

## Looming Suit Complicates State's Tax Picture

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TALLAHASSEE - Florida's property tax debate has played out on the gubernatorial campaign trail and in the state Legislature. In January, it goes to the people.

Ultimately, there could be another venue with a significant role in revamping the state's property tax system: the courts.

A lawsuit filed this year by out-of-state resident's challenges the constitutionality of Florida's existing Save Our Homes tax benefit, a plum for longtime homeowners that will remain available regardless of whether voters approve a property tax cut plan in January.

The architects of that proposal, which would ask voters to approve a constitutional amendment to allow a homestead super exemption, are confident the plan will pass legal muster.

"We truly believe that what we have created is constitutional and dramatically helps taxpayers in the long and short terms," said Sen. Mike Haridopolos, R-Indian River.

Others are more reserved, on the alert for constitutional red flags and the consequences an adverse ruling could bring.

Sen. Steven Geller, D-Cooper City, said any rebuke by the courts with an order to repay wronged taxpayers would be an "absolute disaster for the state."

"One of the things that we're trying to do is make sure that whatever we do, we don't end up destroying or devastating the state of Florida," Geller said.

Florida has collected property taxes since territorial days. In modern times, that money traditionally has been collected based on the value of property owned.

In 1992, Floridians passed a constitutional amendment that capped increases in tax assessments on homestead properties. The intent was to protect seniors on fixed incomes from tax bills that were skyrocketing along with Florida home values.

It became known as the "Save Our Homes" amendment, and it capped increases in home assessments at 3 percent a year or the inflation rate, whichever is lower.

The amendment passed with 54 percent of the vote and took effect in 1995. Years later, there were dramatic consequences for Florida's property tax system.

Seniors did benefit from the system, but so did those who held their homes through the valuation boom of the 1990s and 2000s and were insulated from significant property tax increases.

The revenue needed for everything from schools to police and fire to garbage pickup had to come from somewhere, and unprotected property owners - business owners and owners of investment homes or vacation homes that are not homesteads, for example - bore the brunt.

According to the lawsuit challenging Save Our Homes, the cap has diverted nearly \$9 billion in taxes from homesteaders to non-homestead property owners in just the five fiscal years from 2002 through 2006.

The suit says homesteads were under assessed by an average of 48 percent in 2006.

Lawmakers have recognized the inequity and took action in this month's special legislative session.

Is Save Our Homes fair? Lawmakers shifted position on that question during this year's wrangling over property taxes.

Railing against a dysfunctional system, conservative Republicans first tried to eliminate local property taxes altogether in exchange for an increase in the state sales tax.

Then came the strategy, which will go to voters, to sub out the Save Our Homes cap with a super exemption on all homesteaded property. At the last minute, legislative leaders decided to allow Save Our Homes beneficiaries to keep their existing discount if they prefer it.

Is Save Our Homes constitutional? That question could be answered in courts from Tallahassee to Washington.

Alabamans Force Issue Three Alabama residents who own vacation homes in the Panhandle are forcing the issue.

Birmingham lawyer Jerome Lanning and his wife, Joyce, who own a second home in Santa Rosa, and Montgomery developer Marlow Reese, who owns a second home in Destin, filed suit in February in Leon County Circuit Court challenging the Save Our Homes system. They seek class-action status.

In a sharply-worded introduction to their amended complaint, the plaintiffs claim Save Our Homes is "clearly intended to provide revenue for the State of Florida at the expense of the thousands of non-resident homeowners."

The complaint states that every state legislature undoubtedly wants to protect its own citizens "while gouging outsiders to fill the State coffers, but this type of behavior is illicit."

According to Okaloosa County tax records, Reese paid \$11,005 in property taxes on his \$800,000 home in 2006, while a neighbor whose homesteaded home, valued at \$800,000 and purchased in the 1990s, was taxed on \$275,274 and paid \$3,793 in taxes.

Walton County tax records show that the Lannings paid \$1,607 on their \$180,000 property, while a neighbor whose homestead was purchased in the 1990s and whose just or market value is \$209,000, is taxed on \$101,415 and pays \$908 in taxes.

The lawsuit names various Walton and Okaloosa governmental entities and officials in those counties as defendants, along with Department of Revenue Executive Director Jim Zingale.

None of the plaintiffs responded to requests for an interview.

"Florida needs to get its act together," said their lead attorney, William Slaughter of Birmingham. "This is a very unpopular thing it is doing."

The lawsuit claims that Save Our Homes may violate the equal protection clause of the U.S. Constitution along with a few more arcane provisions: the dormant commerce clause, which prevents taxes from discriminating against interstate commerce; the privileges and immunities clause, which ensures that a citizen of one state venturing into another has the same privileges there; and, most significantly, the right to travel.

Slaughter argues that under Florida's system, nonresidents are financially discouraged from traveling to Florida and purchasing a home because of the immensely disparate tax treatment that they would receive. That violates constitutional guarantees to freely travel among the states, he said.

In their motions for dismissal of the suit, attorneys for the defendants cite a previous challenge to the state's homestead exemption. That case did not challenge the 3 percent cap but did challenge the flat \$25,000 exemption for Florida residents' primary homes.

The lawsuit was dismissed by the 1st District Court of Appeal in 2000.

The court said the benefit applies to all people equally, is supported by a valid state purpose and does not put out-of-state vacation property owners in any worse position than a Floridian who owns vacation property within the state.

"We believe that the issues that were raised were identical to what is being raised now, and the same rationale from the court should apply," said Greg Stewart, who is representing Okaloosa and Walton counties and their school boards.

Contributing to the legally charged atmosphere in Tallahassee was an analysis commissioned by the Legislature from Walter Hellerstein, a University of Georgia professor and one of the nation's preeminent tax experts.

In the spring, lawmakers were studying how to make the Save Our Homes benefit "portable," allowing homeowners to take their artificial Save Our Homes differential with them if they move to a new home.

The 1992 constitutional amendment extinguished Save Our Homes benefits with any property transfer.

Many Floridians living under the tax cap complained loudly that they were unable to move - even to downsize - because of the higher tax bills they would face in a new home being taxed at just value.

Hellerstein advised the Legislature that providing such portability would present a strong legal basis for a challenge.

The potential that a court would order backward-looking relief, such as refunds, or potentially taxing Save Our Homes beneficiaries retroactively, was particularly distasteful to lawmakers.

A refund obligation could have come to tens of billions of dollars over the life of Save Our Homes, and lawmakers eventually backed off a pure portability strategy.

Instead, voters will be asked in January whether they want to allow a super exemption instead of the existing \$25,000 exemption and Save Our Homes cap.

If approved, those who like their existing Save Our Homes cap could maintain the status quo.

In an interview, Hellerstein said that he is comfortable the new system would pass constitutional muster.

Lawmakers agree.

Not Jamie Cole, a lawyer with a Fort Lauderdale law firm who also serves as city attorney for several South Florida municipalities.

Potential 'Serious Legal Problems' A legal analysis distributed by Cole's firm after the special session warns that everything the Legislature accomplished "has potentially serious legal problems."

Among other concerns, Cole said that the super exemption creates a two-class property tax system consisting of those who keep their Save Our Homes cap and those with the super exemption. And that's a potential equal protection violation, he said.

The constitutional amendment likely would have to pass before anyone could challenge it, however.

In the case of the Panhandle lawsuit against the existing Save Our Homes setup, Slaughter says that he is proceeding whichever way the Jan. 29 vote goes.

The lawsuit likely will be amended to reflect post-January circumstances. Even if the measure passes, the option of maintaining existing Save Our Homes benefits keeps the case valid, he said.

And yes, Slaughter is aware that if he succeeds, he might be cast as the villain who cut off 4.4 million homeowners' Save Our Homes benefits.

"Lawyers, unfortunately, don't win popularity contests," he said.

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### **WHAT'S NEXT**

The initial hearing in Jerome K. Lanning et. al v. Patrick P. Pilcher et. al, which challenges Florida's existing Save Our Homes system on federal constitutional grounds, is scheduled for July 24 in Leon County Circuit Court in Tallahassee.

Voters will consider a constitutional amendment to allow homestead owners to replace their Save Our Homes protection with a "super exemption" on Jan. 29. Homeowners would still be able to keep their Save Our Homes cap until they move.