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03-1270

WITH THAT , WE WILL CALL THE LAST CASE ON THE DOCKET, THEN , ZINGALE VERSUS POWELL. YOU MAY PROCEED, IF YOU ARE READY TO GO.

I THINK I AM READY. MAY IT PLEASE THE COURT. I AM LOUIS HUBENER WITH THE ATTORNEY GENERALS OFFICE , REPRESENTING THE PETITIONNER THIS CASE , MR . ZINGALE . ARTICLE VII SECTION 4-C , WHICH WAS KNOWN AS THE "SAVE OUR HOMES" AMENDMENT, PROVIDES FOR A CAP ON THE ASSESSMENT OF HOMESTEAD PROPERTY . THIS APPEAL PRESENTS THE QUESTION WHETHER HOMEOWNERS WHO MAY QUALIFY FOR A HOMESTEAD EXEMPTION , THAT DO NOT APPLY FOR IT , MAY CLAIM THE BENEFIT OF THE ASSESSMENT CAP . THE DISTRICT COURT OF APPEAL REVERSING THE TRIAL COURT, SAID THAT THEY MAY CLAIM THAT BENEFIT , NOTWITHSTANDING THE FAILURE TO APPLY FOR IT .

WHAT WOULD THAT ACTUALLY MEAN , IN THIS CASE? IF, THAT THEY CAN HAVE THE HOMESTEAD EXEMPTION PRIOR TO THE TIME THAT THEY ACTUALLY APPLIED TO IT? DO WE GO ALL THE WAY BACK TO WHEN THEY BOUGHT THIS PROPERTY IN 1990?

WELL , THE OPINION OF THE DISTRICT COURT DOES NOT MAKE THAT CLEAR AT ALL. IT LEAVES IT OPEN AS TO HOW FAR YOU CAN GO BACK , WHETHER YOU CAN GET REFUNDS , WHAT THE BASE YEAR IS FOR THE ASSESSMENT.

THE EXEMPTION IS NOT SO MUCH AS THE LIMITATION WITH REFERENCE TO THE TAX INCREASE. IS THAT CORRECT?

WELL , YOU HAVE TO SHOW YOUR ENTITLEMENT TO THE EXEMPTION , BEFORE YOU CAN SHOW

I UNDERSTAND, BUT THAT IS THE ACTUAL BENEFIT IS THE INCREASE IN THE ASSESSED VALUATION. IS THAT CORRECT?

RIGHT.

I MEAN THAT , IS WHAT WE ARE

WELL, THAT IS THE MAIN ISSUE HERE, I THINK.

I JUST WONDERED , BUT THERE ARE OTHER LIMITATIONS , IN TERMS OF THE STATUTE OF LIMITATIONS AND THE CLAIMS THAT WOULD LIMIT HOW FAR THEY COULD ACTUALLY GO BACK.

RIGHT. INNINGS.

NOW, ARE YOU FOCUSING ON SOLELY SECTION 4-C SECTION 4-C, AS FAR AS THE MEANING OF THE WORDS "ENTITLED TO A HOMESTEAD EXEMPTION" UNDER SECTION 6. IS THAT WHAT WE ARE TO BE FOCUSING ON?

THAT IS WHAT THE DISTRICT COURT OF APPEAL FOCUSED ON , BUT I THINK WE ALSO NEED TO PAY ATTENTION TO 4-C SUB 4 , WHICH TALKS ABOUT NEW HOMESTEAD PROPERTY.

BECAUSE I HAVE, I MEAN, ACTUALLY, AND THE ISSUE ON 4-C IS WHETHER ENTITLED IS EQUIVALENT TO HAVING BEEN ELIGIBILITY OR YOU NEED TO HAVE COMPLIED WITH SECTION 6 OF

THE , WHETHER THAT SORT OF PIGGYBACK S TOGETHER, BUT WHAT I AM INTERESTED I N IS DO YOU, THEN , BECAUSE I DIDN'T SEE THAT ARGUED AT ALL IN THE , OR IN THE APPELLATE COURT DECISION , IS THIS, THEN , WOULD QUALIFY UNDER NEW HOMESTEAD PROPERTY, SHALL BE ASSESSED A T JUST VALUE, AS OF JANUARY 1 , FOLLOWING THE ESTABLISHMENT OF THE HOMESTEAD. IS ESTABLISHMENT A DIFFERENT WORD THAN ENTITLED?

I DON'T THINK THAT REALLY IS. I THINK THAT THE LEGISLATURE , I THINK THE LEGISLATURE ADDRESSED THAT IN 193.155.

BEFORE WE TALK ABOUT WHAT THE LEGISLATURE DID, LET'S FIRST START WITH THE PLAIN LANGUAGE OF THE CONSTITUTION.

RIGHT.

WELL

I JUST WANT, YOU AGREE , OF COURSE THAT , ESTABLISHMENT HAS , MAY HAVE , CERTAINLY HAS A DIFFERENT DEFINITION THAN ENTITLEMENT . CORRECT?

WELL, I THINK WHAT THAT SECTION MEANS IS THAT - -

DO YOU AGREE WITH THAT , THAT THERE ARE TWO DIFFERENT TERMS, AND THEY , THEY ARE USED DIFFERENTLY I N THOSE TWO SECTIONS.

I THINK THERE IS SOME DIFFERENCE BETWEEN

NOW , HOW , JUST, HOW WOULD SECTION 4- C ACTUALLY EVEN APPLY IN THIS CASE , BECAUSE I T SAYS ALL PERSONS ENTITLED TO A HOMESTEAD EXEMPTION UNDER SIX , SHALL HAVE THEIR HOMESTEAD ASSESSED AS OF JUST VALUE AS OF JANUARY 1 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS AMENDMENT .

OUR ARGUMENT THERE IS THAT THE POULS , ALTHOUGH THEY PURCHASED THEIR HOME IN 1990 THE POWELLS , ALTHOUGH THEY PURCHASED THE HOME I N 1990 , DID NOT EVER APPLY FOR HOMESTEAD EXEMPTION UNTIL 2001 AND IT WAS GRANTED FOR THAT YEAR.

WHAT I AM ASKING

I THINK WHAT THE LANGUAGE MEANS IS THAT NEW HOMESTEAD PROPERTY SHALL BE ASSESSED AS AT JUST VALUE.

NO. JUST C. 4-C. SHALL HAVE THEIR HOMESTEAD ASSESSED AS OF JUST VALUE AS OF JANUARY 1 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS AMENDMENT. THAT WOULD BE 1995. IS ANYONE TAKING THE POSITION THAT THEY SHOULD HAVE HAD THEIR JUST VALUE ASSESSMENT AS OF JANUARY 1 , 1995?

I THINK THEY ARE TAKING THAT POSITION.

I THOUGHT THEY SAID THEY WANTED TO GO TO 2000.

WELL, I THINK THEIR POSITION IS THAT THEY HAVE BEEN ENTITLED TO THE HOMESTEAD EXEMPTION FOR SOME DEFINITE PERIOD, AND WHEN THEY BROUGHT SUIT, THEY JUST FOCUSED ON THE YEAR 2000.

YOU SEE , WE ARE MIXING, THEN , TWO DIFFERENT PROVISIONS, SO THAT IS WHERE, AND I AM GOING ASK THIS QUESTION, CERTAINLY , T O THE RESPONDENT HERE, IS THAT IT SEEMS TO ME THAT THE FOCUS ON SECTION 4-C , IS INAPPROPRIATE , BECAUSE YOU ARE TALKING ABOUT

ASSESSMENTS THAT HAVE TO HAVE TAKEN PLACE AS OF JANUARY 1 , 1995.

I AGREE WITH YOU IT ISN'T APPROPRIATE .

NOW WE GO BACK TO SECTION C -4 C-4-C, WHATEVER IT IS , THE ONE THAT , NEW HOMESTEAD PROPERTY.

RIGHT.

NOW , THAT ONE SAYS "SHALL BE ASSESSED AT JUST VALUE AS OF JANUARY 1 OF THE YEAR FOLLOWING ESTABLISHMENT OF THE HOMESTEAD." THAT IS A NARROWER TERM THAN ENTITLED , IS IT NOT?

SOMEWHAT. WE VIEW IT THIS WAY , I THINK

ACTUALLY IT IS A FRIENDLY QUESTION.

THIS, THIS , I KNOW.I UNDERSTAND. THIS ADDRESSES PROPERTY THAT BECOMES HOMESTEAD AT SOME POINT AFTER THE EFFECTIVE DATE OF THE AMENDMENT.

AND DO WE KNOW ANYTHING ABOUT USING THE WORD ESTABLISHMENT , ACTUALLY SOUNDS LIKE IT MEANS AN AFFIRMATIVE ACT.

AN AFFIRMATIVE ACT TO ESTABLISH THE HOMESTEAD, WHICH I THINK REALLY MEANS ESTABLISH THE HOMESTEAD EXEMPTION , BECAUSE HOMESTEAD PROPERTY IS NOT HOMESTEAD PROPERTY FOR TAXPURPOSES, UNTIL YOU ESTABLISH THE EXEMPTION.

ALL RIGHT. SO SINCE WE KNOW THAT PROBABLY THIS AMENDMENT WOULD NEVER HAVE BEEN CONSTRUED TO SAY UNDER SECTION 4-C , THAT ANYONE WHO WAS ENTITLED TO A HOMESTEAD EXEMPTION , BUT HADN'T ACTUALLY APPLIED FOR ONE , WAS GOING TO HAVE THEIR PROPERTY ASSESSED AT JUST VALUE, AS OF JANUARY 1 , 1995. NOBODY HAS EVER TAKEN THAT POSITION, CORRECT?

NO. NO. I DON'T THINK SO.

SO THEN IT HAS TO BE THAT THIS , THE ONLY OTHER PROVISION THAT WOULD ACTUALLY HELP THE RESPONDENTS HERE , WOULD BE THIS NEW HOMESTEAD PROPERTY .

FOUR.

HOW DOES THIS QUALIFY AS NEW HOMESTEAD PROPERTY?

BECAUSE IT WAS NOT HOMESTEAD PROPERTY, AT THE TIME THAT THIS AMENDMENT BECAME EFFECTIVE.

WE ACTUALLY HAVE TO INTERPRET NOT ONLY, WE HAVE TO INTERPRET , BOTH , ESTABLISHMENT , ENTITLEMENT AND HOMESTEAD , TO GET TO THE BOUGHT HIM OF THIS.

RIGHT.

BECAUSE THE STATE HASN'T TAKEN THE POSITION AND NONE OF THE PROPERTY APPRAISERS HAVE TAKEN THE POSITION THAT THEY HAVING NOT BEEN IN AT THE START DATE, THAT THEY NEVERGET TO HAVE THE ADVANTAGE OF IT. IS THAT CORRECT? YOU ARE SAYING, YES , THEY DO, BUT IT STARTS FROM THE DATE THAT THEY APPLY FOR THEIR HOMESTEAD EXEMPTION.

RIGHT. RIGHT.

SO SOMEBODY, FOR EXAMPLE , MAYBE HAD THREE HOMES AT THE TIME , AS OF JANUARY 1 , 1994. THEY STILL OWN THAT HOME. AND IT WASN'T A CHANGE OF OWNERSHIP BUT MAYBE THEY GOTRID OF THE OTHER HOMES , SO THEY NOW COULD ESTABLISH THE ONE HOME A S A HOMESTEAD EXEMPTION.THEY WOULD DO IT UNDER C-4.

THAT IS OUR INTERPRETATION. YES. YES. AND THAT IS, ALSO, THE INTERPRETATION OF THE LEGISLATURE , IN 193.155. THAT, EXCUSE ME , AND WHICH SAYS THAT , WITH RESPECT T O NEW HOMESTEAD PROPERTY , THE ASSESSMENT CAP COMES INTO PLAY , THE YEAR , THE YEAR AFTER THEY ESTABLISHED THE EXEMPTION, ON THE JANUARY 1 OF THE YEAR FOLLOWING THEIR ESTABLISHING THE HOMESTEAD EXEMPTION, THE PROPERTY IS ASSESSED AT FULL VALUE , AND THE CAP APPLIES THEREAFTER TO LIMIT ANY INCREASE IN THAT VALUE. AND THAT I S THE , THAT CERTAINLY IS A PERMISSIBLE INTERPRETATION OF THAT CONSTITUTIONAL LANGUAGE , AND THEREFORE WE SUBMIT THAT IT IS CONTROLLING AS TO CONSTRUCTION.

IF IT IS CONTROLLING , WHAT ARE THE RULES OF STATUTORY CONSTRUCTION THAT WE ARE TO BE GUIDED BY? BY SAYING PERMISSIBLE , YOU SEEM TO BE CREEDING THAT IT IS NOT THE SEEDING THAT IT I S NOT THE SAME LANGUAGE YOU ARE NOT CEDING THAT YOU ARE NOT USING THE PLAIN LANGUAGE, YOU HAVE NOT ESTABLISHED WHY ONE IS USED I N ONE SECTION AND ESTABLISHMENT USED IN ANOTHER SECTION .

I DON'T UNDERSTAND THIS.

FIRST OF ALL , IT I S CONSTITUTIONAL HISTORY. FIRST OF ALL , LEGISLATIVE LANGUAGE IS PLAIN. WE DON'T DO ANYTHING BUT INSERT THE LANGUAGE.

EXACTLY.

IT SOUND TO ME LIKE YOU ARE SAYING THAT THE LANGUAGE IS NOT SO CLEAR , AND THAT THEREFORE , WHAT PRINCIPLE SAYS WHEN THE LANGUAGE ISN'T CLEAR, WE GO AND , S O THE STATUTE THAT HAS BEEN ENACTED BY THE LEGISLATURE, WHO WASN'T INVOLVED IN PASSING THIS AMENDMENT, TO CLARIFY THE INTENT OF THE CONSTITUTIONAL AMENDMENT?

WELL , THE LEGISLATURE IS DIRECTED, UNDER SECTION 4 , TO ADOPT STATUTES THAT IMPLEMENT THIS SECTION 4. AND THAT IS WHAT THEY HAVE DONE HERE. AND I THINK THAT IS

IN OTHER WORDS IS THERE ANY OTHER ARGUMENT? HAVE YOU GONE TO A DICTIONARY AS TO WHAT THE COMMON DEFINITION OF ESTABLISHMENT IS , TO SEE WHETHER THAT IS REALLY INDICATING THAT THERE HAS GOT TO BE AN AFFIRMATIVE RIGHT , SOMETHING AFFIRMATIVE DONE, BEFORE THE RIGHT IS ESTABLISHED?

I THINK IT IS JUST A MATTER OF COMMON SENSE, THAT YOU CAN ONLY ESTABLISH THE HOMESTEAD BY ESTABLISHING THE EXEMPTION . PROPERTY IS NOT HOMESTEAD PROPERTY, UNLESS YOU HAVE ESTABLISHED THE EXEMPTION. IT IS JUST PROPERTY.

HOW LONG HAS IT BEEN THE LAW OF FLORIDA , THAT THERE HAS TO BE A FILING BY THE OWNER OF THE PROPERTY, IN ORDER TO GET HOMESTEAD EXEMPTION?

WELL, THIS COURT DECIDED THAT QUESTION OVER 30 YEARS AGO , IN HORN V MARKHAM, AND IT SAID THAT , WITHOUT , EXCUSE ME , THAT THERE IS NO ABSOLUTE RIGHT TO THE HOMESTEAD EXEMPTION , AND THAT, UNLESS THE PROPERTY OWNER APPLIES FOR AND IS GRANTED THE EXEMPTION, HE HAS NO ABSOLUTE RIGHT TO I T , AND

WILL WE TAKE THAT INTO CONSIDERATION? IS THAT A PRINCIPLE OF STATUTORY CONSTRUCTION THAT WE SHOULD TAKE INTO CONSIDERATION , WHEN THERE IS A CONSTITUTIONAL AMENDMENT,

THAT IS THAT , JUST LIKE THERE IS A LEGISLATURE PRESUMED TO KNOW THE LAW , THAT THOSE THAT PROPOSE THIS AMENDMENT AND ACTUALLY SAID ENTITLED TO A HOMESTEAD EXEMPTION UNDER SECTION 6 OF THIS ARTICLE , WHICH, THEN , REFERS TO THIS , THE METHOD THAT IS SET FORTH IN HORN, THAT THAT , THAT WE SHOULD TAKE THAT CASE INTO CONSIDERATION AS A PRINCIPLE OF STATUTORY CONSTRUCTION?

WELL , ABSOLUTELY. I THINK IT IS THE CONTROLLING PRECEDENT , BECAUSE YOU HAVE A REFERENCE DIRECTLY TO SECTION 6, AND YOU WERE INTERPRETING SECTION 6 IN THE HORNE VERSUS MARKHAM CASE.

BUT ISN'T THAT CLAIM FOR HOMESTEAD EXEMPTION ACTUALLY RECOGNIZING A PREEXISTING CONDITION , THAT IS THE CONDITION OF HOMESTEAD ON THE PROPERTY?

WELL

TO GET THE DEMINGS, YOU HAVE TO DEMONSTRATE THAT , BUT TO GET THE EXEMPTION , YOU HAVE TO DEMONSTRATE THAT , BUT YOU COULD HAVE HAD THAT FACTUAL STATUS THAT WOULD ENTITLE YOU TO THE HOMESTEAD EXEMPTION THAT WAS IN EXISTENCE , LONG BEFORE YOU CLAIMED THE EXEMPTION, RIGHT?

BUT YOU DON'T HAVE A RIGHT TO IT UNLESS AND UNTIL YOU ESTABLISH IT.

WELL , DOESN'T THIS COME BACK , THOUGH, TO THE ISSUE ABOUT THE USE OF THAT BROADER LANGUAGE, THAT IS THE ENTITLEMENT ?

I DON'T THINK SO, BECAUSE IT SAYS ALL PERSONS ENTITLED , UNDER SECTION 6. AND YOU DON'T HAVE A RIGHT , I DON'T THINK THERE IS ANY SIGNIFICANT DIFFERENCE BETWEEN RIGHT AND ENTITLED.

DIDN'T YOU JUST RECOGNIZE THAT YOU HAVE TO PROVE THAT YOU WERE ENTITLED TO IT, AND IT JUST , THE WAY YOU PROVE IT , IS YOU SAY THAT I USE IT AS MY PRIMARY RESIDENCE OR HOWEVER YOU DO IT , KIND OF THING , BUT YOU MAY HAVE BEEN USING IT DE FACTO , AS YOUR PRIMARY RESIDENCE , FOR TEN YEARS , BEFORE YOU WENT IN AND MADE A CLAIM FOR HOMESTEAD EXEMPTION. RIGHT?

WELL , THAT MAY BE TRUE, BUT THE FACT THAT WHEN YOU DO IT

IN ANY OF THOSE YEARS , YOU WOULD HAVE BEEN ENTITLED TO CLAIM HOMESTEAD EXEMPTION, IF THOSE WERE THE CORRECT FACTS. IS THAT CORRECT?

ONCE , BUT , YOU GET NOTHING FROM THAT ENTITLEMENT. YOU GET NOTHING, UNTIL YOU ESTABLISH THE RIGHT, THROUGH THE APPLICATION PROCESS .

YOU HAVE A CONSTITUTIONAL PROVISION THAT WE STARTED OUT TALKING ABOUT. DOES

THAT IS NOT SAYING ANYTHING ABOUT RETROACTIVE .

IT DOES TALK ABOUT ENTITLEMENT , DOES IT NOT?

IT USES THE WORD.

I AM NOT , IT IS JUST A PART OF THE PUZZLE WE ARE TRYING TO WORK OUR WAY THROUGH.

IT IS A BIT UNDER IT IS AN ENTITLEMENT UNDER SECTION 6 , AND UNDER SECTION 6 , THE HORNE VERSUS MARKHAM .

HOW WOULD THE TAXING AUTHORITIES KNOW, AND I GUESSTHIS IS A FRIENDLY QUESTION THAT IS MORE DIRECTED, AND I WANT TO HAVE RESPONDED TO, YOU KNOW , BY YOUR OPPOSITION , BUTI WILL GIVE AWE CRACK A T IT, TOO , AND THAT IS HOW ARE THE TAXING AUTHORITIES TO KNOW PROPERTY IS HOMESTEAD , UNLESS SOMEBODY COMES AND CLAIMS ?

THERE IS NO POSSIBLE WAY THEY CAN KNOW THAT.

NO SUPERCOMPUTER THAT WE HAVE OUT THERE, THAT SENDS OUT VIBES INTO THE COMMUNITY THAT LANDS ON THIS PIECE OF PROPERTY OR THAT PIECE OF PROPERTY, SO THERE IS NO , REALLY , PREEXISTING WAY , BECAUSE I T IS THE STATUS OF AN INDIVIDUAL CLAIMING THAT TO BE AN ONGOING PRIMARY RESIDENCE , IS THAT CORRECT?

THAT IS ABSOLUTELY CORRECT.

SO THERE IS A HEAVY PRACTICAL LAYER TO THIS.

CORRECT. I THINK ALL THE AMICUS MR. CHIEF JUSTICE

THE MARSHAL

THAT HAVE BEEN FILED, I WILL GO INTO THAT I N SOME DEPARTMENT. IT IS JUST IMPOSSIBLE . A WORD OR TWO MORE , I AM INTO MY REBUTTAL TIME, BUT THEY SUGGEST THAT , A S THEY , IN LIFETHE APPLICATION PROCESS , AND TO AVOID THIS PROBLEM THAT THE PROPERTY APPRAISER FACES , THAT THEY CAN PROCEED UNDER , EITHER 194.171-2, WHICH IS JUST TO FILE A LAWSUIT AND HAVE TAX ADMINISTRATION BY LAWSUIT AS WAS DONE IN THIS CASE. THEY SEEM TO HAVE RECEDED SOMEWHAT FROM THAT POSITION IN THEIR BRIEF HERE , AND THEY NOW ARGUE THAT THE HOMEOWNERS CAN GO IN AND HAVE AN INFORMAL CONFERENCE, UNDER 194.011, AND JUST TELL THE PROPERTY APPRAISER THIS ASSESSMENT IS WRONG, BECAUSE LAST YEAR WE WERE ENTITLED TO THE EXEMPTION, EVEN THOUGH WE DIDN'T APPLYFOR IT.

IS THIS THE ONLY CASE OUT THERE?IN OTHER WORDS THE AMENDMENTHAS BEEN IN EFFECT SINCE, WELL , IT WENT INTO EFFECT FOR 1994. AND WE ARE TALKING ABOUT GLOOM AND DOOM HERE, ABOUT ALL OF THESE PEOPLE THAT ARE GOING TO COME OUT OF THE WOODWORK. IS THERE , W E KNOW FROM THE RECORD, AS TO WHETHER THESE PETITIONERS OR RESPONDENTS , THIS IS THE ONLY CASE OUT THERE?

THIS IS THE FIRST THAT HAS RESULTED IN AN APPELLATE DECISION . THERE IS REFERENCE IN THE TRIAL COURT'S DECISION IN THIS CASE , TO ANOTHER DECISION ON THE SAME ISSUE THAT WAS DECIDED AT THE TRIAL COURTELEVEL. I DON'T KNOW WHETHER THAT WAS APPEALED F IT WAS, I T PROBABLY

ARE THERE OTHER LIMITATIONS THAT WOULD PREVENT WHOLESAL APPLICATION OR ACTION HERE, TO GO YOU KNOW, WAY BACK ?

JUST STATUTE OF LIMITATIONS AND TO ANSWER YOUR QUESTION , I THINK THERE ARE A NUMBER OF CASES THAT HAVE BEEN FILED AFTER THIS , A LARGE NUMBER, IN RELIANCE ON THE FOURTH DISTRICT'S DECISION. THIS IS NOT AN ISOLATED CASE.

BUT W E DON'T KNOW HOW MANY OR WHATEVER .

THERE IS NOTHING IN THE RECORD THAT WOULD GIVE A NUMBER.

JUST YOU ARE SORT OF OPERATING ON A COMMONSENSE THING THAT ANYBODY THAT FINDS OUT THEY MIGHT BE ENTITLED TO SOMETHING THEY DIDN'T GET BEFORE.

I AM SURE THAT THEY WILL

ALL RIGHT, IF YOU WANT TO SAVE

ARE THE STATUTES OF LIMITATIONS FOUR YEARS OR TWOYEARS?

IT WOULD PROBABLY BE FOUR YEARS IN THIS CASE , UNDER CHAPTER 95.

CHIEF JUSTICE: THANK YOU.

THANK YOU.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS HARRY RALEIGH , I AM HERE ON BEHALF OF THE RESPONDENTS .

WOULD YOU START OUT BY ADDRESSING THIS ISSUE ABOUT HOW ARE TAX ASSESSORS, UNDER YOUR CONCEPT HERE, OF BEING ELIGIBLE , EVER GOING TO KNOW THE ONE MILLION PARCELS OF PROPERTY THAT EXIST IN DADE COUNTY . HOW ARE THEY TO KNOW OUT THERE , WHICH ARE, AND SO I AM HAVING SOME , THAT THIS PRACTICAL ISSUE.

AND THAT FLOWS OVER INTO THE LAST ISSUE , WHICH WAS WHETHER WE OPENED UP FOUR YEARS , AND IN THE WAKE OF THEFOURTH DISTRICT DECISION IN THIS CASE , NOTHING CHANGESFROM THE PERSPECTIVE OF PROPERTY APPRAISERS. NOTHING . THERE IS A COMPREHENSIVE STATUTORY PROCEDURE, PUT IN PLACE UNDER CHAPTER 194 , TO BRING THIS ISSUE DIRECTLY TO THE ATTENTION OF THE PROPERTY APPRAISER.

BUT SEEMINGLY , UNDER THIS CONSTITUTIONAL SCHEME , WEWOULD HAVE THIS LIMITATION ON ANY INCREASES IN THE ASSESSED VALUATION , IS THAT CORRECT?

YOU HAVE THE 3 PERCENT CAP OR CPI , WHICHEVER APPLIES . YES, SIR.

SO SEEMINGLY TAX ASSESSORS ARE OUT THERE THAT ARE AWARETHAT A PARTICULAR PIECE OF PROPERTY IS HOMESTEAD. WOULD NOT EXCEED THE CAP. RIGHT?

NO, SIR. NO, SIR. THE PROPERTY APPRAISER IS REQUIRED , UNDER 194.011 SUB1 , TO SEND A NOTICE EVERY YEAR. IT IS A TRIM NOTICE. WE ALL GET IT. IT SAYS HERE IS WHAT YOUR ASSESSMENT WAS LAST YEAR.HERE IS WHAT YOUR ASSESSMENT IS THIS YEAR.HERE IS WHAT YOUR TAXES WERE LAST YEAR. HERE IS WHAT THEY ARE GOING TO BE THIS YEAR. IF YOU DON'T AGREE WITH THAT INCREASE IN ASSESSMENT, THEN YOU HAVE THE RIGHT TO AN INFORMAL CONFERENCE WITH THE PROPERTY APPRAISER. WHAT DO YOU DO? YOU SAY , HEY , I WAS ENTITLED TO THE HOMESTEAD EXEMPTIONLAST YEAR.

IT DOESN'T SAY JUST ENTITLED TO HOMESTEAD EXEMPTION.COULD YOU READ WITH US THROUGH THE CONSTITUTIONAL AMENDMENT , ITSELF?

YES, SIR.

IT DOESN'T SAY ENTITLED TO CLAIM. IT DOESN'T SAY RIGHT TO CLAIM. IT SAYS ENTITLED TO A N EXEMPTION UNDER SECTION 6, SO DO YOU AGREE THAT IT MUST BE AN ENTITLEMENT UNDER SECTION 6 OF THIS ARTICLE?

YES.

AND DO YOU, ALSO, AGREETHAT , UNDER SECTION 6 OF THIS ARTICLE , ARTICLE VII , THAT IT SAYS

IT GOES AND CHRIS WHO SHALL BE GOES AND DESCRIBES WHO SHALL BE EXEMPT, BUT IT SAYS UPON ESTABLISHMENT OF A RIGHT THERE TO AND PRESCRIBED BY LAW.

PRESCRIBED BY LAW. AND DOES IT NOT READ TOTALLY IN LINE WITH SUBSECTION 4 , WHEN SUBSECTION 4 USES THE PHRASE "ESTABLISHMENT" ? THAT IS HOW YOU ESTABLISH.

NO , I DON'T AGREE WITH THAT. WHAT I DO AGREE WITH , YOUR HONOR, IS THAT THE PHRASE TO ESTABLISH THE EXEMPTION , AND WE HAVE TO KEEP SEPARATE THE EXEMPTION FROM THE "SAVE OUR HOMES" CAP. TO ESTABLISH THE EXEMPTION TO BE ENTITLED TO YOUR \$25,000 EXEMPTION , YOU HAVE TO FILE. YOU HAVE TO FILE, BECAUSE IT SAYS , EVEN WHEN YOU RESIDE ON THE PROPERTY AND YOU INTEND TO MAINTAIN IT AS YOUR PRIMARY RESIDENCE THAT, IS MY DEFINITION OF ENTITLED TO. EVEN IF YOU DO THAT, IN ORDER TO

THE ENTITLEMENT DOESN'T JUST SAY ENTITLED TO. IT SAYS ENTITLEMENT TO EXEMPTION UNDER SECTION 6. YOU LEAVE OUT THE SECTION 6.

NO. NO. I DON'T INTEND TO LEAVE OUT SECTION 6 .

OKAY.

I AM SAYING THAT THE PORTION OF SECTION 6 THAT DEFINES ENTITLEMENT , IS MERELY THAT YOU LIVE THERE AND INTENDED TO USE IT AS YOUR PRIMARY RESIDENCE.

THEN YOU MUST ERASE THE LAST .

NO. NO. I DON'T ERASE IT, BECAUSE IT SAYS UPON. THAT IS WHEN YOUR EXEMPTION STARTS. THAT IS NOT WHEN YOUR ENTITLEMENT TO THE EXEMPTION STARTED. YOUR ENTITLEMENT TO THE EXEMPTION COULD HAVE STARTED IN 1990, LIKE IT DID FOR THE POWELLS , WHEN THEY BOUGHT THIS PROPERTY.

I DON'T FOLLOW UROLOGIC .

THEY NEVER FILED.

I DON'T FOLLOW UROLOGIC THAT IT MAY BE ENTITLEMENT - - FOLLOW UROLOGIC YOUR LOGIC , BECAUSE THAT IT MAY BE ENTITLED. I AM TRYING TO BUT I AM JUST NOT GETTING IT . I AM TRYING TO DILIGENTLY .

CONSTITUTION SAYS TO THE LEGISLATURE THAT YOU HAVE TO MAKE A LAW THAT GOVERNS THIS ESTABLISHMENT, AS MATTER OF LAW , AND THE LEGISLATURE DID. THE LEGISLATURE PASSED 196.031, WHICH SAYS EXACTLY WHAT I HAVE SAID THE DEFINITION OF ENTITLEMENT IS . 196. ON 31 NEVER MENTIONS 196.031 NEVER MENTIONS FILING. ALL IT SAYS THAT HAS TO HAPPEN , IN ORDER TO BE ENTITLED TO, AND IT USED ENTITLED TO AN EXEMPTION , IS YOU OWN IT AND YOU RESIDE ON IT AS YOUR PRIMARY RESIDENCE. GOOD FAITH INTENTION TO USE IT AS YOUR PRIMARY RESIDENCE. THAT IS WHAT THE LEGISLATURE, THAT IS HOW THEY DEFINE ENTITLED TO. IT USES THAT PHRASE. ENTITLED TO AN EXEMPTION, AND IT NEVER MENTIONS , NEVER ONCE MENTIONS A FILING REQUIREMENT .

YOU ARE NOW TALKING ABOUT WHICH? I AM SORRY. YOU ARE TALKING ABOUT THE CONSTITUTION.

I AM SORRY. 196.031.

WHICH REFERS TO , YOU ARE TALKING ABOUT HOMESTEAD EXEMPTION.

THE TILTH IS EXEMPTION OF HOMESTEADS.

THE TITLE IS EXEMPTION OF HOMESTEADS .

AND WHAT DOES THE MALLORY CASE HOLD?

I AM SORRY.

WHAT DOES THE CASE INTERPRETING SECTION 6 HOLD?

IT DOESN'T . HOLD?

IT DOESN'T.

IT DOESN'T SAY IN ORDER TO RECEIVE A HOMESTEAD EXEMPTION, YOU HAVE T O APPLY FOR I T ?

YES , DO YOU. YES, YOU DO , TO RECEIVE A HOMESTEAD EXEMPTION CASE. THIS IS NOT A HOMESTEAD EXEMPTION CASE. IT IS A CAP CASE.

YOU ARE SAYING , YOUR ARGUMENT AS I UNDERSTAND YOU ARE JUST MAKING IT, IS ON THE BASIS O F STATUTORY CONSTRUCTION, NOT CONSTITUTIONAL CONSTRUCTION. IS THAT RIGHT?

NO. I THINK IT IS BOTH, YOUR HONOR. I THINK THE STATUTE, THE STATUTE OBVIOUSLY HELPS M E , AND LEADS TO THE DEFINITION , THAT HELPS M Y CLIENT'S CASE.

TELL ME , UNDER YOUR SCHEME , WHEN DOES THIS, THE BASE YEAR FOR THE "SAVE OUR HOPES" ACT, WHEN IS THAT BASE "SAVE OUR HOMES" ACT , AND WHEN DOES THAT BASE YEAR COME INTO BE SOMETHING.

IT I S PRIOR TO THE YEAR THAT THEY BRING I T TO THE ATTENTION TO THE PROPERTY APPRAISER.

HOW DO THEY BRING IT TO THE ATTENTION OF PROPERTY APPRAISER? ANOTHER PROPERTY APPRAISER , UNDER 194.011 SUB 1 , SENDS THE TRIM NOTICE EVERY YEAR. YOU GET YOUR TRIM NOTICE. IF YOU DO NOT AGREE WITH YOUR ASSESSED VALUE, SUB-2 SAYS YOU CAN HAVE AN INFORMAL CONFERENCE, TO BRING TO THE ATTENTION , IT SPECIFICALLY SAYS , BRING TO THE ATTENTION ANY MATTER TO THE ATTENTION OF THE PROPERTY APPRAISER , THAT YOU THINK WOULD IMPACT YOUR ASSESSMENT. IF H E STILL RULES AGAINST YOU, THEN 194.011 SUB-3 SAYS THAT YOU HAVE A RIGHT TO APPEAL THAT DECISION T O THE VALUE ADJUSTMENT BOARD. YOU HAVE TO DO BOTH OF THOSE WITHIN 25 DAYS.

YOUR POSITION IS THAT THE PROPERTY OWNER HAS N O OBLIGATION T O FILE ANYTHING WITH THE PROPERTY APPRAISER , IN ORDER TO BE ENTITLED TO THE ESTABLISHMENT OF THE BASE YEAR.

NO, SIR. THAT IS NOT MY POSITION. MY POSITION IS THAT , WITHIN 25 DAYS, HE MUST GO TO THE PROPERTY APPRAISER .

PRIOR TO THE TIME THAT THE PROPERTY APPRAISER SENDS OUT THE NOTICE , I GUESS , I AM HAVING A LITTLE HARD TIME , AS JUSTICE LEWIS SAID, FOLLOWING THIS, BECAUSE I KNOW THAT , IF YOU , I N A SITUATION WHICH I COULD SEE COME INTO PLAY HERE, A PERSON RENTS THEIR PROPERTY , THEY HAVE OWNED IT SINCE THE '70s , BUT

THEY HAVE OWNED IT SINCE 1990.

OKAY. BUT SAY SOMEBODY , OKAY , SAY, BUT, THEN , THEY RENT THEIR PROPERTY FOR 1994, AND THEY ARE NOT ENTITLED TO.

NO, THEY ARE NOT.

SO THEIR BASE YEAR DISAPPEARS.

THAT'S CORRECT.

SO THEN THEY COME BACK, AND THEY ARE GOING TO TAKE THE POSITION THAT THEY ARE ENTITLED TO HOMESTEAD EXEMPTION, BECAUSE THEY STOPPED RENTING THEIR PROPERTY. HOW DOES THAT

THEY CAN'T, BECAUSE THEY WEREN'T ENTITLED TO IT IN THE PRIOR YEAR.

BUT

BECAUSE THEY WERE RENTING IT, SO THEY CANNOT BRING FACTS TO THE ATTENTION OF THE PROPERTY APPRAISER.

BUT THEY ARE ENTITLED TO IT AT SOME POINT. ONCE THEY STOP RENTING THEIR PROPERTY AND THEY TAKE IT AND HE THEY GO BACK AND INTEND IT TO - - AND THEY GO BACK AND INTEND IT TO BE HOMESTEAD AGAIN.

RENT THEIR PROPERTY JANUARY 1, PRIOR TO THAT YEAR, THE PROPERTY APPRAISER IS SUPPOSED TO ASSESS IT. THAT WOULD BE THE SAME AS NEW HOMESTEAD PROPERTY UNDER SUB-4.

UNDER THAT SCENARIO, THOUGH, THEY HAVE TO FILE FOR HOMESTEAD EXEMPTION.

WE DON'T CONTEST THAT THEY MUST FILE FOR HOMESTEAD EXEMPTION.

I THINK IT IS VERY HARD FOR THIS TO BE SEPARATED IN THE STATUTORY SCHEME, AND THE STATUTORY SCHEME IS TO SET THIS UP SO THAT THE PROPERTY APPRAISER IS GOING TO HAVE THE INFORMATION UPON WHICH TO MAKE A DETERMINATION AS TO WHETHER THIS IS HOMESTEAD PROPERTY OR NOT, AND THAT THE CONCEPT IS THAT, ONCE THE PROPERTY APPRAISER GETS THAT FILING, THAT ESTABLISHES THIS AS HOMESTEAD FOR PURPOSES OF EXEMPTION, THE INTENT OF THIS CONSTITUTIONAL AMENDMENT WAS THAT THAT WOULD BE THE BASE YEAR FOR THE ASSESSMENT.

JUSTICE WELLS, I CANNOT QUARREL WITH THE CONCEPT THAT CERTAINLY IT WOULD BE EASIER FOR PROPERTY APPRAISERS, IF THEY THAT IS WHAT THE CONSTITUTION SAYS.

BUT THAT IS THE WAY IT HAS BEEN TREATED SINCE 1993.

BUT WE ARE NOT, WE ARE NOT SHAKING THE HALLS OF JUSTICE, AND THE SKY WILL NOT FALL, BECAUSE OF THAT FOURTH DISTRICT OPINION.

LET ME TRY ANOTHER TACT HERE, BECAUSE WHAT I AM STILL HAVING TROUBLE WITH ACTUALLY FOLLOWS UP WITH WHAT JUSTICE WELLS SAID. HE ASKED YOU HOW IS THE BASE YEAR ESTABLISHED, AND YOU SAY IT IS THE YEAR AFTER IT IS BROUGHT TO THE ATTENTION OF THE PROPERTY APPRAISER THAT THERE IS AN ENTITLEMENT TO A HOMESTEAD EXEMPTION. IS THAT RIGHT? ENTITLEMENT. THEY TELL HIM, HEY, I HAD A HOME, THIS

IF YOU WERE ENTITLED WITHOUT THE THEORETICAL BREAK IN WHERE YOU RENTED IT, THE YEAR PRIOR. YES.

NOW, IN THIS CASE, YOU, UNDER SECTION 4-C, IT SAYS ALL PERSONS ENTITLED TO A HOMESTEAD EXEMPTION UNDER SECTION 6, SHALL HAVE THEIR HOMESTEAD ASSESSED AS OF

JUST VALUE AS OF JANUARY 1 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS AMENDMENT. THAT WOULD BE JANUARY 1 , 1995. CORRECT?

RIGHT .

NOW , WHAT YOU SATISFIED SE IS, NO , I T WHAT YOU SAID IS, NO , IT IS THE YEAR AFTER IT IS BROUGHT TO THE ATTENTION OF THE PROPERTY APPRAISER, SO THE HOMEOWNERS IN THIS CASE, THE POWELLS, WOULD NOT HAVE BEEN ABLE TO HAVE HAD THEIR PROPERTY ASSESSED AS O F JANUARY , AS , A T JUST VALUE AS OF JANUARY 1, 1995, AND THEN GOT THE BENEFIT OF THE CAP AFTER THAT, BECAUSE THEY NEVER BROUGHT IT TO THE ATTENTION OF THE PROPERTY

THAT'S CORRECT, BUT IT IS NOT BECAUSE OF THE LANGUAGE OF SUB-C. IT IS BECAUSE OF THE 60-DAY STATUTE OF LIMITATIONS , NOT SIX YEARS , INCIDENTALY. 60 DAYS.

60 DAYS. NOW WE GET TO , THOUGH , SINCE THEY ARE NOT TRAVELING UNDER SECTION 4-C , WE GO TO SECTION 4-C-4 , WHICH SAYS THAT NEW HOMESTEAD PROPERTY SHALL BE ASSESSED AT JUST VALUE , AS O F JANUARY 1 OF THE YEAR FOLLOWING THE ESTABLISHMENT OF THE HOMESTEAD . NOW , I AM ASKING, I WILL ASK YOU THE SAME QUESTION I ASKED MR . HUBENER , IS DO YOU CONCEDE OR DEGREE THAT ESTABLISHMENT IS A DIFFERENT WORD THAN ENTITLEMENT?

I AGREED THAT IT IS A DIFFERENT WORD. UNDER THE CIRCUMSTANCES OF THE ISSUES RAISED IN THIS CASE, IDON'T BELIEVE THAT THERE IS ANY DIFFERENCE.

SO YOU DON'T THINK IT NEEDS ANY STATUTORY CONSTRUCTION , TO UNDER WHAT THE VOTERS OF THE STATE , IN ADOPTING THIS CONSTITUTIONAL AMENDMENT, MINDFUL OF THE WHOLE SCHEME OF THE WAY THIS GOES , MEANT BY USING THE WORD "FOLLOWING THE ESTABLISHMENT OF THE HOMESTEAD", AS OPPOSED TO USING "FOLLOWING MOVING INTO A PROPERTY WHICH SPROCKTED BY HOMESTEAD ?"

CERTAINLY IF WE HAD SOMETHING THAT IS THE EQUIVALENT OF LEGISLATIVE HISTORY FOR THIS AMENDMENT, WE WOULD BE ALL OVER IT.

SO THEREFORE IS THIS A PLAIN LANGUAGE CONSTRUCTION?

I THINK IT IS .

THAT IS THE WHOLE PROBLEM.

I T DOESN'T SAY THE YEAR FOLLOWING THE ESTABLISHMENT OF THE HOMESTEAD EXEMPTION . BUT IT SAYS THE YEAR FOLLOWING THE ESTABLISHMENT OF THE HOMESTEAD.

BUT SECTION 6 DOES MAKE REFERENCE TO THE EXEMPTION , BECAUSE IT DOES SAY UPON ESTABLISHMENT. IT NOT HOMESTEAD JUST IN THE AIR. IT HAS A QUALIFYING PHRASE, UPON ESTABLISHMENT.

THAT IS IN ORDER TO GET YOUR EXEMPTION .

BUT AGAIN

WE ARE NOT ENTITLED TO THAT EXEMPTION.

BUT, AGAIN, THAT IS WHAT IS REFERENCED IN SECTION 4-C.

IT IS THE ENTITLEMENT TO THE EXEMPTION NOT THE GRANT OF THE EXEMPTION.

NO. IT DOESN'T SAY ENTITLEMENT. IT SAYS ENTITLEMENT UNDER SECTION 6 . SECTION 6 IS HOW YOU ESTABLISH THE EXEMPTION , IS IT NOT? IS IT NOT? BECAUSE IT SAYS , UPON ESTABLISHMENT.

THAT IS HOW YOU OBTAIN THE ESTABLISHMENT.

AND THAT IS WHAT SECTION 6 SAYS.

IT TELLS YOU WHEN IT STARTS.

IT DOES NOT TELL WHEN YOU IT STARTS. IT DOESN'T START , UNTIL YOU ESTABLISH IT.

UPON.

UPON ESTABLISHMENT .

RIGHT.

ESTABLISHMENT. WHICH IS A DIFFERENT WORD THAN ENTITLEMENT , THAT JUSTICE PARIENTE SUGGESTED.

YES, SIR , IT IS. LET M E TAKE ANOTHER TACT THOUGH.

OKAY.

IF THE DRAFTERS OF THIS AMENDMENTANT LEGISLATURE, IN IMPLEMENTING IT, IN ALL O F CHAPTER 194 , HAD INTENDED A FILING REQUIREMENT , WHY DIDN'T THEY SAY ALL PERSONS WHO HAVE RECEIVED A HOMESTEAD EXEMPTION? THEY DIDN'T SAY. THAT.

WHY DIDN'T THEY JUST SAY THAT ALL PERSONS ENTITLED TO HOMESTEAD EXEMPTION AND NOT SAY SECTION 6?

BECAUSE

THIS ARTICLE. THEY REFERRED SPECIFICALLY TOTHE ARTICLE.

THAT IS WHAT YOU HAVE TO DO TO BE ENTITLED , TO LIVE IT O IT AND TO USE IT AS YOUR PRIMARY RESIDENCE.

LET ME BACK WAY LET ME BACKAWAY ON THE ARGUMENT HERE A LITTLE BIT. WHAT IS THE STANDARD THAT WE APPLY? IS IT NOT STRICT CONSTRUCTION AGAINST THE TAXPAYER?

IT IS NOT AN EXEMPTION CASE, YOUR HONOR. IT DOES NOT HAVE ANYTHING TODO WITH EXEMPTION, OTHER THAN YOU MUST HAVE BEEN ENTITLED TO THE HOMESTEAD EXEMPTION , INORDER TO HAVE A CAP ON YOUR ASSESSED VALUE UNIFORMITY THIS IS AN ASSESSMENT CASE. ASSESSED VALUE . THIS IS AN ASSESSMENT CASE . WE ARE QUARRELING ABOUT AN EXEMPTION.

YOU DON'T GET THE EXEMPTION UNTIL YOU HAVE THE EXEMPTION.

NO , NOT AND HAVE. THAT IS THE WHOLE ISSUE HERE. THE, YOU ARE ENTITLED TO THE CAP , IF YOU FIT THE DEFINITION OF WHAT YOU NEED TO DO, TO BE ENTITLED TO THE EXEMPTION ! AND IT IS OUR POSITION THAT THE CONSTITUTION

WHAT STANDARD SHOULD BE APPLIED IN THE TAXING STATUTE, OR THIS TAXING PROVISION , UNDER ARTICLE VII , FINANCE AND TAXATION? WHAT STANDARD SHOULD WE APPLY?

IN OTHER WORDS SHOULD WE CONSTRUE IT LIBERALLY IN FAVOR OF THE TAXPAYER OR SHOULD

WE CONSTRUE IT STRICTLY , SO THAT THE GOVERNMENTAL AUTHORITY

I SUBMIT YOU SHOULD CONSTRUE IT LIBERALLY, IN FAVOR OF THE TAXPAYER.

I KNOW YOU AGREE, BUT PRINCIPLE OF STATUTORY CONSTRUCTION, WOULD ALLOW THAT , WHEN WE HAVE GOT, I MEAN, IN THIS CASE, THE POWELLS OWNED A HOME SINCE 1990. THEY APPARENTLY HAD A , YOUKNOW , SUBSTANTIAL INCREASE IN THEIR PROPERTY VALUE. ONE YEAR IT WENT FROM \$1.1 MILLION TO \$2.3 MILLION , AND I AM SURPRISED BUT WHAT IS THAT GOING TO DO , WHEN W E WISH WE ALL HAD THAT KIND O F PROBLEM , BUT THAT SOUTHBOUND, THAT PUTS THEM IN A POSITION WHERE THEY WOULD BUT THAT IS , THAT PUTS THEM IN A POSITION WHERETHEY WOULD , WHAT IS THAT , 40,000?

UNDER YOUR SCENARIO .

TO UNDERSTAND THAT POINT , THE TAXING AUTHORITY HADN'T GOTTEN 40,000, THEY HADN'T GOTTEN ANYMORE MONEY OUT OF THE POWELLS FOR THE YEAR 2001. THAT WAS WHAT THEY WERE GOINGTO HAVE - -

UNTIL WE FACED THIS BILL, RIGHT.

SO AT THAT POINT , YOU ARESAYING THAT THEY COULD GO BACK TO THE PRIOR YEAR AND SAY , BECAUSE I WAS ENTITLED TO THE HOMESTEAD EXEMPTION , EVEN THOUGH I HAVEN'T ESTABLISHED MY HOMESTEAD BY LAW , THAT I WOULD BE , WE WOULD BE ALLOWED , YOU WOULD NOT B E ALLOWED TO INCREASE IT MORE THAN 3 PERCENT FROM 2.3 MILLION ?

THAT'S CORRECT.

3 PERCENT MORE.

THAT'S CORRECT.

THAT IS WHAT YOUR POSITION IS.

THAT I S EXACTLY MY POSITION.

IT DOESN'T EFFECT , AS FARAS THE CONCERNS OF THE TAX , PROPERTY APPRAISERS, IT DOESN'T AFFECT, THEN , I T AFFECTS THE 2001 O R '02, WHATEVER YEAR WE ARE TALKING ABOUT, TAX THEY RECEIVED MUCH LESS IN TAX FROM THE POWELLS.

NOT WHATSOEVER , NOR CAN WE GO BACK MORE THAN THAT ONE YEAR, THAN IS BECAUSE , UNDER THE STATUTORY SCHEME , UNDER 194.011, YOU HAVE TO HAVE YOUR INFORMAL CONFERENCE , AND END YOUR VAB APPEAL , WITHIN 2 5 DAVIS THE NOTICE , AND IF YOU DON'T LIKE ANY OF THAT , YOU STILL ONLY HAVE 6 0 DAYS TO FILE

THEY HAD A RIGHT, THEY COULD HAVE PROTESTED THIS INCREASE BY SAYING THAT THE INCREASE WASN'T WARRANTED. I MEAN, THERE WERE A LOT OF OTHER REASONS THAT THEY COULD HAVE LOOKED TO PLACE

THEY DON'T CHALLENGE THE TRUE VALUE. THAT IS PROBABLY THE TRUE VALUE UNIFORMITY THIS IS ON THE INTRACOASTAL , RIGHT ACROSS FROM THE FT. LAUDERDALE YACHT CLUB. IT IS PROBABLY WORTH THAT, AND THERE WAS NO CHALLENGES.

YOUR ARGUMENT , I MEAN , THE TESTIMONY WAS JUST WHAT , THAT THEY JUST DIDN'T REALIZE THEY WERE ENTITLED TO A HOMESTEAD EXEMPTION?WHAT DO THEY SAY?

WHEN YOU ARE BEING TAXED ON 2.5 MILLION DOLLARS, THE BENEFIT THAT YOU RECEIVE FROM

THE \$25,000 HOMESTEAD EXEMPTION , IS NOT AS SIGNIFICANT A PORTION OF YOUR OVERALL TAX BILL , AS IT WOULD BE IF YOU WERE ASSESSED AT \$200,000.

SO THEY DON'T REALLY CARE ABOUT THE HOMESTEAD EXEMPTION. IS THAT WHAT

WELL, THEY DIDN'T NOTICE IT , TAN THAT IS THE REASON THEY DIDN'T NOTICE IT. WHEN IT GOES UP \$40,000

THEY NOTICE IT BECAUSE, AND THEY WILL CONTINUE TO NOTICE IT , BECAUSE , OR THEY WOULD HAVE HAD TO NOTICE IT, IF THEY CONTINUED TO NOTICE IT, IF THEY HADN'T FILED FOR THE EXEMPTION, BECAUSE THEY WOULDN'T HAVE A BASE YEAR UPON WHICH TO LIMIT IT TO 3 PERCENT. ISN'T THAT RIGHT? I MEAN, THIS IS WHAT THAT IS ALL ABOUT, IS THE LIMITATION OF 3 PERCENT.

THAT'S CORRECT. AND IF THEY HAD WAITED ANOTHER YEAR , THEY COULDN'T HAVE ROLLED THAT ONE BACK. THEY WOULD BE STUCK.

WHAT TRIGGERS THAT?

BECAUSE THE STATUTE WOULDN'T ALLOW THEM. THE 60 DAYS WOULD HAVE EXPIRED.

SO THERE WAS, FROM 1990 , I AM TAKING THAT WHAT YOU ARE TELLING US IS , FROM 1990 UNTIL 2000 , THE PROPERTY ASSESSOR DID NOT RE-ASSESS THEIR PROPERTY IN ANY SUBSTANTIAL AMOUNT , TO CALL IT TO THEIR ATTENTION THAT IT WOULD BE GOOD TO BRING IT TO THEIR ATTENTION THAT IT WOULD BE GOOD TO GO AND GET THIS, GIVE IT THEIR ATTENTION .

I HAVE TO SAY , SO THE RECORD WILL REFLECT, THIS IS SARCASM. THAT IS CORRECT , SIR , THE PROPERTY APPRAISER NEGLECTED TO APPRAISE IT FOR TEN YEARS AND THEY MISSED ONE YEAR AND NOW IS GOT YOU. THE GOVERNMENT HIDES BEHIND A BUSH AND AS SOON AS YOU MAKE A MISTAKE , WE GOT YOU.

IT IS EITHER GOT YOU OR THEY ARE VERY FORTUNATE THAT IT WASN'T RE-ASSESSED EARLIER.

THERE WEREN'T ANY CHANGES.

I THINK THAT CONCERNS ME IS THIS IS CALLED WHAT WE CALL "SAVE OUR HOMES", AND IT WAS LINKED TO PEOPLE RECEIVING THE HOMESTEAD EXEMPTION, BECAUSE THERE ARE MANY HOMEOWNERS OUT THERE THAT THAT \$25 HOW IT IS A SIGNIFICANT AMOUNT OF MONEY. WHAT WOULD BE THE REASON TO SAY WE ARE NOT REALLY CARING FOR THIS, WHETHER YOU GOT YOUR HOMESTEAD EXEMPTION OR NOT. IT IS JUST GOING TO BE THE STATUS, WHICH IS THAT YOU HAPPEN TO BE PEOPLE THAT OWN A HOME AND IT IS YOUR PRIMARY RESIDENCE THAT IS GOING TO ENTITLE YOU TO THE SAVE OUR HOMES CAP , BUT YOU DON'T HAVE TO, YOU KNOW , EVEN IF YOU DON'T CARE ABOUT YOUR HOMESTEAD EXEMPTION.

I THINK, IF WE LOOK AT WHAT IS HAPPENING IN WATERFRONT COMMUNITIES THROUGHOUT FLORIDA , WE CAN UNDERSTAND A , WHY "SAVE OUR HOMES" WAS ENACTED TO BEGIN WITH, AND WE CAN SEE WHY WE NEED IT. IF THESE PROPERTIES , EVEN FOR PEOPLE THAT CAN AFFORD TO OWN A \$3.5 MILLION HOME , THERE COMES A POINT WHEN THEY CAN'T AFFORD TO PAY \$90,000 A YEAR IN TAXES ANYMORE, WHEN THEY GET RETIRED , THEY GO ON FIXED INCOME , WHATEVER , THERE COMES A POINT WHERE THERE IS A LIMIT. WHAT IS GOING TO HAPPEN TO THIS PROPERTY? IT IS GOING TO BE REDEVELOPED AS NONSINGLE FAMILY RESIDENTIAL.

CHIEF JUSTICE: WE ARE GOING TO HAVE TO END ON THAT NOTE. WE THANK YOU VERY MUCH.

THANK YOU VERY MUCH.

CHIEF JUSTICE: OKAY .

I DON'T HAVE A WHOLE LOT TO ADD AT THIS POINT , BUT THERE ARE JUST TWO POINTS I WOULD LIKE TO MAKE THAT I THINK , REALLY , SIMPLIFY THE DISPOSITION OF THIS CASE , AND THAT IS THAT , 194.001 , DOESN'T APPLY HERE AND SHOULDN'T APPLY HERE , BECAUSE ALL WE ARE CONCERNED WITH IS PEOPLE WHO DID NOT MAKE THE FILING DEADLINE WITH THEIR APPLICATION TO THE PROPERTY APPRAISER. AND THAT CIRCUMSTANCE IS GOVERNED SPECIFICALLY BY 196.001-8, WHICH GIVES THEM A MEANS OF SEEKING THE EXEMPTION , EVEN THOUGH THEY WERE LATE , BUT REQUIRES THE SHOWING OF EXTENUATING CIRCUMSTANCES. THAT HAS BEEN TOTALLY AVOIDED HERE, AND WITH THIS SUGGESTION THAT THE WHOLE THING CAN BE HANDLED UNDER 194.011 , WHICH WAS CERTAINLY NEVER THE INTENT OF THE LEGISLATURE. THE SPECIFIC STATUTE CONTROLS THE MORE GENERAL. SECONDLY , ALL THIS IS ABOUT IS THEY ARE TRYING TO ESTABLISH THAT THEY WERE ENTITLED TO THE HOMESTEAD EXEMPTION IN THE YEAR 2000 , AND THAT, I THINK , IS CONTROLLED BY , CONTROLLED BY THE NICHOLAS VERSUS BALLENGER DECISION , WHICH CLEARLY HOLDS THAT , WHEN YOU GO IN UNDER 194.171-2 , TO CONTEST YOUR ASSESSMENT , YOU CANNOT SAY , I AM HERE. THE ASSESSMENT IS WRONG , BECAUSE LAST YEAR I WAS ENTITLED TO THE EXEMPTION , BUT I DIDN'T GET IT.

THAT, REALLY, GOES BACK AROUND TO WHETHER , WHAT ENTITLEMENT MEANS , BECAUSE THEIR ARGUMENT IS THAT IS TRUE, IF THEY WERE GOING TO BE CLAIMING THE HOMESTEAD EXEMPTION FOR THE PRIOR YEAR BUT NOT IF THEY ARE CLAIMING THE BENEFIT OF THE CAP, AND IF WE END UP, I MEAN, THAT IS REALLY WHAT IT STILL BOILS DOWN TO ARE THE TWO MIRROR IMAGES OF ONE ANOTHER, OR ARE THEY SEPARATE AND INDEPENDENT RIGHTS THAT SOMEBODY WOULD HAVE? I MEAN, THAT IS WHAT THIS CASE IS ABOUT, ISN'T IT?

WELL , THIS CASE IS ABOUT WHETHER THEY SHOULD HAVE HAD THE EXEMPTION FOR THE YEAR 2000, AND THEY DIDN'T GET IT, AND

BUT ISN'T THAT, IN OTHER WORDS, IF THEY ARE SAYING THEY ARE NOT , THEY ARE NOT INTERTWINED RIGHT. THEY ARE TWO SEPARATE , INDEPENDENT RIGHTS. ISN'T THAT WHAT WE HAVE TO LOOK AT IS ONE ABSOLUTELY TIED TO THE OTHER , OR COULD YOU HAVE A RIGHT TO GET THE CAP , WITHOUT A RIGHT TO HAVE THE HOMESTEAD EXEMPTION?

I UNDERSTAND YOUR POINT, BUT THE POINT IS YOU STILL HAVE TO IMPROVE YOU STILL HAVE TO PROVE YOU HAD SOMETHING LAST YEAR THAT YOU DIDN'T, AND I THINK THE BALLENGER DECISION DISPOSES OF THAT ARGUMENT. THANK YOU VERY MUCH.

CHIEF JUSTICE: ALL RIGHT. THANK YOU ALL , VERY MUCH, ON A VERY INTERESTING QUESTION. WE ARE GOING TO STAND IN RECESS NOW, UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.