IN THE
SUPREME COURT OF FLORIDA

JAMES A. ZINGALE, as the Executive Director of the Department of Revenue, State of Florida,	)	
Petitioner,	)	
vs.	)	**Case No.**
	)	**LT No. 4D02-3754**
ROBERT O. POWELL and ANN S. POWELL,	)	
Respondents.	)	

JURISDICTIONAL BRIEF OF PETITIONER, JAMES A. ZINGALE

On Petition For Review Of A Decision Of The District Court Of Appeal, Fourth District, State of Florida

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Petitioner, James A. Zingale, seeks review of a decision of the Fourth District Court of Appeal expressly construing article VII, section 4 of the Florida Constitution (the "Save Our Homes" provision), expressly affecting a class of constitutional officers (property appraisers), and expressly conflicting with this Court's decision in Horne v. Markham, 288 So. 27 196 (Fla. 1973)

STATEMENT OF THE CASE AND FACTS

Robert and Ann Powell, respondents, purchased a home in Broward County in 1990. The Powells received notice in 2001 that their ad valorem property taxes would increase by more than $10,000 over the previous year, 2000. On September 17, 2001, the Powells filed their first application for homestead exemption on the property. The homestead exemption was subsequently approved for the year 2001. App. 1.

In 2002, the Powells unsuccessfully sought from the Broward County Value Adjustment Board a reduction in the assessed value of their property under authority of article VII, section 4, Florida Constitution–-the "Save Our Homes" provision. The Powells then filed the underlying action challenging the property appraiser's failure to apply the value assessment cap set forth in article VII, section 4(c), Florida Constitution, when calculating the year 2001 tax assessment. They contended that under article VII, section 4(c), the increase in assessed value of their property should have

been limited to a maximum of three percent, and that this limitation should have applied to the increase for the year 2001. App. 2.

Section 193.155, Florida Statutes, implements article VII, section 4. The trial court found the Powells' claim barred by section 193.155, which in pertinent part provides:

> 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 property receives the exemption. Thereafter, determination of the assessed value of the property is subject to the following provisions:
>
> (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. Any change resulting from such assessment shall not exceed the lower of the following:
>
> (a) Three percent of the assessed value for the prior year, or
>
> (b) The percentage change in the Consumer Price Index . . . for the preceding calendar year . . . .

Section 193.155, Florida Statutes (emphasis added).

Under this statute, the trial court found the Save Our Homes limitation would not apply to the Powells until January 1, 2002, since they did not receive the homestead exemption until 2001. The trial court also found its decision consistent with Horne v.

Markham, 288 So. 2d 196 (Fla. 1973). The Powells never challenged the validity of section 193.155.

On appeal, the Fourth District Court of Appeal reversed. Not mentioning section 193.155, and construing only article VII, section 4, the Fourth District held that the Powells were "entitled" to the benefits of article VII, section 4 even though they had not sought a homestead exemption for the year 2000:

> [W]e conclude that entitlement to a homestead exemption, for the purpose of seeking application of the Save Our Homes cap, is not limited to homeowners that have actually applied for and been granted homestead exemption, but includes all homeowners who qualify for and thus are entitled to homestead exemption.
>
> We reject Defendants' argument that Horne v. Markham, 288 So. 2d 196 (Fla. 1973), is controlling here. As set forth in Horne, a property owner seeking a homestead exemption must comply with requirements "prescribed by law," such as filing a timely application. 288 So. 2d at 200. That is not the issue before this court. The Powells do not seek a homestead exemption for the year 2000; they seek application of the Save Our Homes cap to the increase in the assessed value of their home in that year. Thus, their compliance with the filing requirements of section 196.011 is irrelevant here. See § 196.011, Fla. Stat. (2002).

App. 2.

Under Article VII, section 4, Florida Constitution, a property owner must be entitled to a homestead exemption to claim the

benefit of the limitation:

> [A]ll 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. The assessment shall change only as provided herein.

Article VII, section 6 provides for the homestead exemption. It states that a qualifying person "shall be exempt from taxation . . . up to the assessed value of five thousand dollars, upon establishment of the right thereto in the manner prescribed by law." (Emphasis added.)

Section 196.011, Florida Statutes, prescribes the manner for establishing the right to a homestead exemption. As the above-quoted portion of its decision indicates, the Fourth District found the fact the Powells did not comply with section 196.011 until 2001 "irrelevant."

SUMMARY OF THE ARGUMENT

This Court has discretionary jurisdiction to review the decision of the Fourth District pursuant to article V, section 3(3), Florida Constitution, because the decision expressly construes article VII, section 4 of the Florida Constitution, and because it expressly affects a class of constitutional officers--property appraisers.

The decision also conflicts with Horne v. Markham, 288 So. 2d

196 (Fla. 1973). That decision held that there is no right to a homestead exemption until it is established by law. The Fourth District misconstrued and misapplied Horne in ruling that there can be an entitlement to the exemption when the right thereto has not been established according to law.

ARGUMENT

I. THE FOURTH DISTRICT'S DECISION EXPRESSLY CONSTRUES A PROVISION OF THE FLORIDA CONSTITUTION.

The decision below expressly construes article VII, section 4 of the Florida Constitution. The Fourth District held that:

> 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. With that in mind, we conclude that entitlement to a homestead exemption, for the purpose of seeking application of the Save Our Homes cap, is not limited to homeowners that have actually applied for and been granted a homestead exemption, but includes all homeowners who qualify for and thus are entitled to a homestead exemption.

App. 2 (internal quotation marks and citations omitted). Because the decision construes article VII, section 4, the Court has discretion to grant review. See article V, section 3(3), Fla. Const.

This Court should grant review and decide whether a property

owner can be entitled to a homestead exemption and the benefits of article VII, section 4, without ever having established a right to the exemption as mandated by section 6.

II. THE FOURTH DISTRICT'S DECISION EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS.

The Court also has discretion to review the Fourth District's decision because it expressly affects all county property appraisers, who are a class of constitutional officers. See article V, section 3(3), Fla. Const., and article VIII, section 1(d), Fla. Const. (providing for election of a property appraiser for each county). See also Bystrom v. Whitman, 488 So. 2d 520 (Fla. 1986) (recognizing that property appraisers are constitutional officers).

The decision below affects county property appraisers as a class because each county property appraiser must assess, inspect, and classify property for purposes of taxation. See §§ 192.011, 193.023, 193.085, and 193.114, Fla. Stat. County property appraisers must also receive, review, and grant or deny applications for exemptions, including homestead exemption. See §§ 196.011, 196.031, 196.131, 196.141, and 196.151, Fla. Stat.

The Fourth District's decision holds that a person who is theoretically entitled to a homestead exemption is automatically entitled to the Save Our Homes limitation irrespective of whether

the person has applied for and received the homestead exemption. Property appraisers must limit their assessments accordingly.

The decision also imposes an impossible task on property appraisers: to identify those property owners who have not applied for homestead exemption but nevertheless qualify for it and are thus "entitled" to the Save Our Homes limitation. The failure to accomplish this will certainly expose tax assessors to actions under section 194.171, Florida Statutes, and possibly expose ad valorem taxing entities (counties, municipalities, school districts and special districts) to the consequences of refund actions under section 197.182, Florida Statutes. Compare State, Dep't of Revenue v. Stafford, 646 So. 2d 803, 807 (4th DCA 1994) (taxpayer must assert challenge to basis for assessment pursuant to section 194.171, not section 197.182), with State, Dep't of Revenue v. Sohn, 654 So. 2d 249, 251 (Fla. 1st DCA 1995) (where error in classifying property is one of commission or omission, not judgment, taxpayer not compelled to follow section 194.171).

III. THE FOURTH DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN HORNE V. MARKHAM, 288 SO. 2D 196 (FLA. 1973).

In Horne v. Markham, 288 So. 2d 196 (Fla. 1973), this Court explicitly held that a taxpayer has no right to a homestead exemption unless an application therefor is timely filed under the

requirements of chapter 196, Florida Statutes. The right to a homestead exemption is not absolute and can only be established in the manner prescribed by law. Id. at 199.

The assessment limitation of Article IV, section 4(c), applies only to "persons entitled to a homestead exemption under Section 6 of this Article. . . ." (emphasis added). Under Horne, the right to a homestead exemption--the "entitlement" to it--does not exist in the abstract. No property owner is entitled to the homestead exemption under section 6 unless he or she applies for it. The ruling in Horne makes eminent sense because the property appraiser cannot determine who is entitled to the exemption--and thus make the proper assessment--until the property owner applies for and establishes the right.

The decision below conflicts with Horne because it holds the Powells are "entitled" to a homestead exemption for a year in which they did not apply for it, 2000, and thus enables them to claim the assessment limitation for the 2001 tax year. A proper reading of Horne compels the conclusion that the Powells could not claim the exemption for 2000, and therefore had no entitlement to it for that year, because they did not apply for it.

The Fourth District misconstrued and misapplied the decision in Horne. This Court therefore has discretion to grant review. See Mancini v. State, 312 So. 2d 732 (Fla. 1975) (recognizing

conflict jurisdiction where district court announces rule of law which conflicts with rule announced by supreme court); Dade County v. Salter, 194 So. 2d 587 (Fla. 1966) (recognizing conflict jurisdiction when district court misinterpreted controlling supreme court decision); Ricks v. Loyola, 822 So. 2d 502, 505 (Fla. 2002) (district court misapplied supreme court precedent). See generally Kogan and Waters, The Operation and Jurisdiction of the Florida Supreme Court, 18 Nova L. Rev. 1153, 1232 (1994).

REASONS FOR GRANTING REVIEW

The Fourth District's misreading of Horne v. Markham and its failure to take into account section 193.155(1), Florida Statutes, in construing article VII, section 4, are reasons enough to grant review. But far more troublesome is the effect of the decision: any property owner who could claim a homestead exemption is entitled to the Save Our Homes limitation even if the property owner has never applied for the exemption. How the property appraiser is to divine the identity of such persons is an unanswered and unanswerable question.

The Court should grant review because the decision of the Fourth District imposes an impossible responsibility upon the state's property appraisers as a class, exposes them to unnecessary and wasteful lawsuits, and potentially threatens all ad valorem taxing entities. See § 197.182(2), Fla. Stat.

CONCLUSION

This Court has discretion to grant review. Based upon the foregoing argument and authority cited, review should be granted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this _____ day of July, 2003, to **HARRY S. RALEIGH, JR.,** Niles, Dobbins, Meeks, Raleigh & Dover, L.L.P., P. O. Box 11799, Fort Lauderdale, FL 33339-1799; and **GAYLORD A. WOOD, JR.**, 304 S.W. 12th Street, Fort Lauderdale, FL 33315-1521.

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Louis F. Hubener

CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared with Courier New 12-point in compliance with Fla. R. App. P. 9.210(a)(2).

_____
Louis F. Hubener