SUPREME COURT OF FLORIDA

Case No. **SC11-554**

PEDRO J. GARCIA, as Property Property Appraiser of Miami-Dade County, Florida,

Petitioner/appellant,

L.T. Case No.: **3D09-3427**

vs.

DAVID ANDONIE and **ANA L. ANDONIE**, et al.,

Respondents/appellees.
_____/

BRIEF OF AMICUS CURIAE, THE PROPERTY APPRAISERS' ASSOCIATION OF FLORIDA, INC. IN SUPPORT OF PETITIONER, PEDRO J. GARCIA, MIAMI-DADE COUNTY PROPERTY APPRAISER

Loren E. Levy
Fla. Bar No. 0814441
Ana C. Torres
Fla. Bar No. 0047019
The Levy Law Firm
1828 Riggins Lane
Tallahassee, Florida 32308
Telephone: 850/219-0220
Facsimile: 850/219-0177

Counsel for The Property Appraisers' Association of Florida, Inc.

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PRELIMINARY STATEMENT

Petitioner, Pedro J. Garcia, Miami-Dade County Property Appraiser will be referred to herein as the "property appraiser." Respondents, David Andonie and Ana L. Andonie, will be referred to herein as the "Andonies." Amicus Curiae, The Property Appraisers' Association of Florida, Inc., will be referred to herein as the "PAAF."

STATEMENT OF THE IDENTITY OF THE AMICUS CURIAE AND ITS INTEREST IN THE CASE

The Property Appraisers' Association of Florida, Inc. (PAAF) is a statewide professional association consisting of 35 duly elected property appraisers in various counties throughout the State of Florida. The members of the PAAF are constitutional officers charged with the duty of administering the Florida Constitution and duly enacted laws of the State of Florida pertaining to the assessment of all real and tangible personal property, and the administration of exemptions from ad valorem taxation. PAAF's members are interested in this case because it involves the proper interpretation and administration of the homestead tax exemption.

SUMMARY OF ARGUMENT

PAAF joins in and adopts the arguments presented in the initial brief of the property appraiser of Miami-Dade County. For the reasons set forth therein, the permanent residency of minor children necessarily must follow that of their parents. If property owned by the parents cannot receive homestead tax exemption because they are legally incapable of establishing permanent residency, the minor children likewise cannot establish permanent residency.

In support of its decision allowing the Andonies to receive homestead tax exemption based on the residency status of their minor children, the Third District Court incorrectly concluded that the constitutional provision was self-

executing and, therefore, section 196.031(1)(a) was invalid. This Court has consistently held that there is no absolute, self-executing right to homestead tax exemption. Entitlement to the exemption, rather, is dependent upon a taxpayer complying with the statutory requirements prescribed by the legislature. Although the homestead tax exemption originates in the Florida Constitution, the legislature has been authorized to delineate the parameters of the exemption within the limitation of power set forth therein.

The Third District Court further erred in concluding that the Department of Revenue's failure to actively defend its administrative rule meant that the property appraiser's reliance thereon was unmeritorious. The department is merely a nominal party in the vast majority of ad valorem cases.

ARGUMENT

I. THE FLORIDA CONSTITUTION DOES NOT ESTABLISH A SELF-EXECUTING RIGHT TO THE HOMESTEAD TAX EXEMPTION AND SAVE OUR HOMES CAP ON ASSESSMENT INCREASES.

In support of its decision allowing the Andonies to receive homestead tax exemption based on the residency status of their minor children, the Third District Court concluded that the constitutional provision was self-executing. "The provision is indubitably a self-executing provision of the Florida Constitution." De La Mora v. Andonie, 51 So.3d 517, 521 n.5 (Fla. 3d DCA 2010). The Third

District Court implicitly relied upon its holding that the homestead tax exemption was self-executing to subsequently declare unconstitutional the "who resides thereon" language of section 196.031(1)(a), Florida Statutes (2011). In this regard, the district court erred.[1]

This Court has consistently held that there is no absolute, self-executing right to homestead tax exemption. Zingale v. Powell, 885 So.2d 277 (Fla. 2004); Horne v. Markham, 288 So.2d 196 (Fla. 1973). Entitlement to the exemption, rather, is dependent upon a taxpayer complying with the statutory requirements prescribed by the legislature. Although the homestead tax exemption originates in the Florida Constitution, the legislature has been authorized to delineate the parameters of the exemption within the limitation of power set forth therein.

Article VII, section 6(a) of the Florida Constitution provides in pertinent part:

> Every person who had the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed

[1] Whether the Florida Constitution establishes a self-executing right to the homestead tax exemption and Save Our Homes Cap on assessment increases is a question of law that is reviewed de novo. Dep't of Revenue v. City of Gainesville, 918 So.2d 250 (Fla. 2005).

> valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law.

(Emphasis added.) This Court analyzed article VII, section 6(a) in Horne v. Markham, 288 So.2d 196 (Fla. 1973). In Horne, the taxpayer failed to file a homestead tax exemption application by the April 1st deadline as statutorily required. The property appraiser denied the taxpayer's application as untimely, and the taxpayer filed suit. The taxpayer argued that he was entitled to homestead tax exemption despite his failure to make a timely application because article VII, section 6(a) provided an absolute constitutional right to the exemption.

This Court rejected the taxpayer's argument because entitlement to the homestead tax exemption was dependent upon "establishment of right thereto in the manner prescribed by law." Id. Because the taxpayer did not file a timely application as statutorily required, this Court concluded that he failed to establish his right to the exemption. As this Court stated:

> Appellant's contention that he has an absolute right to a homestead exemption is without merit. As properly noted by the trial judge in his order, Article VII, Section 6, of the Constitution of the State of Florida, F.S.A., *does not establish an absolute right to a homestead exemption.* Rather, it clearly provides that taxpayers who otherwise qualify shall be granted an exemption *only "upon establishment of right thereto in the manner prescribed by law."* In this case, of course, "the manner prescribed by law" is set forth in Chapter 196, Florida Statutes, 1971, F.S.A. Here as noted by the trial judge, plaintiff simply failed to file his application for a homestead

> exemption in a timely manner, as required by said Chapter. *Therefore, the appellant, who has failed to follow the Florida Constitutional "requirement" in Article VII, Section 6, cannot be heard to complain of being denied the dependent Florida Constitutional 'right' contained in same.*

Id. at 199 (italics in original); see also Johns v. May, 402 So.2d 1166, 1168 (Fla. 1981) (explaining that the statutory homestead tax exemption requirements at issue in Horne were "a legitimate exercise of legislative prerogative" enacted in accordance with the constitution).

This Court reached the same conclusion in Zingale v. Powell, 885 So.2d 277 (Fla. 2004). There, the taxpayers purchased a home in Broward County in 1990 but did not apply for and receive homestead tax exemption until 2001. The property appraiser, however, did not apply the Save Our Homes (SOH) cap set forth in article VII, section 4(c) of the Florida Constitution to the increase in the assessed value of the taxpayers' property from 2000 to 2001. As a result, the taxpayers filed suit and argued that they were entitled to the SOH cap for tax year 2001 even though they failed to apply for a homestead exemption until that year.

The Fourth District Court held that the SOH cap applied to all taxpayers who qualified for homestead exemption despite their failure to apply for and receive the exemption. Powell v. Markham, 847 So.2d 1105, 1106 (Fla. 4th DCA 2003). The court interpreted the meaning of the word "entitled" in the SOH amendment as not requiring receipt of a homestead tax exemption. Id. at 1106.

The court reasoned that this interpretation was consistent with the intent of the framers in adopting the SOH amendment.

This Court overturned the Fourth District Court's decision and held that a taxpayer qualified for the SOH cap only when he or she properly applied for and received homestead tax exemption. Zingale, 885 So.2d at 285. "Although taxpayers have a right to the constitutional cap, the right is not self-executing." Id. This Court concluded that the SOH cap "is tied to the grant of a homestead exemption." Zingale, 885 So.2d at 279.

Thus, Horne and Zingale have clearly established that there is no self-executing constitutional right to the homestead tax exemption or SOH cap. Instead, a taxpayer's ability to claim entitlement to these constitutional privileges must be established in the manner prescribed by the legislature.

In concluding that the homestead tax exemption was self-executing, the Third District Court failed to mention either Zingale or Horne. This omission is striking, especially since the court noted via a "but see" citation that the First District Court had reached the opposite conclusion in Haddock v. Carmody, 1 So.3d 1133 (Fla. 1st DCA 2009). See De La Mora, 51 So.3d at 521 n.5.

Carmody discussed both Zingale and Horne in holding that "a taxpayer's right to claim the homestead exemption is not self-executing since article VII, section 6(a), conditions exemption upon establishment of the right in

accordance with the manner prescribed by law." 1 So.3d at 1136. There, the trial court ruled that section 196.061, Florida Statutes – which provides that rental constitutes legal abandonment of the homestead tax exemption – was unconstitutional as applied because it conflicted with the taxpayer's constitutional right to the exemption. Id. at 1135. The First District Court reversed and stated that:

> In the present case, under the reasoning and rulings in *Markham* and *Zingale*, the trial court erred in ruling section 196.061, Florida Statutes, unconstitutional as applied to Appellees. Article VII, section 6, provides that the legislature may establish by law the procedures for claiming the homestead tax exemption. Accordingly, section 196.061 is the legislature's establishment of how rental property is to be treated under the homestead exemption law and is not unconstitutional as applied to Appellees.

Id. at 1136 (emphasis added).

The Fourth District Court also has recognized that the constitutional homestead tax exemption provision authorizes the legislative to prescribe the manner in which the exemption is implemented. See Prewitt Mgmt. Corp. v. Nikolits, 795 So.2d 1001 (Fla. 4th DCA 2001). The issue in that case was whether a wholly owned subchapter S corporation, which held title to residential real property, qualified for the homestead tax exemption. In that regard, the constitution provides that the property "may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock

ownership or membership representing the owners or members proprietary interest in the corporation owning a fee or a leasehold initially in excess of ninety-eight years." Art. VII, § 6(a), Fla. Const.

In implementing the constitutional provision, the legislature delineated several types of corporate entities eligible for the homestead tax exemption in sections 196.031 and 196.041, Florida Statutes (2011). The parties agreed that a wholly owned subchapter S corporation was not on the list of corporate entities qualifying for the exemption under these statutes. 795 So.2d at 1003-1004.

The taxpayer argued that the legislature did not have the constitutional authority to enact an exclusive list of qualifying corporate entities because the language of the constitutional provision itself was broader than the concomitant legislation. The Fourth District Court rejected this argument, concluding that "the legislature properly exercised its authority by enacting sections 196.031 and 196.041, and we find no conflict between Article VII, section 6 of the Florida Constitution and these statutes." Id. at 1005. "In sum, the Florida legislature has provided an exclusive list of equitably owned properties entitled to a homestead

exemption from ad valorem taxation. Because appellant's property is not part of the exclusive list, it was not entitled to an exemption." Id.[2]

Despite its conclusion that the homestead tax exemption was self-executing in De La Mora, the Third District Court appears to have reached the opposite conclusion only four months later in Mitchell v. Higgs, 61 So.3d 1152 (Fla. 3d DCA 2011). There, the taxpayer challenged the property appraiser's decision to remove his homestead exemption for the current tax year and for the seven prior years, resulting in a lien in accordance with section 196.161, Florida Statutes (2011). Section 196.161 allows the property appraiser to remove the homestead tax exemption of a property owner that received the exemption in prior years but "was not entitled to a homestead exemption." § 196.161(1)(b), Fla. Stat. (2011). The property appraiser is required to serve a notice of intent to record a tax lien in the amount of unpaid taxes, a 50 percent penalty, and interest for up to 10 years in arrears.

The taxpayer argued that section 196.161 violated the "change in judgment" rule, which prevents a property appraiser from making a change to a certified tax roll in subsequent years. The statute also was unfair because, while the property appraiser may go back and remove a homestead exemption in prior years, the taxpayer was precluded from retroactively claiming homestead tax

[2] There are a series of Attorney General opinions reaching the same conclusion. See Ops. Att'y Gen. Fla. 2007-18; 2005-52; 2004-45; 1992-2; 1980-32.

exemption. The Third District Court rejected these arguments by relying on Carmody, the same decision it disagreed with in De La Mora. As the Court stated:

> The legislature has imposed a series of requirements for eligibility for the homestead tax exemption and a mechanism for recovering the tax savings (plus interest and a penalty) realized by a property owner not actually entitled to claim the exemption. The constitutionality of such a mechanism (as applied) was thoroughly addressed in *Haddock v. Carmody*, 1 So.3d 1133 (Fla. 1st DCA 2009). In that case, a property owner claimed and received the homestead tax exemption for a condominium that was subject to a rental program. Under section 196.061, Florida Statutes (2005), the rental of an entire dwelling claimed to be a homestead 'shall constitute the abandonment of said dwelling as a homestead.' On that basis, the property tax appraiser notified the owner that the exemptions for three prior years were revoked.
>
> The First District reversed the trial court's determination of unconstitutionality as applied, holding that the Florida Constitution expressly conditions eligibility for the exemption 'upon establishment of the right in accordance with the manner prescribed by law.' *Id*. at 1136 (citation omitted). The court noted at the outset that 'statutes involving tax exemptions are strictly construed against the taxpayer.' *Id.* at 1137. For the same reasons, we find section 196.161 constitutional and enforceable as applied in this case.

Mitchell, 61 So.3d at 1155 (italics in original, emphasis added).

The legislature's authority to enact provisions implementing the homestead tax exemption is not without limitation. This Court has twice struck down legislative attempts to limit entitlement to the homestead tax exemption for

property owners that have resided in the state for an insufficient time period. See Osterndorf v. Turner, 426 So.2d 539 (Fla. 1983); Sparkman v. Scott, 58 So.2d 431 (Fla. 1952).

Sparkman addressed a statute that disqualified a person from receiving homestead tax exemption unless "such person at the time of making application for such exemption shall have been a legal resident of the State of Florida for the period of at least one year prior thereto." 58 So.2d at 431-32. This Court concluded that the statute was unconstitutional because it was an unlawful attempt to alter, contract, or enlarge the homestead tax exemption as set forth in the constitution.

In particular, this Court held that the statute unlawfully attempted to restrict the class of persons entitled to homestead tax exemption to those persons who had been legal residents of the state for a period of one year prior to applying for the exemption. "It cannot be seriously questioned that the class or group entitled to homestead exemption under the constitution, and the class or group entitled to such right or privilege under the constitution as attempted to be restricted by legislative enactment, *are quite materially different.*" Id. at 432 (emphasis added).

This Court reached the same conclusion in Osterndorf. In that case, voters passed two constitutional amendments increasing the homestead exemption

amount applicable to school district and non-school district levies from the existing $5,000 to $25,000. The changes stemmed from concerns about inflating home values and the possibility that a Proposition 13-type provision could pass in Florida. Id. at 541; Pajcic, Weber, and Francis, Truth or Consequences: Florida Opts for Truth in Millage in Response to the Proposition 13 Syndrome, 8 Fla.St.U.L.Rev. 593 (1980). The exemption amount for school district levies increased to $25,000 upon passage of the amendment. The exemption amount for non-school district levies was gradually raised to $25,000 over a period of three years. The increases in the exemption amount were to be implemented by "general law and subject to conditions specified therein." See Art. VII, §§ 6(c), (d) Fla. Const. (1980).

To implement these constitutional amendments, and apparently to reduce their tax impact, the legislature limited the persons entitled to receive the higher exemption amount to those residents "of this state for the 5 consecutive years prior to claiming the exemption. . . ." §§ 196.031(3)(d), (e), Fla. Stat. (Supp. 1982). The statute subsequently was challenged as violative of the equal protection clause of the Florida Constitution.

This Court held that the legislature lacked the authority to divide its resident citizens into two permanent classes for homestead tax exemption purposes. As this Court stated:

> The statute in issue, not the constitutional provision, effectively establishes two categories of permanent residents for entitlement to homestead tax exemption. We find there is no rational basis for distinguishing between *bona fide residents* of more than five consecutive years and *bona fide residents* of less than five consecutive years in the payment of taxes on their homes. This disparate treatment of resident homeowners cannot be allowed if our equal protection clause is to have any real meaning. It is interesting to note that permanent residents of less than five years have all the other rights and privileges of permanent residents, including the right to vote, the right after six months to obtain a divorce, the right after one year to attend any state university as a resident student, and the right to protect their homestead under all the remaining homestead provisions of our constitution. They are in fact bona fide residents for all purposes except the enhanced homestead exemption.

Osterndorf, 426 So.2d at 545 (italics in original, emphasis added).

It has long been established that the constitution is a limitation upon the legislature's power to provide for the exemption from taxation of any classes of real or personal property except those specifically permitted by the constitution. See e.g. Sebring Airport Auth. v. McIntyre, 783 So.2d 238 (Fla. 2001) (including extensive discussion of case law); Hillsborough County Aviation Auth. v. Walden, 210 So.2d 193 (Fla. 1968); Palethorpe v. Thompson, 171 So.2d 526 (Fla. 1965); State ex rel. Miller v. Doss, 2 So.2d 303 (Fla. 1941). The legislature is without authority to grant an exemption from taxes where the exemption has no

constitutional basis. Archer v. Marshall, 355 So.2d 781 (Fla. 1978); Presbyterian Homes of the Synod of Fla. v. Wood, 297 So.2d 556 (Fla. 1974).

Under the Florida Constitution, certain property *shall* be exempt, while other property *may* be exempt by general law. Compare Art. VII, § 3(a), Fla. Const. (all municipally owned property used exclusively for municipal or public purposes *shall* be exempt) with Id. (portions of property used predominantly for educational, literary, scientific, religious, or charitable purposes *may* be exempted by general law). Many other constitutional provisions permit the legislature to enact general laws implementing the particular exemption or classification. E.g., Art. VII, § 3(e), Fla. Const. (exempting $25,000 of the assessed value of tangible personal property "by general law and subject to the conditions specified therein"); Id. at § 3(f) (exemption for real property dedicated in perpetuity for conservation purposes "as defined by general law"); Id. at § 3(g) (authorizing a deployed servicemember exemption "[b]y general law and subject to the conditions specified therein"); Art. VII, § 4(a), Fla. Const. (agricultural lands "may be classified by general law and assessed solely on the basis of character or use").

The constitutional provision setting forth the homestead tax exemption conditions "establishment of the right thereto in the manner prescribed by law." Art. VII, § 6(a), Fla. Const. Subject to the limitations discussed in

Sparkman and Osterndorf, therefore, the legislature is authorized to enact statutes establishing the manner in which the homestead tax exemption may be received.

Within this constitutional framework, and consistent with the constitution's authorizing language in the homestead tax exemption provision, the legislature has enacted the following definition of permanent resident:

> (17) "Permanent resident" means a person who has established a permanent residence as defined in subsection (18).
> (18) "Permanent residence" means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

§§ 196.012(17), (18), Fla. Stat. (2011) (emphasis added). The legislature also has set forth factors for property appraisers to consider in determining permanent residency in section 196.015, Florida Statutes (2011). For the tax year in question, the statute provided that:

> Intention to establish a permanent residence in this state is a factual determination to be made, in the first instance, by the property appraiser. Although any one factor is not conclusive of the establishment or nonestablishment of permanent residence, the following are relevant factors that may be considered by the property appraiser in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:
> (1) Formal declarations of the applicant.

> (2) Informal statements of the applicant.
> (3) The place of employment of the applicant.
> (4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.
> (5) The place where the applicant is registered to vote.
> (6) The place of issuance of a driver's license to the applicant.
> (7) The place of issuance of a license tag on any motor vehicle owned by the applicant.
> (8) The address as listed on federal income tax returns filed by the applicant.

§ 196.015, Fla. Stat. (2006).[3]

The general statute implementing the homestead tax exemption that the Third District Court held invalid is section 196.031(1)(a), which provides in pertinent part that:

> Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $25,000 on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution.

The Third District Court held invalid and "legally ineffective" the "who resides thereon" language of section 196.031(1)(a) because of its view that the language "reveals that it is a vestige of the past, probably inadvertently carried forward into

[3] Section 196.015 was subsequently amended to include additional factors. Subsection (4), however, was not changed.

the modern statutory scheme relating to section 196.031." De La Mora, 51 So.3d at 523. The court found "this appendage to section 196.031 unenforceable and thus, we decline to be guided by the statute." Id. at 524.

It is difficult to discern the logic of the district court's holding. Initially, the court observed that the 1934 homestead tax exemption "did not contain a requirement that the exemption claimant 'reside thereon' the homestead property." Id. at 523. The constitutional provision, however, expressly provided that "title to said homestead may be vested in such head of a family or in his lawful wife *residing upon* such homestead or in both." Art. X, § 7, Fla. Const. (1885) (amended 1934). The phrases "reside thereon" and "residing upon" seem remarkably similar.

The 1938 constitutional amendment restricted the household exemption to every person "who has legal title or beneficial title in equity to real property in this state and *who resides thereon* and in good faith makes the same his or her permanent home, or the permanent home of another or others legally or naturally dependent upon said person." Art. X, § 7, Fla. Const. (1885) (amended 1938). The 1968 Constitution slightly rephrased the language as follows: "[e]very person who has the legal or equitable title to real estate and *maintains thereon* the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall . . .." Art. VII, § 6(a), Fla. Const. (emphasis added).

Although section 196.031 has been amended on numerous occasions since 1968, the "who resides thereon" language has remained in place. The language cannot be said to be "materially different" from the "maintains thereon" language used in the current constitutional provision so as to cause its invalidity as discussed in Sparkman. To the contrary, the language is consistent with the constitutional provision and within the legislature's authority to enact statutes providing for receipt of homestead tax exemption upon "establishment of right thereto." Art. VII, § 6(a), Fla. Const. Thus, the Third District Court erred in holding the constitutional provision self-executing and the statute unconstitutional.[4]

II. THE THIRD DISTRICT COURT INCORRECTLY CONCLUDED THAT THE DEPARTMENT OF REVENUE DISAGREED WITH THE PROPERTY APPRAISER'S POSITION.

The Third District Court appeared troubled by the Department of Revenue's (department) failure to join in the property appraiser's argument or appear for oral argument and concluded therefrom that the department believed the

[4] PAAF joins in and adopts the arguments presented in the initial brief of the property appraiser of Miami-Dade County. For the reasons set forth therein, the permanent residency of minor children necessarily must follow that of their parents. If property owned by the parents cannot receive homestead tax exemption because they are legally incapable of establishing permanent residency, the minor children likewise cannot establish permanent residency.

property appraiser's reliance upon its administrative rule to be unmeritorious. De La Mora, 51 So.3d at 522 n.7. The court's conclusion is without basis.

The department is required to be joined as a party in any suit contesting an assessment "on the ground that it is contrary to the State Constitution." § 194.181(5), Fla. Stat. (2011). Because nearly every challenge to an assessment or denial of an exemption or classification implicates the Florida Constitution, the department is named as a party defendant in the vast majority of ad valorem tax cases. The attorney for the property appraiser is required to represent the department, upon request, in these lawsuits and is prohibited from receiving any additional compensation for this service. See § 194.181(6), Fla. Stat. (2011).

The provisions requiring joinder of the department were enacted in 1969. See Ch. 69-140, § 7, Laws of Fla. (1969). The apparent purpose of the statute is administrative efficiency, which is provided by requiring the department to be a party, "as opposed to not joining him [the executive director] and thus requiring him to obtain, secondhand, court decisions affecting the execution of his responsibilities." Bonavista Condo. Ass'n, Inc. v. Bystrom, 520 So.2d 84, 86 (Fla. 3d DCA 1988). As such, the department is most often a mere nominal party. See Dep't of Revenue v. Ford, 417 So.2d 1109 (Fla. 5th DCA 1982) (where the department was joined as a mandatory party defendant and complaint sought only

declaratory relief from the property appraiser's assessments, the court lacked authority to require department to perform a statutory duty), reversed on other grounds, 438 So.2d 798 (Fla. 1983).

Here, the Third District Court simply infers too much by virtue of the department's failure to actively defend its administrative rule. The court just as easily could have surmised that the department was worried about the perceived political peril of taking a position on what could be considered a sensitive immigration issue. The department also may have been worried about the appearance of being "taxpayer unfriendly" if it presented arguments supportive of the property appraiser. All of these inferences are unsupported by the record and should be rejected.

CONCLUSION

Based upon the aforementioned arguments and authorities, this Court respectfully is requested to quash the Third District Court's decision and uphold the property appraiser's denial of homestead tax exemption.

Loren E. Levy
Fla. Bar No. 0814441
Ana C. Torres
Fla. Bar No. 0047019
The Levy Law Firm
1828 Riggins Lane
Tallahassee, Florida 32308
Telephone: 850/219-0220
Facsimile: 850/219-0177

Counsel for The Property Appraisers' Association of Florida, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing amicus brief has been furnished by U.S. Mail to **MELINDA S. THORNTON, ESQUIRE** and **SHANIKA A. GRAVES, ESQUIRE**, Assistant County Attorneys, Office of Miami-Dade County Attorney, 111 NW 1st Street, Suite 2810, Miami, Florida 33128-1930; **JOSEPH C. MELLICHAMP, III, ESQUIRE**, Chief Assistant Attorney General, Revenue Litigation Bureau, PL 01 - The Capitol, Tallahassee, Florida 32399-1050; **DANIEL A. WEISS, ESQUIRE**, Tannebaum Weiss, PL, Museum Tower, Suite 2850, 150 West Flagler Street, Miami, Florida 33130-1534; **KENNETH P. HAZOURI, ESQUIRE** and **JEFFREY S. ELKINS, ESQUIRE**, de Beaubien, Knight, Simmons, Mantzaris & Neal, LLP, Post Office Box 87, Orlando, Florida 32802-0087; and **THOMAS M. FINDLEY, ESQUIRE**, and **ROBERT J. TELFER, III, ESQUIRE**, Messer, Caparello & Self, P.A., Post Office Box 15579, Tallahassee, Florida 32317 on this the **29th** day of August 2011.

Loren E. Levy

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the amicus curiae certifies that the font size and style used in the foregoing amicus brief is 14 Times New Roman and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a).

_____

Loren E. Levy