IN THE SUPREME COURT OF FLORIDA

JAMES A. ZINGALE, as the Executive Director of the Department of Revenue, State of Florida,	)	Case No. SC03-1270
Petitioner,	)	LT No. 4D02-3754
v.	)	
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

MIAMI-DADE COUNTY PROPERTY APPRAISER'S AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER JAMES A. ZINGALE

BRIEF FILED BY LEAVE OF COURT

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INTRODUCTION AND STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

Joel W. Robbins, Property Appraiser of Miami-Dade County, submits this Amicus Curiae Brief in support of the position of Petitioner James A. Zingale, Executive Director of the Department of Revenue, State of Florida. Mr. Robbins, as a constitutional officer, is a critical participant in Florida's uniform system of ad valorem taxation.

Mr. Robbins' particular concern is the impact that the Fourth District's decision will have on his ability to consider in an orderly manner taxpayers' entitlements to caps on the assessed values of residential properties pursuant to Article VII, Section 4(c), Florida Constitution, the "Save Our Homes" law. With over 600,000 residential properties in Miami-Dade County, adherence to the statutory requirements of timely application for homestead exemption is crucial so that each year's assessment cycle proceeds in as efficient and predictable a manner as possible.

SUMMARY OF THE ARGUMENT

For ad valorem tax purposes, homestead exemption is significant to a taxpayer for two reasons. One, it entitles the taxpayer to a reduction in taxable value on his residence of up to $25,000. Second, once the exempt status is established, the taxpayer is entitled to a cap on the annual assessed value of his home. Both

benefits further the intent of Florida law to preserve and protect the family residence.

However, the effects of the homestead exemption and the cap on assessed value, when multiplied for each tax year on each residential property--especially in a county the size of Miami-Dade County--impact the revenues available to school districts, counties and municipalities which provide services to the community. For this reason, Florida law provides for an orderly process by which a taxpayer applies by a date certain to the property appraiser for the exemption. The property appraiser then ensures that the criteria for exemption have been met, all in time for the local government to consider the collective impact of exemptions and value caps during their respective budgetary cycles.

The "Save Our Homes" cap on assessed values, provided for in Article VII, Section 4(c), Florida Constitution, requires that the homestead entitlement be "under Section 6 of this Article." Article VII, Section 6, Florida Constitution, provides for the establishment of the homestead exemption "in the manner prescribed by law." The statutes implementing the homestead exemption, including Sections 196.011 and 196.031, Florida Statutes, set forth the criteria for entitlement, including the mandate that an application be filed before the exemption can be granted. The homestead exemption statutes are consistent with Section 193.155, Florida Statutes, which implements the "Save Our Homes" amendment, in that it requires that the homestead exemption be

"received." It is obvious by the very wording of these laws, and, moreover, it is required by established rules of constitutional and statutory construction, that they all be read *in pari materia.*

Inexplicably, the Fourth District focused on the word "entitled" in the "Save Our Homes" amendment, ignored the qualifying phrase "under Article 6 of this Section," and, in effect, created a judicial exception to the homestead exemption application requirement. The effect of the Fourth District ruling is that any taxpayer can bypass the application requirement, can wait until after any given tax year's budget process and tax roll are fixed, and can then come forward and claim that he would have been entitled to the establishment of the Save Our Homes cap if he had applied. It is no comfort that the taxpayer may have to file a lawsuit to show entitlement--the disruption to what is intended to be an orderly tax process would already have occurred. The effect of such claim would be even more serious if, as in this case, it involved a claim of entitlement to refunds of tax dollars which already would have been disbursed.

Amicus Curiae urges this Court to reject the Fourth District's analysis and reverse the ruling below, so that taxpayers and the local governments that depend upon tax revenues for the provision of essential services can participate in a predictable and consistent process.

ARGUMENT

THE FOURTH DISTRICT ERRED IN HOLDING THAT THE TAXPAYERS WERE ENTITLED TO THE "SAVE OUR HOMES" CAP ON THE ASSESSED VALUE OF THEIR RESIDENCE FOR THE 2001 TAX YEAR IN THE ABSENCE OF THE ESTABLISHMENT OF A PRIOR BASE YEAR BASED ON TAXPAYERS' RECEIPT OF A HOMESTEAD EXEMPTIONS AND, IN SO RULING, HAS IMPROPERLY SANCTIONED A DISRUPTION OF THE ORDERLY ADMINISTRATION OF THE AD VALOREM TAXATION PROCESS

Article VII, Florida Constitution, which deals with matters relating to finance and taxation, grants authority for the levying of ad valorem taxes. Flowing from this authority is a constitutional and statutory framework designed to ensure that taxes are assessed and collected in an orderly manner.

Article VII contains two interrelated sections, both of which provide for implementing legislation, which are relevant to the homestead issue before this Court. More specifically, these constitutional provisions and statutes (which hereinafter may be described collectively as the "Ad Valorem Homestead Laws" for ease of reference) are, with emphasis added in the underlined words:

1. **Article VII, Section 4**. Taxation; assessments. -- By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

* * *

(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]

* * *

Article VII, Section 4(c) is implemented by Section 193.155, Florida Statutes, which provides in pertinent part:

> Homestead assessments.--Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption.
>
> (1) 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.

* * *

2. **Article VII, Section 6**. Homestead exemption.--

   (a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon … upon establishment of right thereto in the manner prescribed by law.

* * *

Article VII, Section 6, is implemented by Sections 196.011 and 196.031, Florida Statutes, which provide in pertinent part:

[1] Article VII, Section 4(c), Florida Constitution, is commonly referred to as the "Save Our Home" amendment, and provides for caps on assessed (taxable) value on residences under specified conditions.

196.011 Annual application required for exemption.--

(1)(a) Every person or organization who, on January 1, has the legal title to real or personal property, except inventory, which is entitled by law to exemption from taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption with the county property appraiser….

(b) The form to apply for an exemption under s. 196.031 … must include a space for the applicant to list the social security number of the applicant…. Failure to file a complete application by that date constitutes a waiver of the exemption privilege for that year….

* * *

196.031 Exemption of homesteads.--

(1) Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, … as defined in s. 6, Art. VII of the State Constitution….

* * *

The crux of the Save Our Home provision is the entitlement to homestead exemption. The threshold of the entitlement to homestead exemption is the application requirement. Yet, despite the cohesive backdrop of the collective Ad Valorem Homestead Laws, the Fourth District inexplicably has chosen one word in Article VII, Section 4(c)--"entitled"--and has interpreted it as if it exists in a vacuum. In so doing, the Fourth District has ignored time-honored rules of constitutional and statutory construction as well as a necessary common sense reading of the Ad Valorem Homestead Laws.

I. THE DISTRICT COURT OPINION OVERLOOKS THAT ARTICLE VII, SECTIONS 4(c) AND 6, FLORIDA CONSTITUTION, AND THEIR IMPLEMENTING STATUTES, ARE INTENDED TO WORK TOGETHER TO EFFECTUATE THE ORDERLY ADMINISTRATION OF THE AD VALOREM TAXATION PROCESS

B. Constitutional Provisions Relating To Taxation Must Be Read *In Pari Materia*

This Court must decide the meaning of the phrase in Article VII, Section 4(c), Florida Constitution, "All persons entitled to a homestead exemption under Section 6 of this Article…." Does it mean, as the Fourth District has implied, that all a taxpayer needs to do is come forward and show that he would have qualified for the exemption, even if he had not applied for it? Or does it mean, as Petitioner and Mr. Robbins submit, that Section 4)(c) intends by its plain language that the entitlement must be based upon compliance with the requirements that have been enacted pursuant to Article VII, Section 6, Florida Constitution?

The district court has decided that the issue can be resolved without looking beyond the word "entitled." In fact, the district court has denied the relevance of reference to the homestead exemption requirements of Article VII, Section 6, stating that "[Taxpayers] do not seek a homestead exemption … they seek application of the Save Our Homes cap…."

In ignoring the requirement that the entitlement to homestead exemption be "under Section 6 of this Article," the district court has disregarded this Court's directive that "… constitutional provisions must be read *in pari materia* 'to form [a] congruous whole so as not to render any language superfluous.'" *Physicians Healthcare Plans, Inc., et al. v. Pfiefler*, 846 So. 2d 1129, 1134 (Fla. 2003) (citation omitted). *See also*, *Caribbean Conservation Corporation, Inc. v. Florida Fish and Wildlife Conservation Commission*, 838 So. 2d 492 (Fla. 2003) (multiple provisions addressing a similar subject must be read *in pari materia*); *Burnsed v. Seaboard Coastline Railroad Company*, 290 So. 2d 13, 16 (Fla. 1974) (provisions should be interpreted in reference to each other "… since every provision was inserted with a definite purpose…."). The appropriateness of reading Section (4)(c) and (b) together, as Section 4(c) clearly intends, is all the more manifest given that the purposes of the Save Our Homes cap and the homestead exemption are both solidly grounded in the same policy of preservation of the family residence.

C. Statutory Provisions, Especially Those Implementing Related Constitutional Provisions, Must Also Be Read *In Pari Materia*

By its wording, Article VII, Section 4(c) ties the entitlement to the Save Our Homes cap to the homestead exemption provision of Article VII, Section 6. Article VII, Section 6 provides that the right to the homestead exemption must be established "in the manner prescribed by law," just as Article VII, Section 4 contemplates that the provisions thereunder will be implemented "[b]y general law." Therefore, the statutes, which further the ends of the two constitutional provisions, must be analyzed with equal attention. *See Florida Department of Education v. Glasser*, 622 So. 2d 944 (Fla. 1993), in which this Court noted that not only must legislation be passed when constitutional provisions require legislative action, but that the statutes so enacted must be construed in harmony with the Constitution.

The "manner prescribed by law" in which Article VII, Section 6, Florida Constitution, is carried out is found in Chapter 196, Florida Statutes, which deals with ad valorem tax exemptions. A taxpayer's right to homestead exemption is established by compliance with both Section 196.011, Florida Statutes, the application requirement made applicable by its terms to the homestead exemption, and Section 196.031, Florida Statutes, which requires a showing of legal or equitable title and good faith permanent and actual residence by the taxpayer or a dependent.

This Court in *Horne v. Markham*, 288 So. 2d 196 (Fla. 1973), affirmed the necessity of a timely application as an essential element of the homestead exemption entitlement. *See also In re Home and Housing of Dade County, Inc.*, 220 B.R. 492, 495 (Bankr. S.D. Fla. 1998), where the federal court, in construing the exemption application requirement of Section 196.011(1), Florida Statutes, echoed the Florida courts, stating that "if [an] exemption is not timely applied for, exempt status may not be granted for property, even if it would otherwise qualify."

The "general law" enacted by the Florida Legislature to implement Article VII, Section 4(c), Florida Constitution is Section 193.155, Florida Statutes, which, surprisingly, was neither mentioned nor referenced by the Fourth District below. This statute premises the establishment of the Save Our Homes cap on the receipt of a homestead exemption by the taxpayer. The entitlement, establishment and receipt of a homestead exemption occur solely by operation of Chapter 196, Florida Statutes.

Just as this Court requires harmonious construction of both related constitutional provisions, and these provisions with their implementing statutes, so, too, must related statutes be construed *in pari materia.* In *State v. Fuchs*, 769 So. 2d 1006, 1009 (Fla. 2000), this Court relied on general principles of statutory construction requiring that clearly related statutes be read *in pari materia* noting that even

“[I]n the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term….’” (citations omitted).

Section 193.155, Florida Statutes, requires that the homestead exemption be “received,” but does not define the term. However, the definition of “received” can be gleaned from Sections 196.011 and 196.031, Florida Statutes, which set forth the elements necessary for receipt of the homestead exemption--application, title, residence. Reading Sections 193.155, 196.011 and 196.031, Florida Statutes, together gives substance and meaning to the language of Article VII, Section (4)(c), Florida Constitution that “entitlement” to the homestead exemption be “under Article VII, Section 6.”

Florida courts have on many occasions noted the necessity of construing ad valorem tax statutes *in pari materia*. *See*, *e.g.*, *Leon County Educational Facilities Authority v. Hartsfield*, 669 So. 2d 1105 (Fla. 1st DCA 1996), *decision quashed on other grounds*, 698 So. 2d 526 (Fla. 1996); *Spanish River Resort Corporation v. Walker*, 497 So. 2d 1299 (Fla. 4th DCA 1986); *Czagas v. Maxwell*, 393 So. 2d 645 (Fla. 5th DCA 1981); *Lanier v. Bronson*, 215 So. 2d 776 (Fla. 4th DCA 1968); *St. Joe Paper Company v. Brown*, 210 So. 2d 725 (Fla. 1st DCA 1968). So, too, should the Save Our Homes statute, Section 193.155, Florida Statutes, and the homestead exemption statutes, Sections

196.011 and 196.031, Florida Statutes, be read together to achieve a result that makes sense.

It would be quite ironic if Florida law were interpreted to remove from ad valorem revenues a few hundred dollars, which is the value of the homestead exemption itself, only upon full compliance with Chapter 196, Florida Statutes, yet allow, through the Save Our Homes law, the potential loss of many thousands of dollars on any given parcel of capped property, with no need for compliance with Chapter 196. Such a result flies in the face of reason, and should therefore be rejected. *Wakulla County v. Davis*, 395 So. 2d 540 (Fla. 1981).

D. The Plain Meanings Of "Entitled" And "Under" Are Consistent With The Requirement Of Compliance With The Homestead Exemption Application Requirement

The Fourth District states that the "resolution of this case depends on the meaning of the word 'entitled' as used in the Save Our Homes provision." Amicus Curiae Robbins finds it hard to understand how the lower court could view that word in a context isolated from Article VII, Section 6, Florida Constitution or Chapter 196 and Section 193.155, Florida Statutes. However, Mr. Robbins also submits that the legal definitions of "entitled" and "under" are themselves consistent with the requirement that a homestead exemption must be applied for and received prior to establish of the cap on assessed value.

Black's Law Dictionary 368 (Abridged 6th ed. 1991) defines "entitle," in pertinent part, as "[t]o qualify for; to furnish with proper grounds for seeking or claiming." Page 1060 defines "under," in pertinent part, as "according to," which, as noted on page 862, is consistent with the definition of "pursuant to," which, in pertinent part, also means "according to" and "when used in a statute, is a restrictive term." Therefore, an application requirement as set forth pursuant to a statutory framework is consistent with the plain meaning of "entitled … under Section 6 of this Article…." Article VII, Section 4(c), Florida Constitution.

II. THE DISTRICT COURT OPINION FAILS TO RECOGNIZE THAT IN ORDER TO ENSURE THE PROVISION OF ESSENTIAL SERVICES TO THEIR COMMUNITIES, LOCAL GOVERNMENTS RELY UPON THE ORDERLY ADMINISTRATION OF THE AD VALOREM TAXATION PROCESS

As this Court has long realized, "[t]axation is essential to [the] maintenance of sovereign government…." *Harris v. City of Sarasota*, 181 So. 366 (Fla. 1938). To ensure revenue for the provision of essential services, the Florida Constitution in Article VII, Section 9(a), authorizes counties, school districts and municipalities to levy ad valorem taxes. These taxes are the backbone of Florida's local governments. Therefore, it is critical that the integrity of the ad valorem tax process be upheld.

The Local Government Budget Process Depends Upon The Timely Completion Of The Assessment Process

In *State ex rel. Gillespie v. Thursby*, 139 So. 372, 376 (Fla. 1932), this Court recognized that "[t]here must be a time for the cessation of the relation of the levying and assessing officer to the tax of each year." *See also Lake Worth Towers, Inc. v. Gerstung*, 262 So. 2d 1, 4-5 (Fla. 1972), where the Court discussed the necessity for limitations and laches defenses to tax challenges because "… there must be a time when tax processes and procedures that have been completed should not be judicially disturbed."

Consistent with this judicial acknowledgment of the need for finality in the annual taxing process is the legislature's statutory framework dealing with taxation and budgeting. The deadlines governing the property appraisers' assessments are fixed so that the budgeting process, which includes the setting of the local millage rate, can be completed in time for the tax collector to begin collecting taxes to fund the services approved in each local government's budget.

Beginning January 1 of each taxing year, each property appraiser begins the process of determining the just value of all real and tangible personal property. Section 192.041, Florida Statutes. By March 1, taxpayers requesting exemption of their properties, including homestead exemption, are required to have filed their original applications or otherwise verified the renewal of previously granted exemptions. Section 196.011, Florida Statutes.

Between March 1 and July 1, the property appraisers are engaged in their determinations whether exemption requests should be renewed, granted or denied. When homestead exemptions are at issue, consideration of a wide variety of factors is often necessary, ranging, for example, from the effect of immigration status on permanent residency to the effect of trust documents on title. Section 196.031, Florida Statutes.

By July 1, property appraisers must have completed assessments of all property and further have determined entitlement to all exemptions. Sections 193.023(1) and 196.193(5), Florida Statutes. On that date, the property appraisers must certify to each taxing authority "the taxable value within the jurisdiction of the taxing authority." Sections 195.073 and 200.065(1), Florida Statutes.

On or about August 24 of each year, taxpayers receive a notice from which they can determine the taxable values and exemptions of their properties and the proposed taxes upon said values. Sections 200.065(2)(b) and 200.269, Florida Statutes. This notice triggers the time frame for taxpayer challenges to assessments and exemptions. Section 194.011, Florida Statutes. At the same time, during September and October, local government budget hearings, at which the millage rates are set, are held, culminating in the adoption of the final millage rate on or about October 8. Tax bills are then prepared and sent, pursuant to Chapter 197, Florida Statutes, so that the tax collectors are ready to

begin processing tax payments as of November 1. Sections 197.322 and 197.333, Florida Statutes.

One of the last activities during the annual taxing and budgeting process is the filing of lawsuits by taxpayers who wish to contest assessments and exemption decisions. Section 194.171, Florida Statutes. Section 194.171, Florida Statutes, itself contains a jurisdictional deadline so that there will be finality to the challenge process. *Markham v. Neptune Hollywood Beach Club*, 527 So. 2d 814 (Fla. 1988). *See also Nikolits v. Ballinger*, 736 So. 2d 1253 (Fla. 4th DCA 1999).

A. Lawsuits Are Not Acceptable Substitutes For Adherence To Statutory Procedures

Into this orderly statutory ad valorem tax scheme have come Taxpayers, seeking a valuable tax benefit without having timely filed an application for homestead exemption, a requirement for triggering the establishment of the Save Our Homes cap. Taxpayers apparently offer to consider 2000 as their "base year"--*i.e.*, the first year of exemption--so that 2001 becomes the first year in which value is capped, despite the fact that the 2000 tax roll and the sixty days for filing suit on the 2000 tax year have long since passed.[2] The Fourth District, in sanctioning the manner in which Taxpayers asserted their claim to the cap, has also sanctioned unpredictability in the ad valorem taxing process.

With respect to exemption, the ad valorem tax statutes intend that there be a defined period of time to be spent by property appraisers in determining entitlements to exemptions. *Nikolits v. Ballinger*, *Id.* at 1254, citing Section 196.151, Florida Statutes, "Between March 1 and July 1, property appraisers 'shall carefully consider all applications for tax exemption that have been filed in their respective offices.'" This Court has validated the importance of the application itself in *Gamma Phi Chapter of Sigma Chi Building Fund Corporation v. Dade County*, 199 So. 2d 717, 719 (Fla. 1967), stating

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[2] Amicus Curiae Robbins is less concerned about the Powells' apparent willingness to set 2000 as the base year than he is about the language of the Fourth District's opinion which leaves open the question of how the base year is determined when a taxpayer never received a homestead exemption, then shows up claiming "entitlement" in past years and refunds of already distributed tax monies.

> … the 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 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.

Similarly, in *Davis v. Macedonia Housing Authority*, 641 So. 2d 131 (Fla. 1st DCA 1994), the First District reversed a lower court judge who had granted charitable exemption to property for a past year and for future years. The court emphasized the importance of the filing of the application which is essential to the property appraiser's orderly determination of entitlement for the current tax year.

The *Macedonia Housing* case is significant as well for recognizing the legislative intent that challenges to assessment decisions be timely filed pursuant to Section 194.171, Florida Statutes only with respect to the current tax year. The taxpayer in that case applied for exemption in 1991; the lower court which granted exemptions for 1990, 1992 and future years was reversed as to these years.

How does the Fourth District's opinion impact property appraisers? The ruling means that taxpayers can come forward at any time and ask the appraisers to analyze their individual properties outside of the time of year when appraisers would normally be reviewing the current year's applications. It means that taxpayers, if they meet the title and residence criteria of Section 196.031, can

request recalculations of taxes owed based on the Save Our Homes cap for years in the past, and refunds of the difference between the recalculated taxes and what they paid, even though such moneys would already have been disbursed to the local governing authorities.

The Fourth District's opinion exposes property appraisers to increased numbers of lawsuits and burdensome administrative procedures with respect to processing refunds. It exposes local governments to uncertainty in their budgeting processes. It excuses taxpayers from paying attention to their annual tax bills and contradicts the established rule of law that taxpayers are presumed to know the law and their obligations thereunder. *Harris v. City of Sarasota*, 181 So. 366 (Fla. 1938).

None of the consequences of the Fourth District's opinion is desirable. None of the consequences is necessary, when the ad valorem statutes provide for taxpayer participation in the taxing process in an orderly manner. And, in a county the size of Miami-Dade, where there are over 600,000 residential folios,[3] the unpredictability, uncertainty, and financial impact could be substantial.

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[3] Even though over 400,000 residential folios already have homestead exemptions, nothing in the Fourth District's opinion would prevent taxpayers from claiming that base years should be redetermined.

CONCLUSION

For all the foregoing reasons, Amicus Curiae Robbins urges this Court to reverse the decision of the Fourth District and affirm the judgment of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this _____ day of December, 2003, to ***Harry S. Raleigh, Jr., Esquire***, Niles Dobbins Meeks Raleigh & Dover, LLP, Post Office Box 11799, Ft. Lauderdale, Florida 33339-1799 and ***Louis F. Hubener, Chief Deputy Solicitor General***, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399.

____
Assistant County Attorney

CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared with typestyle 14 point Times New Roman in compliance with Rule 9.210(a)(2), Fla. R. App. P.

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Assistant County Attorney