IN THE SUPREME COURT OF FLORIDA

JIM SMITH, PROPERTY APPRAISER,
PINELLAS COUNTY, FLORIDA, AND
JAMES ZINGALE AS THE EXECUTIVE
DIRECTOR OF THE DEPARTMENT OF
REVENUE, STATE OF FLORIDA,

Petitioners,

vs. Case No. SC05-488

STEPHEN KROSSCHELL,

Respondent.

_____/

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Respondent Stephen Krosschell ("Respondent") purchased property located at 2907 Cedar Trace, Tarpon Springs, FL ("Property") in 1999, and Respondent homesteaded the Property for the year 2000 and the years thereafter. (R38) In August 2000, Respondent received his first notice of proposed property taxes of $3,454.28, reflecting an assessed value for the Property of $188,700. (R57) Petitioner Jim Smith, the Pinellas County Property Appraiser ("Appraiser") certified this $188,700 assessed value for the Tax Roll on October 13, 2000. (R38-39) Pursuant to section 193.122(2), Florida Statutes (1999), the Appraiser was required to publish a notice of certification in a local publication and display the notice of certification in his office. In October 2000, the Appraiser sent a final tax notice to the Respondent, which again reflected an assessed value for the Property of $188,700. (R58) This notice stated that taxes were due on November 1, 2000. (R59) Respondent's mortgage company paid the discounted tax of $3,316.11 on November 10, 2000. (R60)

On November 10, 2000, the Appraiser determined that he had made a data entry error which caused a material mistake of fact relating to an essential condition of the Property. Accordingly, he issued a Certificate of Correction of

Tax Roll to the Tax Collector, stating that the assessed value of the Property should be increased to $288,800, and the total tax should be increased to $5,566.52. (R61) Neither the Tax Collector nor the Appraiser notified the Respondent of this correction. (R39) Instead the Tax Collector returned the mortgage company's payment to the mortgage company and, without Respondent's knowledge or consent, directed the mortgage company to pay increased taxes of $5,566.52, as discounted to $5,343.86 for early payment. (R39, 60) Without Respondent's knowledge or consent, the mortgage company paid this amount from Respondent's escrow account. (R39, 60)

When Respondent later discovered these events after his mortgage company required him to increase his mortgage payments, he made a complaint to the Pinellas County Tax Collector and the Appraiser. (R39) Consequently, the Appraiser on January 2, 2001, directed the Tax Collector to correct the valuation of the Property on the Tax Roll to its original assessed value of $188,700 and to refund the increase in taxes. (R64) The year 2000 assessed value for the Property, as reflected in the year 2000 Tax Roll, was therefore $188,700. In August and in October or November 2001, Respondent received a notice of proposed property taxes and a final notice, reflecting an assessed value of $297,400 for the Property and taxes of $5,920.69 (R67-69) The 2001 assessed value for the Property

represented a 58% increase over the 2000 assessed value for the Property, as reflected in the January 2, 2001, correction to the year 2000 Tax Roll. (R64, 67-69)

Respondent paid the increased taxes under protest and filed a lawsuit to correct the assessed value and to obtain a refund of his paid taxes. (R40) On April 7, 2003, the court granted summary judgment to the Respondent. (R82-83) On January 29, 2004, the court denied rehearing. (R96-97) On January 12, 2005, the Second District Court of Appeal affirmed but certified conflict. Smith v. Krosschell, 892 So. 2d 745 (Fla. 2d DCA 2005). The Appraiser and Florida's Department of Revenue now seek review in this Court.

SUMMARY OF THE ARGUMENT

I. This Court may appropriately accept jurisdiction in this cause, because the decision under review has important consequences for the manner in which property appraisers, who are constitutional officers, carry out their duties. The Second District certified conflict with a decision of the Third District, and this Court should decide whether the 2001 amendment to section 193.155, Florida Statutes, is constitutional.

II. The applicable standards of review require liberal construction of the pertinent constitutional and statutory provisions in favor of Respondent, who is a taxpayer and homeowner.

III. The Appraiser attempted on November 10, 2000, to increase his assessment of Respondent's Property, after he had certified it a month earlier for the tax rolls. The Appraiser now does not dispute that he had no statutory authority at that time to increase the base "just value" of Respondent's Property. The Appraiser's argument in this Court is that a 2001 statutory amendment can be applied retroactively to validate the increase in the base value. Florida courts, however, have repeatedly refused to apply a statutory change retroactively if it impairs vested rights, creates new obligations or imposes new penalties. Here, the statutory amendment imposed a new obligation to pay more taxes and impaired Respondent's vested right that the assessment of his Property not increase each year by more than 3%. In addition, a statutory change does not apply retroactively unless the Legislature clearly expresses its intent. The Legislature has not made any such clear expression of its intent in this instance. Florida courts have frequently held that tax statutes do not apply retroactively.

After the base value was determined, Respondent had a vested right under the Florida Constitution not to have increases in the assessments of his Property exceed 3%. Moreover, after the base value was determined, neither party will have any basis to dispute the simple mathematical calculations needed to determine assessments in later years founded on this initial base value. Consequently, the

trial court correctly ruled that annual assessments for years after 2000 should not exceed the 3% cap.

IV. Regardless of whether this Court agrees that the Appraiser cannot apply amended section 193.155, Florida Statutes (2001), retroactively, it should also decide whether amended section 193.155 is constitutional. The parties fully briefed this issue below, and it is ripe for review. The issue is an important tax question, the reasoning of the First District in another case indicates that it would find that the amendment is unconstitutional, and deciding the question would be useful to the parties in their other litigation. The issue is capable of repetition and yet evades review. Most taxpayers do not have the knowledge and do not have the economic resources to mount a constitutional challenge to the statute for only a relatively minimal economic benefit. Accordingly, most taxpayers will not litigate the issue, and it will likely take years to reach this Court again, if at all. This Court has a constitutional duty to prevent governmental officials from violating the Florida Constitution.

V. The 58% increase between the 2000 and 2001 assessments on Respondent's Property violated the Florida Constitution, because it exceeded the 3% cap. The 2001 amendment to Section 193.155, to the extent it authorized this increase, is unconstitutional. The Constitution provides that changes in assessed

value of homesteaded property shall occur *only* as provided in the Constitution. Error correction is not one of the listed reasons for changing the assessed value. Adopting the Appraiser's construction of the Constitution would be inconsistent with the purpose of the 3% cap to protect the home owner.

ARGUMENT

I. THIS COURT SHOULD TAKE JURISDICTION IN THIS CAUSE.

Petitioner agrees with the Appraiser that this Court should take jurisdiction in this cause, although not entirely for the reasons identified by the Appraiser in his Initial Brief. As the Appraiser points out, this Court has jurisdiction under Article V, Section 3(b)(4), of the Florida Constitution, because the Second District certified conflict with Robbins v. Kornfield, 834 So. 2d 955 (Fla. 3d DCA 2003), rev. granted, 852 So. 2d 861 (Fla. 2003), rev. dismissed, 868 So. 2d 523 (Fla. 2004). The Second District's decision, however, was based on its view that it could not apply retroactively a 2001 amendment to section 193.155, Fla. Stat., found in ch. 2001-137, § 5, Laws of Fla. ("2001 amendment"). By contrast, Robbins did not discuss the law on the retroactive application of tax statutes, and it instead simply assumed without discussion that the amended statute did apply to prior years. The Second District's decision below conflicts with the result of Robbins, and this Court therefore has jurisdiction, but, contrary to the Appraiser's

views, the Second District's decision does not necessarily conflict with Robbins' reasoning because Robbins' reasoning does not address the retroactivity issue.

In his Initial Brief, the Appraiser does not mention that this Court separately has jurisdiction under Article V, Section 3(b)(3), of the Florida Constitution, because the decision below expressly affects property appraisers, who are a class of constitutional officers. See Art. VIII, § 1(d), Fla. Const. ("There shall be elected by the electors of each county, . . . a property appraiser . . . ."). This Court has previously accepted jurisdiction on this basis. See Redford v. Department of Revenue, 478 So. 2d 808, 810 (Fla. 1985) ("The broad issue before us is the authority of the Department of Revenue . . . to overrule or challenge decisions of a County Property Appraiser . . . . We have jurisdiction. Art. V, § 3(b)(3), Fla. Const."). This Court should resolve the conflict between the decisions of the Second and Third Districts which issued conflicting instructions to two constitutional officers – the Dade and Pinellas County property appraisers – as well as to other property appraisers as a class statewide.

Finally, Respondent argued throughout the proceedings below that the 2001 amendment which the Appraiser seeks to employ is unconstitutional. This issue was fully briefed by both sides in the lower tribunals. See Krosschell, 892 So. 2d at 1146 ("Krosschell claimed that the fifty-eight percent increase in the year 2001

over the year 2000 assessment was in violation of Article VII, Section 4, of the Florida Constitution."). As Respondent explains in more detail in Part IV of this Brief, because the increase in taxes resulting from corrections to erroneous residential assessments is typically relatively small in comparison to the litigation costs needed to challenge these assessments, this Court may not have an opportunity again for many years, if at all, to address this important constitutional tax issue, which is likely to recur and yet evades review. In the meantime, Florida property appraisers will continue to violate taxpayers' constitutional rights. Given this Court's obligation to uphold the Florida Constitution and uphold the constitutional rights of Florida's citizens, this Court should take jurisdiction to resolve the constitutional question.

II. THE APPLICABLE STANDARDS OF REVIEW REQUIRE LIBERAL CONSTRUCTION IN FAVOR OF THE RESPONDENT, WHO IS A TAXPAYER AND OWNER OF HOMESTEADED PROPERTY.

Although Florida Rule of Appellate Procedure 9.210(b)(5) required the Appraiser to address the "applicable appellate standard of review," conspicuously absent from the Appraiser's Initial Brief is any discussion of the standards of review applicable to tax statutes and to the constitutional homestead protection provided by Article VII, Section 4(c), of the Florida Constitution. The Second District below expressly relied on the pertinent standard of review in making its

decision.

This Court has repeatedly held that courts must broadly construe constitutional homestead provisions such as Section 4(c) in favor of the homeowner and strictly construe any exceptions to these provisions. In Havoco of Am., Ltd. v. Hill, 790 So. 2d 1018 (Fla. 2001), for example, this Court considered whether a debtor who deliberately homesteaded his property with the intent to defraud his creditors should be entitled to bankruptcy protection of his home. This Court liberally construed the homestead exemption and found that the debtor could indeed protect his property, notwithstanding his intent to defraud.

> [T]his Court's homestead exemption jurisprudence has long been guided by a policy favoring the liberal construction of the exemption. "Organic and statutory provisions relating to homestead exemptions should be liberally construed in the interest of the family home." A concomitant in harmony with this rule of liberal construction is the rule of strict construction as applied to the exceptions.

Id. at 1021 (citation omitted). See also Tramel v. Stewart, 697 So. 2d 821, 824 (Fla. 1997) ("[T]he homestead guarantee in the constitution must be liberally construed."); Butterworth v. Caggiano, 605 So. 2d 56, 59 (Fla. 1992) ("Florida courts have consistently held that the homestead exemption . . . must be liberally construed.").

The same conclusion applies to the tax statute at issue in this appeal, which implements the constitutional guarantee found in Section 4(c). In the decision

under review, Krosschell, 892 So. 2d at 1147, the Second District quoted extensively from Maas Bros., Inc. v. Dickinson, 195 So. 2d 193, 198 (Fla. 1967), in which this Court held as follows:

> [T]he taxing authority [does not] stand[] in a favored position before the Court. . . . It is a fundamental rule of construction that tax laws are to be construed strongly in favor of the taxpayer and against the government, and that all ambiguities or doubts are to be resolved in favor of the taxpayer. This salutary principle is found in the reason that the duty to pay taxes, while necessary to the business of the sovereign, is still a duty of pure statutory creation and taxes may be collected only within the clear definite boundaries recited by statute.

See also Fisher v. Sun Oil Co., 330 So. 2d 76, 80 (Fla. 1st DCA 1976) ("It is a cardinal rule that a statute imposing taxes must be clear and specific and will be liberally construed in favor of the taxpayer."). The applicable standards of review thus require this Court to construe the pertinent constitutional and statutory provisions liberally in favor of the Respondent.

III. THE 2001 STATUTORY AMENDMENT CANNOT BE APPLIED RETROACTIVELY TO PERMIT THE APPRAISER TO CHANGE HIS CERTIFIED DETERMINATION OF THE JUST VALUE OF RESPONDENT'S PROPERTY.

A. The Appraiser Increased his Assessment of Respondent's Property by Over $100,000, One Month after Certifying a Lower Assessment.

In this case, pursuant to section 193.122(2), Florida Statutes (1999), the Appraiser on October 10, 2000, certified the assessments on his tax roll, including

a $188,700 assessment on Respondent's Property. Pursuant to section 193.155, Florida Statutes (1999), this certified assessment of Respondent's Property was an assessment of "just value as of January 1," 2000, the year in which the Property was homesteaded. Pursuant to section 193.122(2), the Appraiser published a notice of certification in a local publication and displayed a notice of certification in his office.

"To certify" means "to attest authoritatively." State v. Williams, 362 So. 2d 678, 680 (Fla. 4th DCA 1978). Certification is important under Florida law, because it provides certainty and finality to tax assessments. "[T]he historical cutoff point of certification of tax roll . . . gives stability to taxation." Korash v. Mills, 263 So. 2d 579, 582 (Fla. 1972).

> Once the Tax Assessor has certified the tax roll and the tax levied thereon paid on particular described property, said property cannot again be taxed for that particular year.
>
> This principle was clearly stated in the case of State ex rel. Gillespie v. Thursby, 1932, 104 Fla. 103, 139 So. 372, at page 376, as follows:
>
> '. . . There must be a time for the cessation of the relation of the levying and assessing officers to the tax of each year, and there can be no better time than when the possession of the tax rolls pass to other parties. With the levy made, assessments completed, certificate of the board of county commissioners affixed to the tax rolls, the warrant to the tax collector issued, and the tax rolls delivered to the proper officials under the law, who are without authority to surrender them, it

> would not be possible for the assessment of the lands . . . to be changed . . . .'

Okeelanta Sugar Refinery, Inc. v. Maxwell, 183 So. 2d 567, 568 (Fla. 4th DCA 1966).

In United Telephone Co. v. Colding, 408 So. 2d 594, 595 (Fla. 2d DCA 1981), the court said that, "once the tax roll has been certified and the tax levied thereon paid, the property upon which taxes have been paid cannot be taxed for that year even though the tax appraiser has mistakenly, inadvertently or negligently assessed the property for taxation." In accordance with Florida law, the Appraiser, by certifying the tax roll, attested authoritatively and finally that Respondent's Property should be assessed at a just value of $188,700 for the year 2000.

Thereafter, a final tax bill was sent to the Respondent, reflecting the assessed just value of $188,700. (R58) Taxes based on this assessment were due on November 1, 2000. Respondent's mortgage company paid the taxes on November 10, 2000, based on this certified and authoritative assessed just value. (R60) On November 10, 2000, however, the Appraiser increased by over $100,000 the assessed value which he had authoritatively certified one month earlier. (R61) The Appraiser did not provide notice of this 58% increase to the Respondent, who discovered it only when his mortgage company dunned him for more money to pay his taxes.

Because Respondent had been given no opportunity to challenge this 58% increase under the statutory procedures in section 194.011(3), Florida Statutes, for bringing challenges to the Value Adjustment Board, the Appraiser changed his assessment back to the original $188,700 value on January 2, 2001. (R64) Respondent has never since received formal notice that this assessment was changed. In August 2001, however, Respondent received notice of a 58% increase in his assessment. (R68)

B. The Appraiser Acted without Statutory Authorization on November 10, 2000, when he Attempted to Increase the Base Year "Just Value" Assessment of Respondent's Property.

The Appraiser makes no effort to contend in this Court that his actions in 2000 had statutory authorization at that time. By making no argument on this point, he necessarily concedes that he did in fact act illegally on November 10, 2000, when he attempted to increase the base year assessment of Respondent's Property.

The Appraiser relies primarily on Robbins v. Kornfield, 834 So. 2d 955 (Fla. 3d DCA 2003), rev. granted, 852 So. 2d 861 (Fla. 2003), rev. dismissed, 868 So. 2d 523 (Fla. 2004). Robbins itself, however, cited Smith v. Welton, 729 So. 2d 371 (Fla. 1999) ("Welton II"), and found that "in Welton, the Florida Supreme Court held that property appraisers lacked authority under Section 193.155(8)(a),

Florida Statutes (1995), to retroactively change the base year 'just value' assessment of a homestead property." 834 So. 2d at 956-57. The Appraiser likewise concedes in his Initial Brief in this Court at 18 that "in Welton, this Court determined that section 193.155(8)(a), Florida Statutes (1995), did not provide authority to make changes to the base year just value assessment, based upon its interpretation of the plain language of the statu[t]e as it then existed."

The Appraiser's concession that he acted without statutory authorization on November 10, 2000, when he attempted to change the base year assessment of Respondent's Property, is well-supported by Welton II and the statutory text. On November 10, 2000, section 193.155, Florida Statutes, provided in relevant part as follows:

> Property receiving the homestead exemption after January 1, 1995, shall be assessed at just value as of January 1 of the year in which the 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 the homestead exemption, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from the assessment 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.

> (2) If the assessed value of the property as calculated under subsection (1) exceeds the just value, the assessed value of the property shall be lowered to the just value of the property . . . .
>
> (3) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a change in ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2) . . . .
>
> . . . .
>
> (8) Erroneous assessments of homestead property assessed under this section may be corrected in the following manner:
>
> (a) If errors are made in arriving at any annual assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the assessment must be recalculated for every such year.
>
> (b) If changes, additions, or improvements are not assessed at just value as of the first January 1 after they were substantially completed, the property appraiser shall determine just value for such changes, additions, or improvements for the year they were substantially completed. Assessments for subsequent years shall be corrected, applying this section as applicable.

(R70)

This Court in Welton II interpreted this statute not to permit property appraisers to change initial just values of homesteaded property, even if they determine that they made a mistake in setting this value.

> Section 193.155(8)(a) on its face is inapplicable to the base year assessment. . . . The statute by its plain language refers to errors in the "annual assessment" (i.e., the value that is ascribed to a homestead each year after the "just value" has been determined in the base year), not errors in the base year "just value" assessment. Nowhere in section 193.155(8)(a) is the base year "just value" assessment even mentioned. By its plain wording, section 193.155(8)(a) thus bestows

> no authority on a property appraiser to make a retroactive change in the base year assessment.
>
> Accordingly, we hold that [the property appraisers] lack authority under section 193.155(8)(a) to retroactively change the base year "just value" assessment.

Welton II, 729 So. 2d at 373.

Here, the Appraiser certified the just value assessment for the Property in October 2000. The Appraiser, however, attempted to change this just value assessment a month later on November 10. Under Welton II, the Appraiser did not have the statutory authority at that time to make this change to the base year assessment, as the Appraiser now does not dispute and therefore appropriately concedes.

C. The Appraiser is Seeking to Apply the 2001 Statutory Amendment Retroactively.

The Appraiser also correctly does not dispute that he is seeking to apply the 2001 amendment to section 193.155, Florida Statutes, retroactively to Respondent's Property. See Appraiser's Initial Brief at 15 and 18 ("This Court should . . . find that the 2001 amendment . . . was intended to operate retroactively." "Included in [the] powers [granted by the 2001 amendment] was the right and duty of the Appraiser to retroactively correct . . . errors.") To determine whether a new statute is being applied retroactively, "'the court must ask whether

the new provision attaches new legal consequences to events completed before its enactment.'" Memorial Hospital–West Volusia, Inc. v. News-Journal Corp., 784 So. 2d 438, 440 (Fla. 2001) (citation omitted).

Here, adopting the Appraiser's views regarding the 2001 amendment would attach "new legal consequences" in two ways to the initial just value determination of Respondent's Property, completed by the Appraiser in the year 2000 before the enactment of the 2001 amendment. First, as this Court said in Welton II, under the version of section 193.155 extant in 2000, the base value determination in 2000 could not later be changed. The Appraiser's application of the 2001 amendment below attached a new legal consequence to the 2000 base value assessment by allowing changes to this assessment. Second, later assessments could not increase more than 3% each year from the 2000 base value assessment. The Appraiser's application of the 2001 amendment below again attached a new legal consequence to the 2000 base value determination by allowing a 58% increase in the assessment in 2001. Thus, the Appraiser's application of the 2001 amendment had retroactive effects both for the 2000 assessment and for the 2001 assessment, because, in both instances, it attached new legal consequences to the initial base value assessment completed by the Appraiser before the enactment of the 2001 amendment.

D. The 2001 Amendment to Section 193.155, Florida Statutes, Cannot be Applied Retroactively.

1. By Passing the 2001 Amendment, the Legislature Substantively Changed the Law.

The Appraiser's argument in the Second District and in this Court was and is that, in the 2001 amendment, the Legislature amended section 193.155 to allow property appraisers to change the base year assessment retroactively. The Appraiser cites Robbins v. Kornfield, 834 So. 2d 955 (Fla. 3d DCA 2003), rev. granted, 852 So. 2d 861 (Fla. 2003), rev. dismissed, 868 So. 2d 523 (Fla. 2004), and contends that this statutory amendment applies retroactively. See the Appraiser's Initial Brief at 19 ("The retroactive application of section 193.155, Florida Statutes (2001), has been both interpreted and approved by the Third District Court of Appeal in Robbins . . . ."). Robbins, however, did not discuss the law on retroactive application of tax statutes, and it instead simply assumed without discussion that the amended statute did apply to prior years. Robbins cannot be cited as authority on an issue of law that apparently was not raised and that it apparently did not consider.

The 2001 statutory amendment to section 193.155 was not a clarification of prior law. It instead changed prior law to give county governments the right to impose additional taxes that they previously could not impose. When the

Legislature passed the amendment, it knew it was changing substantive law. According to the Senate Staff Analysis for this amendment, the Legislature made this change precisely because the prior law did not allow property appraisers to correct errors in the base just value of homestead property.

> Section 193.155, F.S., provides that if an error is made in the annual assessment of homestead property subject to subsection (c) of s. 4 of Art. VII of the Florida Constitution, the annual assessment must be recalculated for every year, but the base year assessment for such properties cannot be changed, even if it is discovered that the base year assessment contains a material mistake of fact concerning the property.

(R75) The House Message Summary for this Bill agreed that the amendment was made "to allow the property appraiser to correct material mistakes of fact on assessments of homestead property." (R79) The 2001 amendment thus substantively changed prior law.

2. Applying the 2001 Statutory Amendment Retroactively Would Improperly Impair Vested Rights and Create New Tax Obligations.

A two-part test applies to determine whether a statute is properly applied retroactively.

> To determine whether a statutory amendment applies retroactively, courts must engage in a two step analysis. First, they must determine whether there is clear evidence of legislative intent to apply the statute retrospectively. If the legislation clearly expresses an intent that it apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.

Pondella Hall For Hire, Inc. v. Lamar, 866 So. 2d 719, 722 (Fla. 5th DCA 2004). Applying the 2001 amendment retroactively in this case would violate both prongs of this two-part test.

In this instance, applying the statutory amendment to Respondent's Property resulted in a tax increase of more than $2,000 (R60-61), an increase which Pinellas County could not have obtained prior to the amendment. Under the second prong of the retroactivity test, even if the Legislature clearly intends to apply a statute retroactively, Florida courts refuse to apply the statute if it impairs vested rights, creates new obligations or imposes new penalties. Here, the Appraiser's application of the 2001 statutory amendment imposed a new obligation on Respondent to pay more taxes and impaired Respondent's vested, constitutional right not to have his assessments increase by more than 3%.

> Even when the Legislature does expressly state that a statute is to have retroactive application, this Court has refused to apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties. When we apply these standards to the instant case, we find that section 627.727(10) cannot be applied retroactively because it is, in substance, a penalty. Without question, the Legislature has expressly stated that section 627.727(10) is remedial and is to be applied retroactively. Just because the Legislature labels something as being remedial, however, does not make it so. In fact, . . . we [have] signified a contrary conclusion by finding that the imposition of the amount of the excess judgment as damages would be "analogous to imposing a penalty or punitive damages on the insurer." For example, although the Legislature has

> characterized section 627.727(10) as simply a remedial clarification of legislative intent, the damages incurred by State Farm under section 627.727(10) would be over $200,000 higher in this case than if the section did not apply to this action.

State Farm Mut. Auto. Ins. Co. v. Laforet, 658 So. 2d 55, 61 (Fla. 1995) (citations omitted).

Just as the increased damages to the insurer was a substantive result of a statutory amendment in State Farm Mut. Auto Ins. Co. which could not be applied retroactively, so also the increased taxes to Respondent in the present case means that the statutory amendment to section 193.155 cannot be applied retroactively to his Property. In Florida Department of Revenue v. Liberty National Ins. Co., 667 So. 2d 445 (Fla. 1st DCA 1996), the First District for this reason refused to apply a statutory amendment that would increase taxes. Citing State Farm Mut. Auto Ins. Co., the First District rejected retroactive application of the statute because "[t]he 1994 amendment would drastically alter tax liability for preceding years." 667 So. 2d at 446. The same conclusion applies in the case at hand.

3. The 2001 Amendment Cannot be Applied Retroactively, Because the Legislature did not Clearly Say that the Amendment Should be Applied Retroactively.

The Appraiser's arguments also fail, because the Legislature in this instance did not clearly say that the 2001 amendment to section 193.155 should be applied

retroactively. As the Appraiser asserts, the 2001 amendment authorizes appraisers to correct base year assessments. The Appraiser does not recognize, however, that the Legislature said nothing one way or another about whether this new statutory authorization applies only to correction of base year errors made after the 2001 amendment's effective date or whether Appraisers can also reach back to errors in pre-2001base year assessments. Because the Legislature did not clearly express its intent on this point, "[t]he general rule [applies] that a substantive statute will not operate retrospectively." State Farm Mut. Auto Ins. Co., 658 So. 2d at 61.

The Appraiser's Initial Brief entirely fails to address this fundamental point, which was not discussed in the Third District's decision in Robbins and which was the basis of the Second District's decision below. According to the Second District, "[t]here is no indication of legislative intent, clear or otherwise, that the statute in question applies retroactively. Therefore, the circuit court correctly determined that the 2000 version of the statute applied here and that the Property Appraiser could not change the original assessed value . . . ." Krosschell, 892 So. 2d at 1146-47.

A reasonable interpretation of the 2001 statutory amendment is that the Legislature did not intend to upset citizens' settled expectations under this Court's decision in Welton II that initial base year determinations made prior to 2001could

not be changed. After the effective date of the amendment, however, citizens would no longer have this expectation, and base year errors made after 2000 could be corrected under the amended statute. Contrary to the Appraiser's suggestion, see Appraiser's Initial Brief at 13 ("The legislature is presumed not to pass meaningless legislation."), this interpretation manifestly does not make the 2001 amendment "meaningless," because the amended statute does apply to post-2000 base year errors.

In this regard, this Court's decision in Memorial Hospital–West Volusia, Inc. v. News-Journal Corp., 784 So. 2d 438 (Fla. 2001), is closely on point. In Memorial Hospital, this Court found that, although a new statute applied to "existing leases," it could "be reasonably read" not to apply to "records created or minutes of meetings held before the effective date of the statute under leases which were in existence on that date." Id. at 441. Although the statute was not silent about existing leases, it was "silent concerning the effect of the exemption on those records in existence at the time the statute was enacted." Id. This Court therefore concluded "that the statute [did] not set forth the clear legislative intent . . . necessary for the presumption of prospective application to be overcome." Id. Similarly, in the present case, the 2001 amendment was silent about the amendment's effect on base year errors already "in existence at the time the statute

was enacted." Consequently, the 2001 amendment does not "set forth the clear legislative intent" necessary to overcome Florida's presumption against retroactive statutes.

Based on this long-standing presumption, Florida courts have repeatedly refused to apply tax statutes retroactively. In State ex rel. Riverside Bank v. Green, 101 So. 2d 805 (Fla. 1958), for example, cited by the Second District below, Krosschell, 892 So. 2d at 1146, this Court found that a newly enacted tax statute did not apply to periods prior to the effective date of the statute.

> We have recognized the presumption that a legislative act operates prospectively unless the intent that it operate retrospectively is clearly expressed. . . .
>
> There is positively nothing in the title of the statute under study to inform a reader it contained a provision that it would operate retrospectively, or in the body "clearly" stating that purpose except the date it would become effective. . . .
>
> . . . If the uniformity of the taxing process is to be maintained to the convenience of taxpayers as well as tax gatherers and the rule is to be perpetuated, there can be only one logical conclusion and that is that the act should be operative prospectively.
>
> Why the legislature did not choose language clearly stating that the act would put the added burden on the property during the year 1957 we will not undertake to surmise. We say only that the legislature did not and that not having done so, the tax could not attach before the later year.
>
> . . . [T]he cardinal rule [is] that statutes imposing taxes must be clear and specific and will be "liberally construed in favor of the

> taxpayer." . . . [S]uch statutes must be construed "strictly as against the state and in favor of the taxpayer."
>
> . . . As we have pointed out, the purpose to make the act retroactive must be more than plausible–it must be clear. We cannot bend the rules of construction . . . . [T]he act should have stated in unmistakable language that it was to apply in the tax year 1957.

Id. at 807-08 (citations omitted).

In State of Florida, Dep't of Revenue v. Zuckerman-Vernon Corp., 354 So. 2d 353 (Fla. 1977), also cited by the Second District below, Krosschell, 892 So. 2d at 1146, this Court did not apply a documentary stamp tax statute retroactively, because the effective date for the statute was after the year at issue. "It is a well-established rule of construction that in the absence of clear legislative intent to the contrary, a law is presumed to act prospectively. The 1977 Legislature's inclusion of an effective date of July 1, 1977, in Ch. 77-281 effectively rebuts any argument that retroactive application of the law was intended." Id. at 358 (citations omitted); accord In re Name Change Petition of Mullin, 892 So. 2d 914, ____ (Fla. 2d DCA 2005) (citation omitted) ("[T]he inclusion of an effective date in a statute by the legislature 'effectively rebuts any argument that retroactive application of the law was intended.'"); Middlebrooks v. Department of State, Division of Licensing, 565 So. 2d 727 (Fla. 1st DCA 1990) (citing Zuckerman-Vernon Corp.). Here, the Legislature stated an effective date of July 1, 2001, for its amendment to section

193.155. Ch. 2001-137, § 12, Laws of Fla. As in Zuckerman-Vernon Corp., Mullin, and Middlebrooks, this effective date "effectively rebuts any argument that retroactive application of the law was intended."

Several other cases have reached the same conclusion that tax statutes cannot be applied retroactively. See Pate v. City of Fernandina Beach, 714 So. 2d 1070, 1073 (Fla. 1st DCA 1998) ("Since the present dispute has to do with tax rolls prepared before 1994, . . . no amendment that took effect after January 1, 1993, applies in the present case."); Florida Department of Revenue v. Liberty National Ins. Co., 667 So. 2d 445, 446 (Fla. 1st DCA 1996) ("The 1994 amendment would drastically alter tax liability for preceding years."); Hausman v. VTSI, Inc., 482 So. 2d 428, 430 (Fla. 5th DCA 1985) ("Tax statutes . . . operate only prospectively unless legislative intent to the contrary clearly appears."); Eli Witt Co. v. Department of Business Regulation, 388 So. 2d 1340, 1340 (Fla. 1st DCA 1980) ("The [tax] rule remained viable until the effective date of Chapter 77-421, which did not have retroactive application.").

For all of these reasons, the 2001 amendment to section 193.155 does not apply retroactively in this case. Under Welton II and the version of section 193.155 in effect in 2000, the Appraiser did not have statutory authority to change

the 2000 base year assessment for Respondent's Property. This Court should therefore affirm the lower tribunals' decisions on this point.

D. The Assessment Increases for Later Years for Respondent's Property Cannot Exceed 3% of the Assessed Value for the Prior Year.

The lower tribunal ruled for years 2001 and later that "assessments for later years shall be corrected and based on [the] year 2000 assessment [of $188,700], in accordance with the law and the Florida Constitution." (R82) The lower tribunal thus ruled that, after the year 2000, increases in the annual assessments could not exceed 3% of the prior year's assessment, as provided in Article VII, Section 4(c), of the Florida Constitution, and section 193.155(1)(a), Fla. Stat. (1999). As explained in more detail in the next section of this Brief, once the base value of the Property was determined, Respondent had a vested right under Section 4(c) not to have the assessed value of his Property increased by more than 3% each year. Although section 193.155(8)(a), Fla. Stat. (2001), provides a mechanism for correcting erroneous annual assessments, neither the original nor the amended version of this statute can be applied to impair Respondent's vested constitutional right. See State Farm Mut. Auto. Ins. Co. v. Laforet, 658 So. 2d 55, 61 (Fla. 1995) ("[T]his Court has refused to apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties.").

In addition, the determination of the annual assessments for years 2001 and later was and is a simple mechanical calculation based on a percentage value of the prior year's assessment. § 193.155(1)(a), Fla. Stat. (2001). Neither party in this case contends that this mathematical determination for Respondent's Property will be erroneously calculated, once the base value is determined. As this Court decided in Welton II, an error in a base year assessment did not mean that the mathematically calculated annual assessments were erroneous and could be corrected under a statute allowing corrections only to annual assessments. 729 So. 2d at 373.

Both parties agree that the assessment error in this case occurred in 2000 for the base value determination. For the reasons previously stated, the 2001 amendment to section 193.155(8)(a) cannot be applied retroactively to correct this base value error. After the year 2000 base value determination is decided, annual assessments for later years only require the application of simple arithmetic, and neither side can contend that these assessments are erroneous and subject to correction under section 193.155(8)(a). Consequently, this Court should affirm the lower tribunal's decision for the years 2001 and later.

IV. THIS COURT SHOULD DECIDE WHETHER THE 2001 AMENDMENT IS CONSTITUTIONAL.

A. The Constitutional Question is Ripe for Review if This Court Decides that the Appraiser can Apply the 2001 Amendment Retroactively.

If this Court agrees with the Appraiser that he can apply the 2001 amendment retroactively, then the question whether the 2001 amendment to section 193.155 violates Article VII, Section 4(c), of the Florida Constitution is ripe for review in this Court. Section 193.155 is the legislature's implementation of the constitutional homestead protection in Section 4(c). Whether the 2001 amendment complies with this constitutional protection was briefed and argued in both the trial court and the Second District. This Court would fail to do complete justice in the case before it if it ruled that the 2001 amendment could be applied retroactively but did not address whether the 2001 amendment was constitutional.

B. Even if This Court Decides that the Appraiser Cannot Apply the 2001 Amendment Retroactively, This Court Should Decide Whether the Amendment is Constitutional, Because the Extent of the Government's Taxing Power is an Important Tax Question.

This Court should decide the constitutional issue even if it agrees with Respondent that Appraiser cannot apply the 2001 amendment retroactively. Respondent recognizes that courts often decline to address constitutional questions that can be resolved on other grounds. For several reasons, this Court should not

follow that practice here.

In the first place, whether the 2001 amendment is constitutional is an important tax question with substantial implications for the taxing authorities and for the taxes which Florida's citizens must pay. This Court ought to decide this important question and should do so sooner rather than later.

> This [case] involves a construction of both the Constitution and the statute. Ordinarily the Court will avoid considering a constitutional question if the particular matter in litigation can be determined by a construction of the statute, but under the circumstances of this case the Court feels impelled to examine the constitutional question [because] …it is a matter of great public importance that the extent of the taxing power of the state be settled and thoroughly understood by state officers and by taxpayers.

Green v. State ex rel. Phipps, 166 So. 2d 585, 587 (Fla. 1964). Green is directly on point and calls for this Court to resolve the constitutionality of the 2001 amendment at this time.

C. This Court Should Decide the Constitutional Question, because the Reasoning of the First District in Another Case Indicates that it would Find that the 2001 Amendment is Unconstitutional.

This Court should also resolve the constitutional question, because this Court has mandatory jurisdiction of decisions that declare a statute unconstitutional. Art. V, § 3(b)(1), Fla. Const. Here, as Respondent explains in more detail in Part V of this Brief, the reasoning of the First District's decision in

Smith v. Welton, 710 So. 2d 135, 137 (Fla. 1st DCA 1998) ("Welton I"), aff'd on other grounds, 729 So. 2d 371 (Fla. 1999), that the pre-2001 version of section 193.155 was unconstitutional applies equally to the 2001 amendment of this statute. This Court ought to decide whether a statute is constitutional when the reasoning of a district court in another case indicates that it would rule that the statute is invalid.

This Court's decision in Sullivan v. Sapp, 866 So. 2d 28 (Fla. 2004), is analogous. In Sullivan, this Court first decided the case on nonconstitutional grounds, but it nevertheless reached the constitutional question to resolve a conflict with another case, because this Court generally takes jurisdiction of conflict cases. By analogy in the present case, this Court should reach the constitutional question, because this Court has mandatory jurisdiction when a statute is declared unconstitutional, and the reasoning of the First District in another case renders the 2001 amendment unconstitutional.

> We fully recognize that when a case may be resolved on grounds other than constitutional, the Court will ordinarily refrain from proceeding to decide the constitutional question. However, we also recognize the well-settled principle that "once an appellate court has jurisdiction it may, if it finds it necessary to do so, consider any item that may affect the case." When, as here, the constitutional conflict issue is the basis for our jurisdiction, disposition of the constitutional question will aid the lower courts, afford guidance, serve to resolve and eliminate a conflict between the district courts, and advance the

> underlying policy of removing uncertainty for children and families, we find it necessary to consider the constitutional issue.

Sullivan, 866 So. 2d at 34-35 (citations omitted).

D. This Court Should Resolve the Constitutional Question to Provide Guidance to the Parties in Their Other Cases.

The present case involves the 2000 and 2001 assessments of Respondent's Property. The Appraiser has also continued improperly to use his correction to the 2000 assessment as the basis for later assessments of Respondent's Property. The Respondent and the Appraiser are therefore currently engaged in separate litigation in the trial court over the propriety of these later assessments. These later cases in the trial court either are or will be stayed, pending this Court's decision in the present case.

This Court should decide the constitutional question, to provide guidance to the trial court in these other cases.

> Ordinarily, this Court will not reach constitutional issues if the case in which the question arises may be effectively disposed of on other grounds. However, it is foreseeable that in the instant cause the state will file an amended information. To aid in the disposition of any future proceedings below, we now consider the constitutionality of the statute vel non.

State v. Dye, 346 So. 2d 538, 541 (Fla. 1977) (citations omitted).

E. This Court Should Decide the Constitutional Question even if it is Moot, Because Courts Commonly Decide Moot Questions that are Important and Capable of Repetition or are Likely to Recur but Evade Review.

The principle that courts commonly will not decide constitutional questions if the case is susceptible to resolution on other grounds can be understood as an aspect of the mootness doctrine that courts generally will not decide moot questions. If a court has disposed of a case on other grounds, then the constitutional issue can be deemed moot. On the other hand, a countervailing principle is that this Court does decide moot questions if they are important and likely to recur or are capable of repetition yet evading review. "The mootness doctrine does not destroy our jurisdiction because the question before this Court is of great public importance and is likely to recur. Moreover, this Court elects to proceed because the problem that the instant action presents is capable of repetition yet evading review." State v. Matthews, 891 So. 2d 479, 483-484 (Fla. 2004).

In this instance, the constitutionality of the 2001 amendment is manifestly of great public importance and likely to recur. Property appraisers across the state will continue to use the 2001 amendment to correct initial base value assessments. Indeed, the Appraiser in this instance corrected the Respondent's 2000 assessment in defiance of this Court's decision in Welton II before the 2001 amendment even

existed. He certainly will continue to do so for other taxpayers, now that the 2001 amendment is in effect.

Moreover, the issue easily evades review. Few taxpayers will know that corrections of base value assessments are unconstitutional. The few taxpayers who have the requisite knowledge are unlikely to litigate the issue, because litigation will generally be economically unfeasible. Tax increases which result from corrections to base value assessments are typically relatively low in comparison to the enormous litigation costs, time, and effort necessary to challenge these corrections on constitutional grounds. In this instance, for example, Respondent has litigated a petition to the Value Adjustment Board, four separate lawsuits in the trial court, an appeal to the Second District, and the current proceeding in this Court. From a purely economic point of view, this litigation has not been cost-effective because, if Respondent prevails, he will only save approximately $2,000 per year, and he has already expended attorney time worth tens of thousands of dollars.

Any future litigant on this issue can reasonably expect to face the same daunting prospect of lengthy litigation reaching all the way to this Court. To prevail, future litigants must obtain a decision from a district court that the 2001 amendment is unconstitutional, and review of this decision will then be mandatory

in this Court. County governments have a substantial economic incentive to contest the issue, and property appraisers, who have well-staffed county attorneys' offices and the state Attorney General's office to assist them, will undoubtedly in every instance litigate the issue to the hilt. When faced with this intimidating necessity of protracted and expensive litigation with only relatively minimal economic benefit, the few litigants who know they have been wronged will choose not to pursue the matter. Consequently, pursuant to Matthews and numerous other cases, this Court should resolve the constitutional question at this time, even if it is moot as a result of this Court's decision on the retroactivity issue, because the issue is important and capable of repetition and yet evades review.

F. This Court should Decide the Constitutional Question, Because this Court has a Duty to Defend the Florida Constitution From Governmental Encroachment.

Finally, this Court should decide the constitutional question, because this Court has an obligation pursuant to Article II, Section 5(b), of the Florida Constitution to support, protect, and defend the Constitution from governmental encroachment.

> [T]he members of this Court are reminded of their own obligation as state officers to uphold the Florida Constitution pursuant to Article II, Section 5(b) thereof:
>
> "(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

> I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution . . . of the State of Florida . . . ."

Fields v. Askew, 279 So. 2d 822, 823 (Fla. 1973).

Under the circumstances of this case, the constitutional duty to defend the Florida Constitution, contained in Article II, Section 5(b), can overcome any judge-made jurisprudential principle that counsels against deciding constitutional questions unnecessarily. Unless the 2001 amendment is invalidated, property appraisers will continue to use it. The vast majority of taxpayers have neither the knowledge nor the financial resources to contest the appraisers' use of the 2001 amendment. This issue will take years to reach this Court again, if it ever does. In the meantime, appraisers across the state will continue to violate taxpayers' constitutional rights and will do so repeatedly. In view of its duty under Article II, Section 5(b), this Court should not permit this state of affairs to occur and should reach the constitutional issue, even if it also decides on other grounds that the Appraiser cannot use the 2001 amendment in this case because he cannot apply this amendment retroactively.

V. THE 58% INCREASE IN THE ASSESSED VALUE OF RESPONDENT'S PROPERTY VIOLATED THE FLORIDA CONSTITUTION, AND THE AMENDED VERSION OF SECTION 193.155 IS UNCONSTITUTIONAL.

A. The Florida Constitution Only Allows Annual Assessment Increases of 3% or Less for Homestead Property.

The Appraiser's 58% increase of the 2000 assessed value of the Respondent's homesteaded property violated Article VII, Section 4(c), of the Florida Constitution, because the increase exceeded 3%. Although, for the reasons previously stated, Respondent does not believe the 2001 amendment to section 193.155 applies retroactively in this case, the amendment is unconstitutional and violates Section 4(c) to the extent it is deemed to authorize the Appraiser's actions. Section 4(c) provides as follows:

> (c) All persons entitled to a homestead exemption . . . shall have their homestead assessed at just value as of January 1 of the year following the effective date of the 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 the following:
>
> (A) Three percent (3%) of the assessment for the prior year; or
>
> (B) The percent 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.
>
> 2. No assessment shall exceed just value.
>
> 3. After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of

> the following year. Thereafter, the homestead shall be assessed as provided herein.

The plain language of Section 4(c) (emphasis added) provides that, after the initial assessment of a homesteaded property is made, this "assessment shall change *only* as provided herein." Assessments can only "be changed annually on January 1st of each year," and annual increases cannot exceed 3%.

B. The 58% Increase in the Assessed Base Value of Respondent's Property Violated the Florida Constitution.

In this case, Respondent received notice in August 2001of a 58% increase in the assessed value of his homesteaded Property. This 58% increase violated Section 4(c) (emphasis added), which allows homestead assessments to "change *only* as provided herein." This Court must give the word "only" in Section 4(c) its plain meaning. As this Court said regarding another aspect of the Section 4(c) amendment, "[t]his Court simply has no authority to circumvent the constitutionally mandated . . . plain language of the amendment." Fuchs v. Wilkinson, 630 So. 2d 1044, 1046 (Fla. 1994). This Court similarly said in Zingale v. Powell, 885 So. 2d 277, 282 (Fla. 2004) (citation omitted), regarding another constitutional provision relating to homesteads, that "'[a]ny inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language.'"

Under these principles of constitutional interpretation, because error correction is not explicitly listed in Section 4(c) as a reason to change the base value assessment, and because Section 4(c) explicitly states that this assessment can change "only as provided herein," error correction is not permitted. Section 4(c) has no provision for changing the "just value" of a homesteaded property, after the time for challenging the assessment before the Value Adjustment Board has passed, after the final tax bill is sent, after the taxes are due, after they are paid, and one month after the Appraiser made an authoritative attestation of this value. Contrary to the Appraiser's view, Section 4(c) only allows annual increases "on January 1st of each year," not a monthly increase on November 10. Moreover, these annual increases cannot exceed 3%, and the increase between 2000 and 2001 in this instance was 58%. The increased assessment in this case therefore violated the Florida Constitution.

The First District emphasized an identical point when it found that former section 193.155(8)(a), Florida Statutes (1995),[1] was unconstitutional to the extent it

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[1] Section 193.155(a) formerly provided as follows:

> (8) Erroneous assessments of homestead property assessed under this section may be corrected in the following manner:
>
> (a) If errors are made in arriving at any annual assessment under this section due to material mistake of fact concerning an

allowed property appraisers to correct annual assessments for material mistakes of fact.

> The Florida Constitution, Article VII, Section 4(c), provides that "assessment[s] shall change *only* as provided herein," thus prohibiting changes to just value that are not expressly stated in the constitution. The purported exception to the three-percent rule in section 193.155(8)(a), Florida Statutes is not one provided for in the constitution and is, therefore, facially unconstitutional.

Smith v. Welton, 710 So. 2d 135, 137 (Fla. 1st DCA 1998) ("Welton I"), aff'd on other grounds, 729 So. 2d 371 (Fla. 1999) (citation and footnote omitted, emphasis added). The First District's reasoning applies equally to the amended version of section 193.155 and means that the amended statute is unconstitutional as well.

This Court's affirmance of the First District's Welton I decision on other grounds does not alter its persuasive power. This Court did not reject the First District's constitutional analysis in Welton I and instead simply did not rule on it. Smith v. Welton, 729 So. 2d 371, 373 (Fla. 1999) ("Welton II"). As such, a Tallahassee circuit judge would unquestionably be bound by the First District's views expressed in Welton I. This Court in fact recently cited Welton I with approval in connection with the constitutional homestead protection. Zingale v. Powell, 885 So. 2d 277, 281 (Fla. 2004). Florida courts commonly cite as binding

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> essential characteristic of the property, the assessment must be recalculated for every such year.

authority decisions that have been affirmed on other grounds. See Tensfeldt v. Tensfeldt, 839 So. 2d 720, 724 n.5 (Fla. 2d DCA 2003) (citing case affirmed on other grounds); Williams v. State, 654 So. 2d 261, 262 (Fla. 2d DCA 1995) (same); Kellogg v. Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A., 807 So. 2d 669, 673 (Fla. 4th DCA 2001) (same); Covington v. State, 770 So. 2d 1256, 1256 (Fla. 1st DCA 2000) (same).

Butterworth v. Caggiano, 605 So. 2d 56 (Fla. 1992), is almost directly on point. In Butterworth, this Court considered whether the State could seek forfeiture of homestead property used for racketeering activity. This Court rejected the State's position, because the Constitution did not expressly list forfeiture as one of the exceptions to the homestead exemption.

> Most significantly, Article X, section 4 expressly provides for three exceptions to the homestead exemption. Forfeiture is not one of them. According to the plain and unambiguous wording . . ., a homestead is *only* subject to forced sale for (1) the payment of taxes and assessments thereon; (2) obligations contracted for the purchase, improvement or repair thereof; or (3) obligations contracted for house, field or other labor performed on the realty. Under the rule "expressio unius est exclusio alterius" – the expression of one thing is the exclusion of another – forfeitures are not excluded from the homestead exemption because they are not mentioned, either expressly or by reasonable implication, in the three exceptions that are expressly stated.

Id. at 60 (emphasis in original); see also Olesky v. Nicholas, 82 So. 2d 510, 513 (Fla. 1955) ([T]he Florida constitutional exemption of homesteads protects the

homestead against every type of claim and judgment except those specifically enumerated in the constitutional provision itself . . . .").

In the present case, correcting errors is not an exception listed in Article VII, Section 4(c), of the Florida Constitution as a basis to change an initial assessment of a homestead property. Instead, Section 4(c) expressly states that "only" annual changes of not more than 3% are permitted. Accordingly, under the "expressio unius est exclusio alterius" doctrine as applied by this Court in Butterworth to the homestead exemption, Section 4(c) does not allow error correction of the sort sought by the Appraiser.

C. The Plain Text of the Section 4(c) Does not Provide for Correction of Errors.

Citing the dissenting opinion in Welton I, the Appraiser argued to the Second District that (1) Section 4(c) only precludes increases greater than 3%, once the just value of the property is correctly determined, and (2), in this case, the just value of Respondent's Property was incorrectly determined. According to the dissenting judge in Welton I, "[i]n the event homestead property is erroneously assessed because of a material mistake of fact . . ., then the erroneous assessment could not have reflected the property's 'just value.' If a material mistake of fact has resulted in an assessment at other than just value, [the statute] . . . authorize[s] … a corrected assessment of the property to just value." Welton I, 710 So. 2d at

138 (Van Nortwick, J., dissenting). For several reasons, this Court cannot adopt this dissenting view.

In the first place, this view ignores the plain meaning of the constitutional text in Section 4(c) (emphasis added) that the "assessment shall *change only* as provided herein." Contrary to the Welton I dissenter's and the Appraiser's views, this provision on its face is not limited to future changes in assessed value resulting from inflation or increased market value, and it extends to all changes, including corrections of past assessments. The verb "change" in its intransitive sense means to "become different or undergo alteration." American Heritage Dictionary of the English Language, 4th ed. (2000). Here, the Appraiser authoritatively attested to his assessment of the Property in October 2000, final tax bills were sent based on this assessment, and the tax bill based on this assessment was in fact paid in November 2000. By every standard, this assessment was final. The Appraiser, however, then caused the assessment to "become different or undergo alteration" by issuing a Certificate of Correction to Tax Roll to the Tax Collector to reflect a corrected assessment. This "change" was unconstitutional because it was not listed in Section 4(c) as an approved method of altering an assessment and it violated Section 4(c)'s three percent increase limitation.

D. Respondent is Entitled to a Liberal Construction in Favor of the Homeowner.

This Court also cannot follow the Welton I dissent, because it fails to apply the required liberal construction in favor of the homeowner. See Tramel v. Stewart, 697 So. 2d 821, 824 (Fla. 1997) ("[T]he homestead guarantee in the constitution must be liberally construed."). Because this Court must construe the homestead exemption liberally in favor of the Respondent and must strictly construe any exceptions, this Court cannot adopt the reasoning of the Welton I dissent, which fails to apply these presumptions. The Welton I majority's construction of the constitutional text is at least reasonable and therefore must be adopted, given the required liberal construction that must be applied. For the same reason, Section 4(c)'s exception for annual 3% assessment increases must be strictly construed in favor of the homeowner not to allow a 58% increase.

E. The Appraiser's Position is Inconsistent with the Purpose of the Constitutional Amendment to Cap Property Tax Increases.

Finally, this Court cannot follow the Welton I dissent, because it would not carry out the purpose of Section 4(c) to prevent belated tax increases and "reduce the burden on homestead property." Zingale v. Powell, 885 So. 2d at 281.

> The purpose of the 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.

> The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to homestead tax exemption (Article VII, Section 6, Florida Constitution), exemption from forced sale (Article X, Section 4(a), Florida Constitution), and the inheritance and alienation of homestead (Article X, Section 4(c), Florida Constitution).

Id. (quoting Welton I, 710 So. 2d at 137.) The plain text of Section 4(c) reveals that it is intended to foreclose annual assessment increases greater than 3%, once the property's base value is determined. The Appraiser's 58% increase contradicts this plain intent expressed in Section 4(c)'s unequivocal text.

If the Appraiser and the Welton I dissent were correct, then the Appraiser could consistently with the Florida Constitution revisit an appraisal twenty years later and change it to reflect a corrected just value. Indeed, the property appraiser in Robbins attempted to correct a nine-year-old appraisal. Robbins v. Kornfield, 834 So. 2d 955, 956 (Fla. 3d DCA 2003). Because all later assessments would then also have to be corrected, the result could be a huge tax bill that could cause citizens to lose their homes.

The Appraiser's and the Welton I dissenter's interpretation is incompatible with the purpose of Section 4(c) to ensure that citizens would "not lose their homes on the tax block due to the rising value of Florida property." Welton II, 729 So. 2d at 373. This interpretation of Section 4(c) would not "encourage the preservation

of homestead property in the face of . . . rising property values and assessments." Welton I, 710 So. 2d at 137. Instead, it "would defeat the purpose of [Section 4(c)] by allowing constant reassessments of homesteads based on 'new information.'" Id. at 138.

Contrary to the Appraiser's views, the Second District's decision below does not allow Respondent "to reap an inappropriate windfall for the duration of his ownership of [his] home." Appraiser's Initial Brief at 21. Respondent in fact has not received any windfall, since the costs in money, time, and effort to litigate this matter have vastly exceeded the financial benefit which Respondent has yet to receive. In addition, Section 4(c) was plainly intended to allow homeowners to obtain a reduction in the assessed value of their homesteads in comparison to the assessments of properties that are not homesteaded. Assessment disparities which encourage property owners to remain in and not sell their homes are exactly what Section 4(c) was intended to create.

The Appraiser and the Director of Revenue may believe that these disparities are "bad public and tax policy." Appraiser's Initial Brief at 22. This Court, however, cannot question the policies underlying Section 4(c). Instead, it must protect and enforce them in accordance with Section 4(c)'s plain text. Petitioners would be better advised to bring their concerns to the people of the state of Florida

and ask them to change the Constitution, rather than attempt to accomplish the same goal through the back door by asking this Court to alter by judicial interpretation the clear language of Article VII, Section 4(c), of the Florida Constitution.

CONCLUSION

This Court should affirm and declare the 2001 amendment to section 193.155 unconstitutional.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been delivered by U.S. mail this 13th day of May, 2005, to Christina LeBlanc, Pinellas County Attorney's Office, 315 Court Street, Clearwater, FL 33756, and to Mark T. Aliff and Eric J. Taylor, Office of the Attorney General, Revenue Litigation Section, PL-01 Capitol Bldg., Tallahassee, FL 32399-1050.

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CERTIFICATE OF COMPLIANCE

I certify that the font size and type used in this Brief is 14-point Times New Roman.

_____

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