DISTRICT COURT OF APPEAL, FIRST DISTRICT,
STATE OF FLORIDA

JEROME K. LANNING and JOYCE A., etc., et al.,

Appellants,

v.

PATRICK P. PILCHER, individually, etc., et al.,

Appellees.
_____/

CASE NO.: 1D07-6564

L.T. Case No. 37-2007-CA-000582

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

ANSWER BRIEF OF APPELLEES OKALOOSA COUNTY, OKALOOSA COUNTY SCHOOL BOARD, WALTON COUNTY, AND WALTON COUNTY SCHOOL BOARD

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PRELIMINARY STATEMENT

Jerome K. Lanning and Joyce A., et al. will be referred to as "Appellants."

Patrick P. Pilcher, et al. will be referred to as "Appellees."

Okaloosa County, Okaloosa County School Board, Walton County, and Walton County School Board will be referred to collectively as the "County and School Board 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."

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

Reference to the transcript of the motion hearing will be designated as "Tr." followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

The Appellees, Okaloosa County, Okaloosa County School Board, Walton County, and Walton 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. 3 at 413-540). 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 brought a claim for declaratory relief alleging that SOHA was unconstitutional as a violation of (1) the "dormant" Commerce Clause of Article I, section 8 of the U.S. Constitution; (2) the Privileges and Immunities Clause of the Fourteenth Amendment to the U.S. Constitution; (3) the Equal Protection Clause of the Fourteenth Amendment to the

U.S. Constitution; (4) the constitutional Right to Travel; and (5) the Due Process Clause of the Fifth and Fourteenth Amendments of the U.S. Constitution (R. Vol. 3 at 444-57). 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. 3 at 457-60, 463-66).

The Appellees below filed several separate motions to dismiss and strike directed to the Second Amended Complaint, arguing, in part, that the complaint should be dismissed in its entirety for failure to state a cause of action as to each of the constitutional issues and for failure to state a cause of action and lack of subject matter jurisdiction as to the claims under 42 U.S.C. section 1983 (R. Vol. 2 at 345-383; R. Vol. 3 at 384-408).[1] A hearing was held on these motions on August 6, 2007. At the hearing, much of the argument centered on this Court's decision in Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000), in which almost identical constitutional claims were rejected, and Nordlinger v. Hahn, 505 U.S. 1 (1992), a decision of the U.S. Supreme Court upholding a California tax scheme very similar to Florida's SOHA, despite constitutional challenge. At the conclusion of the hearing, the Court ruled that based upon the decisions in Reinish and Nordlinger,

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[1] Appellees/defendants below also argued that the complaint should be dismissed for lack of subject matter jurisdiction (R. Vol. 2 at 369-70). The court rejected this argument, and this ruling is the subject of the cross-appeal by various other Appellees. Also, Appellees argued improper venue as to the defendants other than James Zingale (R. Vol. 2 at 377-78). The court did not rule on this issue.

the SOHA was constitutional (Tr. at 112-13, 117). The court also dismissed the claims brought pursuant to 42 U.S.C. section 1983 (Tr. at 112-13, 115-16). Subsequent to the hearing, the trial court entered its written Final Judgment of Dismissal with Prejudice, reaffirming its earlier ruling (R. Vol. 8 at 1529-57). This appeal has followed.

SUMMARY OF THE ARGUMENT

The SOHA is part of Florida's coordinated 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. A non-resident owner of a secondary or vacation home in Florida is treated identical to a Florida resident owner of a secondary or vacation home.

Contrary to Appellants' arguments, the SOHA does not violate the dormant Commerce Clause, the Equal Protection Clause, the Privileges and Immunities Clause, the Right to Travel, or Due Process. 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 an equal protection challenge to a similar tax structure in California, control the outcome in this case.

The SOHA does not discriminate against interstate commerce. Rather, it is an even-handed provision that applies to both residents and non-residents of Florida. Owners of secondary and vacation homes in Florida are treated the same, regardless of residency. Further, there is no need to remand this case for the trial court to conduct a fact specific balancing test pursuant to Pike v. Bruce Church, Inc., 397 U.S. 137 (1970), even if this test applies, as the court properly relied on the Reinish court's ruling on this issue.

Additionally, the SOHA does 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. The underlying classification for the SOHA is based on the use of the property and not the user. Therefore, the SOHA does not treat Appellants any differently from Florida residents who rent or who use Florida real property as secondary or vacation homes.

Similarly, the SOHA does not violate a fundamental or essential right guaranteed by the Privileges and Immunities Clause. The SOHA does not deny equal treatment to non-residents or discriminate against them. Further, there is no violation of Appellants' constitutionally guaranteed Right to Travel because Appellants, as well as Florida residents, are free to buy, keep, or dispose of vacation or second homes in Florida. Appellants have not identified any obstacle preventing their travel to or from Florida. As to any alleged violation of Due

Process, Appellants appear to have waived and abandoned the argument on appeal by their failure to raise that issue.

Appellants also failed to state a claim below under 42 U.S.C. section 1983. Under the provisions of 28 U.S.C. section 1341, federal courts are prohibited from enjoining, suspending or restraining the assessment, levy and collection of any tax under state law where a plain, speedy and efficient remedy is available from state courts. Such prohibition has also been deemed to apply to actions brought under 42 U.S.C. section 1983 in state court. As Florida provides a plain, speedy and efficient remedy, the trial court properly ruled it must refrain from granting relief under section 1983.

STANDARD OF REVIEW

The County and School Board 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").

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 coordinated 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.[2] Art. VII, § 6, Fla. Const. Under this aspect of the scheme, 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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[2] SJR 2D (2007), and Amendment 1 as approved by the voters in January 2008, provides for a doubling of the homestead exemption for all taxing units except school districts. 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, individuals who have claimed a Florida residence as their homestead are also entitled to a "cap" on the assessed value of their homestead property, pursuant to the SOHA. Once a homestead is established, the owner is assessed taxes based on just value as of January 1 of the following year. Art. VII, § 4(c)(3), Fla. Const.[3] The homestead property is then reassessed on January 1 of each year. However, Article VII, section 4(c)(1) of the Florida Constitution limits the annual change in assessments of homestead property to three percent of the assessment for the prior year 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. California's Proposition 13 implemented a similar acquisition-value property taxation scheme, which was upheld by the United States Supreme Court, despite constitutional challenge. Nordlinger v. Hahn, 505 U.S. 1 (1992).

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[3] At the time the case was originally decided below, the assessment based on just value applied to first-time homesteaders as well as property owners who had acquired a new homestead. With the passage of SJR 2D (2007) and 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 to another homestead. However, "portability," as this provision is often referred to, is not at issue in this appeal, as it had not been approved prior to the filing and dismissal of the Second Amended Complaint.

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 is not linked to length of Florida residency, but rather, is tied to the length of time an individual has owned homestead property in Florida, coupled with market conditions. There is no durational residency requirement or waiting period for those who have moved from out of state. A homeowner becomes eligible for the SOHA at the time a Florida homestead is established, and this is not dependent on whether the property owner came from in state or out of state.

II. THE TRIAL COURT PROPERLY RELIED ON THIS COURT'S REASONING AND DECISION IN REINISH AND THE U.S. SUPREME COURT'S REASONING AND DECISION IN NORDLINGER IN DISMISSING APPELLANTS' COMPLAINT

The validity of Florida's homestead ad valorem tax scheme was previously addressed and upheld by this Court in Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000). The Reinishes, like Appellants, were non-residents who had 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. The trial court in that action dismissed the complaint, concluding that the various theories of unconstitutionality were all without legal merit. Id.

Although the primary challenge in Reinish was to the homestead tax exemption, the underlying classification system challenged by the Reinishes included both the tax exemption and the SOHA. In Reinish, the appellants asserted in their briefs a specific argument regarding the SOHA, 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.
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> . . . .
>
> 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)).[4]

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.

Reinish, 765 So. 2d at 205.

Almost a decade later, Appellants seek to resurrect the identical arguments presented in Reinish. In the present case, the trial court rejected Appellants'

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

challenges to the SOHA, relying on this Court's analysis in Reinish, that the underlying classification of property is based on the use of the property rather than on residency of the owner. As the trial court determined, the reasoning of Reinish is just as applicable in the present case.

The trial court correctly followed Reinish, as it is bound by the decisions of this Court which have not been overruled. 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 to Reinish, the Nordlinger decision is also controlling precedent on many of the issues raised in this case. In Nordlinger, the U.S. Supreme Court considered California's similar 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.[5] 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. Id. at 6. For example, 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. Additionally, "[t]he general tax levied against her modest home is only a few dollars short of that paid by a pre-1976 owner of a $2.1 million Malibu beachfront home." Id. at 7.

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

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[5] Full cash value was defined under the California constitutional amendment as "the assessed valuation as of the 1975-1976 tax year or, 'thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." Nordlinger, 505 U.S. at 5.

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.

Based upon the Nordlinger and Reinish decisions, it is clear that Appellants' claims must fail, and the trial court properly dismissed the Second Amended Complaint as failing to state a cause of action.

III. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIM THAT THE SOHA VIOLATES THE DORMANT COMMERCE CLAUSE

In their Second Amended Complaint, Appellants challenged the SOHA on the basis that, among other things, it violates the dormant Commerce Clause. The Commerce Clause of the federal Constitution states, in part: "The Congress shall have power to . . .regulate Commerce with foreign Nations, and among the several States." Art. I, § 8, cl. 3, U.S. Const. In addition to the affirmative grant of power to Congress, the Clause "also has a negative or dormant aspect, which severely limits the extent to which the States or local governments can discriminate against, unduly burden, tax, or otherwise interfere with interstate commerce. . ." Reinish, 765 So. 2d at 210 n. 8. In general, the dormant Commerce Clause prevents states from enacting provisions which interfere with, discriminate against, or unduly burden interstate commerce. General Motors Corp. v. Tracy, 519 U.S. 278, 287 (1997).

Appellants address the court's analysis of their challenge under the dormant Commerce Clause under two separate arguments of their Initial Brief. First, in part II of their argument, Appellants assert that the case should be remanded because the trial court failed to conduct the balancing test set forth in Pike v. Bruce Church, Inc., 397 U.S. 137 (1970). Pike sets forth a two-tiered test that is applied to challenges to state regulations under the dormant Commerce Clause. Under the first tier, if the state regulation per se discriminates against interstate commerce, it will be struck down as a violation of the dormant Commerce Clause. However, if the regulation is not per se discriminatory, the court must decide whether the regulation places a burden on interstate commerce that clearly outweighs its possible benefit:

> Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.

Reinish, 765 So. 2d at 212-13 (quoting Pike, 397 U.S. at 142).

Pike generally applies in cases challenging state regulatory provisions, not in cases such as this one involving state taxation. See Complete Auto Transit v. Brady, 430 U.S. 274 (1977) (applying a separate four prong test in the case of a state tax); Dep't of Banking & Finance v. Credicorp, Inc., 684 So. 2d 746 (Fla. 1996) (outlining the two separate legal standards that apply to (1) a general

revenue tax or (2) a regulatory measure enacted pursuant to the state's police powers). Additionally, since Reinish, the U.S. Supreme Court has criticized certain applications of the Pike balancing analysis. See Dep't of Revenue of Ky. v. Davis, 128 S. Ct. 1801, 1818-19 (2008) (citing cases for the proposition that "[C]ourts as institutions are poorly equipped to evaluate with precision the relative burdens of various methods of taxation. The complexities of factual economic proof always present a certain potential for error, and courts have little familiarity with the process of evaluating the relative economic burden of taxes").

In any event, to the extent Pike applies, this Court, in Reinish, already conducted the balancing test and determined that the provisions of the homestead tax exemption scheme, including the SOHA, did not discriminate against interstate commerce and did not violate the dormant Commerce Clause. In applying the second step of the test, this Court specifically concluded that "the Florida exemption is an even-handed regulation that promotes the legitimate, strong public interest in promoting the stability and continuity of the primary permanent home." Reinish, 765 So. 2d at 214. This Court further concluded that the Reinishes had not shown the effects on interstate commerce were anything more than incidental, "or that the burden imposed on such commerce is clearly excessive when compared to the asserted local benefits." Id. This analysis forecloses Appellants' arguments regarding the application of Pike.

Appellants also argue in part III C. of their Initial Brief that the SOHA does not comply with the test set forth by Complete Auto Transit. Pursuant to the four prong test of Complete Auto, a tax will be sustained against a Commerce Clause challenge "when the tax is applied to an activity with a substantial nexus with the taxing state; is fairly apportioned; does not discriminate against interstate commerce; and is fairly related to the services provided by the State." 430 U.S. at 279.

Appellants argue only that the SOHA does not comply with the third prong of the test, which prohibits a state tax from discriminating against interstate commerce. Similar to the traditional Commerce Clause standard, a tax may not facially discriminate against interstate commerce, nor may it discriminate in purpose or effect. See Bacchus Imps., LTD v. Dias, 468 U.S. 263, 271-73 (1984). However, the SOHA is an even-handed provision that applies equally to both residents and non-residents of the State of Florida. Any difference in treatment is based on the use of property.

There are legitimate state interests which distinguish residential property used as vacation or second homes from the use of residential property for primary permanent homes. "A secondary or vacation home does not implicate the same acute public policy concerns relating to the establishment and protection of a stable, financially secure primary residence." Reinish, 765 So. 2d at 210.

Appellants simply are not similarly situated to owners of Florida homestead property. Accordingly, there can be no discrimination between these two groups. See Dep't of Revenue of Ky., 128 S. Ct. at 1811 (providing "any notion of discrimination assumes a comparison of substantially similar entities"). All owners of secondary and vacation homes in Florida are treated exactly the same, regardless of residency.

Appellants next argue that the SOHA is facially discriminatory because it influences consumer choices regarding where to buy residential property, and because it diminishes interstate relocations. As to the former argument, the tax benefits offered by the SOHA do not influence whether Appellants or others purchase secondary or vacation residences in Florida or outside of the state because the SOHA is limited in its application to homestead property. Any alleged effect on the interstate commerce of Appellants is merely incidental.

As to the argument that the SOHA is discriminatory because it diminishes interstate relocations, this argument was also foreclosed by Reinish. In Reinish, the Court discussed in detail the "well-reasoned analysis" set forth by an Illinois decision, Stahl v. The Village of Hoffman Estates, 694 N.E.2d 1102 (Ill. App. Ct. 1998), which the Court found "instructive and useful." Reinish, 765 So. 2d at 214. In Stahl, a real estate transfer tax exemption applied only to residents who lived on their property in the Village for a year and then bought another residence in the

Village within a certain period of time. The appellants in that case argued that this exemption per se discriminated against interstate and intrastate commerce. Stahl, 694 N.E. 2d at 1104.

The Illinois appellate court ruled that the property tax exemption was not per se discriminatory. In rendering its decision, the court stated:

> The ordinance, with its exemption, does not impose a tax on people who leave the Village. It rewards the people who stay. In that way the Village promotes stability and continuity. That is a legitimate local purpose. People make decisions about where they want to live. We do not see how the decision to leave Hoffman Estates, foregoing a tax exemption, can be said to offend the Commerce Clause.

Id. at 1107. Likewise, in the present case, the SOHA limits tax increases for those who remain in their homestead property, with a purpose of preserving the primary permanent home. That preservation serves a legitimate local purpose, and the decision of a homeowner to sell his or her primary residence and forego any built-up SOHA benefits, or not, cannot be said to offend the Commerce Clause.

Appellants next assert an odd argument relating to the perceived interrelation between the SOHA and the Florida Education Finance Program (FEFP).[6] Appellants argue that the SOHA, in coordination with the FEFP, results

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[6] The FEFP is the primary source of funding for school operational purposes, and is made up of both state and local money. See Chapter 1011, Part II, Florida Statutes. State funds are derived primarily from sales tax, and local funds are

in out-of-state owners of residential property subsidizing the cost of education for residents of Florida. Although Appellants do not phrase it as such, it appears that Appellants are essentially arguing that the SOHA violates the fourth prong of the Complete Auto Transit test -- that the tax on Appellants is not fairly related to the services provided by the State. 430 U.S. at 279.

This prong of the Complete Auto Transit test establishes an exceedingly low bar to meet. The relevant inquiry is not the amount of tax or the value of benefits bestowed, but rather, whether the measure of the tax is reasonably related to the extent of Appellants' contact with the State. Commonwealth Edison Co. v. Mont., 453 U.S. 609, 625-26 (1981). So long as a general revenue tax, such as an ad valorem property tax, does not discriminate against interstate commerce and is apportioned to activities occurring within the State, the State "is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, [and] to benefits which it has conferred by the fact of being an orderly, civilized society." Id. at 625.

The dormant Commerce Clause does not require that the use of the ad valorem taxes be directly equated to the services provided to Appellants. The tax

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generated through ad valorem taxation. All school districts must levy required local effort at a millage rate not to exceed that certified by the Commissioner of Education. The school districts have no discretion in setting this millage rate.

is assessed based on the value of the property, which is in direct relation to activities or presence in the State. Appellants are provided services such as fire service, police protection, and public schools, all of which are benefits conferred by the fact of being an orderly society, and each protects the value of the property Appellants own in the State. See id. at 625, 627 ("When a tax is assessed in proportion to a taxpayer's activities or presence in a State, the taxpayer is shouldering its fair share of supporting the State's provision of 'police and fire protection, the benefit of a trained work force, and the advantages of civilized society.'").

Appellants failed to state a claim under the dormant Commerce Clause. Accordingly, the trial court properly dismissed the Second Amended Complaint on this basis.

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

Appellants also 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. 505 U.S. 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)).

Nordlinger and Reinish are dispositive of this issue. 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. The Court applied the rational basis standard of review to evaluate the difference in treatment between newer and older owners. Id. at 11.[7] The Court found two rational or reasonable considerations to justify the difference in benefits: first, the State had a legitimate interest in local neighborhood preservation, continuity, and stability; and second, the State legitimately could conclude that a new owner at the time of acquiring his property did not have the same reliance interest warranting protection against higher taxes as did an existing owner. Id. at 12.

In Reinish, a similar equal protection challenge was brought against Florida's homestead tax structure, and this Court, relying on Nordlinger, ruled that the trial court properly dismissed the claim below. Reinish 765 So. 2d at 203-07.

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[7] As discussed in part V, infra, the fundamental right to travel is not implicated in this case. Accordingly, only rational basis scrutiny applies.

This Court, in Reinish, 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.

Reinish, 765 So. 2d at 206-07 (citations omitted). The Legislature reasonably could have concluded that the classification promotes a legitimate State purpose. Id.

Appellants attempt to show "countervailing irrational consequences" which warrant further review, such as the difficulty of renters in achieving home ownership because of the effects of the SOHA. (Initial Brief at 21-24). However, this issue was addressed squarely by the Court in Nordlinger. 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. Similarly, in this case, the courts should defer to the Legislature on matters of whether the SOHA is the wisest or most prudent policy decision.

Appellants again assert, under this argument, that the SOHA in combination with the FEFP results in inequitable tax treatment. Although it is difficult to isolate the exact argument on this point, it appears that Appellants are asserting that non-resident owners of second homes in Florida subsidize the tax bill for Florida residents who own both homestead property and second homes in Florida, but only as to the *homestead property*. The difficulty with this argument is that Appellants are attempting to compare themselves with Florida residents in their capacity as owners of homestead property, and not as owners of secondary or vacation homes. Appellants are attempting to avoid one of the basic principles of an equal protection analysis -- that only persons who are in all relevant respects similarly situated must be treated similarly. Duncan v. Moore, 754 So. 2d 708, 712 (Fla. 2000) ("Equal protection is not violated merely because some persons are treated differently than other persons. It only requires that persons similarly situated be treated similarly.") As discussed throughout, the different tax treatment is based on the use of property, not the user. Appellants and Florida residents

owning secondary or vacation homes are treated exactly the same. Accordingly, there is no violation of the Equal Protection Clause.

V. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIMS THAT THE SOHA VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE OR RIGHT TO TRAVEL

Appellants' claim that the SOHA violates the Privileges and Immunities Clause and the constitutional 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 the present case, there is no fundamental or essential right violated by the denial of the homestead tax exemption or the SOHA. See Reinish, 765 So. 2d at 209. The application of the SOHA does not deny equal treatment to non-residents, nor does it discriminate against them. The application of the SOHA is based upon the use that a party makes of its residential property, regardless of whether the property is owned by residents of Florida or residents of other states. This point was clearly made in Reinish.

Residents of Florida, like non-residents, are not entitled to application of the SOHA to their secondary or vacation residential properties. Appellants and other non-residents have no right to any preferential treatment on the taxation of their secondary or vacation homes inside the state of Florida. See Shaffer v. Carter, 252

U.S. 37, 53 (1920) ("Section 2 of Art. IV of the Constitution entitles [a non-resident] to the privileges and immunities of a citizen, but no more; not to an entire immunity from taxation, nor to any preferential treatment as compared with resident citizens. It protects him against discriminatory taxation, but gives him no right to be favored by discrimination or exemption."). The 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 properties. Florida legitimately may lessen the tax burden for owners of primary homes within Florida, as compared with that of owners of residential property utilized as secondary or vacation homes. Because Appellants do not maintain their primary residences in Florida, they, like all other owners of secondary or vacation homes in the State, will not be afforded the same tax benefit as those with homesteads in Florida.

Rubin v. Glaser, 416 A.2d 382 (N.J. 1980), is instructive on this issue. The Supreme Court of New Jersey considered a constitutional challenge to a homestead tax rebate. Appellants were non-resident owners of a second or vacation home in New Jersey. The court concluded that the homestead rebate act satisfied the requirements of the Privileges and Immunities Clause because it bore a close relationship to a proper purpose irrespective of the impact upon nonresidents. Id. at 386. First, the court found that the rebate was closely related to the beneficial

purpose of alleviating the heavy realty tax burden, and that the Legislature did not intend to foster the ownership of vacation homes or other homes not maintained as principal residences. Second, the statutory aim was not directed against non-residents. The court found that New Jersey residents who own vacation homes in New Jersey were treated the same as non-residents with respect to the rebates. Id. at 386-87. This case was cited with approval by Reinish. 765 So. 2d at 210. The Florida homestead tax scheme, including the SOHA, like the homestead rebate, "provides no greater, or lesser, benefit to Florida owners of secondary homes than it does to . . . non-residents." Id.

Appellants argue that many non-residents use their vacation property in Florida for a substantial portion of the year, and sometimes may have more money invested in their Florida property than their primary home outside of Florida. However, the Privileges and Immunities Clause does not mandate that a non-resident be given all of the benefits of Florida residency without becoming a Florida resident. Rather, entitlement is determined by the use of Florida residential property -- if used as a primary, permanent residence, the owner is entitled to the full array of benefits under the SOHA.

Appellants' claim that the cause should be remanded for reconsideration is without merit. In Hillside Dairy, Inc. v. Lyons, 539 U.S. 59 (2003), cited by Appellants in support of this argument, the Court remanded the case because it

agreed "with petitioners that the absence of an express statement in the California laws and regulations identifying out-of-state citizenship as a basis for disparate treatment is not a sufficient basis for rejecting this claim." Id. at 67. In this case, clearly the trial court did not reject Appellants' argument because of the absence of an express statement of discrimination in the SOHA. The court rejected Appellants' argument on the basis that this issue had already been decided adversely to Appellant's position by Reinish and Nordlinger.

As any resulting inequality based on the SOHA is only incidental to the application of the tax system, and does not reflect hostile discrimination, Appellants have failed to state a claim under the Privileges and Immunities Clause. Reinish, 765 So. 2d at 209; see also Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 297 (1998).

Likewise, Appellants have failed to state a claim as to their Right to Travel. Appellants accurately identify the "three components" of the Right to Travel discussed by the U.S. Supreme Court in Saenz:

> It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.

526 U.S. at 500.

None of these three components are violated in this case. Appellants, as non-resident owners of second or vacation homes in the State of Florida, are provided no greater or lesser benefit than Florida residents. Appellants, as well as Florida residents, are free to buy, keep, or dispose of vacation or second homes in Florida. Additionally, the state does not infringe upon the constitutional guarantee "that individuals may migrate between states to live and work." Reinish, 765 So. 2d at 210. As the trial court found, Appellants have not identified any obstacle preventing any of them from traveling to or from Florida, or any impediment to travel at all (R. Vol. 8 at 1540).[8]

Appellants attempt to make an argument under the third component identified by Saenz "for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." 526 So. 2d at 500. However, clearly Appellants have no standing to raise an issue with regard to newly arrived, permanent residents of Florida. See Nordlinger, 505 U.S. at 10-11 (citing Allen v. Wright, 468 U.S. 737, 751 (1984), for the "general prohibition" on

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[8] Though Appellants may seek to characterize the application of SOHA as a durational requirement, it is no such thing. The application of SOHA is available without any durational requirements. 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. The SOHA applies after a homestead is established, and this is not dependent on whether the property owner came from in state or out of state.

a litigant's raising another person's legal rights). By Appellants' own assertions, they are non-resident owners of property within Florida. Accordingly, Appellants' arguments on this basis should be disregarded by this Court, as Appellants have no standing to raise such issues.

VI. APPELLANTS HAVE ABANDONED THEIR DUE PROCESS ARGUMENT

Appellants do not present a specific argument on appeal that the trial court's ruling on their arguments under the Due Process Clause was error. Accordingly, Appellants should be deemed to have abandoned and waived this issue on appeal. In any case, Appellants failed to state a cause of action as to a violation of the Due Process Clause of the U.S. Constitution. As to procedural due process, the trial court properly found that no violation is shown because Florida provides ample opportunity for hearing and the right to be heard with no risk of property loss through forfeiture while the matter is being litigated (R. Vol. 8 at 1543). See §§ 194.171, 197.182, Fla. Stat. (2008).

As to substantive due process, the trial court also properly found that no violation has occurred because "Florida is not attempting to tax beyond its borders or to treat residents and non-residents differently, or to reach non-Florida property" (R. Vol. 8 at 1544). There is no substantive due process claim available, as there is a clear and substantial nexus between Appellants' property and the State of Florida. See generally Quill Corp. v. North Dakota, 504 U.S. 298, 306 (1992)

("The Due Process Clause 'requires some definite link, some minimum connection, between a state and the person, property, or transaction it seeks to tax,' . . . and that the 'income attributed to the State for tax purposes must be rationally related to values connected with the taxing State.'" (citation omitted)). Appellants have not articulated any basis for rejection of the trial court's rulings, and, therefore, the trial court's dismissal of the complaint on these grounds should be summarily affirmed.

VII. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIM UNDER 42 U.S.C. SECTION 1983 FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CAUSE OF ACTION

In addition to the constitutional claims asserted under the counts for declaratory action, Appellants' Second Amended Complaint also sought relief pursuant to 42 U.S.C. section 1983. This claim was properly rejected by the trial court.

Under the provisions of 28 U.S.C. section 1341 (the "Tax Injunction Act"), federal courts are prohibited from enjoining, suspending or restraining the assessment, levy or collection of any tax under state law where a plain, speedy and efficient remedy is available from state courts. The provision has been deemed to also apply to actions brought under 42 U.S.C. section 1983 in state courts. Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm'n, 515 U.S. 582 (1995).

In Nat'l Private Truck Council, the Supreme Court held that in a suit where a litigant seeks declaratory or injunctive relief against a state tax pursuant to section

1983, state courts, as well as their federal counterparts, "must refrain from granting federal relief under § 1983 when there is an adequate legal remedy" under state law. Id. at 592. In reaching this conclusion, the Court stated:

> In determining whether Congress has authorized state courts to issue injunctive and declaratory relief in state tax cases, we must interpret § 1983 in light of the strong background principle against federal interference with state taxation. Given this principle, we hold that § 1983 does not call for either federal or state courts to award injunctive and declaratory relief in state tax cases when an adequate legal remedy exists. Petitioners do not dispute that Oklahoma has offered an adequate remedy in the form of refunds. Under these circumstances, the Oklahoma courts' denial of relief under § 1983 was consistent with the long line of precedent underscoring the federal reluctance to interfere with state taxation.

Id. at 589.

As the trial court here found, "[t]hat an adequate clear and certain remedy exists under Florida law cannot be seriously disputed" (R. Vol. 8 at 1547).

> Under Florida law, a property owner challenging an ad valorem property tax has several options that encompass both pre-deprivation and post-deprivation relief. See § 194.171, Fla. Stat. (2006). The property owner may file suit in circuit court and pay only those taxes that he/she admits in good faith to be due and owing. Such action automatically suspends all proceedings for the collection of taxes prior to final disposition of the action. See § 194.171(3), Fla. Stat. (2006). This is in effect an automatic injunction against collection procedures. The statute does not preclude a taxpayer from paying all taxes claimed to be due and seeking relief by way of a refund, since the statute provides that payment shall not be deemed an admission that the tax was due and does not

> prejudice the right to bring an action seeking refund. See § 194.171(4), Fla. Stat. (2006). Refunds are also provided for in section 197.182, Florida Statutes (2006). This is a broader remedy than necessary under National Truck, McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, 496 U.S. 18 (1990), and Harper v. Virginia, 509 U.S. 96, 113 S. Ct. 2510 (1993).

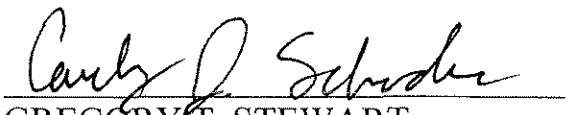
(R. Vol. 8 at 1547).

Appellants argue that they are not required to demonstrate the inadequacy of any state remedy at the motion to dismiss stage and cite Zinermon v. Burch, 494 U.S. 113, 124-25 (1990), to support this proposition. However, this case is not applicable here, as Zinermon involved a claim of violation of procedural due process where the plaintiff was held allegedly against his will in the state mental hospital. In the case of state taxation, the courts have ruled "[i]t is clear that Florida provides a plain, adequate and complete remedy to state taxpayers challenging state tax statutes." Winicki v. Mallard, 615 F.Supp. 1244, 1249 (M.D. Fla. 1985), aff'd by, 783 F.2d 1567 (11th Cir. 1986). Appellants' argument on this point is without merit, and it should be rejected. The trial court properly ruled it lacked subject matter to consider Appellants' claims under 42 U.S.C. section 1983, based upon the clear holding of Nat'l Private Truck Council.

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 and for lack of subject matter jurisdiction and failure to state a cause of action as to the claim under 42 U.S.C. section 1983. Appellants have failed to demonstrate any reversible error on appeal. Therefore, the County and School Board Appellees respectfully request that the Court affirm the final judgment of the lower court in all respects.

Respectfully submitted,



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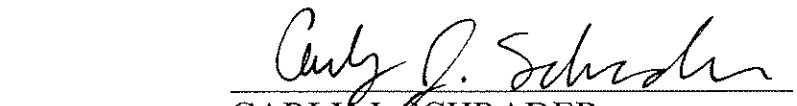

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