
IN THE SUPREME COURT OF FLORIDA
Case No. SC09-1796
First DCA Case No. 1D07-6564

Upon Petition For Discretionary Review
Of A Decision Of The First District Court Of Appeal

JEROME K. LANNING and JOYCE A. LANNING,
husband and wife; and ANN C. REESE,
as personal representative of the estate of Marlow Reese,
individually and as representatives of similarly-situated persons,

Petitioners,

v.

PATRICK P. PILCHER, individually and in his official capacity as Property
Appraiser of Walton County, Florida; RHONDA SKIPPER, individually and in
her official capacity as Tax Collector of Walton County, Florida; WALTON
COUNTY, FLORIDA, a political subdivision of the State of Florida; the
WALTON COUNTY SCHOOL BOARD; et al.,

Respondents.

AMENDED
PETITIONERS' BRIEF ON JURISDICTION
WITH APPENDIX

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STATEMENT OF THE CASE AND FACTS

Petitioners seek review of *Lanning v. Pilcher*, __ So. 3d __, 2009 WL 2605426 (Fla. 1st DCA 2009) (“*Lanning*”). [A 1] Petitioners sued the property appraisers, tax collectors, and school boards of Walton and Okaloosa Counties, and the counties themselves, among other defendants. Petitioners’ lawsuit challenged Florida’s Save Our Homes Amendment (“SOHA”), now codified at article VII, section 4(d)(1) of the Florida Constitution, which confers – *only* on Florida residents who are entitled to homestead exemptions – the benefit of a cap on annual property tax assessments.¹ Petitioners asserted that SOHA discriminates against nonresidents in violation of the Equal Protection, Commerce, and Privileges and Immunities Clauses of the United States Constitution. *Lanning*, 2009 WL 2605426 at *1-*2.

The trial court upheld SOHA against Petitioners’ constitutional attacks, and the First District affirmed. The district court reasoned that SOHA is not

¹ SOHA, now codified at article VII, section 4(d)(1) of the Florida Constitution, provides that annual changes in the tax assessments on homestead property “shall not exceed the lower of the following:

- a. Three percent (3%) of the assessment for the prior year,
- b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967 = 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.”

Article VII, section 6, creates the homestead exemption, but limits it to properties that are the “permanent residence” of the owner or the owner’s dependents.

unconstitutionally discriminatory even though it excludes nonresidents from the class of individuals entitled to the property tax cap, because it has the same effect on some Florida residents; i.e., those who own non-homestead property such as vacation homes and business property. The First District also equated Petitioners' challenge with a frontal attack on Florida's homestead exemption, and thus rejected Petitioners' constitutional claims under its own prior decision holding that Florida's homestead exemption itself was constitutional. *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000), *rev. den.*, 790 So. 2d 1107 (Fla. 2001), *cert. den.*, 534 U.S. 993 (2001). The First District likewise relied upon *Nordlinger v. Hahn*, 505 U.S. 1 (1992), which held that California's constitutional provision limiting real property tax increases to 2% per year absent a change of ownership, did not violate the Equal Protection Clause. *Lanning*, 2009 WL 2605426 at *2.

SUMMARY OF THE ARGUMENT

The Court has jurisdiction to review *Lanning* for two reasons. First, the First District in *Lanning* expressly construed the Save Our Homes Amendment, article VII, section 4(c), of the Florida Constitution. A decision that expressly construes a provision of the state constitution is one of the principal kinds of cases within this Court's discretionary review jurisdiction. Art. V, § 3(b)(3), Fla. Const.

The second reason the Court has jurisdiction to review *Lanning* is that the decision expressly affects property appraisers and tax collectors, both of which are

classes of constitutional officers created by article VIII, section 1(d), of the Florida Constitution. Again, this places *Lanning* within the scope of this Court's discretionary review jurisdiction under article V, section 3(b)(3) of the Florida Constitution.

The Court should exercise its discretion to review *Lanning* because it raises significant constitutional issues of first impression. SOHA has been questioned in dicta as potentially unconstitutional, but no court has previously confronted and resolved the constitutional implications of SOHA. The First District rejected the very possibility of constitutional challenge as a matter of law, without even allowing an evidentiary hearing at which to test the purported justification for SOHA's differential tax treatment of property based on the owners' residency status. These issues are important to Florida's taxing authorities as well as to the resident and non-resident owners of Florida property, and they deserve to be resolved under the careful fact-based scrutiny to which such issues have always previously been deemed entitled.

ARGUMENT

I. THE COURT HAS JURISDICTION ON TWO INDEPENDENT GROUNDS.

A. The Decision Expressly Construes The Florida Constitution.

Lanning expressly construes article VII, section 4(c), of the Florida Constitution. The *Lanning* Court expressly identified the validity of that

constitutional provision as the central merits issue in the case, addressed Petitioners' constitutional attacks, evaluated them in light of precedent, and expressly upheld the provision as constitutional. This Court has held previously that a case construing SOHA is reviewable under this species of discretionary jurisdiction. *Zingale v. Powell*, 885 So. 2d 277, 279 n.1 (Fla. 2004). Thus, there can be no doubt that the decision expressly construes a provision of the Florida Constitution and falls within this Court's review jurisdiction for this reason.

B. The Decision Expressly Affects Two Classes of Constitutional Officers.

Lanning expressly affects property appraisers and tax collectors, both of which are classes of constitutional officers within the Florida Constitution's grant of jurisdiction to this Court. Art. V, § 3(b)(3), Fla. Const. The Florida Constitution creates the offices of property appraiser and tax collector in article VIII, section 1(d). This Court has recognized previously that property appraisers and tax assessors are classes of constitutional officers within the meaning of article V, section 3(b)(3) of the Florida Constitution. *See Bystrom v. Whitman*, 488 So. 2d 520, 520 (Fla. 1986) (property appraisers); *Tyson v. Lanier*, 156 So. 2d 833, 835 (Fla. 1963) (tax assessors). The property appraisers and tax collectors of Walton and Okaloosa Counties are parties to this action, and the *Lanning* decision affects the performance of their official duties of determining the amount of property taxes to be imposed on Florida real property, and collecting such taxes, just as it affects

all such officers statewide. Thus, as this Court noted in *Tyson*, “jurisdiction on that ground [class of constitutional officers] could hardly be successfully challenged.” 156 So. 2d at 835.

II. THE COURT SHOULD REVIEW *LANNING* BECAUSE IT RAISES GENUINE AND SUBSTANTIAL CONSTITUTIONAL QUESTIONS.

The Court should review *Lanning* because it presents compelling constitutional issues of first impression. No one disputes that under SOHA, two identical homes located next to each other can and do carry vastly different tax burdens, the difference arising not because of the nature or location of the homes, but the residency status of the homeowners. This undeniable tie to the owners’ residency status utterly undermines the purported justification for SOHA, which this Court has described as rooted in the nature of the physical location and economic value of the property – *not* the owners’ residency status:

‘The purpose of the amendment is to encourage the preservation of homestead property in the face of ever increasing opportunities for real estate development, and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads.’

Zingale, 885 So. 2d at 281 quoting from *Smith v. Welton*, 710 So. 2d 135, 137 (Fla. 1st DCA 1998)) (footnote omitted in *Zingale*).

Petitioners’ constitutional challenges demanded and deserved an evidentiary hearing to test the purported justification for SOHA’s differential taxation of

property, against the available, and considerable, evidence of its burdens on interstate commerce. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970); *Ben Oehrleins and Sons and Daughter, Inc. v. Hennepin County*, 115 F.3d 1372 (8th Cir. 1997) (summary judgment remanded for failure to conduct *Pike* balancing analysis); *United Transp. Union v. Foster*, 205 F.3d 851 (5th Cir. 2000) (summary judgment remand for failure to conduct *Pike* balancing analysis); *Allied Artists Picture Corp. v. Rhodes*, 679 F.2d 656 (6th Cir. 1982) (final judgment at trial remanded for further consideration under the *Pike* balancing analysis).

The Save Our Homes Amendment was the result of a citizens' initiative proposed under Article XI, section 3, of the Florida Constitution. *In Re Advisory Op. to the Att'y Gen.—Homestead Valuation Limitation*, 581 So. 2d 586 (Fla. 1991). Thus, as this Court has recognized with respect to other such initiatives, the political committee that sponsored the amendment drafted it with its own political goals in mind and without the benefit of the “filtering legislative process” that accompanies other methods of amending the Florida Constitution and enacting general law. *See Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984). Because this Court's advisory opinion process for initial review of citizens' initiatives does not extend to resolving federal constitutional claims, and because this is the first case

to litigate such claims against SOHA,² this Court has not yet had the opportunity to pass upon whether SOHA passes muster under the United States Constitution. The First District's analysis was limited to following two materially different cases involving challenges to the Florida homestead amendment and a California constitutional provision. This Court should evaluate and resolve the precise federal constitutional claims asserted against SOHA itself.

CONCLUSION

The Court has jurisdiction to review *Lanning* because the district court expressly construed the Florida Constitution, and because the decision expressly affects the state's property appraisers and tax collectors as classes of constitutional officers. The Court should exercise its jurisdiction to review *Lanning* because it raises substantial constitutional issues of first impression that have a significant impact on the ownership of real property statewide.

² Just before the election at which SOHA was approved, two statewide local government associations challenged the validity of the proposed amendment on grounds that it substantially affected another provision of the Florida Constitution and thus failed the single-subject requirement. *Florida League of Cities v. Smith*, 607 So. 2d 397, 398 (Fla. 1992). Three Justices joined a dissent noting the existence of a "serious equal protection violation" in SOHA, which was not presented for resolution in that case. 607 So. 2d at 404 (Overton, J., dissenting).

Respectfully submitted this 15th day of October, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by United States mail to respondents' counsel listed below, this 15th day of October, 2009.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief was prepared using Times New Roman
14 point type, a font that is proportionately spaced and in compliance with Florida
Rule of Appellate Procedure 9.210.

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A 1 Decision to be reviewed, *Lanning v. Pilcher*, __ So. 3d __, 2009 WL 2605426 (Fla. 1st DCA Aug. 26, 2009) (“*Lanning*”).