IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ROBERT BRUNER and
etc., et al.,

Appellants,

Case No. 1D08-5524
L. T. Case No. 37-2007-CA-003247

vs.

BERT HARTSFIELD, etc., et al.,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEES, LEON COUNTY, LEON COUNTY SCHOOL BOARD, AND CHARLOTTE COUNTY SCHOOL BOARD

GREGORY T. STEWART
Florida Bar No. 203718
HARRY F. CHILES
Florida Bar No. 0306940
CARLY J. SCHRADER
Florida Bar No. 14675
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
(850) 224-4070
(850) 224-4073 (Facsimile)
ATTORNEYS FOR LEON COUNTY, LEON COUNTY SCHOOL BOARD, AND CHARLOTTE COUNTY SCHOOL BOARD

J. JEFFRY WAHLEN
Florida Bar No. 884316
Leon County School Board Attorney
Ausley & McMullen, P.A.
227 South Calhoun Street
P.O. Box 391
Tallahassee, Florida 32301
(850) 224-9115
(850) 222-7560 (Facsimile)
CO-COUNSEL FOR LEON
COUNTY SCHOOL BOARD

MICHAEL R. McKINLEY
Florida Bar No. 275247
JOHN L. WIDEIKIS
Florida Bar No. 641383
McKinley, Ittersagen, Gunderson.
Berntsson & Wideikis, P.A.
18401 Murdock Circle
Port Charlotte, Florida 33948
(941) 627-1000
(941) 255-5483 (Facsimile)
CO-COUNSEL FOR CHARLOTTE
COUNTY SCHOOL BOARD

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PRELIMINARY STATEMENT

Robert C. Bruner, Katherine S. Bruner, Deborah E. Plitnick and Stanley C. Chamberlain will be collectively referred to as "Appellants."

Bert Hartsfield, Doris Maloy, Leon County, Leon County School Board, Frank Desguin, Vicki L. Potts, Charlotte County, Charlotte County School Board, Gary Nikolits, Anne M. Gannon, City of North Palm Beach, Palm Beach County, Palm Beach County School Board, and Lisa Echeverri, in her official capacity as Executive Director of the Florida Department of Revenue, will be collectively referred to as "Appellees."

The Save Our Homes Amendment, as authorized by Article VII, section 4 of the Florida Constitution, shall be referred to as "Save Our Homes" or "SOHA."

Joint Resolution 2D of the Florida Legislature, which was approved by the voters of the State of Florida on January 29, 2008, shall be referred to as "Amendment 1."

Reference to materials in the record will be designated as "R." followed by the appropriate volume and page number.

STATEMENT OF THE CASE AND FACTS

The Appellees, Leon County, Leon County School Board, and Charlotte County School Board, acknowledge the Statement of the Case and Facts filed by Appellants within the Initial Brief. However, as the statement is unduly argumentative, the County and School Board Appellees submit their own Statement of the Case and Facts, as permitted by Florida Rule of Appellate Procedure 9.210(c).

This is an appeal from a Final Judgment of Dismissal with Prejudice of Appellants' Second Amended Complaint. The complaint challenged the constitutionality of Article VII, section 4 of the Florida Constitution, more commonly known as the Save Our Homes Amendment, together with its implementing statute, section 193.155, Florida Statutes (R. Vol. 1 at 96-158). The SOHA provision constitutionally limits increases in the assessed taxable value of residences entitled to the homestead exemption to three percent of the assessment for the prior year, or the percent change in the Consumer Price Index, whichever is less. Art. VII, § 4(c), Fla. Const. Appellants also challenge what is commonly referred to as the "portability" provision of Joint Resolution 2D of the Florida Legislature, which was approved by the voters of the State of Florida on January 29, 2008, as Amendment 1. The portability provision of Amendment 1 allows homestead property owners to transfer all or a portion of their SOHA benefits to

another Florida homestead. The benefits derived from the application of the SOHA and portability may vary from year to year based upon the market conditions.

Appellants, recently relocated from out of state resident owners of Florida homestead property, brought a claim for declaratory relief alleging that SOHA and the portability provision of Amendment 1 are unconstitutional as a violation of (1) the Equal Protection Clause of Article I, section 2, Florida Constitution; (2) the constitutional Right to Travel under Article IV, section 2, of the U.S. Constitution, the Privileges and Immunities Clause; and (3) the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (R. Vol. 1 at 126-29). Appellants also sought retroactive and prospective relief, permanent injunctive relief under 42 U.S.C. section 1983, and permanent injunctive relief under state law (R. Vol. 1 at 129-40).

The Appellees below filed various separate motions to dismiss and strike, and motions for judgment on the pleadings (collectively the "Motions to Dismiss") directed to the Second Amended Complaint (R. Vol. 1 at 159-191; R. Vol. 2 at 192-388; R. Vol. 3 at 389-93).[1]

[1] Appellees/defendants below also argued that the complaint should be dismissed for lack of subject matter jurisdiction (R. Vol. 1 at 183-84). The court rejected this argument, and this ruling is the subject of the cross-appeal by various other Appellees. Also, Appellee Charlotte County School Board, among others, argued

A hearing was held on the Motions to Dismiss on May 29, 2008 (R. Vol. 6 at 1026).[2] Subsequent to the hearing, the trial court entered its written Final Judgment of Dismissal with Prejudice, ruling that the SOHA and Amendment 1 are not violative of the Privileges and Immunities Clause, the constitutional Right to Travel, or Equal Protection (R. Vol. 5 at 882-883). The court also dismissed the claims brought pursuant to 42 U.S.C. section 1983 (R. Vol. 5 at 883-884, 894-895).[3] A Corrected Final Judgment of Dismissal with Prejudice was entered sua sponte by the court on October 29, 2008 (R. Vol. 5 at 889-99).[4] This appeal has followed from the Final Judgment of the trial court, dismissing the Complaint in its entirety.

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for dismissal on the basis of improper venue (R. Vol. 1 at 186). The court did not rule on this issue.

[2] Before the Motions to Dismiss were disposed of by the trial court, Appellants filed a Motion for Partial Summary Judgment and supporting affidavits of Dr. James T. McClave and Plaintiff Robert Bruner (R. Vol. 3 at 398-585). These affidavits were filed as appendices to the Appellants' Initial Brief. However, as the trial court dismissed the Complaint, this motion, along with the affidavits, never became ripe for consideration. In any event, the affidavits are irrelevant and not pertinent to the issues on appeal.

[3] However, this ruling is not being challenged on appeal.

[4] The corrected order appears to merely correct typographical errors.

Also currently on appeal to this Court are the related cases of Lanning v. Pilcher, 1D07-6564, and Deluccio v. Havill, 1D08-5529.[5] Deluccio, but not Lanning, is "traveling" with the present case. Although Appellants state that Deluccio and this case have been consolidated for oral argument, as of the date of service of this Answer Brief, there is no order by this Court consolidating these cases for purposes of oral argument, and Appellees would object to such consolidation.

[5] In Lanning, non-resident owners of Florida secondary and vacation homes challenged the SOHA on constitutional grounds, including alleged violations of the dormant Commerce Clause, the Privileges and Immunities Clause, Equal Protection, Right to Travel, and Due Process. In Deluccio, non-resident owners of Florida secondary and vacation homes challenged the SOHA, and Amendment 1, on constitutional grounds including alleged violations of the dormant Commerce Clause and the Privileges and Immunities Clause.

SUMMARY OF THE ARGUMENT

The SOHA is part of Florida's comprehensive constitutional tax scheme for homestead property, enacted for the purpose of preserving the primary permanent home. The SOHA caps the annual assessment of homestead property at three percent above the prior year's assessment or the percentage change in the Consumer Price Index, whichever is less. The applicability of the SOHA is dependent on the classification or use of the property as homestead property and not the residency of the owner. Amendment 1, also challenged in this appeal, is an extension of the SOHA, and therefore, also only applies to property used as a homestead, regardless of the residency of the owner.

Contrary to Appellants' arguments, the SOHA does not violate the Equal Protection Clause, the Privileges and Immunities Clause, or the Right to Travel. The trial court correctly dismissed Appellants' Second Amended Complaint because the complaint, as a matter of law, failed to state a cause of action for a violation of any of these constitutional provisions. This Court's decision in Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000), rejecting almost identical constitutional arguments, and the U.S. Supreme Court's decision in Nordlinger v. Hahn, 505 U.S. 1 (1992), rejecting a constitutional challenge to a similar tax structure in California, control the outcome in this case.

The SOHA and Amendment 1 do not deny to Appellants equal protection of the law. Pursuant to Reinish and Nordlinger, the SOHA is supported by a rational basis: the protection of the primary residence. Further, the underlying classification for both the SOHA and Amendment 1 is based on the use of the property and not the user.

Similarly, the SOHA, along with Amendment 1, does not violate a fundamental or essential right guaranteed by the Privileges and Immunities Clause. Appellants, as residents of the State, do not have standing to challenge the SOHA under a traditional Privileges and Immunities Clause analysis, and to the extent they may have standing to raise the Right to Travel, Appellants fail to state a claim because the SOHA contains no durational residency requirement, but applies based on the establishment of a homestead. As to Amendment 1, Appellants have no standing to contest this provision as they were all resident owners of homestead property at the time of its passage.

Because Appellants have failed to establish a violation of their Right to Travel, Appellants have also failed to establish any right to application of a heightened standard of review. Pursuant to Nordlinger and Reinish, the State has a rational basis for the SOHA, along with Amendment 1, and therefore, Appellants fail to state a claim of constitutional invalidity. Accordingly, the trial court's order of dismissal should be affirmed in its entirety.

STANDARD OF REVIEW

The Appellees agree that the standard of review for the issues involved in this appeal is de novo. See, e.g., Fullerton v. Fla. Med. Ass'n, Inc., 938 So. 2d 587, 590 (Fla. 1st DCA 2006) ("This court's review standard of a trial court's grant of a motion to dismiss is *de novo*."); Reinish v. Clark, 765 So. 2d 197, 203 (Fla. 1st DCA 2000) (providing that where the trial court dismissed the plaintiff's complaint based on the conclusion that the Florida homestead tax exemption does not violate the United States Constitution, "the lower tribunal's rulings are strictly questions of law to which a *de novo* standard of review applies").

"For purposes of ruling on the motion to dismiss, the trial court was obliged to treat as true all of the [second] amended complaint's well-pleaded allegations, including those that incorporate attachments, and to look no further than the [second] amended complaint and its attachments." Rudloe v. Karl, 899 So. 2d 1161 (Fla. 1st DCA 2005) (alteration in original). "A reviewing court operates under the same constraints." Id.; see also Gladstone v. Smith, 729 So. 2d 1002 (Fla. 4th DCA 1999) ("When considering the merits of a motion to dismiss, a court's gaze is limited to the four corners of the complaint.").

However, for reasons stated within the Argument section, Appellees disagree that anything higher than the rational basis analysis applies in this case.

ARGUMENT

I. INTRODUCTION

Appellants challenge the validity of Article VII, section 4, of the Florida Constitution, more commonly known as the Save Our Homes Amendment, together with its implementing statute, section 193.155, Florida Statutes. The SOHA is part of the State's comprehensive ad valorem tax structure for homestead property consisting of two separate components. First, all persons having legal or equitable title to real estate and maintaining thereon a permanent residence are exempt from ad valorem taxation for the first $25,000 of the assessed value. Art. VII, § 6, Fla. Const. This exemption amount was increased under Amendment 1, on assessed valuation greater than $50,000 for all levies other than school district levies.[6] Under its provisions, individuals are only allowed one homestead exemption; however, a property owner need not be a citizen of the United States to be eligible for the exemption, nor is there a durational residency requirement. Reinish v. Clark, 765 So. 2d 197, 205 (Fla. 1st DCA 2000).

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[6] This provision was implemented by the Legislature in 2008 by adding a new section 196.031(1)(b), Florida Statutes:

> Every person who qualifies to receive the exemption provided in paragraph (a) is entitled to an additional exemption of up to $25,000 on the assessed valuation greater than $50,000 for all levies other than school district levies.

Second, under SOHA, individuals who have claimed a Florida residence as their homestead are also entitled to a "cap" on the assessed value of their homestead property. Once a homestead is established, the owner is assessed taxes based on just value as of January 1 of the following year and each subsequent year. Art. VII, § 4(c)(3), Fla. Const. However, SOHA limits the annual increase in assessments of homestead property to three percent of the prior year's assessment or the percent change in the Consumer Price Index, whichever is less. Only homeowners who have claimed a homestead exemption are entitled to the benefits of the SOHA. This type of tax structure is referred to as acquisition-value property taxation, because property is generally reassessed at fair market value at the time the property is acquired.

Both the tax exemption and the SOHA "are parts of a coordinated constitutional scheme relating to taxation and have as their underlying purpose the protection and preservation of homestead property." Zingale v. Powell, 885 So. 2d 277, 285 (Fla. 2004). The extent of the benefit provided by the SOHA and portability is not linked to the length of Florida residency, but rather, is tied to the market conditions. As the market conditions change, that benefit may increase or even decrease from year to year. There is no durational residency requirement or waiting period for those who have moved from out of state prior to the

establishment of homestead, and entitlement is not dependent on whether the property owner came from in state or out of state.

With the passage of Amendment 1 by the voters on January 29, 2008, owners of homestead property in Florida can now transfer all or a portion of their SOHA benefits that may exist based upon market conditions in any given year to another homestead. This is commonly referred to as "portability." As the portability provision of Amendment 1 is an extension of the SOHA, there is also no durational residency requirement or waiting period tied to this benefit. According to the allegations in the Second Amended Complaint, at the time Amendment 1 passed, all of the Appellants/Plaintiffs below owned homestead property in Florida, and therefore, the amendment applied to Appellants upon its passage (R. Vol. 1 at 99-102).

II. PURSUANT TO REINISH AND NORDLINGER, THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' COMPLAINT.

Nordlinger and Reinish are dispositive of the issues on appeal. First, the validity of Florida's homestead ad valorem tax scheme was previously addressed and upheld by this Court in Reinish, 765 So. 2d 197. The Reinishes purchased a part-time residence in Florida. Id. at 201. The Reinishes primarily challenged the homestead tax exemption provision, arguing that the homestead tax exemption violated the federal Equal Protection Clause, the Privileges and Immunities Clause, including the Right in Travel, and the "dormant" Commerce Clause. Id.

Additionally, as a component of homestead exemption, they also contested the three percent cap on assessments under the SOHA. As in the present matter, the trial court in Reinish dismissed the complaint, concluding that the various theories of unconstitutionality were all without legal merit. Id.

Though the Appellants attempt to ignore the breadth of the claim in Reinish, the application of SOHA is clearly raised. In Reinish, the appellants asserted in their briefs a specific argument regarding the SOHA, nearly identical to the primary argument on appeal in the present case:

> [T]he "Save Our Homes" provisions significantly leverage these benefits for Floridians, by capping the reassessments of their "homestead property." *See* Art. VII, § 4, Fla. Const., as amended; § 193.155, Fla. Stat. Under these provisions, reassessments of property which qualifies as a Homestead (i.e. that owned by permanent residents) may not increase yearly by more than 3% of the prior year's assessment or the percentage change in the Consumer Price Index, whichever is less. Persons who are not eligible for the Homestead Tax Exemption, i.e. nonresident homeowners such as Plaintiffs, have no protection against the annual reassessments of their property. As a result, the gap between the lower real estate taxes paid by a Florida resident (with both the homestead exemption and the reassessment cap) and the higher taxes paid by a nonresident (without either benefit) on identical pieces of property will simply grow over time.
>
> * * * *
>
> In addition to the annual benefit provided by the Homestead Tax Exemption, the "Save Our Homes" provision, by capping future tax increases for residents

> only, exacerbates the property tax differential between residents and nonresidents who own identical pieces of property. Thus, the Homestead Tax Exemption, coupled with the Save Our Homes provision, produce a significant economic benefit exclusively for permanent Florida residents, which is never available to Plaintiffs and the class they seek to represent.

(Reinish v. Clark, Case No. 98-03973, (Fla. 1st DCA), Appellants' Reply Brief and Cross-Appellees' Answer Brief at 9-10) (first emphasis added)).[7]

In its written opinion in Reinish, this Court acknowledged the Reinishes' argument that both the tax exemption and the SOHA cap afford those who establish a permanent Florida residence a clear and continuing economic advantage over non-residents. Reinish, 765 So. 2d at 213. However, this Court rejected all of the Reinishes' constitutional arguments, determining that there was no discrimination because the underlying classification was based on the use of the property rather than on residency of the owner:

> Whether the person is a Florida resident or not, only one homestead exemption is allowed irrespective of how many other residences the persons owns. . . .[T]he Florida exemption treats the Reinishes no differently from either Florida residents who rent, rather than own, a particular Florida real-estate parcel, or Florida residents who use Florida real property as a secondary, seasonal, or vacation residence.

Id. at 205.

[7] The Court may take judicial notice of its own records. § 90.202(6), Fla. Stat. (2008).

Almost a decade later, Appellants seek to resurrect nearly identical arguments to those presented in Reinish. In the present case, the trial court rejected Appellants' challenges to the SOHA, relying on this Court's analysis in Reinish. As the trial court determined, the reasoning of Reinish is fully applicable in the present case.

This Court should also abide by its own precedent based on the doctrine of *stare decisis*. N. Fla. Women's Health & Counseling Servs. v. State, 866 So. 2d 612, 637 (Fla. 2003) ("The doctrine of stare decisis, or the obligation of a court to abide by its own precedent, is grounded on the need for stability in the law and has been a fundamental tenant of Anglo-American jurisprudence for centuries"); Gessler v. Dep't of Bus. & Prof'l Reg., 627 So. 2d 501, 504 (Fla. 4th DCA 1993) ("The concept of stare decisis, by treating like cases alike and following decisions rendered previously involving similar circumstances, is a core principle of our system of justice.").

In addition, the challenge to a California tax exemption before the United States Supreme Court in Nordlinger is almost identical to the challenge in this case. In Nordlinger, the U.S. Supreme Court considered California's acquisition-value tax system set in place by Proposition 13, a constitutional amendment which capped real property taxes at one percent of a property's full cash value. In addition, there was a two percent cap on annual increases in the assessed

valuations. Nordlinger, 505 U.S. at 5. The Court considered the "dramatic disparities" in the taxes paid by persons owning similar pieces of property, which continue to grow over time, noting that the petitioner, a recent purchaser of residential property, paid about five times more in taxes than some of her neighbors, who had owned comparable homes for a number of years. Id. at 6.

Despite these dramatic disparities, the Court upheld California's acquisition-value tax structure, ruling that it was not violative of the Equal Protection Clause of the Fourteenth Amendment. First, the Court determined that the rational basis standard of review was applicable to evaluate the difference in treatment between newer and older owners. Id. at 11. As in this case, the Petitioner in Nordlinger had alleged that heightened scrutiny applies because the amendment infringed upon her constitutional right to travel. However, the Court decided this issue adverse to the Petitioner, stating:

> [T]he complaint does not allege that petitioner herself has been impeded from traveling or from settling in California because, as has been noted, prior to purchasing her home, petitioner lived in an apartment in Los Angeles. This Court's prudential standing principles impose a "general prohibition on a litigant's raising another person's legal rights." . . . . Petitioner has not identified any obstacle preventing others who wish to travel or settle in California from asserting claims on their own behalf, nor has she shown any special relationship with those whose rights she seeks to assert, such that we might overlook this prudential limitation. . . Accordingly, petitioner may not assert the constitutional right to travel as a basis for heightened review.

Id. at 10-11.

The Court determined that Proposition 13 passed a rational basis, equal protection review and identified two legitimate state interests which were rationally furthered by the law. First, "the State has a legitimate interest in local neighborhood preservation, continuity, and stability." Second, "the State legitimately can conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner." Id. at 12. This same reasoning is applicable in the present case -- the State of Florida has a legitimate interest in the preservation of the primary permanent home which is rationally furthered through the SOHA.

In addition, Nordlinger also addressed a provision in the California law similar to the portability provision of Amendment 1. Under the California tax scheme, persons aged 55 and older who exchange principal residences and children who acquire property from their parents were exempt from reassessment. The Petitioner in Nordlinger claimed these exemptions made the unfairness of the tax structure worse. However, the Court rejected this argument, ruling that such exemptions from the tax scheme did not "necessarily render the overall scheme invidiously discriminatory." Nordlinger, 505 U.S. at 16-17.

III. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIM THAT THE SOHA VIOLATES EQUAL PROTECTION.

Appellants failed to state a cause of action as to a violation of Equal Protection. The Equal Protection Clause of the Fourteenth Amendment provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Its purpose is to prevent "governmental decisionmakers from treating differently persons who are in all relevant respects alike." Nordlinger, 505 U.S. at 10.

The Equal Protection Clause does not prohibit laws from establishing classes of people and treating the people in each class differently. Rather, the standard of review for a law that draws classifications among individuals is that the classification be rationally related to a legitimate state interest. Id. at 10. Neither the Due Process Clause nor the Equal Protection Clause imposes upon a state any rigid rule of equality of taxation. Reinish, 765 So. 2d 197. "Indeed, 'in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.'" General Motors Corp. v. Tracy, 519 U.S. 278, 311 (1997) (quoting Madden v. Kentucky, 309 U.S. 83 (1940)). "A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it." Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937).

Appellants complain of "horizontal inequities" for new owners of homestead property as opposed to long-term homestead owners. However, these arguments clearly ignore the established precedent. In Nordlinger, as in the present case, the plaintiff complained of dramatic disparities in tax burdens caused by an acquisition-value property tax structure. Because of the rising property values in California during the applicable time period, Stephanie Nordlinger's tax bill for her newly-acquired home was much higher than comparable property purchased before Proposition 13 was adopted. The Court, in fact, described the difference in tax burdens between longer-term property owners and newcomers as "staggering." 505 U.S. at 6.

Despite these dramatic disparities, the Court upheld California's acquisition-value tax structure, ruling that it was not violative of the Equal Protection Clause of the Fourteenth Amendment. In finding a rational basis for the law, the Supreme Court held:

> A new owner has full information about the scope of future tax liability before acquiring the property, and if he thinks the future tax burden is too demanding, he can decide not to complete the purchase at all. By contrast, the existing owner, already saddled with the purchase, does not have the option of deciding not to buy his home if taxes become prohibitively high.

Id. at 13.

The Reinish Court, relying on Nordlinger, ruled that the trial court had properly dismissed the claim. Reinish 765 So. 2d at 203-07. This Court discussed at length the importance of the home in Florida law:

> Public policy considerations favor laws protecting the basic homestead, which "promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune." . . . Mindful of the historic, civic, and economic significance of the need to foster and protect the primary residence of Florida homeowners, without an attendant need to give the same high level of protection to other types of residential properties, we conclude, as did the trial court, that the Florida homestead tax exemption's classification has some reasonable basis and does not offend equal protection concerns.

Id. at 206-07 (citations omitted). The Legislature reasonably could have concluded that the classification promotes a legitimate State purpose. Id.

On appeal, Appellants' argument as to Equal Protection focuses almost exclusively on a report by the Legislative Office of Economic and Demographic Research dated February 15, 2007, in order to demonstrate alleged inequities resulting from the SOHA.[8]

Appellants' arguments on this point appear to merely attack the policy decision of the Florida Legislature. However, courts routinely defer to the

[8] This report was not part of the record below, and should be stricken from the record and not considered. In any event, it is irrelevant to this cause.

Legislature on matters of policy decisions. In Nordlinger, for example, the petitioner and amici in that case argued that the acquisition-value tax structure frustrated the "American dream" of home ownership for younger and poorer families. 505 U.S. at 17. In response, the Court noted that, in the rational basis context:

> [The] Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.

Id. See also, Reinish, 765 So. 2d at 206 ("States are not required to convince the courts of the correctness of their legislative judgments.") Similarly, in this case, the courts should defer to the Legislature on matters of whether the SOHA and portability are prudent policy decisions. The issue is whether Appellants stated a claim in their complaint for which relief can be granted on the asserted constitutional grounds. Pursuant to Reinish and Nordlinger, they did not.

To the extent that Appellants rely on Osterndorf v. Turner, 426 So. 2d 539 (Fla. 1982), that case is clearly distinguishable. Osterndorf involved a challenge to section 196.031(3)(e), Florida Statutes (1980), which granted a homestead exemption of $25,000 to homeowners who have been residents for five consecutive years immediately prior to claiming the exemption. Under the statute, homeowners with less than five years residency received only a standard $5,000

exemption. Id. at 540. The Florida Supreme Court held this clearly was a durational residency requirement and was, therefore, unconstitutional.

Although Appellants attempt to frame it as such, there is no such durational residency requirement at issue in this case. The current incarnation of the homestead exemption, including the SOHA, was approved by this Court in Reinish, which is still good law. Appellants were all eligible to receive the benefits of the SOHA upon obtaining homestead property in Florida, and admittedly, did take advantage of this provision. There was no durational residency requirement similar to the one imposed by the statute at issue in Osterndorf. Accordingly, that case does not support Appellants' arguments on appeal.

In addition, Amendment 1, as an extension of SOHA, does not contain a residency requirement, and applies to Appellants in the same manner as any other owner of Florida homestead property. A similar portability provision was approved in Nordlinger. 505 U.S. at 16-17.

For these reasons, the trial court correctly dismissed Appellants' complaint as to their arguments on Equal Protection grounds.

IV. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIM THAT THE SOHA VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE, SPECIFICALLY, THE RIGHT TO TRAVEL.

Appellants' claim that the SOHA violates the Privileges and Immunities Clause, specifically the Right to Travel, was also properly dismissed. The Privileges and Immunities Clause of the Fourteenth Amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Amend. XIV, § 1, U.S. Const. The Privileges and Immunities Clause of the Fourteenth Amendment "protects those rights which are attributes of national citizenship, or are implicit in the concept of national citizenship." Defeo v. Sill, 810 F. Supp. 648, 655 n.6 (E.D. Pa. 1993).

The Fourteenth Amendment Privileges and Immunities Clause is modeled on the Constitution's Article IV, Section 2, clause, which seeks to ensure that rights granted by a state to its citizens are not withheld from citizens of other states. Saenz v. Roe, 526 U.S. 489, 502 (1999). Article IV, section 2, prevents discrimination by states against nonresidents, while the Fourteenth Amendment, section 1, protects the attributes of U.S. citizenship, "such as the right to vote for national officials, the right to petition Congress for redress of grievances and the right to enter public lands." Salla v. County of Monroe, 399 N.E.2d 909, 910 n.1 (N.Y. 1979). It bridges the gap left by Article IV, section 2, in order to protect

U.S. citizens from legislation of their own states having the effect of denying equal treatment in the exercise of their privileges of national citizenship in other states.

The Privileges and Immunities Clause governs only those rights or activities which are fundamental in the sense that interference would "hinder the formation, the purpose, or the development of a single Union. . ." Baldwin v. Fish & Game Comm'n of Montana, 436 U.S. 371, 383 (1978). "Only with respect to those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally." Id.

In this case, the deprivation asserted by the Appellants is not in the nature of the privileges and immunities which have a bearing upon the vitality of the Nation as a single entity. Although the right "to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state" is protected by the Privileges and Immunities Clause, the claim in this case is more in the nature of a denial of equal taxation, than on an alleged infringement upon the right to acquire, hold, or dispose of property. Reinish , 765 So. 2d at 209. A non-resident is not entitled to preferential treatment as compared to a resident citizen, but is only protected against discriminatory taxation. Shaffer v. Carter, 252 U.S. 37, 53 (1920). Any difference in treatment in this case arises not from discrimination of similarly situated

property owners, but from the application of the provision to two separate classes of property.

Generally, the Privileges and Immunities Clause provides protection only to non-residents of the state in which the privileges are claimed. See United Bldg. & Const. Trades Council v. Mayor & Council of Camden, 465 U.S. 208, 217 (1984); Goldfarb v. Supreme Court of Virginia, 766 F.2d 859, 864-65 (4th Cir. 1985); Pierce v. Alabama Bd. of Optometry, 835 F.Supp. 593, 597 (N.D. Ala. 1993); Shepard v. State of Alaska, 897 P.2d 33, 41 (Alaska 1995). However, as to a violation of the constitutional Right to Travel, the Supreme Court has held that the Privileges and Immunities Clause protects "for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." Saenz, 526 U.S. at 500. In this case, there is no violation of this right, or any of the other components of the Right to Travel.

As they did in their argument relating to their Equal Protection claim, Appellants seek to show a violation by characterizing the application of the SOHA as a durational residency requirement, similar to the requirement applicable in Saenz. In that case, the challenged California law limited welfare benefits of new residents, for the first year of residency, to the benefits they would have received in the State of their prior residence. Id. at 493. The Court ruled that the right to travel embraces a citizen's right to be treated equally in her new State of residence,

and the discriminatory classification imposed on new residents was "itself a penalty." Id. at 505. Significantly, the court noted that the classifications challenged are defined entirely by the period of residency in California and the location of the prior residences of the disfavored class members. Id.

In the present case, although Appellants seek to characterize the application of SOHA as a durational residency requirement such as the one challenged in Saenz, it is no such thing. The application of SOHA is available without the requirement that the owner be a resident of the state for a certain number of years in order to receive the state benefit. To the extent that non-residents enter the State and seek to become permanent residents, they need only establish a residence in Florida as their permanent residence, and they are then entitled to the same benefits as all other permanent residents, based upon that use. See Reinish, 765 So. 2d at 204-205. Appellants do not allege a violation of the Right to Travel under Saenz, and, as residents of the State, cannot assert any grounds giving them standing to bring a claim under the Privileges and Immunities Clause.

Tellingly, Reinish was decided *after* Saenz, and the Court clearly considered that decision in rejecting the Reinishes' Right to Travel claim. Reinish, 765 So. 2d at 210. Many of the other decisions cited by Appellants were also decided before Reinish, and are also inapplicable in this case because they involved durational residency requirements or a strict time cut-off for application of benefits. See

Mem'l Hosp. v. Maricopa County, 415 U.S. 250 (1974) (involving a county law which required that an indigent be a resident of the county for twelve months in order to be eligible for free nonemergency care); Dunn v. Blumstein, 405 U.S. 330 (1972) (concerning a one-year residency requirement for voter registration); Shapiro v. Thompson, 394 U.S. 618 (1969) (involving a one year state residency requirement for receipt of state welfare benefits) overruled on other grounds in Edelman v. Jordon, 415 U.S. 651 (1974); see also Attorney General of New York v. Soto-Lopez, 476 U.S. 898 (1986) (plurality opinion) (ruling that a state statute which offered a civil service employment preference only to veterans who were state residents at the time of their induction into the military violated the Right to Travel); Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) (ruling that a New Mexico statute exempting property held by Vietnam veterans who were New Mexico residents before May 8, 1976 created fixed, permanent distinctions between classes of residents).

Appellants also cite to Zobel v. Williams, 457 U.S. 55 (1982). Although the challenged law in Zobel does not involve a threshold waiting period, an examination of the facts and analysis of that case shows it is also distinguishable from the case at bar. In Zobel, an Alaska statute distributed a portion of the state's mineral income to each of the state's residents in proportion to the number of years that resident had lived in the state. The Court explained: "Under the plan, each

citizen 18 years of age or older receives one dividend unit for each year of residency subsequent to 1959, the first year of statehood. The statute fixed the value of each dividend unit at $50 for the 1979 fiscal year; a one-year resident thus would receive one unit, or $50, while a resident of Alaska since it became a State in 1959 would receive 21 units, or $1,050." 457 U.S. at 57. There was no durational threshold, but the Court found that the scheme created a fixed permanent distinction between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they had been in the state. Id. at 59. The Court applied an equal protection analysis to invalidate the statute, finding that the scheme cannot pass even minimal scrutiny. Id. at 60-61

Zobel is not applicable here. The Alaska law at issue in Zobel distributed earnings to state residents directly proportionate to the length of residency. By contrast, the SOHA is a tax exemption that applies in the same manner to all homestead property in Florida. Although the SOHA results in certain differences in assessed value from property to property, whatever disparity exists between long-term residents and more recent arrivals is primarily the result of market-related forces, and is not proportionate to length of residency. This type of acquisition value assessment system was approved by the Supreme Court in Nordlinger. See also Columbus-Muscogee County Consol. Gov't v. CM Tax Equalization, Inc., 579 S.E.2d 200 (Ga. 2003) (ruling that an acquisition value

property tax scheme was valid under both equal protection and right to travel analyses pursuant to Nordlinger; concluding that nothing in the tax scheme "treats new arrivals to the County any differently from long-term County residents seeking to purchase a home there"). The Right to Travel is not impaired; if there is any burden on interstate travel by the SOHA and Amendment 1, it is clearly incidental and not actionable.

As applied to the Appellants themselves, the application of SOHA does not deny equal treatment to non-residents, nor does it discriminate against Appellants. Appellants, after all, are residents of the State of Florida that have established their permanent residences in the State and partake of the benefits of the SOHA. These benefits are cyclical: Appellants may one day be considered long-term owners of homestead property. They allege that their Right to Travel is violated, simply because, at the time of acquisition, they do not receive the same extent of benefit as some longer-term residents of the State who have had the benefit of Save Our Homes for a greater period of time. However, as Nordlinger and Reinish clearly establish, this is not a violation of Appellants' Right to Travel. Nothing in the SOHA treats new arrivals to the State any differently from long-term residents seeking to purchase homestead property.

To the extent that Appellants seek to contest the portability aspects of Amendment 1, clearly they have no standing to contest this provision under a

claim of violation of Right to Travel. Appellants are established Florida residents who have qualified for homestead exemption and the benefits of SOHA. They were already permanent residents of the State at the time Amendment 1 was approved. No claim can be made that the approval of the portability provision of Amendment 1 impairs their Right to Travel, as their place of residence was already clearly established, and they will benefit from portability just as any other permanent Florida resident owning homestead property. See Nordlinger, 505 U.S. at 10-11.

V. THE TRIAL COURT DID NOT ERROR IN APPLYING A RATIONAL BASIS STANDARD OF REVIEW.

In this case, clearly a rational basis standard of review applies, as there is no violation of any fundamental or essential right. See Nordlinger, 505 U.S. 1; Reinish, 765 So. 2d at 209. Although freedom to travel throughout the United States has been recognized as a basic right under the Constitution, this right is not impeded in this case by the SOHA or Amendment 1. Reinish, 765 So. 2d at 207-10; see also Soto-Lopez, 476 U.S. at 905 (providing "that only where a State's law 'operates to penalize those persons. . .who have exercised their constitutional right to interstate migration' is heightened scrutiny triggered."); Mem'l Hosp., 415 U.S. at 258 (same). In this case, Appellants have been denied no substantial right or significant benefit, as Appellants were able to take advantage of the benefits of the SOHA by establishing a homestead residence upon their relocation to Florida.

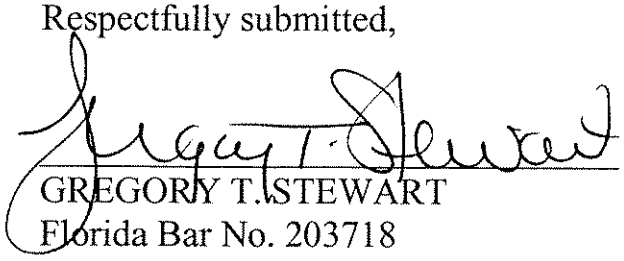
Appellants were treated the same as residents of Florida who are purchasing homestead property in the State for the first time. As the constitutional Right to Travel is not implicated, no fundamental right has been violated in this case, and the compelling-state interest test does not apply.

CONCLUSION

As a matter of law, the trial court properly dismissed the Second Amended Complaint for failure to state a cause of action as to the constitutional issues raised on appeal.[9] Appellants have failed to demonstrate any reversible error on appeal. Therefore, the Appellees Leon County, Leon County School Board, and Charlotte County School Board, respectfully request that the Court affirm the final judgment of the lower court in all respects.

[9] Appellants do not argue on appeal that the trial court erred in dismissing Appellants' claims under 42 U.S.C. section 1983. As such, any argument on this basis is waived.

Respectfully submitted,



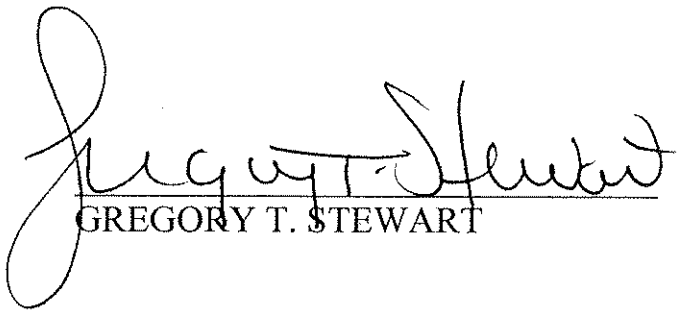
GREGORY T. STEWART
Florida Bar No. 203718
HARRY F. CHILES
Florida Bar No. 0306940
CARLY J. SCHRADER
Florida Bar No. 14675
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
(850) 224-4070
(850) 224-4073 (Facsimile)
gstewart@ngnlaw.com
hchiles@ngnlaw.com
cschrader@ngnlaw.com
ATTORNEYS FOR LEON COUNTY, LEON COUNTY SCHOOL BOARD, AND CHARLOTTE COUNTY SCHOOL BOARD

J. JEFFRY WAHLEN
Florida Bar No. 884316
Leon County School Board Attorney
Ausley & McMullen, P.A.
227 South Calhoun Street
P.O. Box 391
Tallahassee, Florida 32301
(850) 224-9115
(850) 222-7560 (Facsimile)
jwahlen@ausley.com
CO-COUNSEL FOR LEON COUNTY SCHOOL BOARD

MICHAEL R. McKINLEY
Florida Bar No. 275247
JOHN L. WIDEIKIS
Florida Bar No. 641383
McKinley, Ittersagen, Gunderson, Berntsson, & Wideikis P.A.
18401 Murdock Circle
Port Charlotte, Florida 33948
(941) 627-1000
(941) 255-5483 (Facsimile)
mmckinley@migblaw.com
jwideikis@migblaw.com
CO-COUNSEL FOR CHARLOTTE COUNTY SCHOOL BOARD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the attached Service List, this 15 day of May, 2009.



GREGORY T. STEWART

SERVICE LIST

WILLIAM C. OWEN, ESQ.
William C. Owen, LLC
241 Pinewood Drive
Tallahassee, FL 32303

JAMES G. FEIBER, JR., ESQ.
Salter, Feiber, Murphy,
Hutson & Menet, P.A.
P.O. Box 357399
Gainesville, FL 32635

DOUGLAS S. LYONS, ESQ.
MARSHA LYONS, ESQ.
Lyons & Farrar
325 N. Calhoun Street
Tallahassee, FL 32301

WILLIAM M. SLAUGHTER, ESQ.
MATTHEW T. FRANKLIN, ESQ.
MARK D. HESS, ESQ.
Haskell, Slaughter, Young &
Rediker, LLC
1400 Park Place Tower
2001 Park Pl. N.
Birmingham, Alabama 35203

THOMAS T. GALLION, III, ESQ.
Haskell, Slaughter, Young &
Gallion, LLC
P.O. Box 4660
Montgomery, Alabama 36103

TALBOT D'ALEMBERTE, ESQ.
D'Alemberte & Palmer, PLLC
Post Office Box 10029
Tallahassee, Florida 32302-2029

JARRELL L. MURCHISON
Assistant Attorney General
JOSEPH C. MELLICHAMP, III
Assistant Attorney General
Office of the Attorney General
The Capitol
Revenue Litigation Section
Tallahassee, FL 32399-1050

SCOTT D. MAKAR
Solicitor General
CHARLES B. UPTON
Deputy Solicitor General
Office of the Attorney General
The Capitol, Suite PL-01
Tallahassee, FL 32399

ALICE A. HARDY, ESQ.
Leon County Tax Collector's Office
P.O. Box 1835
Tallahassee, FL 32302

ROBERT J. SNIFFEN, ESQ.
J. DAVID MARSEY, ESQ.
Sniffen Law Firm, P.A.
211 East Call Street
Tallahassee, FL 32301

HERBERT W. A. THIELE
Leon County Attorney
301 S. Monroe Street
Room 202
Tallahassee, Florida 32301

DENISE J. NIEMAN, ESQ.
Palm Beach County Attorney
ANDREW M. PELINO, ESQ.
Assistant County Attorney
PAUL F. KING, ESQ.
Assistant County Attorney
Palm Beach County
Litigation Section
301 N. Olive Avenue, #601
West Palm Beach, FL 33401

GERALD A. WILLIAMS, ESQ.
Chief Counsel
ROBERT GLASSMAN, ESQ.
Office of the Chief Counsel
School Board of Palm Beach County
P.O. Box 19239
West Palm Beach, FL 33416

RANDALL D. BURKS, ESQ.
Office of the Chief Counsel
School Board of Palm Beach County
P.O. Box 19239
West Palm Beach, Florida 33416

BRIAN HANLON, ESQ.
General Counsel
Palm Beach County Tax
Collector
P.O. Box 3715
West Palm Beach, Fl 33402

JAY R. JACKNIN, ESQ.
JEFFREY M. CLYMAN, ESQ.
c/o Property Appraiser's Office
Palm Beach County
301 N. Olive Avenue
Fifth Floor
West Palm Beach, FL 33401

E. BRUCE JOHNSON, ESQ.
TAMARA M. SCRUDDERS, ESQ.
2455 E. Sunrise Boulevard
Suite 1000
Fort Lauderdale, FL 33304

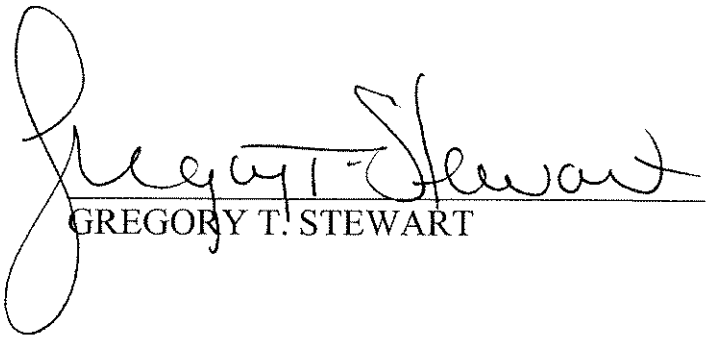
JANETTE S. KNOWLTON, ESQ.
Charlotte County Attorney
DANIEL E. GALLAGHER, ESQ.
Assistant County Attorney
Charlotte County
18500 Murdock Circle, #573
Port Charlotte, FL 33948-1094

JAMES GORDON, ESQ.
18501 Murdock Circle, #6
Port Charlotte, FL 33948

JOHN L. POLK, ESQ.
Post Office Box 511221
Punta Gorda, FL 33951-1221

CERTIFICATE OF FONT SIZE COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief of Appellees, Leon County, Leon County School Board, and Charlotte County School Board, complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).



GREGORY T. STEWART