order to obtain the benefit of the SOHA cap in subsequent years. In so holding, the Fourth District did not discuss, or even cite, §193.155, Fla. Stat. It simply ignored the statute. Since the statute is a valid exercise of the legislature's authority to regulate the taxation and exemption process, the Fourth District's decision is in error.

The language of §193.155, Florida Statutes is consistent with and does not materially alter the provisions of the Save Our Homes Amendment [hereinafter "SOHA"]. When the Constitution prescribes a right or remedy, the legislature has the authority to enact legislation to regulate the manner of its exercise. *See Holmer v. State*, 28 So.2d 586, 588 (Fla. 1947). In the instant case, the legislature did not materially change the class of persons entitled to the protection of the Save Our Homes Amendment cap on assessment increases. *Cf. Sparkman v. Scott*, 58 So.2d 431, 432 (Fla. 1952) (holding that the statutory requirements for a homestead exemption cannot be materially different from the constitutional requirements). Rather, the requirement that property owners seeking the protection of the SOHA cap receive a homestead exemption is merely a logical, if not the only, interpretation of the Florida Constitution that is necessary in order to administer the constitutional provision in a fair and equitable manner.

Following the enactment of the Save Our Homes Amendment, the legislature enacted §193.155, Florida Statutes, which clarifies many of the provisions of the SOHA and provides a mechanism for the uniform application of those requirements throughout the State. Among other things, the enabling legislation defines what constitutes a change of ownership, the specific manner of assessing changes, additions and improvements to homestead property, and the procedure for correction of errors in the assessment of homestead property.

In *Smith v. Welton*, 729 So.2d 371, 372 (Fla. 1999) this Court considered the constitutionality of subsection (8) of §193.155, which delineates the procedure for the correction of errors in the assessment of homestead property. The First District Court of Appeal had held subsection (8) unconstitutional because it allowed an assessment to be increased for reasons not expressly stated in the Constitution. *See Smith v. Welton*, 710 So.2d 135, 137 (Fla. 1st DCA 1998). On

appeal, this Court found that the property appraisers had misapplied §193.155(8). *See Welton,* 729 So.2d at 373. However, this Court declined to hold §193.155(8) unconstitutional, even though it contained language that was not contained in the Constitution. *See* id.

Like subsection (8), the portions of §193.155, Fla. Stat. that require property to receive a homestead exemption in order to be eligible for the SOHA cap, though not a mirror image of the language used in the Constitution, are a logical extension of the language contained within the Constitution. The Constitution limits the application of the SOHA cap to persons "entitled to a homestead exemption under Section 6 of this Article." *See* Art. VII, §4(c), Fla. Const. Section 6 allows the legislature to prescribe the means by which a taxpayer must establish their right to a homestead exemption. *See* Art. VII, §6(a), Fla. Const. This Court has held that a person is not entitled to a homestead exemption unless and until they file a timely homestead application. *See Horne v. Markham*, 288 So.2d 196, 199 (Fla. 1974). Thus, if the filing of an application is required in order to become entitled to a homestead exemption, it follows that a person is not "entitled to" a homestead exemption for purposes of the SOHA cap unless and until they comply with the procedures for obtaining the homestead exemption. The Fourth District's conclusion that an application is necessary to receive the homestead exemption, but is not necessary to receive the protections of the SOHA cap, which is dependent on entitlement to a homestead exemption, is illogical and should be rejected by this Court.

If this Court adopts the view taken by the Fourth District, the property appraisers of this State will have no way of knowing which taxpayers are entitled to the protections of the SOHA cap or when they become entitled to it. The SOHA cap is, for all practical purposes, a classified use assessment. *See* §193.441, Florida Statutes (stating that "any assessment for tax purposes which is less than the just value of the property shall be considered a classified use assessment"). Exemption and classified use assessments necessarily require taxpayers to file an application, since the taxpayer's use of the property is not a matter of public record. *See* e.g., *Gamma Phi Chapter of Sigma Chi Building Fund Corp. v. Dade County,* 199 So.2d 717, 719 (Fla. 1967).

In *Gamma Phi,* this Court upheld the constitutionality of §192.062, Florida Statutes, which required owners of exempt property to file an annual application. The taxpayers argued that the Florida Constitution did not require an application. *See id.* at 719. This Court disagreed, explaining that "[t]he requirement that the property-holder disclose yearly the status of his property, that is, its title and use, is a sensible, logical means of determining taxability from year to year, bearing in mind the relative ease with which each of these factors may be varied as the tax years pass." The Court further noted that "[t]he regulation is a purely administrative measure calculated to produce the orderly and efficient preparation of the tax roll which must be completed by 1 July in each year." *Id*.

Likewise, in order to apply the SOHA cap in a uniform manner, the property appraisers must be informed as to which taxpayers are entitled to the cap by virtue

of their use of their property for homestead purposes. Article VII, §4 of the Florida Constitution allows the legislature to prescribe laws necessary to secure a just valuation of all property for ad valorem taxation. Section 193.155, Florida Statutes provides a reasonable means for effectuating the Save Our Homes Amendment cap in a fair and just manner.

The Respondents claim that the property appraisers will be made aware of a person's entitlement to the SOHA cap if that person sues the property appraiser. This hardly promotes the public policy in favor of uniform assessments. According to the Respondents, persons who are entitled to a homestead exemption, but who do not apply for and receive an exemption, should still receive the benefits of the SOHA cap. However, the Respondents contend that these persons should only receive the cap if they sue the property appraiser. Such a litigation-intensive result cannot be what was intended by the voters of the State of Florida. For that matter, it is hard to believe that any voters would consider the requirement that a person apply for and receive a homestead exemption to be an undue restriction of a person's right to the SOHA cap. The Fourth District had no reasonable basis for rejecting the plain language of §193.155, Florida Statutes and thus, the Fourth District's decision should be reversed accordingly.

II. THE FOURTH DISTRICT'S DECISION CONTRAVENES THE PUBLIC POLICY IN FAVOR OF UNIFORM ASSESSMENTS AND THE EFFICIENT ADMINISTRATION OF THE TAX ASSESSMENT PROCESS.

Florida's statutory framework for ad valorem taxation is designed to promote the orderly and efficient assessment and collection of taxes. *See Gamma Phi*, 199 So.2d at 719. By permitting taxpayers to come forward at any time to claim the benefits of the SOHA cap (in the instant case, ten years later) the Fourth District has created an element of uncertainty that will impede the taxing authorities' ability to prepare a reliable budget and hamper the property appraisers' ability to prepare an accurate tax roll. The Constitution, by its plain language, does not contemplate this result.

In several of the amicus' counties, taxpayers who have never applied for or been granted a homestead exemption have requested refunds of ad valorem taxes paid in prior years. The taxpayers claim that because they were entitled to a homestead exemption, the SOHA cap should be applied retroactively so as to entitle them to refunds, even though they never applied for or received a homestead exemption in those tax years. In one such case, the taxpayer waited 17 years to apply for an exemption and now seeks the retroactive aplication of the cap and corresponding refunds.

In *Nikolits v. Ballinger*, 736 So.2d 1253, 1254 (Fla. 4th DCA 1999), the Fourth District held that a request for retroactive application of the SOHA cap was, in effect, a challenge to the denial of a homestead exemption in the prior years. Thus, the Fourth District denied relief, holding that such a claim was barred by the

sixty day statute of non-claims of §194.171, Florida Statutes. *See id.* In the instant case, by allowing taxpayers to receive retroactive application of the SOHA cap despite their lack of a homestead exemption in prior years, the Fourth District appears to have receded from its earlier decision, and opened the door to taxpayers seeking refund requests for prior years, even though they did not apply for or receive the benefits of a homestead exemption in those years.

The Fourth District was correct in *Ballinger*, when it held that an action to obtain the benefits of the SOHA cap is barred unless the taxpayer challenges the denial of a homestead exemption in the previous years in a timely manner. In the instant case, the taxpayers are seeking the retroactive application of the SOHA cap despite never challenging the denial of a homestead exemption for the prior years. Thus, this action should have been barred by the sixty day statute of non-claims of §194.171, Fla. Stat. This Court should reverse the Fourth District's decision holding otherwise to insure that multitudes of recalcitrant taxpayers will not now be seeking refunds for overpayments in tax years for which they did not even apply for an exemption.

CONCLUSION

WHEREFORE, Amicus Curiae Ed Crapo, Ervin Higgs, Ken Wilkinson, and Timothy "Pete" Smith, respectfully request that this Court reverse the decision of the Fourth District Court of Appeal, with directions to enter a judgment on the pleadings in favor of the Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to:

Charles J. Crist, Jr.
Attorney General
PL-01-The Capitol
Tallahassee, FL 32399-1050

Christopher M. Kise
Solicitor General
Office of the Attorney General
PL-01-The Capitol
Tallahassee, FL 32399-1050

Louis F. Hubener
Chief Deputy Solicitor General
Office of the Attorney General
PL-01-The Capitol
Tallahassee, FL 32399-1050

Mark T. Aliff
Assistant Attorney General
Tax Section
Office of the Attorney General
PL-01-The Capitol
Tallahassee, FL 32399-1050

Harry S. Raleigh, Jr.
Niles, Dobbins, Meeks, Raleigh & Dover, LLP
P.O. Box 11799
Fort Lauderdale, FL 33339-1799

Gaylord A. Wood, Jr.
304 S.W. 12th Street
Fort Lauderdale, FL 33315-1521

on this 22nd day of December, 2003.

DENT & ASSOCIATES, P.A.
330 South Orange Avenue
Post Office Box 3259
Sarasota, Florida 34230
Phone: (941) 952-1070
Fax: (941) 952-1094
Attorneys for Ed Crapo, as Property Appraiser of Alachua County, Florida; Ervin A. Higgs, as Property Appraiser of Monroe County, Florida; Kenneth M. Wilkinson, as Property Appraiser of Lee County, Florida; Timothy "Pete" Smith, as Property Appraiser of Okaloosa County, Florida

SHERRI L. JOHNSON
Florida Bar No. 0134775
JOHN C. DENT, JR.
Florida Bar No. 0099242

CERTIFICATE OF COMPLIANCE

Counsel for Amicus Curiae Crapo, Higgs, Wilkinson and Smith, certifies that the foregoing Brief of Amicus Curiae is typed in 14 point (proportionately spaced) Times New Roman font.

DENT & ASSOCIATES, P.A.
330 South Orange Avenue
Post Office Box 3259
Sarasota, Florida 34230
Phone: (941) 952-1070
Fax: (941) 952-1094
Attorneys for Ed Crapo, as Property Appraiser of Alachua County, Florida; Ervin A. Higgs, as Property Appraiser of Monroe County, Florida; Kenneth M. Wilkinson, as Property Appraiser of Lee County, Florida; Timothy "Pete" Smith, as Property Appraiser of Okaloosa County, Florida

SHERRI L. JOHNSON
Florida Bar No. 0134775
JOHN C. DENT, JR.
Florida Bar No. 0099242

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