IN THE
SUPREME COURT OF FLORIDA

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

Petitioner,

Case No. SC03-1270
LT No. 4D02-3754

vs.

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

Amicus Curiae Brief filed in support of the Respondents , Robert O. and Ann S. Powell, by real property owners in Nassau County, Florida who are presently seeking relief under Article VII, §4 of the Florida Constitution

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Amicus Curiae Brief Filed with Consent of the Parties

JACOBS AND ASSOCIATES, P.A.
Arthur I. Jacobs, Esquire
Lisa G. Satcher, Esquire
Post Office Box 1110
Fernandina Beach, Florida 32035-1110
(904) 261-3693 (telephone)

(904) 261-7879 (facsimile)
Attorneys for Amicus Curiae, Stephen M. Klein et al.

TABLE OF AUTHORITIES

Statement of Identity and Interest of Amicus Curiae

Amicus curiae are a group of individuals and two revocable living trusts who hold title to property located in Nassau County, Florida. These individuals are: James and Sandra Shaw; Stephen Klein and the Stephen M. Klein Revocable Living Trust; Charles and Marilyn Gordon and their Revocable Living Trust; John and Patricia Noonan; Robert and Linda McCann; Elvin J. Newhart; Robert and Florence Rives; Otis Bowden; William McGraw; Alvin and Linda Rusnak; and Lawson W. Hamilton.

These homeowners are currently engaged in litigation against the Department of Revenue, the Nassau County Property Appraiser and the Tax Collector for Nassau County, Florida. Portions of these suits rest on the application of Article VII, section 4 of the Florida Constitution, otherwise known as the "Save our Homes cap" to the assessments placed on the real property owned by amici curiae, some of which had already applied and qualified for the homestead exemption and some of which had not yet applied therefor.

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeals was correct in its interpretation of Article VII, § 4 of the Florida Constitution, otherwise known as the "Save our Homes cap." The Court correctly ruled that the Save our Homes cap provision applies to all homeowners who qualify for a homestead exemption, regardless of whether the homeowner has actually applied for and received the exemption.

The Petitioner and its various supporting amici would have this Court uphold that the Florida Legislature, through its enabling legislation found in Fla. Stat. § 193.155 (6), could limit the right to the cap as approved by referendum and set forth in the Florida Constitution, due to the fact that subsection (6) limits the applicability of § 193.155 to those persons who have applied for and received the homestead exemption. Just because subsection six states that § 193.155 of the Florida Statutes only applies to those granted a homestead exemption does not mean that those who did not file for and receive the homestead exemption are wholly barred from the Save

our Home cap. This Constitutional amendment certainly does not discriminate between the two.

Finally, although the plain language of the amendment supports the Respondents' opinion, which should complete this review, the purpose of the amendment, the legislature's prior use of the operative term "entitled" and basic canons of statutory construction clearly lead to upholding the decision of the Fourth District Court of Appeals.

ARGUMENT

I. THE FOURTH DISTRICT COURT OF APPEALS CORRECTLY INTERPRETED ARTICLE VII, § 4 AS BEING APPLICABLE TO ALL HOMEOWNERS WHO ARE OTHERWISE ENTITLED TO THE HOMESTEAD EXEMPTION BUT HAVE NOT APPLIED FOR AND BEEN GRANTED THE HOMESTEAD EXEMPTION.

The main legal issue before this Court is whether Article VII, § 4 of the Florida Constitution applies to all properties eligible for the homestead exemption.

The law at issue was adopted by referendum. The "Save our Homes cap," found in Article VII, § 4 titled "Taxation; assessments" of the Florida Constitution, provides that:

> 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)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 . . .
>
> a. three percent (3%) of the assessment for the prior year.
>
> b. the percent change in the Consumer Price Index . . .
>
> . . . .

The Amendment's only apparent enabling legislation, albeit arguably incomplete, is found in Fla. Stat. § 193.155, titled "Homestead assessments." This statute provides that homestead property shall be assessed at just value as of January 1, 1994, with property receiving the homestead exemption being assessed at just value as of January 1 of the year in which the property receives the exemption. The remaining portions of Florida Statute § 193.155 then describe the assessment caps and allowable changes in the caps for properties that have received homestead exemption.

Of importance is the fact that neither of the aforementioned laws state that the Save our Homes cap shall only apply to those who already receive the homestead exemption. The Petitioner and its supporting amici prefer this Court to read into the above laws an additional privilege for those who apply for and receive a homestead exemption, above and beyond those who otherwise qualify for exemption; i.e., those who fall under the definition of homestead.[1] However, the Save our Homes cap is not

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[1] Fla. Stat. §192.001 (8) defines a homestead as that property described in §6(a) of Art. VII of the State Constitution. Article VII, § 6(a) states that "(a) Every person who has the legal or equitable

a privilege; it is a constitutional right provided to those who are entitled to a homestead exemption.

Although the fact that the plain language of the constitutional amendment clearly expresses that the Save our Homes cap applies to all properties held as a homestead, which would thus be entitled to the exemption if applied for, the Petitioner asserts that because Fla. Stat. § 193.155 expressly applies to only those properties that receive a homestead exemption, the constitutional right to the Save our Homes cap must also only apply to those properties that receive the homestead exemption. This assertion makes no sense. To agree with this assertion is to follow the implication that the Florida Legislature has the right to narrow–or otherwise remove a constitutional right from a certain group of people who, but for the statute, have the constitutional right to the tax assessment cap. See Austin v. State of Fla., 310 So. 2d 289, 293(Fla. 1975)("A statute enacted by the Legislature may not constrict a right granted under the ultimate authority of the Constitution.")

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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, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years."

While the plain language of the Save our Homes cap clearly states that all homeowners entitled to the homestead exemption are entitled to the cap on their tax assessment, diving into the realm of statutory interpretation leads to the same result: the Constitutional Amendment applies to all homeowners who are entitled to the homestead exemption–not merely those who have applied for and received the homestead exemption. However, because so much controversy has been made over the use of the term "entitled," a review of the various sources demonstrating the intent of the drafters of this law clearly supports the Respondents' position.

For example, the purpose of the Save our Homes cap 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. App. 1st DCA 1998). Nowhere in this stated purpose does it state or imply that only those who receive a homestead exemption are entitled to the Save our Homes cap.

Once again, looking beyond the plain language of the Amendment, one may also examine the legislative construction and use of the term "entitled" in other constitutional provisions concerning tax assessments; i.e., Fla. Stat. §§ 196.031 and 196.011. Agency for Health Care Admin. v. Associated Industries, 678 So. 2d 1239 (Fla. 1996). Florida Statute § 196.031(1) provides the following:

> 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.

(Emphasis added.) The legislature did not mandate homeowners to apply for and receive a homestead exemption in order to declare entitlement to an exemption from taxation. In addition, Fla. Stat. § 196.011 provides

> 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, listing and describing the property for which exemption is claimed and certifying its ownership and use. The Department of Revenue shall prescribe the forms upon which the application is made. Failure to make application, when required, on or before March 1 of any year shall constitute a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (8).

(Emphasis added.) Once again, the legislature, dealing with the applicability of the homestead exemption, clearly differentiates between one entitled to the homestead exemption and one who receives the homestead exemption.

Lastly, it is important to note the title of the section in which the Save our Homes cap is provided in Art. VII, § 4; i.e., "Taxation; assessments," as opposed to those sections found under Art. VII, § 6 titled "Homestead exemptions." Perhaps the

placement of the Save our Homes cap under the title of "Taxation; assessment" versus "Homestead exemption" sheds additional light on the intent and purpose of the Save Our Homes Cap. See Church of the Holy Trinity v. United States, 143 U.S. 457, 462; 12 S. Ct. 511, 513; 36 L. Ed. 226, 229; 1892 U.S. LEXIS 2036 (1892)(title is relevant to the interpretation but not dispositive.) Clearly this provides additional evidence of the intent of the law: to apply a cap on the assessment of a homeowner's homestead. Whether this homestead receives additional tax exemptions is irrelevant.

Conclusion

Because the plain language of Article VII, § 4 provides that the Save our Homes cap applies to all homeowners who meet the definition of homestead, and would be entitled to the exemption if applied for, the decision of the Fourth District should be upheld.

Respectfully Submitted,

Jacobs and Associates, P.A.

By: _____

Lisa G. Satcher
Fla. Bar No. 195758
Arthur I. Jacobs
Fla. Bar No. 108274
Post Office Box 1110
Fernandina Beach, Florida 32025-1110
(904) 261-3693 (telephone)
(904) 261-7879 (facsimile)

Attorneys for Amicus Curiae homeowners located in Nassau County, Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief in support of the Respondent has been furnished to the following by U.S. Mail this 3rd day of March, 2004:

Harry S. Raleigh, Jr., Esquire
Dobbins, Meeks, Raleigh & Dover, LLP
P.O. Box 11799
Ft. Lauderdale, FL 33339

Charles J. Crist, Attorney General
Christopher M. Kise, Solicitor General
Louis F. Hubener, Chief Deputy Solicitor General
Office of the Attorney General,
The Capitol PL-01
Tallahassee, Florida 32399

Gaylord A. Wood, Jr., Esquire
Wood & Stuart, P.A.
304 S.W. 12th St.
Ft. Lauderdale, FL 33315-1549

Edward A. Dion, Esquire
Governmental Center, Ste. 423
115 S. Andrews Ave.
Ft. Lauderdale, FL 33301

Sheri L. Johnson, Esquire
Dent & Associates, P.A.
P.O. Box 2359
Sarasota, FL 34230

B. Jordan Stuart, Esquire
Wood & Stuart, P.A.
206 Flagler Ave.
New Smyrna Beach, FL 32169

Eddie Stephens, Esquire
Christiansen & Jacknin
c/o Property Appraiser's Office
Governmental Center, 5th Floor

Robert A. Ginsberg,
County Attorney
Stephen P. Clark Center,
Suite 2810

301 N. Olive Ave.
West Palm Beach, FL 33401

111 N.W. First Street
Miami, FL 33128-1993

Loren Levy, Esquire
The Levy Law Firm
1828 Riggins Rd.
Tallahassee, FL 32308

Certificate of Font Compliance

I HEREBY CERTIFY that this amicus curiae brief was prepared using WordPerfect and Times New Roman 14 point font.

Jacobs & Associates, P.A.

By: _____
Lisa G. Satcher