IN THE SUPREME COURT OF FLORIDA

DEBORAH CHAMES and
HELLER & CHAMES, P.A.,

Petitioners,

v.

HENRY DEMAYO,

Respondent.
_____/

CASE NO.: SC06-1671

On Discretionary Review from the Third District Court of Appeal

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AMICUS BRIEF OF THE ATTORNEY GENERAL IN SUPPORT OF RESPONDENT

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STATEMENT OF INTEREST

The Attorney General is the chief legal officer of the State of Florida; the "people's attorney." Art. IV, § 4(c), Fla. Const. (1968); *Watson v. Claughton*, 34 So. 2d 243, 245 (Fla. 1948). Accordingly, the Attorney General may appear on behalf of the state in any suit in which the state has an interest. *See* § 16.01(4)-(5), Fla. Stat. (2006); *State ex rel. Shevin v. Yarborough*, 257 So. 2d 891, 894-95 (Fla. 1972). It is the Attorney General's duty to exercise his power and authority as necessary to protect the public interest. *Landis v. Kress*, 155 So. 823, 827 (Fla. 1934).

The Attorney General appears as an amicus curiae in this proceeding to ensure that the protections guaranteed to Florida's citizens by the Florida Constitution are honored. The law firm in this case seeks to sell Mr. Demayo's home at a public auction, claiming it is entitled to do so based on a charging lien for attorney's fees. But article X, section 4 of the Florida Constitution prohibits foreclosure of homestead for this purpose. This section of the Florida Constitution also prohibits foreclosure based upon a contractual waiver of the homestead exemption. The Attorney General seeks to defend Mr. Demayo's constitutional right of homestead protection in this case so that other Florida citizens will not be faced with similar unconstitutional conduct.

SUMMARY OF ARGUMENT

The Florida Constitution exempts homestead property from forced sale except in very limited circumstances. The exemption exists to prevent absolute pauperism and to promote the stability and welfare of the state, by encouraging property ownership and the independence of the state's citizens. Although creditors have repeatedly attempted to circumvent the homestead exemption, this Court has repeatedly rejected such attempts. The Court has consistently declined to create additional exceptions to the homestead exemption which have no basis in the constitution, and it should likewise decline to create an exception based on contractual waiver.

Furthermore, this Court long ago determined that contractual waiver of the homestead exemption violated this State's public policy, and the present case presents no occasion for departing from this century-old precedent. The fact that other constitutional rights have been deemed waivable is irrelevant, because the homestead exemption is not a personal right of the homeowner, but rather is a prohibition upon the courts from conducting a forced sale of homestead property except in specified circumstances. Authorities from other states provide no clear guidance regarding whether and when contractual waiver of homestead should be permitted, and in any event are an improper basis for construing the unique

language and history of Florida's homestead protection.

STANDARD OF REVIEW

Constitutional interpretation is a question of law subject to de novo review. *See Zingale v. Powell*, 885 So. 2d 277, 280 (Fla. 2004). The Court must construe a constitutional provision so as to fulfill the intent of the frames, not to defeat it. *Id.* at 282 (citing *Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960)). A constitutional provision must never be construed in a way that frustrates or denies the will of the people. *Id.*

ARGUMENT

I. THE FLORIDA CONSTITUTION SETS FORTH THE ONLY PERMISSIBLE METHODS OF WAIVING THE HOMESTEAD EXEMPTION, AND A CONTRACTUAL WAIVER IS NOT AMONG THEM.

For over 140 years, the Florida Constitution has protected homestead property from forced sale except in certain specified circumstances. The constitution exempts homestead property "from forced sale under process of any court" unless the sale is for: (1) taxes or assessments; (2) contracts for purchase, improvement, or repair; or (3) contracts for labor performed on the property. Art. X, § 4(a), Fla. Const. (1968). The constitution also expressly permits owners to alienate their homestead property by mortgage, sale or gift. *Id.* art. X, § 4(c).

Although over the years there have been minor changes to the homestead exemption from forced sale, it has not changed significantly in substance since it was adopted in 1868. *Compare* Art. IX, § 1, Fla. Const. (1868) *with* Art. X, § 4, Fla. Const. (1968).

The purpose of the homestead exemption is to prevent absolute pauperism by protecting people of limited means from the consequences of "ill advised promises" which they make due to their own poor judgment or due to inducement by others. *Carter's Adm'rs v. Carter*, 20 Fla. 558, 563 (Fla. 1884). By guaranteeing the security of the home against the demands of creditors, the homestead exemption promotes the stability and welfare of the state. *Public Health Trust v. Lopez*, 531 So. 2d 946, 948 (Fla. 1988); *see also Bigelow v. Dunphe*, 143 Fla. 603, 608 (Fla. 1940) (purpose of homestead laws is to promote stability and welfare of the state by encouraging property ownership and independence of the citizens) (quoting 26 Am. Jur. p. 10). Although the exemption clearly benefits the homeowner and his or her family, it also serves "the public welfare and social benefit which accrues to the state by having families secure in their homes." *Butterworth v. Caggiano*, 605 So. 2d 56, 59 (Fla. 1992) (quoting *In re Bly*, 456 N.W.2d 195, 199 (Iowa 1990)). This Court has described the exemption as the "bulwark of our social system," observing that "[t]he history of

this law has clearly demonstrated that preservation of a domestic roof . . . against the demands of creditors has contributed immeasurably to the happiness and solidarity of family life . . . ." *Olesky v. Nicholas*, 82 So. 2d 510, 512 (Fla. 1955).

Given the strength of the homestead shield, creditors understandably repeatedly attempt to penetrate it. This Court has rejected every such attempt. Over the 100-plus year history of Florida's constitutional homestead exemption, the Court has developed a rich body of case law which repeatedly calls for liberal, nontechnical application of the plain language of the exemption. The Court's decisions also repeatedly hold that the *only* exceptions to the prohibition against forced sale are those expressly provided by the Florida Constitution, and that these exceptions are to be construed narrowly. Although in this case the law firm argues that the exemption can be avoided by a contractual waiver, the plain language of the exemption—combined with a series of cases from this Court applying it—conclusively forecloses such an argument.

An examination of six of this Court's cases addressing myriad attempts to defeat the homestead exemption demonstrates that the exemption must be applied as written. The Court looks first to the plain language of the exemption, which the Court construes broadly, and then to the plain language of the exceptions, which the Court construes narrowly. Creditors' attempts to overcome the plain language

of the exemption or the exceptions by appeals to technical niceties, equities, or policy arguments have uniformly failed.

One of the early attempts to defeat the homestead exemption occurred in *Olesky v. Nicholas*, 82 So. 2d 510 (Fla. 1955). There, the appellants held a judgment against the appellees for malicious prosecution, and argued the constitutional exemption did not "liberate the homestead from the lien of a judgment for a malicious tort." *Id.* at 511. The Court easily rejected this argument:

> We find no difficulty in holding that the Florida constitutional exemption of homesteads protects the homestead against every type of claim and judgment except those specifically mentioned in the constitutional provision itself.
>
> . . . .
>
> We hold that [the homestead] exemption applies as it reads to any forced sale under process of any court subject to the particular exceptions noted in the Constitution itself.

Id. at 513. Thus, the Court found the plain language of the exemption precluded an execution sale of a homestead even when the judgment was grounded in a malicious tort. *Id.*

Subsequently in *Graham v. Azar*, 204 So. 2d 193 (Fla. 1967), a woman held a judgment against her former husband for nonpayment of child support. She obtained a writ of execution against her former husband's personal property,

against which he asserted constitutional protection.[1] *Id.* at 194. The Court held, based upon the plain language of the provision as well as its history, that the former husband's personal property was exempt from execution because it was not one of the exceptions identified in the constitution:

> This particular article of the 1885 Constitution was debated extensively by the Convention which proposed it. . . . At no point was it ever suggested that a judgment of the type under consideration should be excluded from the exemption provision. In view of the fact that the framers of the Constitution devoted extensive consideration to the wording of the exemption, as well as to the specific exclusions, we feel justified in concluding that any judgment within the broad scope of the exemption is covered by it, unless specifically excluded. Expressio unius est exclusion alterius.

Id. at 195. Implicitly acknowledging the result might appear inequitable, the Court stated it would "resist the temptation to venture upon a philosophical discussion regarding the father's duty to support his minor children." *Id.* The court observed the judgment was enforceable through other means that did not violate the constitutional exemption. *Id.* at 195-96.

Approximately twenty years later, creditors argued that the homestead exemption should not extend to the homeowner's surviving spouse or children who were not dependent on the homeowner. *Public Health Trust of Dade County v.*

[1] The Florida Constitution then exempted "[a] homestead . . . together with one thousand dollars worth of personal property." Art. X, § 1, Fla. Const. (1885).

Lopez, 531 So. 2d 946 (Fla. 1988). Although Florida voters had recently expanded application of the homestead exemption from "head[s] of famil[ies]" to "natural person[s]," and the constitution expressly provided that the homestead exemption "shall inure to the surviving spouse or heirs of the owner," without qualification, the creditors sought to limit application of this latter provision to heirs who were dependent on the deceased homeowner. *Id.* at 947. The creditors argued that literal application of the exemption to any spouse or heir "would provide a windfall for financially independent heirs at the expense of the decedent's creditors, distorting the historical purpose of homestead laws to protect dependents in need of shelter." *Id.* at 948. The Court once again applied the plain language of the constitution to reject the creditors' argument:

> There are no words suggesting that the heirs or surviving spouse had to have been dependent on the homeowner to enjoy this protection. Consequently, the creditors are not asking us merely to construe or interpret the amendment but rather to graft onto it something that is not there. This we cannot do. We are not permitted to attribute to the legislature an intent beyond that expressed . . . or to speculate about what should have been intended. Nor may we insert words or phrases in a constitutional provision, or supply an omission that was not in the minds of the people when the law was enacted.

Id. at 949. The Court also rejected the creditors' assertion that this result was inconsistent with the historical purpose of the homestead protection, explaining that

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Today's constitution also exempts $1,000 of personal property.

homestead protection is not based upon equitable principles, but has always applied "whether the homestead was a twenty-two room mansion or a two-room hut and whether the heirs were rich or poor." *Id.* at 950-51.

The Court's plain language application of the homestead exemption was tested again a few years later in *Butterworth v. Caggiano*, 605 So. 2d 56 (Fla. 1992). There, the State Attorney General argued that the homestead exemption should not bar forfeiture of homestead property used in perpetration of a crime, because forfeiture due to criminal activity was not really a "forced sale." *Id.* at 58. The Court rejected the State's argument, finding the exemption was intended to "guarantee that the homestead would be preserved against any involuntary divestiture by the courts, without regard to the technicalities of how that divestiture would be accomplished."[2] *Id.* at 59. The Court again relied upon the plain language of the exemption:

> Most significantly, article X, section 4 expressly provides for three exceptions to the homestead exemption. Forfeiture is not one of them. . . . Under the rule "expression unius est exclusion alterious"—the expression of one thing is the exclusion of another—

[2] This aspect of the Court's holding in *Caggiano* is directly at odds with the assertion in the concurring opinion below that Mr. Demayo is not facing a "forced sale" because he signed a waiver permitting foreclosure of his property. *Demayo v. Chames*, 934 So. 2d 548, 551 (Fla. 3d DCA 2006) (Shepherd, J., concurring in result). If the law firm in this case is permitted to foreclose the charging lien against Mr. Demayo's homestead, the result clearly will be an involuntary divestiture of the homestead property *by the court*.

> 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.
>
> . . . .
>
> Florida law . . . prohibits the implication of exceptions or limitations to article X, section 4.

Id. at 60.

The State subsequently tried to limit *Caggiano* to its facts, and argued homestead property purchased with the proceeds of criminal activity (as opposed to property used in the perpetration of a crime, which was at issue in *Caggiano*) should be subject to foreclosure. *Tramel v. Stewart*, 697 So. 2d 821 (Fla. 1997). The Court again applied the plain language of the homestead exemption to reject the State's argument. *Id.* at 824. The Court held the constitution does not provide an exception for forfeiture of homestead property based on a violation of the Forfeiture Act and "[i]n the absence of such a provision, this court cannot judicially create one." *Id.* The Court acknowledged that the homestead exemption should not be used to shield fraud or reprehensible conduct, and invited the Constitutional Revision Commission to examine this issue.[3] *Id*.

The Court most recently considered a creditor's attempt to defeat the

[3] The commission proposed an amendment to the Florida Constitution that would have allowed foreclosure of homestead property acquired with the intent to defraud creditors, but the amendment was rejected by a 24 to 7 vote. *Havoco of Am., Ltd. v. Hill*, 790 So. 2d 1018, 1023 (Fla. 2001).

homestead exemption in *Havoco of Am., Ltd. v. Hill*, 790 So. 2d 1018 (Fla. 2001). In that case the creditor obtained a judgment for $15 million against the debtor. Within two weeks of entry of the judgment, the debtor, previously a Tennessee resident, bought a $650,000 home in Florida. *Id.* at 1019. He subsequently filed for bankruptcy and claimed his Florida home was exempt from forced sale. *Id.* The creditor asserted it would be inequitable to apply the homestead exemption because the debtor acquired the homestead with the specific intent to defraud creditors. *Id.* Although the Court was "loathe to provide constitutional sanction to the conduct alleged," it found itself "powerless to depart from the plain language of article X, section 4." *Id.* at 1021. The Court explained that equitable principles could not justify reaching beyond the literal language of the exceptions unless the fraudulently obtained funds were used for one of the recognized exceptions, i.e., to invest in, purchase, or improve the property. *Id.* at 1028.

These cases reflect a consistent theme; creditors try to find or create loopholes in the homestead exemption, and the Court rejects any and all attempts that are not supported by the plain language of the exemption or its exceptions. The present case is simply the latest in a long line of such efforts. The law firm argues that the homestead protection is subject to contractual waiver–but nothing in the constitutional language supports this argument. The constitution provides

exceptions to the exemption for certain limited purposes, including a mortgage. Art. X, § 4 (a),(c), Fla. Const. To be valid and enforceable, a mortgage must be acknowledged by the party executing it, proved by a subscribing witness, or authenticated by a notary. § 695.03, Fla. Stat. (2006). A mortgage also must be recorded. § 695.01 Fla. Stat. (2006). If the framers of the constitution—or the people who ratified it—had wanted to create an exception for contractual waiver without any of the safeguards that exist for a mortgage, they would have done so expressly.[4] But in the absence of any such exception, and in light of this Court's repeated refusal to find exceptions unsupported by the constitution itself, the law firm's claim of waiver must fail.

II. A CONTRACTUAL WAIVER OF THE HOMESTEAD EXEMPTION IS VOID AS AGAINST PUBLIC POLICY.

Even if a contractual waiver of the homestead exemption were not prohibited by the plain language of the Florida Constitution, such a waiver would still be unenforceable because it is void as against public policy. An agreement that violates a provision of a constitution is illegal and void, and courts have an affirmative duty to refuse to sustain what the constitution has declared repugnant to

[4] In fact, an amendment was proposed in 1885 that would have permitted waiver of the homestead protection as to personal property so long as the waiver was in writing, specified an amount, and was signed and sealed in the presence of two witnesses. *See* Fla. Constitutional Convention Jour. 194 (1885). No such provision was ever adopted.

public policy. *Local No. 234 v. Henley & Beckwith, Inc.*, 66 So. 2d 818, 821 (Fla. 1953) ("closed shop" agreement stipulating that labor union members would not work for non-union employers violated constitutional provision prohibiting discrimination against workers based on membership or non-membership in union); *Stewart v. Stearns & Culver Lumber Co.*, 48 So. 19, 21 (Fla. 1908) (agreement restraining trade was unenforceable, because "agreements that violate the principles of public policy designed for the public welfare are illegal and will not in general be enforced by the courts").

The precise question presented in this case—whether the constitutional homestead exemption can be waived in favor of a creditor by contract—was considered by the Court in the early case of *Carter's Adm'rs v. Carter*, 20 Fla. 558 (Fla. 1884). After surveying the relevant decisions from other states, the Court concluded a waiver of homestead in favor of a creditor was unenforceable as against public policy. *Id.* at 570-71. The Court acknowledged that homestead property could be mortgaged, but distinguished a mortgage from a contractual waiver because the nature of a mortgage is "brought vividly to [borrowers'] understanding" in that "the very nature of the transaction implies the exercise of discretion and the contemplation of inevitable consequences." *Id.* at 570. Allowing contractual waiver by "the mere scratch of a pen" to a hard creditor, on the other

hand, might enable the creditor to induce the homeowner to risk losing his last possessions without completely understanding the consequences. *Id.*

The Court faced the same question again more than 70 years later, and reached the same conclusion. *Sherbill v. Miller Mfg. Co.*, 89 So. 2d 28, 29-31 (Fla. 1956). The Court devoted just three sentences to the issue, stating "this Court long ago determined that such a waiver was not an alienation of the homestead and not enforceable, and . . . contrary to the policy of the exemption laws of this State." *Id.* at 31 (citing *Carter's Adm'rs v. Carter*, 20 Fla. 558 (1884)).

Although in *Carter's* and *Sherbill* the Court found the waiver void on public policy grounds, later cases (discussed in Part I of this brief) make clear that waiver is prohibited in the first instance by the plain language of the homestead exemption. Thus the Court need not even reach the public policy question. But if it does, *Carter's* and *Sherbill* provide the unequivocal answer. Neither the law firm nor the concurring opinion has even attempted to make the showing necessary to justify overruling these decisions, *i.e.*, that the decisions have proved "unworkable due to reliance on an impractical legal 'fiction,'" that the cases can be reversed "without serious disruption to the stability of the law," or that "the factual premises underlying the decisions [have] changed so drastically as to leave [their] central holding[s] utterly without legal justification." *North Fla. Women's Counseling*

Servs., Inc. v. State, 866 So. 2d 612, 637-38 (Fla. 2003). In the absence of this necessary showing, there is no basis for overruling these decisions.

III. THE LAW FIRM'S ARGUMENTS IN FAVOR OF CONTRACTUAL WAIVER ARE NOT WELL FOUNDED.

A. The fact that other constitutional rights have been deemed waivable is irrelevant.

The law firm seeks to ignore both the plain language of the exemption and the public policy behind it, and instead rely upon the fact that other constitutional rights, mostly involving the federal rights of criminal defendants, have been deemed waivable. (Petr.'s Br. 7). But these cases are irrelevant to the question of whether Florida's homestead exemption is subject to waiver. The homestead exemption is not a personal *right* conferred upon individual homeowners; it is a *prohibition* upon the courts of this state from accomplishing the forced sale of homestead property except in specified circumstances. As such, the exemption is not contained in the Florida Constitution's "Declaration of Rights" in Article I, but rather in Article X of the constitution, entitled "Miscellaneous." Cases addressing the waivability of constitutional rights are simply inapposite.

Even if the homestead exemption is viewed as a right, the Court must construe this provision of the Florida Constitution not based on federal precedents

or on general statements from other contexts, but rather based on "the express language of the constitutional provision, its formative history, both preexisting and developing state law, evolving customs, traditions and attitudes within the state, the state's own general history, and . . . any external influences that have shaped state law." *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992). The discussion in Parts I and II of this brief amply demonstrates that these factors call for strict application of the exceptions to the exemption and do not support contractual waiver.[5]

B. The 1984 amendment to the constitution did not transform the homestead exemption into a "personal right" subject to contractual waiver.

The law firm's contention that the expansion of the homestead exemption

[5] The Court's recent statement in dicta that "Florida's highly valued constitutional homestead protection is subject to waiver," *In re Amendment to the Rules Regulating the Florida Bar—Rule 4-1.5(f)(4)(B) of the Rules of Professional Conduct*, 939 So. 2d 1032, 1038 (Fla. 2006), significantly overstates the principle of law in the case law cited for that proposition. The only circumstance where waiver of the constitutional homestead protection has been permitted is with respect to § 4(c) of Article X, which requires both spouses' consent for the alienation of homestead by mortgage, sale, or gift. One spouse is permitted to waive this protection in favor of another spouse via a premarital or postmarital agreement. *See, e.g.*, *City Nat'l Bank v. Tescher*, 578 So. 2d 701, 702 (Fla. 1991); *Hartwell v. Blasingame*, 564 So. 2d 543, 545 (Fla. 2d DCA 1990), *approved*, 584 So. 2d 6 (Fla. 1991); *see also* § 732.702, Fla. Stat. (2006) (surviving spouse's right to homestead protection may be waived before or after marriage, in writing, in presence of two witnesses). This type of waiver is permitted because the party benefitting from the waiver is a spouse who is similarly entitled to homestead protection, as opposed to a third party creditor. *Myers v. Lehrer*, 671 So. 2d 864, 866 (Fla. 4th DCA 1996), *rev. denied*, 678 So. 2d 1287 (Fla. 1996).

from a "head of household" to any "natural person" renders the exemption a personal right subject to waiver (Petr.'s Br. 11-14) must fail because it is based upon a faulty foundation. There is simply no support for the law firm's theory that the amendment constituted a complete shift in the policy of the homestead exemption away from protection of families and toward protection of individuals. The history of this amendment unanimously indicates its goal was to *expand* the class of people subject to the protection. *See* PCS/SJR 79 Senate Staff Analysis (Apr. 6, 1983) (resolution "would allow any natural person, rather than just the head of a family," to claim homestead exemption); HJR 85 Comm. on Judiciary (Feb. 9, 1983) (anticipating a fiscal impact on private sector in that an "additional class of debtors would have their property protected"). The ballot summary submitted to the voters described the amendment as providing that the "exemption of a homestead and of personal property to the value of $1,000 from forced sale and certain liens *shall extend to any natural person, not just the head of a family*." *Public Health Trust*, 531 So. 2d at 949 (emphasis added). *See also id.* at 948 (quoting sponsor of amendment as stating its purpose was to protect the homestead of "a single person, a divorced person, any person who has a homestead, rather than just a head of a family"). Nothing in these authorities suggests individual homestead owners were favored over heads of families. It

would be a bizarre result indeed if this Court were to conclude that in the course of expanding the scope of the homestead protection, the voters of Florida simultaneously unwittingly weakened its effect by rendering it a "personal right" subject to contractual waiver by the scratch of a pen.

Furthermore, contrary to the law firm's assertion, the policy behind the homestead exemption is not solely to protect the family. This is surely one of its purposes, *see, e.g., Tullis v. Tullis*, 360 So. 2d 375, 377 (Fla. 1978), but its larger purpose is to promote the stability of the State by encouraging property ownership and ensuring individuals are secure in their homes, *e.g., Public Health Trust*, 531 So. 2d at 948; *McKean v. Warburton*, 919 So. 2d 341, 344 (Fla. 2005). Therefore, even if it were true that the 1984 amendment represented a shift in the policy of the exemption away from protecting the family and toward protecting the individual such a shift still would not overcome the additional policy goal of providing stability to the State as a whole. This latter goal renders it impossible to characterize the exemption as a "personal right" subject to contractual waiver.

C. Authorities from other jurisdictions do not warrant overruling this Court's precedents.

The law firm and the concurring opinion urge this Court to overrule century-old precedent holding the homestead exemption non-waivable, alleging a "present trend" toward construing the homestead exemption as a personal right subject to

waiver. (Petr.'s Br. 14). This contention is not well-founded and must be rejected.

First, the Court would have to retreat from not only *Carter's* and *Sherbill*, but also from the cases discussed in Part I of this brief which call for straight-forward application of the plain language of the homestead exemption and strict construction of its exceptions. These precedents constitute the heart of this Court's homestead exemption jurisprudence; it would be wholly improper to overrule them based upon analyses from other states. This Court has recognized that Florida's case law regarding the homestead provision "has its own contours and legal principles. . . . [a]s a result, it is not susceptible to comparisons with similar provisions in other jurisdictions." *Snyder v. Davis*, 699 So. 2d 999, 1002 (Fla. 1997). Because this Court's own precedents provide clear guidance to the question presented in this case, and these more recent decisions are wholly consistent with *Carter's* and *Sherbill*, reliance upon authorities from other states as a basis for overruling this Court's rulings is unwarranted and inappropriate.

In any event, the suggestion that Florida is an outlier state with respect to waiver of homestead is simply not accurate; nor is the statement that the "vast majority of states" now permit contractual waivers of their respective homestead exemptions, *see Demayo*, 934 So. 2d at 552 (Shepherd, J., concurring in result). Only nineteen jurisdictions contractual permit waiver of the homestead exemption in

favor of general creditors; and sixteen of them do so based upon express statutory or constitutional language.[6] Only three states permit waiver based solely on court decisions.[7] Meanwhile, fourteen jurisdictions expressly prohibit waiver of the homestead exemption in favor of general creditors; ten of those, like Florida, prohibit waiver by case law.[8] Four states prohibit waiver based upon express statutory language.[9]

In sum, there is no clear "majority" approach to contractual waiver of homestead; each state's jurisprudence has developed according to its own unique

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[6] Ala. Const. Art. X, sec. 210, Nev. Const. Art. 4, § 30, Tex. Const. Art. XVI, § 50, (A)(6), Ariz. Rev. Stat. Ann. § 33-1104 (2006), Ga. Code. Ann. § 44-13-40 (2006), 735 Ill. Comp. Stat. 5/12-904 (2006), Iowa Code § 561.21 (2005), Ky. Rev. Stat. Ann. § 427.100 (2006), La. Rev. Stat. Ann. § 20:1 (D) (2006), Mass. Gen. Laws Ann. ch. 188, § 7 (2006), Mo. Rev. Stat. § 513.475(2) (2006), N.C. Gen. Stat. § 1C-1601(c)(2) (2006), Tenn. Code Ann. § 26-2-310(c) (2006), Utah Code Ann. § 78-23-3 (3) (2006), Va. Code Ann. § 34-22 (2006), Wyo. Stat. Ann. § 34-2-121 (2006).

[7] *See Argonaut Ins. Co. v. Cooper*, 261 N.W.2d 743 (Minn. 1978); *First State Bank v. Muzio*, 100 N.M. 98 (1983) (overruled on other grounds by *Huntington Nat'l Bank v. Sproul*, 116 N.M. 254 (1993)), *Cammarano v. Longmire*, 99 Wash. 360 (1918).

[8] *Weaver v. Lynch*, 79 Colo. 537 (1926); *Tuxis-Ohr's Fuel, Inc. v. Trio Marketers, Inc.*, 2005 LEXIS 2848 (Conn. Super. Ct. Oct. 26, 2005); *Wallingsford v. Bennett*, 1 Mackey 303 (D.C. 1881); *Maloney v. Newton*, 85 Ind. 565 (1882); *Celco, Inc. of Am. v. Davis Van Lines, Inc.*, 226 Kan. 366 (1979); *Teague v. Weeks*, 89 Miss. 360 (1906); *Anaconda Fed. Credit Union v. West*, 157 Mont. 175 (1971); *Kneettle v. Newcomb*, 22 N.Y. 249 (1860); *Mayhugh v. Coon*, 460 Pa. 128 (1975); *Maxwell v. Reed*, 7 Wis. 582 (1859).

[9] Cal. Civ. Proc. Code § 703.040 (2006), Md. Code Ann. Cts. & Jud. Proc. § 11-504(d) (2006), Ohio Rev. Code Ann. § 2329.661 (2006), W. Va. Code Ann. § 38-9-6 (2006).

contours and legal principles. Florida's jurisprudence clearly and specifically instructs that the exemption can only be waived through the methods set forth in the Florida Constitution. No authority from outside this jurisdiction warrants overruling this century-old position.

CONCLUSION

In light of the foregoing, the Attorney General, amicus curiae, respectfully requests that this Court affirm the decision of the Third District.

Respectfully submitted,

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I hereby certify that the type size and style used in this brief is 14-point Times New Roman in compliance with Fla. R. App. P. 9.210(a)(2).

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