

INCREASING THE HOMESTEAD TAX EXEMPTION: "TAX RELIEF" OR BURDEN ON FLORIDA HOMEOWNERS AND LOCAL GOVERNMENTS?

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I. INTRODUCTION

In 2004, Florida ranked forty-fifth among the fifty states in terms of the state and local tax burden imposed on its residents.¹ This statistic should not surprise anyone who is familiar with Florida's constitutionally imposed tax structure that provides for prohibitions against certain taxes and exemptions from others.² Floridians do not care to be taxed,³ and the State's Constitution reflects that sentiment.⁴

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This Comment is dedicated to my husband Todd, in appreciation of his endless patience, love, encouragement, and laughter over the past three years.

1. Helen Huntley, *For Floridians, the Tax Burden Is Even Lighter*, St. Petersburg Times 1A (Apr. 9, 2004). The Tax Foundation research organization in Washington, D.C. ranks states according to the state and local tax burden imposed on their residents. *Id.* In 2004, only Texas, Tennessee, Delaware, New Hampshire, and Alaska imposed a lighter tax burden on their residents than Florida. *Id.*; see also St. of Fla., *Florida Quick Facts, Florida Taxes*, <http://www.stateofflorida.com/Portal/DesktopDefault.aspx?tabid=95> (accessed Jan. 6, 2006) (discussing the Tax Foundation's 2004 findings).

2. See generally Fla. Const. art. VII (outlining Florida's structure of finance and taxation).

3. Donna Blanton, *The Taxation and Budget Reform Commission: Florida's Best Hope for the Future*, 18 Fla. St. U. L. Rev. 437, 456-457 (1991) (noting that "Floridians have participated in tax revolts in the past" and that "[l]ocal tax revolts occur periodically as local governments increase property taxes").

4. See Fla. Const. art. VII, §§ 1(a), 9(a) (authorizing local governments to levy only

The homestead exemption is one such constitutional right that is deeply ingrained in Florida's history.⁵ The original purpose behind the homestead exemption was to protect the family unit from losing its home during times of economic hardship.⁶ Today, the Florida Constitution protects the homestead by placing restrictions on transfer,⁷ allowing significant exemptions from creditors' claims,⁸ and providing for a \$25,000 tax exemption on the taxable value of a primary residence.⁹ This Comment will focus on part three of the homestead equation, the \$25,000 tax exemption, and its interplay with the more recently passed Save Our Homes Amendment.¹⁰ While reducing the property tax burden on permanent resident homeowners, the \$25,000 tax exemption has also removed billions of dollars from the State's tax rolls each year since its passage in 1980.¹¹

the property tax). In addition, counties, municipalities, and school boards cannot levy more than ten mills. Fla. Const. art. VII, § 9(b). "A 'mill' is one-tenth of one cent," or one dollar per thousand; thus, ten mills equal one percent of the property value. *Advisory Op. to the Atty. Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 652 n. 4 (Fla. 2004) [hereinafter *Advisory Op. Additional Homestead*] (citing *Black's Law Dictionary* 993 (Bryan A. Garner ed., 6th ed., West 1990) and Fla. Stat. § 192.001(10) (2003)). The terms "ad valorem taxation" and "property taxation" are synonymous and will be used interchangeably throughout this Comment. "Ad valorem taxation" means the taxation of real property in proportion to its assessed value. James S. Wershow & Edward S. Schwartz, *Ad Valorem Assessments in Florida—Recent Developments*, 36 U. Miami L. Rev. 67, 67 (1981). The Florida Constitution also limits the amount of increase in the yearly assessed value of property, which will be discussed in more detail in Part II.

5. See generally John F. Cooper & Thomas C. Marks, *Florida Constitutional Law* 759 (3d ed., Carolina Acad. Press 2001) (discussing how Florida's constitutional homestead provisions have protected family homes from creditors for more than a hundred years).

6. *Id.* at 759–760.

7. Fla. Const. art. X, § 4.

8. *Id.*

9. Fla. Const. art. VII, §§ 4, 6; Fla. Const. art. X, § 4; see also Donna L. Seiden, *There's No Place Like Home(stead) in Florida—Should It Stay That Way?* 18 Nova L. Rev. 801, 803 (1994) (discussing the different components that make up Florida's homestead provision).

10. Florida voters passed the Save Our Homes Amendment in 1992, and it is outlined in Article VII, Section 4 of the Florida Constitution. The Amendment is commonly referred to as the Save Our Homes Cap.

11. Pamela M. Dubov, Student Author, *Circumventing the Florida Constitution: Property Taxes and Special Assessments, Today's Illusory Distinction*, 30 Stetson L. Rev. 1469, 1474 (2001). For tax year 2004, the \$25,000 homestead exemption removed over \$104 billion from statewide tax rolls, a 2.45 percent increase over tax year 2003. Fla. Dept. of Revenue, *2004 Florida Property Valuations & Tax Data* 9–10, tbl. 5 (Dec. 2004) (available at <http://www.myflorida.com/dor/property>) [hereinafter *2004 Prop. Valuations*]. The amount removed from the tax rolls increased 2.47 percent from 2002 to 2003 and has consistently increased over two percent every year since 1998. *Id.*; Fla. Dept. of Revenue, *2001*

In 2004, a political action committee registered under the name of Families for Lower Property Taxes, Inc.¹² proposed an amendment to the Florida Constitution through a citizen initiative petition.¹³ The ballot summary for the proposed amendment promised “property tax relief” to Florida homeowners through an increase in the homestead tax exemption.¹⁴ Passing the proposed amendment in the November general election would have raised the homestead tax exemption from \$25,000 to \$50,000 for all qualifying Florida homeowners.¹⁵ However, the amendment did

Florida Property Valuations & Tax Data tbl. 5 (available at <http://www.myflorida.com/dor/property>). The student author of the comment cited in this footnote has served as the Pinellas County Chief Deputy Property Appraiser for over fourteen years.

12. Families for Lower Property Taxes, Inc. was spearheaded by Karen Saull, a Republican candidate for the United States Senate. Sandi Martin, *No Homestead Hike: Court Strikes Exemption Increase Proposal Because of Wording*, http://www.polkonline.com/stories/071604/loc_hike.shtml (accessed Jan. 6, 2006). Although much has been written about this particular group and its motives behind proposing the increased homestead exemption amendment, political action committees and their motives, including this group in particular, are outside the scope of this Comment.

13. *Advisory Op. Additional Homestead*, 880 So. 2d at 647. Citizen initiative petitions are a way for citizens to amend a constitution without going through the legislative process, and twenty-three state constitutions currently authorize them, including Florida's. Joseph F. Zimmerman, *The Initiative: Citizen Law Making* 23 (Praeger 1999); see also John F. Cooper, *The Citizen Initiative Petition to Amend State Constitutions: A Concept Whose Time Has Passed, or a Vigorous Component of Participatory Democracy at the State Level?* 28 N.M. L. Rev. 227, 260–263 (1998) (noting that citizen initiative petitions were originally favored “as a way for the common people to bypass corrupt legislators and activist judges” so that the constitution would reflect the people's concerns). Recently the citizen initiative petitions have been increasingly criticized as a way for wealthy special interest groups to promote their own agendas, thereby serving the very special interests that the petitions were originally intended to control. *Id.* at 260. For discussion of the difficulties of changing the constitution through amendments and citizen initiatives at the national and state levels, see Gerald Benjamin & Thomas Gais, *Constitutional Convention-phobia*, 1 Hofstra L. & Policy Symp. 53 (1996).

14. *Advisory Op. Additional Homestead*, 880 So. 2d at 647. The ballot summary in 2004 read as follows: “This amendment provides property tax relief to Florida [homeowners] by increasing the homestead exemption on property assessments by an additional \$25,000.” *Id.* The proposed amendment's full text provided that:

Article VII Section 6 of the Florida Constitution is hereby amended to add the following paragraph (g). (g) By general law and subject to conditions specified therein, effective for assessments for 2005 and each year thereafter, an additional homestead exemption of twenty-five thousand dollars shall be granted to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner.

Id.

15. *Id.* For the purposes of the amendment, a qualifying homeowner would have been a person who had legal or equitable title to real estate and who maintained his or her permanent residence on that real estate. *Id.* In her concurring opinion, Justice Quince explained that “[u]nder the current homestead exemption provision, any person who holds

not appear on the November 2004 general election ballot because the Florida Supreme Court ruled that the text of the amendment was misleading to voters.¹⁶ Some local property tax appraisers and opponents of the proposed amendment expressed their relief over the Court's ruling,¹⁷ but the leader of the political action committee pledged to continue working toward the goal of raising Florida's homestead exemption.¹⁸ In all likelihood, the Florida

the legal or equitable title to real estate and who maintains that real estate as his or her permanent residence, 'or another legally or naturally dependent upon the homeowner,' is allowed a certain tax exemption." *Id.* at 655 (Quince, J., concurring) (emphasis in original) (citing Fla. Const. art. VII, § 6). Thus, according to Justice Quince, the proposed amendment was misleading because the ballot summary did not clearly explain the \$50,000 exemption would not be available to all homeowners who were currently eligible for the \$25,000 exemption. *Id.*

16. *Id.* at 653–654 (majority) (holding that the “summary flies under false colors with a promise of ‘tax relief’” and that “[t]he use of the phrase ‘provides property tax relief’ clearly constitutes political rhetoric that *invites an emotional response from the voter* by materially misstating the substance of the amendment” (emphasis added)). When a constitutional amendment is proposed through a citizen initiative petition, the Attorney General can petition the Florida Supreme Court “for an advisory opinion as to whether the text of the proposed amendment complies with the single-subject requirement of article XI, section 3, [of the] Florida Constitution, and whether the ballot title and summary comply with the requirements of [S]ection 101.161, Florida Statutes (2003).” *Id.* at 647. Section 101.161(1) states that the chief purpose of the amendment must be explained in seventy-five words or less, which has been interpreted to mean that the ballot title and summary cannot be misleading to the public. *Advisory Op. Additional Homestead*, 880 So. 2d at 651 (citing *Advisory Op. to the Atty. Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998)). The Court has repeatedly held that “[t]he basic purpose of this provision is ‘to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot.’” *Advisory Op. Additional Homestead*, 880 So. 2d at 651 (citing *Advisory Op. to the Atty. Gen. re Fee on Everglades Sugar Prod.*, 681 So. 2d 1124, 1127 (Fla. 1996)); *Advisory Op. to the Atty. Gen. re Patients’ Right to Know about Adverse Med. Incidents*, 880 So. 2d 617, 621 (Fla. 2004) (citing *Advisory Op. to the Atty. Gen. re People’s Prop. Rights Amend. Providing Compensation for Restricting Real Prop. Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1307 (Fla. 1997)). Thus, a misleading ballot summary would be one in which the ballot did not “fairly inform the voter of the chief purpose of the amendment” and in which “the language of the title and summary, as written, misleads the public.” *Advisory Op. Additional Homestead*, 880 So. 2d at 651 (citations omitted). In the homestead tax exemption advisory opinion, the fact that the summary stated that “the amendment *will* ‘provide property tax relief,’” when in reality the amendment had no effect on local governments’ power to raise tax rates, led the Court to conclude that the summary was misleading. *Id.* at 653 (emphasis in original).

17. *E.g.* Martin, *supra* n. 12 (quoting Polk County Property Appraiser Marsha Faux, who expressed her relief that the amendment was not going to appear on the ballot in 2004).

18. *Id.* (quoting a written statement from Karen Saull, head of Families for Lower Property Taxes, Inc., who “vow[ed] to continue to carry the message of lower taxes and fiscal responsibility to the people of Florida in the future”).

Supreme Court will again have to consider the text of a proposed amendment to increase the homestead tax exemption.¹⁹ If such an amendment were to appear on a general election ballot, it is likely that the amendment would pass, given Florida voters' reputation for anti-tax sentiments²⁰ and history of amending the Constitution.²¹

On its face, increasing the homestead tax exemption sounds like an exciting opportunity for property owners, who will read the text of the proposed amendment and immediately anticipate paying lower property taxes.²² However, an increase in the homestead tax exemption would have severe ramifications for local governments, which depend on revenue from property taxes, and homeowners, who may unwittingly impose hidden taxes and costs on themselves.²³ Most important to voters' analysis of the issue is

19. See Joni James, *Man to Try Again to Double Property Tax Exemption*, St. Petersburg Times (S. Pinellas ed.) 5B (Mar. 10, 2005) (stating that Families for Lower Property Taxes "plans to draft a new initiative for the 2006 election that would amend the state Constitution to double Florida's \$25,000 homestead exemption to \$50,000 to save homeowners as much as \$500 in property taxes annually"); see also David Denslow & Carol Weissert, *Tough Choices: Shaping Florida's Future* 43 (Oct. 2005) (available at http://www.fsu.edu/~collins/materials/tough_choices.pdf) (stating that "[t]hrough the [amendment to raise the homestead exemption] failed to make the ballot in 2004, it may well do so soon and would be likely to pass").

20. Blanton, *supra* n. 3, at 455–457 (discussing Florida "voter[s]" attitudes toward taxes). A 2004 survey of Florida residents reflected that Floridians are "leery of new taxes . . . and are dissatisfied with the governmental output from their taxes." Denslow & Weissert, *supra* n. 19, at 1–2.

21. See Douglas S. Bailey, *Florida's Constitutional Ballot Initiatives: Is This Any Way to Run Government?* 5 (James Madison Inst. Policy Rpt. #39 May 2003) (available at <http://www.jamesmadison.org/article.php/133.html>) (noting that the Florida Constitution has been amended fifty-eight times since 1968). Although the debate over whether the scope of constitutional amendments should be limited is outside the focus of this Comment, it is worth noting that citizens have passed constitutional amendments protecting pregnant pigs, reducing classroom sizes, banning marine fishing nets, creating (and subsequently abandoning) a high-speed rail system, mandating casino gambling, and implementing smoking policies. *Id.* at 1, 5. The James Madison Institute is an independent, non-profit, nonpartisan, Florida-based research and educational organization whose "mission is to keep the citizens of Florida informed about their government and to shape [the] state's future through the advancement of practical free-market ideas on public policy issues." James Madison Inst., *About JMI*, <http://www.jamesmadison.org>; select About Us (accessed Jan. 6, 2006).

22. *Supra* n. 16 (discussing the Florida Supreme Court's recognition that the ballot summary of the proposed amendment was misleading, and noting that voters are apt to respond emotionally to property tax issues when at the polls).

23. Denslow & Weissert, *supra* n. 19, at 24 (stating that "[t]he two taxes that raise the most revenue for state and local governments in Florida are the sales tax and the property tax"); Wershow & Schwartz, *supra* n. 4, at 67 (stating that the primary revenue source for

for voters to know and understand that the homestead exemption is not the exclusive factor in determining property tax revenues. In addition to the homestead tax exemption, the Save Our Homes Cap limits the yearly assessed value of homestead property through the use of an acquisition-value taxation system.²⁴ In actuality, the homestead exemption and Save Our Homes Cap together act as a “double whammy” to local government taxing authorities, since Save Our Homes alone severely limits revenue-generating ability.²⁵ The same local governments, which are thereby limited in the amount of revenue they can collect, are still expected to provide basic services such as water, sewer, fire and rescue, roads, and other infrastructure.²⁶ In addition, Florida’s dramatic population influx and building boom are putting unprecedented stress on current infrastructure.²⁷

local governments in Florida is the property tax).

24. Richard S. Franklin & Roi E. Baugher III, *Protecting and Preserving the Save Our Homes Cap*, 77 Fla. B.J. 34, 34 (Oct. 2003). The Save Our Homes Cap provides that the yearly increase in assessed value is limited to three percent, or the percentage change in the consumer price index, whichever is less. *Id.* at 35. This type of taxation system is referred to as “acquisition-value” taxation because the assessed value of the property is based upon the property’s value when it was purchased, or acquired, by the current owner. Mary LaFrance, *Constitutional Implications of Acquisition-Value Real Property Taxation: The Elusive Rational Basis*, 1994 Utah L. Rev. 817, 817 (1994).

25. See Franklin & Baugher, *supra* n. 24, at 34 (stating that the Save Our Homes Cap alone prevented over \$47.9 billion in assessed property value from being taxed in 2001). In 2002, the amount protected from taxation was approximately \$80 billion, representing a 68.5 percent increase over 2001. *Id.*

26. Melissa J. Morrow, Student Author, *Twenty-Five Years of Debate: Is Acquisition-Value Property Taxation Constitutional? Is It Fair? Is It Good Policy?* 53 Emory L.J. 587, 590, 593 (2004) (discussing the incompatible objectives of local governments, which provide basic public services such as police and fire protection, education, public safety, and recreation facilities that are financed through the collection of real property taxes, and residents, who do not like paying property taxes and expect high levels of service); see also Leroy Collins Inst., *Facing Florida’s Revenue Shortfall* 11–12, 30 (Oct. 2005) (available at http://www.fsu.edu/~collins/materials/tough_choices_report.pdf) (finding that with an enrollment growth of 50,000 students each year in Florida’s schools, “it takes \$400 to \$800 million in state funds each year just to stay even with serving the additional students,” yet fifty-three percent of Floridians would like to see tax and spending levels in the area of K–12 education remain unchanged).

27. From 1990 to 2000, Florida experienced a 23.5 percent increase in population, the seventh highest in the country, whereas the United States as a whole experienced only a 13.1 percent increase in population. U.S. Census Bureau, *United States: Population, Percent Change, 1990–2000*, <http://quickfacts.census.gov/qfd/rankings/PL0120000r.html> (accessed Jan. 6, 2006). According to a report on Florida Tax and Spending Policy from the Leroy Collins Institute, an independent, non-profit, and non-partisan organization located at Florida State University in Tallahassee, “Florida is in the midst of a housing boom unlike any the state has experienced since the 1920s,” and from the years 1996 to 2004,

Recognizing that the objectives of local governments and property owners differ regarding the assessment and collection of property taxes, how does Florida reconcile the historical and intended purpose of the homestead exemption with the current needs of local governments? Furthermore, how does the Save Our Homes Cap fit into the picture? Aside from the historical purpose of protecting the family home,²⁸ a more modern goal of the constitutional tax exemption is to combine the homestead exemption with the Save Our Homes Cap to help prevent lower-income residents from losing their homes because they cannot afford to pay their tax bill, especially in times of rapidly appreciating property values.²⁹ On the other hand, Florida, as one of the lowest-taxing states in the country, does not ask much of its citizens in the way of paying taxes.³⁰ While Florida residents have always had a strong anti-tax sentiment, residents also want government to fund basic services to which they have grown accustomed.³¹ The result is a Florida Constitution that giveth and taketh away—local governments have the power to levy property taxes in order to provide for infrastructure, yet citizens can constitutionally limit the amount of revenue local governments can collect.³²

housing “prices rose by 70 percent, compared to 50 percent nationally.” Leroy Collins Inst., *supra* n. 26, at 6. In addition, the study found that “[w]hat is pretty clear is that through some combination of low tax revenues and impact fees that don’t have growth truly paying for itself, Florida has dug itself into a deep hole on basic infrastructure.” *Id.* at 19.

28. Cooper & Marks, *supra* n. 5, at 759.

29. See *Smith v. Welton*, 729 So. 2d 371, 373 (Fla. 1999) (stating that “the [Save Our Homes] amendment was designed to ensure that citizens on fixed incomes will not lose their homes on the tax block due to the rising value of Florida property”); Morrow, *supra* n. 26, at 596–597 (discussing the fact that “acquisition-value taxation removes the fear of uncontrollable appreciation” from “cash-poor homeowner[s] [who] may not be able to afford [their property] taxes if their property is assessed at fair market value”).

30. *State of Fla.*, *supra* n. 1; see also Denslow & Weissert, *supra* n. 19, at 1 (noting that “Florida is a low-tax, low expenditure state, even compared to other Southern states,” as well as “a growing state with a highly mobile population”); Blanton, *supra* n. 3, at 443–447 (discussing the fact that Florida is one of the few states that does not impose a personal income tax, is a “low tax, high growth state,” and depends heavily on the sales tax for its tax base).

31. Tampa Mayor Pam Iorio, when discussing the proposed homestead exemption increase, commented that most people “like having that park down the street. They like having the police come. They like having the fire department arrive on the scene. That’s why they’re paying these taxes.” Jerome R. Stockfisch, *Property Tax Pickle*, Tampa Trib. at Nation/World 1 (June 21, 2004).

32. Compare Fla. Const. art. VII, § 9(a) (stating that “[c]ounties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes”) with Fla. Const. art. VII, § 4(c)(1)(A)–(B) (amended 1992) (stating that “changes in

The purpose of this Comment is to demonstrate the negative consequences to local governments and Florida property owners that will occur if the homestead exemption is increased while the Save Our Homes Cap continues in its current form. The Florida Legislature and Florida voters must see through the immediate gratification of appeasing the masses by way of a proposal of supposed “tax relief,” and closely examine the effect that cutting local tax revenues will have on the ability of counties, cities, and municipalities to provide basic infrastructure services such as water, sewer, law enforcement, rescue services, schools, and parks and recreation. As long as the Save Our Homes Cap remains in effect and continues to limit the annual assessed value of homestead real property to three percent or less, an increase in the homestead tax exemption has no place in the Constitution.

A reduction in revenues to local taxing authorities will simply cause a shift in revenue generation as those same entities implement alternative means of collecting revenue, some of which may not be constitutional.³³ In turn, the “tax relief” afforded to certain residents in the form of an increased homestead exemption may be completely negated or exceeded by the imposition of special assessments or impact fees.³⁴ In addition, an increased homestead exemption working in conjunction with the Save Our Homes Cap could re-ignite equal protection debates and lawsuits regarding the State’s disparate treatment of certain classes of homeowners.³⁵ Finally, there are public policy concerns that must be considered, especially in light of Florida’s sales- and service-based economy.³⁶ Florida voters should not decide to petition and vote for “tax relief” through rose-colored lenses; rather, voters should determine whether it is even feasible for the Save Our Homes Cap and the homestead tax exemption to continue to coexist.³⁷

assessments shall not exceed the lower of . . . [t]hree percent (3%) of the assessment for the prior year” or “[t]he percent change in the Consumer Price Index . . . for the preceding calendar year”). The Constitution also provides for the \$25,000 homestead exemption as well as a millage rate limitation of ten mills. Fla. Const. art. VII, §§ 6, 9(b).

33. *Infra* pt. IV(B) (discussing alternative sources of local government funding).

34. *Infra* pt. IV(B)(i) (explaining the use of special assessments and impact fees).

35. *Infra* pt. IV(A) (discussing the equal protection debate).

36. *Infra* pt. V (setting forth the policy implications of an increased homestead exemption).

37. *Infra* pts. IV-VI (analyzing the impact of an increased tax exemption and proposing alternatives to Florida’s current tax structure).

Following a brief introduction to the history of and constitutional challenges to the homestead exemption and Save Our Homes Cap in Florida, Part III of this Comment will examine the financial consequences to local governments should the homestead exemption increase and discuss the current constitutionally imposed limitations on tax revenue generation. Part IV will then critically analyze the impact of this proposed amendment on select groups of people and present alternative revenue sources that local governments may utilize to recoup lost revenue. Parts V and VI of this Comment will then discuss the public policy implications of an increased homestead exemption and propose alternatives to the current property tax structure in Florida.

II. HISTORY OF THE HOMESTEAD EXEMPTION AND LIMITATIONS ON ASSESSED VALUE OF HOMESTEAD PROPERTY

Although the homestead exemption enjoys a much longer history in the Florida Constitution than the Save Our Homes Cap, both provisions have endured constitutional challenges during their respective tenures.³⁸ Part A will examine the evolution of the homestead exemption, and Part B will discuss the more recent passage of the Save Our Homes amendment.

A. Florida's Homestead Exemption

The homestead exemption has a deep-rooted history in Florida constitutional law.³⁹ Although most Florida homeowners today likely equate the term "homestead property" with receiving a \$25,000 tax exemption, the tax exemption is only one aspect of homestead and is not the original purpose or meaning of the term.⁴⁰ The homestead provisions first appeared in the 1868 Con-

38. *Infra* pt. II(A)–(B).

39. Cooper & Marks, *supra* n. 5, at 759; *see also* Seiden, *supra* n. 9, at 823 (noting that "the [homestead] exemption is over 200 years old").

40. Rohan Kelley & Tae Kelley Bronner, *Homestead and Exempt Personal Property*, in *Practice under Florida Probate Code* § 19-1, 19.2 (Fla. B. 2002). Some of the purposes for which real property may be a homestead are:

[e]xemption from forced sale (except for certain types of debts) while the homesteader is living; [e]xemption from forced sale (except for certain types of debts) after death of the homesteader; [l]imitation on inter vivos alienation; [l]imitation on testamentary disposition; [and] [l]imitation on disposition by inter vivos trust as a will

stitution, and they were intended to prevent families from losing their homes and farms after the end of the Civil War.⁴¹ Florida was a family-focused state and did not want to risk families or their heirs losing their homes because of unpaid debts.⁴² In addition, courts have noted that public policy favors laws protecting homestead, because these laws “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.”⁴³

In 1968, Florida voters adopted the current form of the Constitution after the Constitution Revision Commission recommended revisions to the Constitution of 1885.⁴⁴ Reflecting voters’ anti-tax sentiment, the current Constitution provides for no imposition of state property taxes on real or tangible personal property.⁴⁵ However, the Constitution does provide that local government authorities—specifically counties, school districts, and municipalities—are allowed to collect property taxes, and may collect additional taxes when granted authority to do so by the Legisla-

substitute.

Id.

41. *Id.* at § 19.14. Regarding the purpose behind the homestead exemption, the Florida Supreme Court has stated, “As a matter of public policy, the purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the homeowner a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law.” *Pub. Health Trust of Dade County v. Lopez*, 531 So. 2d 946, 948 (Fla. 1988).

42. Kelley & Bronner, *supra* n. 40, at § 19.14.

43. *Reinish v. Clark*, 765 So. 2d 197, 206–207 (Fla. 1st Dist. App. 2000) (citations omitted).

44. Dubov, *supra* n. 11, at 1471. A Constitutional Revision Commission is provided for in the 1968 Constitution and meets every twenty years to review and recommend changes to the Constitution. Fla. Const. art. XI, § 2; Benjamin & Gais, *supra* n. 13, at 74. The Commission has the power to make recommendations for constitutional changes directly to the people, who then vote whether to accept or reject the proposals. Fla. Const. art. XI, § 5; Benjamin & Gais, *supra* n. 13, at 74. In 1978, Floridians rejected the recommendations of the very first Revision Commission. Benjamin & Gais, *supra* n. 13, at 74. The Commission’s second convention in 1998, described as “the first successful utilization of the full commission mechanism,” accomplished several important revisions to Florida’s Constitution. Robert F. Williams, *Foreward: Is Constitutional Revision Success Worth Its Popular Sovereignty Price?* 52 Fla. L. Rev. 249, 250, 252 (2000).

45. Fla. Const. art. VII, § 1(a). Article VII, section 1(a) of the Florida Constitution provides that “[n]o tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.”

ture.⁴⁶ The 1968 Constitution also establishes exemptions from property taxation.⁴⁷ One example is a \$5,000 exemption for property on which the owner maintains his or her permanent residence.⁴⁸ In 1980, voters approved an amendment to the Constitution to raise the tax exemption to \$25,000.⁴⁹ Today, the homestead exemption is addressed not only in the Florida Constitution, but in the Florida Statutes as well.⁵⁰

Constitutional challenges to the homestead tax exemption have helped to shape its current state. The increased exemption from \$5,000 to \$25,000 in 1980, and the subsequent loss of revenue to local taxing authorities, concerned the Legislature enough that it incorporated an extended residency requirement into the exemption's statutory framework.⁵¹ The Legislature imposed the condition that the \$25,000 exemption was only available to residents who had maintained their permanent residence in Florida

46. *Id.* at § 9(a) (declaring that "[c]ounties, school districts, and municipalities shall, and special districts may, . . . be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution").

47. *Id.* at § 3. In addition to the homestead exemption, the Constitution also establishes exemptions for other types of property, such as property used predominantly for religious, charitable, educational, or scientific purposes. *Id.*

48. *Id.* at § 6(a).

49. *See id.* at § 6(c)–(d) (increasing the value of the homestead exemption to \$25,000). Ironically, the 1980 increase to \$25,000 was prompted by concern about inflation and the fear that Florida voters could pass a provision similar to Proposition 13 in California, which severely limited increases in assessed value to two percent per year. *Osterndorf v. Turner*, 426 So. 2d 539, 541 n. 1 (Fla. 1982). In 1992, Florida voters passed a provision similar to Proposition 13 anyway, today known as the Save Our Homes Cap. Franklin & Baugher, *supra* n. 24, at 34. For more discussion of Proposition 13 and its consequences, see *infra* Part II(B).

50. Several Florida statutes serve as the framework to implement the constitutional homestead requirement. *See* Fla. Stat. § 196.031 (providing for exemptions of homesteads); Fla. Stat. § 196.075 (providing for additional homestead exemptions for persons sixty-five or older); Fla. Stat. § 196.192 (providing for exemptions from ad valorem taxation).

51. *Osterndorf*, 426 So. 2d at 542 (referring to Section 196.031(3)(d)–(e) of the 1982 Florida Statutes, which imposed a five-year residency requirement on homestead exemption entitlement); *see also* Henry K. van Assenderp & Andrew I. Solis, *Dispelling the Myths: Florida's Non-Ad Valorem Special Assessments Law*, 20 Fla. St. U. L. Rev. 825, 837 (1993) (discussing the Florida Taxation and Budget Reform Commission's study of the 1980 increase in the homestead exemption from \$5,000 to \$25,000. According to the 1991 study, the increase in the homestead exemption had "to some extent, undermined the viability of the property tax as the major revenue source for local government, especially in areas experiencing slow economic growth.") (citing Fla. Taxn. & Budget Reform Commn., *Florida's Fiscal Future: Balancing Needs and Taxes* 34 (1991)).

for five consecutive years prior to filing for the exemption.⁵² In *Osterndorf v. Turner*,⁵³ the plaintiffs challenged the exemption on the grounds that the length-of-residency requirement was unconstitutional.⁵⁴ The Florida Supreme Court held that the residency requirement created two different classes of homeowners, thus rendering it unconstitutional, and that all permanent residents of Florida were entitled to the \$25,000 exemption regardless of how long they had resided in the State.⁵⁵

52. *Osterndorf*, 426 So. 2d at 542 (citing Fla. Stat. § 196.031(3)(d)–(e) (1982)). The Legislative bases behind the conditional residency—according to an affidavit filed by the State during litigation—were four-fold. First, the Legislature reasoned, “new residents have an immediate fiscal impact upon local government’s capital outlay and should pay their own share of [the] tax burden.” Second, “tax savings should be passed on to longer term residents who have in recent years contributed tax dollars that have created a revenue surplus and made the increased tax exemption possible.” Third, “the statute would discourage fraudulent homestead exemption applications.” Finally, “the statute would avoid the possibility of excessive immigration of individuals who desire lower taxes but are in need of many governmental services if Florida became too much of a tax haven.” *Id.*

53. 426 So. 2d 539 (Fla. 1982).

54. *Id.* at 540, 542. The trial court actually found in favor of the tax collector, using a rational basis test, “concluding that the right to receive an increased ad valorem tax exemption was neither a fundamental right guaranteed by the United States Constitution nor a basic necessity of life, the denial of which penalizes the exercise of the constitutional right to travel.” *Id.* at 542. Florida’s Fifth District Court of Appeal agreed that the statute was valid, finding that “the reasons expressed by Speaker Haben supplied a rational basis for the state to impose this durational residency requirement” and that the “language of the constitutional provision granting the enhanced exemption gave the legislature the authority to establish this type of durational residency requirement.” *Id.* at 542–543. However, in analyzing whether the statute violated the Equal Protection Clause of the Florida Constitution, federal cases that addressed durational residency requirements as conditions of receiving benefits persuaded the Florida Supreme Court to hold the statute unconstitutional. *Id.* at 543–544.

55. *Id.* at 544–546. The Florida Supreme Court considered numerous federal cases in its equal protection analysis, including *Shapiro v. Thompson*, 394 U.S. 618 (1969), in which the United States Supreme Court held that a one-year residency requirement as a condition for receiving welfare benefits was unconstitutional because the requirement “would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection,” and “would permit the State to apportion all benefits and services according to the past tax contributions of its citizens.” *Id.* at 543 (citing *Shapiro*, 394 U.S. at 632–633). The Florida Supreme Court also considered *Dunn v. Blumstein*, 405 U.S. 330 (1972), in which a one-year residency requirement was unconstitutional because it “was not necessary to further a compelling state interest.” *Id.* In *Dunn*, the United States Supreme Court found that there is a “difference between bona fide residency requirements and durational residency requirements, and [therefore] ‘durational’ residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard’ of being necessary to promote a compelling governmental interest.” *Id.* (emphasis in original) (citing *Dunn*, 405 U.S. at 344). Very important to the Florida Supreme Court’s analysis was *Zobel v. Williams*, 457 U.S. 55 (1982), in which the Alaska legislature attempted to distribute annual

The most recent and most notable challenge to the homestead tax exemption came in 2000 in *Reinish v. Clark*.⁵⁶ The plaintiffs were Illinois residents who owned real estate in Palm Beach County, where they resided for four to five months each year.⁵⁷ The plaintiffs challenged the homestead exemption under the Equal Protection Clause, the Privileges and Immunities Clause, and the dormant Commerce Clause of the United States Constitution, alleging that the disparity in treatment between resident taxpayers and non-resident taxpayers violated their constitutional rights.⁵⁸ Addressing the homeowners' equal protection argument, the First District Court of Appeal cited to the Supreme Court for its statement that "[t]he Equal Protection Clause does not forbid classifications" of people but merely "keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike."⁵⁹ In a lengthy opinion, the court affirmed the trial court's dismissal of the plaintiffs' complaint, holding that the Florida homestead tax exemption did not violate the plaintiffs' constitutional rights.⁶⁰

dividends from the state's mineral income to residents based on length of residency. *Id.* at 543–544. "Alaska attempted to justify the residency distinction on the basis that it was a reasonable state objective to reward citizens for past contributions." *Id.* at 544. The United States Supreme Court held that Alaska's objective was "not a legitimate state purpose," and "Alaska's reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residency," which "would be clearly impermissible." *Id.* (citing *Zobel*, 457 U.S. at 63–64). In addition, "five justices believed that the Alaska scheme was unconstitutional as infringing upon the right to travel, in violation of the privileges and immunities clause." *Id.*

56. 765 So. 2d 197 (Fla. 1st Dist. App. 2000).

57. *Id.* at 201.

58. *Id.*

59. *Id.* at 203 (citing *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)). Under the equal protection claim, the plaintiffs alleged that by denying them the homestead exemption only because they were out-of-state residents, the homestead provision created an arbitrary and discriminatory classification or distinction of residents that was unconstitutional under the Fourteenth Amendment. *Id.* The court held that the Florida exemption treated the plaintiffs the same as any other Florida residents who rented property or "use[d] Florida real property as a secondary, seasonal, or vacation residence." *Id.* at 203–205.

60. *Id.* at 201. The plaintiffs' privileges and immunities claim alleged that the financial burdens that non-resident property owners faced in comparison to resident property owners infringed upon their rights to interstate travel and property ownership. *Id.* at 207, 209. In dismissing this claim, the court held that the State had a valid objective in protecting the financial ability of taxpayers to maintain a primary shelter, and that a secondary or vacation home did not implicate the same policy concerns as providing for a safe and stable primary residence. *Id.* at 210. The court also reasoned that the "homestead tax exemption was not designed to protect all types of real property" and that the homestead exemption did not preclude non-residents from purchasing Florida real property or moving

B. Save Our Homes Cap

Florida voters passed the Save Our Homes constitutional amendment in the 1992 general election.⁶¹ Similar to Proposition 13, which California enacted in the late 1970s, Save Our Homes limits the amount of yearly increase in the assessed value of homestead property.⁶² The Save Our Homes Cap has faced several constitutional challenges during its short tenure, and so far has managed to survive, perhaps because of the previous unsuccessful challenges to California's Proposition 13.⁶³

In 1991, the Florida Supreme Court issued an opinion to the Florida Attorney General that the proposed Save Our Homes amendment did not violate the single-subject rule of the Florida Constitution and was not misleading to voters; thus, the amendment appeared on the 1992 general election ballot.⁶⁴ That same year, the Florida League of Cities⁶⁵ and the Florida Association of

to Florida to live and work if they wished. *Id.*

Finally, the plaintiffs alleged that the homestead exemption violated the dormant Commerce Clause because it created taxes that unduly burdened interstate commerce and imposed a tariff on Florida property owners whose primary residence was in another state. *Id.* at 211–212. The court held that “the homestead tax exemption is not *per se* discriminatory against interstate commerce, for the provisions do not treat local and interstate commerce differently.” *Id.* at 214. In conclusion, the court ruled that the homestead exemption “is an even-handed regulation that promotes the legitimate, strong public interest in promoting the stability and continuity of the primary permanent home.” *Id.* at 215.

61. Franklin & Baugher, *supra* n. 24, at 34–35.

62. *Id.* at 34, 37. In Florida, the Save Our Homes Cap limits the yearly increase in assessed value of homestead property to three percent, or the percentage change in the consumer price index, whichever is less. *Id.* at 35. In addition, under the recapture rule, all homestead property assessed below full market value must be raised by three percent or the change in the consumer price index, regardless of whether the property's value increased during that calendar year. *Id.* at 36.

63. *See* Morrow, *supra* n. 26, at 604 (noting that the United States Supreme Court ultimately upheld the constitutionality of Proposition 13 in *Nordlinger*, holding that “Proposition 13 was enacted precisely to achieve the benefits of an acquisition-value system,” although the Court did acknowledge the disparities that exist in such a system (citations omitted)).

64. *Advisory Op. to the Atty. Gen. re Homestead Value Limitation*, 581 So. 2d 586, 588 (Fla. 1991). “The single-subject requirement of article XI, section 3 of the Florida Constitution” calls for proposed amendments to “embrace but one subject and matter directly connected therewith.” *Id.* at 587 (citing Fla. Const. art. XI, § 3). To satisfy this requirement, “the proposed amendment must have ‘a logical and natural oneness of purpose.’” *Id.* (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)).

65. The Florida League of Cities, formed in 1922, is a league composed of Florida municipalities and other units of local government. Fla. League of Cities, Inc., *About the League*, <http://www.flcities.com/abouttheleague.asp> (accessed Jan. 20, 2006). Currently, 404 of Florida's 408 municipalities are voluntary members of the league. *Id.* “The aim of

Counties⁶⁶ jointly challenged the Save Our Homes provision under the claim that the imposition of Save Our Homes would trigger a “repealer” in the homestead exemption provision.⁶⁷ The constitutional provision that includes the homestead protection also includes language providing for a repeal of a portion of the \$25,000 exemption if voters approve an amendment that “provides for the assessment of homestead property at a specified percentage of just value.”⁶⁸ The plaintiffs alleged that approval of the Save Our Homes amendment would meet the criteria to trigger the repealer.⁶⁹ In a highly divided opinion,⁷⁰ the Florida Supreme Court held that the plain language of the Save Our Homes amendment did not trigger the repealer.⁷¹

the Florida League of Cities is to promote local self-government and serve the municipal governments in Florida,” which includes providing “advocacy at both the state and federal levels, increasing public knowledge of municipal services and issues, providing municipal officials with training and technical assistance, and providing cost-effective programs and products to local governments.” *Id.* at http://www.flcities.com/what_we_do.asp.

66. The Florida Association of Counties (FAC) was formed in 1929 and its membership consists of Florida’s sixty-seven counties as well as “appointed county officials including administrators/managers, attorneys[,] and other professional county government personnel.” Fla. Assn. of Counties, *FAC Information*, <http://www.fl-counties.com/facinformation.htm> (accessed Jan. 20, 2006). FAC’s mission is:

[T]o preserve and promote democratic principles by working to keep appropriate authority at the level of government closest to the people, and to increase the capacity of Florida counties to effectively serve and represent the citizens of the state through legislative action, education of public officials, and enhancement of public awareness about the role and functions of county government.

Id.

67. *Fla. League of Cities v. Smith*, 607 So. 2d 397, 398 (Fla. 1992).

68. *Id.* The “repealer” section referenced in the Florida Constitution is in Article VII, subsection 6(d), and provides the homestead exemption would be repealed “on the effective date of any amendment to section 4 [of Article VII] which provides for the assessment of homestead property at a specified percentage of its just value.” *Id.*

69. *Id.*

70. Justice Kogan delivered the opinion of the Court, with Justices McDonald and Harding concurring. *Id.* at 398, 401. Then-Chief Justice Barkett concurred specially in a separate opinion. *Id.* at 401. Justice Overton dissented in a separate opinion, in which Justices Shaw and Grimes concurred, and Justice Grimes dissented in a separate opinion, in which Justice Overton concurred. *Id.* The dissenting justices were forthcoming about their frustration with constitutional amendment cases, with Justice Overton stating, “I am continually troubled that this Court is placed in the position of determining at the last minute the validity of proposed constitutional amendments. . . . There has to be a better way to address this type of issue at an earlier time. This case illustrates my frustration.” *Id.* (Overton, J., dissenting).

71. *Id.* at 400 (majority). The Court held that the repealer was not triggered because Save Our Homes was a variable cap that would never apply to all homestead property at any given moment. *Id.* However, Justice Grimes disagreed with the majority, stating that

The most recent case to challenge the Save Our Homes Cap was in 2004. In *Zingale v. Powell*,⁷² the homeowners resided in their home for eleven years before applying for homestead exemption.⁷³ Because of rapidly increasing property values, the homeowners' property taxes increased by almost \$40,000 from 2000 to 2001.⁷⁴ The homeowners applied for the homestead exemption in September 2001 and were subsequently approved, but they also sought to apply the Save Our Homes Cap to limit the increase in their assessed value from 2000 to 2001.⁷⁵ The Florida Supreme Court held that the baseline assessment for Save Our Homes is to be determined the year in which a successful application is submitted and approved; therefore, the property owners' baseline

with respect to some homesteads, an "assessment of homestead property at a specified percentage of its just value . . . is exactly what will occur." *Id.* at 404 (Grimes, J., dissenting). Justice Grimes believed that "[i]t is illogical to conclude that the repealing sentence of section 6(d) only becomes activated by an amendment which requires an across-the-board reduction in homestead assessments." *Id.*

72. 885 So. 2d 277 (Fla. 2004).

73. *Id.* at 279–280. It should be noted that a homeowner is eligible to apply for homestead status immediately after the purchase of a property and can do so by visiting the local property appraiser's office. *Pinellas County Property Appraiser*, <http://pao.co.pinellas.fl.us/HowDoI.html> (accessed Jan. 6, 2006). In addition, many county property appraisers now have online resources to assist residents in filing for homestead status and to answer questions about tax exemptions and Save Our Homes. *E.g. id.*; *Leon County Property Appraiser*, <http://www.co.leon.fl.us/propappr/faq.cfm#Exemptions> (accessed Jan. 10, 2006); *Miami-Dade County Property Appraiser*, <http://www.co.miami-dade.fl.us/pa/exemptions.asp> (accessed Jan. 10, 2006). The Florida Department of Revenue also maintains a website with up-to-date information on Save Our Homes, as well as contacts for all local property appraisers' offices. Fla. Dept. of Revenue, *Florida Property Appraisers*, <http://www.myflorida.com/dor/property/appraisers.html> (accessed Jan. 20, 2006); Fla. Dept. of Revenue, *Florida Property Tax Valuation & Income Limitation Rates*, <http://www.myflorida.com/dor/property/limitations.html> (accessed Jan. 20, 2006).

74. *Zingale*, 885 So. 2d at 280.

75. *Id.* *Zingale*, the county property appraiser, and others appearing as amici, "assert[ed] that a homeowner's entitlement to the benefits of the cap in article VII, section 4(c) [of the Florida Constitution] is dependent upon establishing the right to a homestead exemption under article VII, section 6 'in the manner prescribed by law,' i.e., by timely application for a homestead exemption." *Id.* at 282 (quoting Fla. Const. art. VII, § 6). *Zingale* and his amici also argued that the property appraiser can only determine whether property is homestead property, and thus eligible for the Save Our Homes Cap, if the homeowner applies for and obtains the homestead exemption. *Id.* The plaintiff homeowners, on the other hand, argued that the constitutional provision only required them to establish the eligibility requirements for homestead, not the application for exemption, to qualify for the Save Our Homes Cap. *Id.* They argued, therefore, that the Save Our Homes Cap should apply retroactively to the year in which the homestead eligibility requirements were met, not when the application was filed. *Id.*

should be based on its 2001 assessed value.⁷⁶ The Court's decision was significant because, after *Zingale*, new homeowners must file and be approved for the homestead exemption by March 1 of a tax year in order to trigger the Save Our Homes baseline assessment for that year.⁷⁷ If the homeowner delays filing and is not approved until the following calendar year, the property's assessed value will be the market value of the property on January 1 of the year in which the homeowner is approved.⁷⁸ For new purchasers in counties that are experiencing rapid increases in property values, a delay in filing can potentially increase tax liability by thousands of dollars.

The extreme difference in tax liability based on the purchase date of a property is one of the reasons why voters are likely to respond favorably to a constitutional amendment to increase the homestead tax exemption. Although increasing the exemption may provide temporary relief to the coffers of certain homeowners, local governments and property owners will bear the burden of replacing lost revenue in the long run.

III. A NUMBERS GAME—WHY INCREASING THE HOMESTEAD EXEMPTION MERELY SHIFTS RATHER THAN ELIMINATES THE TAX BURDEN

To understand the budget pressures that local governments will face if the homestead exemption is increased, it is important to consider Florida's infrastructure concerns, as well as the current constitutional limitations on how much tax revenue local governments can collect.

76. *Id.* at 285. Concluding that "a successful application for a homestead application is necessary both to obtain the exemption and to qualify for the cap," the Florida Supreme Court stated that "this construction [of the amendment] facilitates a logical, orderly scheme that is entirely consistent with the purpose of the amendment"; imposes "only a slight burden on the taxpayer in comparison to the tax benefit received"; and also "prevents substantial uncertainty in taxing authorities' annual taxing and budgeting process." *Id.*

77. Interview with Pamela M. Dubov, Pinellas County Fla. Chief Dep. Prop. Appraiser (Aug. 2005) (notes on file with Author).

78. *Id.*; see also Pinellas County Prop. Appraiser, *Save Our Homes*, <http://pao.co.pinellas.fl.us/soh.html> (accessed Jan. 20, 2006) (explaining the Save Our Homes amendment and how the cap works when property is sold).

A. Revenue Lost If the Homestead Tax Exemption Is Raised to \$50,000

After the proposal of the amendment to increase the homestead exemption in 2004, the State Division of Elections performed a study on the financial impact to local governments should this amendment pass.⁷⁹ Based on 2003 property tax rates and assessed values,⁸⁰ the Division concluded that the amendment would remove over \$95 billion, or roughly ten percent, from the statewide property tax base.⁸¹ This translates to almost \$765 million in county revenues, \$830 million in school district revenues, \$239 million in municipal revenues, and \$167 million for other special districts,⁸² totaling over \$2 billion in lost revenue statewide.⁸³

In addition, many homeowners would be exempt from paying any property taxes, because their property is valued at \$50,000 or

79. Fla. Leg. Off. of Econ. & Demographic Research, *Citizen's Initiatives*, <http://edr.state.fl.us/conferences/constitutionalimpact/2005/citizensinitiative.htm> (last updated Feb. 21, 2006). As part of the amendment process, the Financial Impact Estimating Conference prepares "Initiative Financial Information Statements" on all constitutional amendments proposed by citizen initiative, to demonstrate the financial or fiscal impact on the State should the amendment pass, in accordance with Section 100.371 of the Florida Statutes. *Id.* For a complete listing of financial impact statements for all of the 2005 proposed amendments, see *id.* For a complete listing of financial impacts for the 2004 proposed amendments, see *id.* at <http://edr.state.fl.us/conferences/constitutionalimpact/2004%20Ballot/citizensinitiative04ballot.htm> (last updated Sept. 29, 2005).

80. Because the amendment was to appear on the November 2004 general election ballot, the financial impact statement for the amendment is based on 2003 property values. *Id.* at <http://edr.state.fl.us/conferences/constitutionalimpact/2004%20Ballot/citizen-sinitiative04ballot.htm> (last updated Sept. 29, 2005). Because property values have continued to rise since the Financial Impact Statement's release, projected lost revenue numbers would climb in subsequent studies. See *infra* nn. 123-125 and accompanying text (discussing rising property values in Florida).

81. Fla. Dept. of St. Div. of Elections, *Initiative Financial Information Statement: Additional Homestead Tax Exemption #04-01* (adopted June 25, 2004) (available at http://edr.state.fl.us/conferences/constitutionalimpact/2004%20Ballot/a6fis_complete.pdf) [hereinafter *Initiative Statement*].

82. The statutory definition of a special district is "a local unit of special government, except a district school board, created pursuant to general or special law for the purposes of performing prescribed, specialized functions, including municipal service functions, within limited boundaries." David M. Hudson, *Special Taxing Districts*, in *Florida State and Local Taxes* vol. II, 425, 428, ¶ 9.01 (Fla. B. 1984) (citing Fla. Stat. § 165.031(5) (1986)). In general, "special districts may perform a full range of governmental and proprietary functions, all of which could be performed by county or municipal government." *Id.* at 427.

83. *Initiative Statement*, *supra* n. 81.

less. For example, based on 2003 property values in Polk County, owners of over 40,000 homes would have owed no property taxes under a \$50,000 homestead exemption, whereas only 7,352 homes were totally exempt under the \$25,000 exemption.⁸⁴ The Polk County Property Appraiser has estimated that more than one third of Polk homeowners would be completely exempt from paying property taxes if the exemption was raised to \$50,000.⁸⁵ Polk County projected a loss of \$18.1 million in tax revenues to the County Commission, and a loss of \$19.4 million for the School Board.⁸⁶ Lee County would have suffered \$64 million in losses under the new amendment, according to the Lee County Property Appraiser.⁸⁷ In Hillsborough County, the amendment would have resulted in 42,000 homeowners being exempt from paying any ad valorem taxes,⁸⁸ compared to 6,200 exempt under the current system.⁸⁹ In Pinellas County, Kenneth City alone would have lost twenty-three percent of its base.⁹⁰

Although an increased exemption appears to be beneficial to most homeowners, saving them a few hundred dollars in property taxes, local governments would be severely impacted by such an amendment. For example, Palm Beach County would lose approximately \$35 million in revenue.⁹¹ In Hillsborough County, the effect would be a revenue loss of \$65 million, which is why county administrators are opposed to the passage of such an amendment.⁹² Even fiscal conservatives, state tax watchdogs, and prop-

84. *Double Whammy*, Ledger (Lakeland, Fla.) A20 (June 13, 2004). Under the current homestead exemption and Save Our Homes tax breaks alone, Polk County loses \$22.6 million in annual tax revenues. Bill Rufty, *Polk Owners Save \$22 Mil. Every Year*, Ledger (Lakeland, Fla.) A1 (Sept. 18, 2005).

85. Martin, *supra* n. 12.

86. *Id.*

87. *The Truth about Homestead*, <http://www.truthabouthomestead.com/about.asp> (accessed Feb. 6, 2005).

88. *See supra* n. 4 (defining "ad valorem taxation" and stating that "ad valorem taxation" and "property taxation" are used interchangeably throughout this Comment).

89. *Bigger Homestead Exemption Tricky Ploy to Shift Tax Load*, Tampa Trib. at Nation/World 10 (July 8, 2004).

90. *The Homestead Shuffle*, St. Petersburg Times 14A (June 10, 2004).

91. Dale M. King, *Double Homestead Exemption—Or Double Trouble?* <http://www.truthabouthomestead.com/news.asp> (accessed July 11, 2005). This figure is based on 2004 projections.

92. Stockfisch, *supra* n. 31. According to Hillsborough County Administrator Pat Bean, "You either eliminate what [you are] doing, or find the revenue to do it. . . . There are no free services. You pay one way or another." *Id.*

erty tax appraisers with anti-tax sentiments tend to agree that governments and municipalities cannot run without the proper revenue.⁹³ Furthermore, even though some property owners may benefit from a few hundred extra dollars in their pockets, a disproportionate amount of money will be spent by local governments simply trying to implement the exemption in the property appraisers' offices.⁹⁴ Updating property records, recalculating tax bills, brainstorming about out how to make up for lost revenue, cutting budgets, and fighting lawsuits are just a few of the many tasks that will inevitably arise from the passage of the amendment and the subsequent administrative nightmare of trying to implement the increased exemption.⁹⁵

B. Florida's Population Influx and Infrastructure

Should an increase to the homestead tax exemption take effect, revenues to local governments will decrease significantly while the demand for new infrastructure will continue to escalate. From 1990 to 2000, Florida experienced a population growth of 23.5 percent.⁹⁶ In comparison, the United States as a whole experienced only a 13.1 percent increase in population during the same period.⁹⁷ Between 2000 and 2003, 89.2 percent of Florida's rise in population was due to migration,⁹⁸ whereas only 10.8 per-

93. *Id.* Anthony Cutaia, a real estate expert from Boca Raton, commented, "[y]ou can't run government, you can't run a school district, you can't run a municipality and starve them out of business." *Id.* His sentiments are shared by Dominic Calabro, the head of Florida TaxWatch, an independent tax watchdog, who sees the movement as irresponsible and a "false accomplishment" that will result in higher charges and service fees and ultimately be called the "great tax shift of 2004 and beyond." *Id.* Even Governor Bush, a fiscal conservative, believes that "[t]here's no amount of waste, fraud and abuse at the local level or the school district level that one could envision would exist in that regard. There are going to have to be cuts in services or higher taxes." *Id.*

94. Martin, *supra* n. 12. Polk County Property Appraiser Marsha Faux commented that "a huge ad valorem tax dollar loss . . . [is] going to have to be made up somewhere. [T]he process of implementing [the amendment] would [be] time-consuming, from a property appraiser's standpoint."

95. *Id.*

96. Fla. Leg. Off. of Econ. & Demographic Research, *Demographic Info. for Members and Staff 1* (Feb. 2004) (available at <http://www.state.fl.us/edr/population/newsletter.pdf>) [hereinafter *Demographic Research*]; see also U.S. Census Bureau, *supra* n. 27.

97. U.S. Census Bureau, *supra* n. 27.

98. *Demographic Research*, *supra* n. 96, at 1. Migration means that people are moving to Florida from other places.

cent of the growth was attributed to natural increase.⁹⁹ Florida is currently ranked fourth in population behind California, Texas, and New York, but it is expected to become the third largest state sometime between 2015 and 2020.¹⁰⁰ However, the most surprising statistic may be that Florida has the ninth highest population density per square mile in the country, behind only much smaller states such as Rhode Island, Connecticut, and Delaware.¹⁰¹

With a population influx that does not appear to be slowing down any time soon, the need for increased infrastructure becomes apparent. Basic services such as roads, public safety, water, sewer, and public schools, to name a few, will have to be built to accommodate this rapid population growth. The cost of funding these services is higher due to sprawl,¹⁰² or “low density development outside of city centers,” which is the prevalent mode of growth in the United States today. Currently, property tax revenues are the primary way that local governments finance these necessary public services.¹⁰³

Even in the 1970s, studies found that the tax revenues generated by new developments did not cover the cost of those developments’ demand for public services.¹⁰⁴ More recent studies conducted in California and Florida demonstrate that the extra cost of providing infrastructure and municipal services in connection with sprawl is approximately \$20,000 per residential unit.¹⁰⁵ According to a 2003 survey of Florida’s civil engineers, the most

99. *Id.* Natural increase is the excess of births over deaths. *Id.*

100. *Id.*

101. U.S. Census Bureau, *supra* n. 27. The density statistic is surprising in light of the fact that large areas of Florida are uninhabitable, such as the 1.5 million acres of wetlands in Everglades National Park. Natl. Park Serv., *Everglades, Facts*, <http://www.nps.gov/ever/pphtml/facts.html> (accessed Mar. 30, 2006).

102. Ken Snyder & Lori Bird, *Paying the Costs of Sprawl: Using Fair-Share Costing to Control Sprawl* 3 (U.S. Dept. of Energy Dec. 1998). “Sprawl is generally defined as very low-density development outside of city centers, usually on previously undeveloped land.” *Id.* Infrastructure costs are higher with sprawl because “the further away developments are from the service centers that serve them,” the greater the expense to provide those services. *Id.* at 11.

103. Wershow & Schwartz, *supra* n. 4, at 67 (stating that property taxation “is the major source of revenue for county, municipal, and other local governments in Florida”); see also Denslow & Weissert, *supra* n. 19, at 24 (stating that “[t]he two taxes that raise the most revenue for state and local governments in Florida are the sales tax and the property tax”).

104. Snyder & Bird, *supra* n. 102, at 13.

105. *Id.* at 10.

pressing infrastructure concerns in Florida are roads, drinking water, mass transit, and schools.¹⁰⁶ Because over twenty percent of major roads in Florida are in less-than-good condition and nineteen percent of Florida's bridges are either unusable or structurally deficient, Florida motorists spend approximately \$53 each per year, or \$662 million total, in extra vehicle repairs and operating costs.¹⁰⁷ In addition, the infrastructure that supports Florida's drinking water will require \$3.7 billion over the next twenty years, while wastewater infrastructure will require \$6.3 billion.¹⁰⁸ Furthermore, a study of sewer hookups in Tallahassee found that the average price for a sewer connection is about \$6,000 per household.¹⁰⁹ As Florida's population continues to increase, so will the need for additional revenue, not only to build additional infrastructure, but also to refurbish and revitalize existing structures.

C. Current Limitations on Revenue Generation

In light of Florida's population increase and the resulting need for additional revenue, local governments have a heightened awareness of the constitutionally imposed limitations on how much revenue they can generate. One such limitation in the Constitution is the millage rate cap.¹¹⁰ The Florida Constitution mandates that no county may impose a millage rate greater than ten

106. Am. Socy. of Civ. Engrs., *Florida*, <http://www.asce.org/reportcard/pdf/fl.pdf> (accessed Jan. 6, 2006) [hereinafter *Florida Survey*].

107. *Id.* (citing July 2003 TRIP Fact Sheets containing transportation statistics compiled by TRIP, a nonprofit transportation research group). According to a James Madison Institute study, transportation funding has not kept pace with Florida's growth, and the percentage of state and local expenditures allocated to roads has decreased dramatically since the 1960s. Randall G. Holcombe, *Paying for Growth*, 32 J. James Madison Inst. 5-6 (Summer 2005) (available at <http://www.jamesmadison.org/article.php/379.html>). The amount spent by the State and local governments on roads has steadily declined from nineteen percent of their total budgets in 1960, to only 6.1 percent in 2000. *Id.* Therefore, "[i]f we Floridians want to know why we find ourselves increasingly stuck in traffic, the easy answer to the question is that we are spending a much smaller proportion of our total government outlays on roads than we were a few decades ago." *Id.* The Texas Transportation Institute (TTI) has estimated the costs of traffic congestion in seventy-five metro areas since 1982. Leroy Collins Inst., *supra* n. 26, at 21. In 2000, TTI estimated that the total cost in wasted time and fuel to Florida's six largest metro areas was \$4.25 billion, or \$458 per person. *Id.*

108. *Florida Survey*, *supra* n. 106 (citing an Environmental Protection Agency Drinking Water Infrastructure Needs Survey from 2001).

109. Snyder & Bird, *supra* n. 102, at 10-11.

110. Fla. Const. art. VII, § 9(b).

mills, and only a constitutional amendment can change this provision.¹¹¹ As of 2004, fourteen Florida counties had reached the ten mill county cap, and eight other counties had millage rates within one mill of the cap.¹¹² Ten municipalities imposed a millage rate at or above nine mills.¹¹³ In addition, over twenty percent of homestead properties in twelve different counties were completely exempt from paying property taxes in 2004.¹¹⁴

Using 2003 tax rates and assessed values, if the homestead tax exemption increased to \$50,000, twenty-eight of Florida's sixty-seven counties could not recoup all of their lost revenue through raising millage rates alone, because of the constitutionally imposed limit of ten mills.¹¹⁵ Most of the hardest hit counties are poor, rural counties with small populations.¹¹⁶ A 1980 study indicated that the increase in the homestead exemption from \$5,000 to \$25,000 at that time "undermined the viability of the property tax as the major revenue source for local government, especially in areas experiencing slow economic growth."¹¹⁷ These same counties would face an even more difficult situation today, if the homestead exemption was to be increased to \$50,000.

111. *Id.* For the legal definition of "mill," see *supra* n. 4.

112. *2004 Prop. Valuations, supra* n. 11, at 171–172. The fourteen counties at their ten mill limit in 2004 were Calhoun, Dixie, Gadsden, Gilchrist, Glades, Hamilton, Holmes, Jefferson, Lafayette, Liberty, Madison, Suwanee, Union, and Washington. *Id.* The eight counties within one mill of the ten mill limit in 2004 were Bradford, Duval, Hendry, Highlands, Levy, Putnam, Sumter, and Wakulla. *Id.*

113. *Id.* at 93–167. The ten municipalities were Indian Creek, Islandia, Opa-Locka, Zolfo Springs, Greenville, Belle Glade, Riviera Beach, Crescent City, South Bay, and Lake Wales. *Id.*

114. *Id.* at 246–247. The twelve counties with over twenty percent tax exempt parcels in 2004 were Calhoun, Dixie, Hamilton, Holmes, Jackson, Lafayette, Liberty, Madison, Putnam, Taylor, Union, and Washington. *Id.*

115. *Initiative Statement, supra* n. 81, at 4.

116. Maurice Tamman, *Counties with Poor, Stable Populations Hurt by Revenue Law*, Sarasota Herald-Trib. A12 (Sept. 21, 2005); see generally *supra* nn. 112–114 (summarizing the counties that either operated at their ten mill cap or had at least twenty percent of residential properties completely exempt from paying ad valorem taxes in 2004).

117. Van Assenderp & Solis, *supra* n. 51, at 837. According to one report, "because of Save Our Homes and other exemptions, 18 of Florida's 67 counties could levy taxes on 50 percent or less of their properties' value" in 2004. Tamman, *supra* n. 116. These counties are typically inland counties and "[struggle] more for tax revenue than coastal counties because they can't attract the wealth that migrates to the waterfront." *Id.* The result is that some Florida counties are flush with cash to spend, while others, like Liberty County, have to rely on grants from the State just to fund routine government services. *Id.*

Another limitation on current revenue generation is the total exemption from ad valorem taxation that certain types of property currently enjoy, such as hospitals, charities, and religious organizations.¹¹⁸ These entities often pay little, if any, property taxes.¹¹⁹

The most stifling limitation on revenue generation is the Save Our Homes Cap, which removes billions of dollars from the taxable base each year.¹²⁰ For homestead property, Save Our Homes limits the increase in assessed value to three percent above the value for the preceding year, or the increase in the consumer price index for the preceding year, whichever is less.¹²¹ Thus, a homeowner with homestead status is entitled to a \$25,000 reduction in the assessed value of the property, plus the three percent cap on increases to the assessed value.¹²² However, upon sale of the property, property appraisers reassess the property at fair market value, and the new owners “start over” with Save Our Homes.¹²³ This phenomenon can result in tax inequities between similarly situated properties.

The disparity in tax treatment comes when the “old” homeowner sells to the “new” homeowner and the property is reassessed at fair market value. The “new” homeowner’s property taxes may double or triple that first year, because the three percent Save Our Homes cap has prevented the previous assessments from accurately reflecting the increase in the property’s true value.¹²⁴ This scenario is especially likely given that from

118. Fla. Const. art. VII, § 3.

119. These organizations are, however, subject to special assessments and impact fees, which will be discussed in more detail in Part IV(B)(i). *See also* Dubov, *supra* n. 11, at 1488 (discussing local governments’ use of special assessments to levy “hidden taxes” against tax-exempt properties).

120. In 2004, “Save Our Homes saved Floridians \$2.9 billion in countywide property taxes,” while the “homestead and all other exemptions saved them another \$2.2 billion.” Maurice Tamman, *Save Our Homes Riddles Property Taxes with Inequities*, Sarasota Herald-Trib. A1 (Sept. 18, 2005); *see also* Dubov, *supra* n. 11, at 1477–1478 (noting that in 1999 alone, Save Our Homes and the homestead exemption together saved over \$112 billion in property value from taxation).

121. Franklin & Baugher, *supra* n. 24, at 35.

122. *Id.* at 35–36.

123. *Id.* at 38–39.

124. For example, two condominiums, each with the same number of rooms, the same view of the Gulf of Mexico, worth the same amount of money, and separated by one floor, could have tax bills of \$5,700 and \$2,300, respectively, because of how long the property owner has owned the home. *E.g.* Tamman, *supra* n. 120 (describing the tax bills of two

2003 to 2004, property values in Florida increased an average of 14.13 percent.¹²⁵ As property values increase at astronomical rates in some counties and at a steady pace in others,¹²⁶ Save Our Homes limits increases in assessed value to three percent of the previous year's value, while the homestead exemption takes another \$25,000 off the assessed value. These limitations translate into billions of dollars lost from the State's tax base.

IV. THE UNINTENDED CONSEQUENCES OF INCREASING THE HOMESTEAD EXEMPTION

In addition to substantially reducing local government revenues, increasing the homestead exemption also raises many possible legal problems. First, an increase in the exemption could pave the way for new constitutional challenges to the exemption under the Equal Protection Clause. Second, there is the likelihood that local governments would look to alternative sources of funding to recoup lost revenue, some of which may or may not be constitutional. In addition, there are underlying public policy concerns involving the traditional purpose of the homestead and Florida's reliance on tourism for its economic base.¹²⁷

similarly situated condominium owners in Siesta Key). In addition, it is quite possible that a homeowner's market value may increase upwards of ten to twelve percent per year, because property values statewide have steadily increased an average of 10.63 to 14.13 percent over the last five years. Fla. Dept. of Revenue, *Florida Property Valuations and Tax Data Book—Florida Property Just Value Growth by Percentage*, <http://www.state.fl.us/dor/property/justvalperc.html> (accessed Feb. 8, 2006) [hereinafter *Growth by Percentage*]. Even though each respective homeowner's assessed value is currently limited to a three percent increase per year, if the property changes ownership, the new owner will be taxed at the fair market value of the property.

125. *Growth by Percentage*, *supra* n. 124.

126. *2004 Prop. Valuations*, *supra* n. 11, at 1–2. From 2003 to 2004, twenty-six Florida counties experienced an increase in just value of real property of more than fifteen percent. *Id.* For example, property values increased 16.19 percent in Alachua County, 34.23 percent in St. Lucie County, and 46.68 percent in Okeechobee County. *Id.* The average increase in just property value for all Florida counties from 2003 to 2004 was 15.29 percent. *Id.* at 2.

127. Blanton, *supra* n. 3, at 445–446 (discussing Florida's almost exclusive reliance on the sales tax for its revenue); see also Michael Braga, *Snowbirds Feel Tax Heat*, Sarasota Herald-Trib. A1 (Sept. 23, 2005) (stating that nearly one million snowbirds travel to Florida each year, according to a University of Florida study, and that these visitors may easily spend in excess of \$4 billion a year in Florida's economy).

A. Equal Protection Debate

An acquisition-value taxation system such as Florida's significantly shifts the tax burden to recent buyers and renters of residential property, as well as to business owners and owners of commercial property, which raises an equal protection argument that has been heard by the United States Supreme Court.¹²⁸ In the late 1970s, California passed Proposition 13, which is a system similar to Florida's Save Our Homes Cap.¹²⁹ It is somewhat ironic that Florida's decision in 1980 to increase the homestead exemption to \$25,000 was spurred by fear that voters would pass something similar to Proposition 13.¹³⁰ For twenty-five years, California has been an example of what an acquisition-value real property taxation system such as Save Our Homes can do to local governments.¹³¹ In many respects, Proposition 13 has changed the way that local governments operate in California—and not always for the better.¹³²

128. The United States Supreme Court considered an equal protection challenge to an acquisition-value taxation system in *Nordlinger*, 505 U.S. 1. For an explanation of "acquisition-value taxation," see *supra* n. 24.

129. LaFrance, *supra* n. 24, at 818–819, n. 18. California's Proposition 13 is similar to Save Our Homes in that transfer triggers a reassessment at fair market value; however, Proposition 13 limits the annual increase to two percent and has carved out "exceptions" for certain classes of transfers. *Id.* Proposition 13 also applies to secondary, rental, or commercial property, whereas Save Our Homes only applies to homestead property. *Id.* Like Floridians, Californians were concerned about rapidly increasing property values and rates of housing inflation that led to large increases in property tax bills. Jonathan Schwartz, Student Author, *Prisoners of Proposition 13: Sales Taxes, Property Taxes, and the Fiscalization of Municipal Land Use Decisions*, 71 S. Cal. L. Rev. 183, 186 (1997). "[H]ad Proposition 13 failed, . . . homeowners' property tax bill[s] would have almost doubled between 1974 and 1978." *Id.* (quoting Jack Citrin, *California and the American Tax Revolt: Proposition 13 Five Years Later* 1, 18 (Terry Schwadron ed., U. Cal. Press 1984)).

130. *Osterndorf*, 426 So. 2d at 541.

131. Schwartz, *supra* n. 129, at 183–184. California voters passed Proposition 13 in 1978, and it "has had severe and dramatic consequences for land use." *Id.* at 183, 185. Although the intent of voters was "to limit the scope and power of government, the initiative has actually empowered the state to act in areas traditionally left to local politicians." *Id.* at 185.

132. *Id.* at 183 (stating that "Proposition 13 has had implications for California that transcend the assessment of property taxes," such as an increased reliance on the sales tax and the "fiscalization of municipal land use"); see also Andrew Reding, *The City That Staged a Rebellion and Embraced Property Taxes*, L.A. Times M2 (Apr. 5, 1998) (stating that "[t]he long-term effect [of Proposition 13 and its progeny] has been to encourage the proliferation of other forms of taxation—user fees, franchise fees, utility taxes, special assessments—that are more regressive than property taxes, imposing a larger burden on all but the wealthiest taxpayers").

Notwithstanding the negative effects that Proposition 13 has had on local governments, the United States Supreme Court upheld Proposition 13 after a California homeowner challenged the statute on equal protection grounds.¹³³ In 1992, the Court decided *Nordlinger v. Hahn*,¹³⁴ holding that Proposition 13 was not unconstitutional, and deferring to the State's taxation authority.¹³⁵ After *Nordlinger*, future constitutional challenges to the Save Our Homes Cap may not succeed.¹³⁶ However, *Nordlinger* left the door open to challenges to acquisition-value taxation systems because the Court in *Nordlinger* did not overturn, but merely distinguished, *Allegheny Pittsburgh Coal Co. v. County Commissioner*.¹³⁷ In *Allegheny*, a county tax assessor in Webster County, West Virginia, assessed coal mining property based on acquisition cost, but made only minor adjustments to the value of other property that had not recently sold, which left comparable properties receiving substantially different tax treatment.¹³⁸ The Court held that "the relative undervaluation of comparable property in Webster County over time . . . denies petitioners the equal protection of the law," reasoning that equal protection requires "the seasonable attainment of a rough equality in tax treatment of similarly

133. *Nordlinger*, 505 U.S. at 4, 17.

134. 505 U.S. 1.

135. *Id.* at 17–18; Morrow, *supra* n. 26, at 587.

136. In 2003, the Georgia Supreme Court overruled a trial court's finding that a county's acquisition-value taxation structure was a violation of the Equal Protection Clause. *Columbus-Muscogee County Consol. Govt. v. CM Tax Equalization, Inc.*, 579 S.E.2d 200, 204 (Ga. 2003). Although the Court addressed the dramatic disparities in taxation that can occur in acquisition-value taxation, the Court followed the *Nordlinger* ruling in holding that the County's tax system was valid. *Id.* at 203–204. In the Georgia case, the homestead value was essentially "frozen" for the purpose of county taxation until the property experienced a change of ownership, but for state tax purposes the property was taxed at fair market value. *Id.* at 201. The "homestead freeze" was approved by a majority of the county's voters. *Id.* The Georgia Supreme Court ruled that despite a conflict with the state constitution's uniformity clause, which stated that "all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax," the county's "homestead freeze" was valid because it was intended by the Legislature to amend the uniformity clause. *Id.* at 202, n. 1.

137. 488 U.S. 336 (1989); Morrow, *supra* n. 26, at 588 (explaining that by "failing to establish any bright-line test, the Court left the door open for continued attacks against acquisition-value taxation," and thus, "state courts have continued to hear challenges against acquisition-value property taxation and the academic debate over the repercussions of this method of taxation [has] endured").

138. 488 U.S. at 338.

situated property owners.”¹³⁹ When the Court was later confronted with deciding the constitutionality of Proposition 13 in *Nordlinger*, the Court distinguished *Nordlinger* on the grounds that Proposition 13 was enacted for a valid state purpose.¹⁴⁰ But because *Allegheny* was not overturned by *Nordlinger*, the door was left open for disgruntled property owners to challenge systems of acquisition-value taxation.¹⁴¹ Should a constitutional amendment increase the homestead tax exemption to \$50,000, Florida courts may have to revisit whether Florida’s current system creates two classes of homeowners who are treated unequally and unfairly by the state’s system of property taxation.

The homestead exemption, in conjunction with Save Our Homes, creates two classes of homeowners in Florida because there is no limit on the assessed value of non-homestead property. Business owners, rental property owners, and part-time residents pay more in taxes than those who own homestead real property because non-homestead property is assessed at fair market value.¹⁴² Should a homestead exemption increase take effect, non-homestead property owners may be required to pay even more in taxes, through millage rate increases or higher occupational li-

139. *Id.* at 343, 346. At the time of the *Allegheny* decision, the Court was aware of the Proposition 13 system in California, and even referred to Proposition 13 in a footnote, but “chose not to address the constitutionality of Proposition 13.” Morrow, *supra* n. 26, at 603.

140. *Allegheny*, 488 U.S. at 344 n. 4; Morrow, *supra* n. 26, at 603–604. According to the Court, the difference between Proposition 13 and West Virginia’s system was that Proposition 13 was adopted “precisely to achieve the benefits of acquisition-value taxation,” whereas West Virginia’s “unequal assessment practice . . . had no such purpose.” *Id.* Most important, “the West Virginia Constitution guaranteed that ‘taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value.’” Morrow, *supra* n. 26, at 605 (quoting W. Va. Const. art. X, § 1). Therefore, the acquisition-value system “‘contravene[d] the constitutional right of one [to be] taxed upon the full value of his property.’” *Id.* at 603 (quoting *Allegheny*, 488 U.S. at 345).

141. Morrow, *supra* n. 26, at 604–605 (noting that “the Court chose to preserve, but severely narrow, the notion that ‘dramatic disparities in taxation of properties of comparable value’ can violate equal protection” (quoting *Allegheny*, 488 U.S. at 345)).

142. LaFrance, *supra* n. 24, at 819 n. 18 (explaining that Florida’s Save Our Homes and homestead provisions do not apply to secondary homes, rental properties, or commercial properties). An increase in property taxes can have a devastating effect on local businesses and the economy. If business owners cannot generate enough revenue to cover increases in property taxes, they could be forced to close or sell to developers. See Michael Braga & Maurice Tamman, *Rising Property Taxes Sink Coastal Business*, Sarasota Herald-Trib. A1 (Sept. 20, 2005) (reporting the devastating impact of escalating property taxes on small business owners, and implicating the lack of homestead or Save Our Homes protection as a key factor in the problem).

cense fees, in order to make up for lost revenue to the local taxing authority.¹⁴³

An additional concern is the effect that changes in the property tax system will have on tourism revenue. Florida depends on the sales tax for a large portion of its tax base, of which travel and tourism make up a significant amount.¹⁴⁴ Many of these tourists rent real property for several months out of the year, and many of these tourists are elderly.¹⁴⁵ A 2004 survey of Florida's temporary residents revealed that almost sixty-four percent of these part-time residents were age fifty-five or older, compared to only thirty-two percent of permanent residents.¹⁴⁶ As a result of Save Our Homes and the increased homestead exemption, non-homestead property (including seasonal homes and rental property) will pick up more of the tax burden because these homes will be reassessed and taxed each year at full fair market value.¹⁴⁷ In turn, property owners will pass these additional taxes along to renters.¹⁴⁸ For many elderly persons on fixed incomes, who either are seasonal renters or cannot afford to purchase property in Florida, increased rent may mean that they spend vacations else-

143. *Advisory Op. Additional Homestead*, 880 So. 2d at 652–653 (explaining that the language of the proposed ballot to increase the homestead tax exemption was misleading because local governments were still free to raise millage rates); see also *Truth about Homestead*, *supra* n. 87 (asserting that “[o]wners of non-homesteaded property such as second homes, rental properties and commercial buildings” would suffer from increased property tax rates in response to the amendment, which would in turn discourage investors from building or buying those types of properties); LaFrance, *supra* n. 24, at 1071–1072 (arguing that Florida's real property taxation laws allow non-homestead property owners to be the most tax-burdened group of people in the State).

144. *Supra* n. 127 (discussing Florida's reliance on the sales tax and tourists' spending habits).

145. Stanley K. Smith & Mark House, *Snowbirds and Other Temporary Residents: Florida 2004* at 4–5, 9, <http://www.bebr.ufl.edu/Articles/FloridaPop2005.pdf> (Oct. 2004) (citing a survey reflecting that temporary residents stayed in Florida an average of five months, 46.2 percent of those temporary residents were over age sixty-five, and 32.6 percent of them did not own a residence in Florida).

146. *Id.* at 5–6.

147. See Braga, *supra* n. 127 (stating that, for example, “[i]n Manatee and Sarasota counties, temporary residents own 46 percent of all residential property, but pay 58 percent of the taxes”).

148. See Dale White & Michael Braga, *Tenants Suffer As Higher Taxes Force Landlords to Raise Rents*, *Sarasota Herald-Trib. A1* (Sept. 23, 2005) (explaining that landlords must pass along costs to tenants to stay in business, yet low-income tenants cannot afford to absorb the additional rent increases).

where, thus reducing the State's tax revenue from tourism and travel.¹⁴⁹

Because of Save Our Homes, two homes of equal fair market value can have significant differences in property taxes simply because one of the homeowners has resided on the property for many years.¹⁵⁰ Young families, first-time homebuyers, or new residents to the State are severely impacted by this disparity in property taxes, because they are purchasing homes that will be reassessed at fair market value once ownership has changed hands.¹⁵¹ In *Osterndorf*, the Florida Supreme Court held that imposing different taxes solely on the basis of length of residence in the state violated Florida's Equal Protection Clause.¹⁵² In essence, the Court decided that by not allowing residents of less than five years to receive the full homestead exemption, the Legislature had created two classes of homeowners.¹⁵³

Similarly, the argument can be made that the Save Our Homes Cap and the homestead exemption create two classes of homeowners—those that have resided in their home for a period of years, and those that are seeking to purchase a first home or a new home. According to the Court in *Osterndorf*, to satisfy equal protection, “there must be at least a rational basis for disparities to exist.”¹⁵⁴ Proponents of Save Our Homes and the homestead exemption will argue that the State has a legitimate interest in protecting persons—especially the elderly—from being forced out of their homes because they can no longer afford their tax bills.¹⁵⁵ This is a legitimate argument; however, the inverse of that argu-

149. *See id.* (pointing out that Florida's tax structure “has created a system that punishes renters—often those least able to pay—with a higher tax burden”); *see also* Smith & House, *supra* n. 145, at 17 (noting that approximately 920,000 temporary residents per year have a “substantial impact on many aspects of life in Florida”).

150. LaFrance, *supra* n. 24, at 817.

151. *See id.* at 842–843 (noting that “acquisition-value taxation provides a windfall to wealthy taxpayers while shifting their share of the cost of state services to recent buyers, whose incomes in many cases may be lower”).

152. 426 So. 2d at 544–546.

153. *Id.* at 545.

154. *Id.*

155. *See Smith*, 729 So. 2d at 372–373 (setting forth the policy reasons for the Save Our Homes amendment and stating that it “was designed to ensure that citizens on fixed incomes will not lose their homes . . . due to the rising value of Florida property”); *see also* Morrow, *supra* n. 26, at 596–597 (noting that individuals with low or fixed incomes are disadvantaged during times of rapidly increasing property values if their homes are reassessed at fair market value).

ment is also valid. The State has a substantial interest in providing affordable housing to homeowners and non-homeowners alike and in protecting people from being prevented from owning a home altogether. First-time homebuyers, young families attempting to purchase a home, or those families simply looking to sell their current home in favor of another home, can face property tax bills that significantly affect quality of life, causing some families to go into debt or to fall behind on monthly bills.¹⁵⁶ Thus, the effect these amendments can have on new homebuyers contradicts the purposes of homestead and Save Our Homes, which are to protect the family home and prevent the family unit from losing its home because of financial difficulties.¹⁵⁷

Some may argue that nothing is wrong with forcing new residents to bear the majority of the tax burden. It is human nature not to be concerned with the quality of life of outsiders who are not part of the group.¹⁵⁸ One justification for the disparities, which is favored by locals and not so much by courts, is that newcomers to the system have not contributed to the system and thus should not benefit from it, whereas “established residents should be able to reap that which they have created through their [past] contributions.”¹⁵⁹ Addressing this issue, the Court in *Osterndorf* clearly stated that it is unconstitutional to reward homeowners for past contributions to the State.¹⁶⁰ Yet, Save Our Homes rewards homeowners based on the length of time they have resided in a home, and thus on the taxes and monies they have previously

156. See Tamman, *supra* n. 120 (discussing the extreme tax inequities that result from the current system, and stating that some of the hardest hit are “parents with growing families who want more space, or empty nesters who want a smaller home”); Michael Braga, *Homeowners Feel Trapped by Taxes*, Sarasota Herald-Trib. A1 (Sept. 22, 2005) (pointing out that many people cannot afford the high tax bills associated with buying a new home under the acquisition-value tax system in Florida, and are therefore forced to stay put, move out of the state, or downsize).

157. *Supra* pt. II(A) (providing the origins and purposes of the homestead exemption and Save Our Homes).

158. Robert C. Farrell, *Classifications That Disadvantage Newcomers and the Problem of Equality*, 28 U. Rich. L. Rev. 547, 567 (1994).

159. *Id.* at 568.

160. 426 So. 2d at 545. In *Zobel v. Williams*, 457 U.S. 55 (1983), Justice O'Connor wrote that rewarding past contributions is not necessarily impermissible, but a state cannot “achieve this objective by disadvantaging those who [have] more recently exercised their right to travel . . . [or by] treat[ing] new residents less favorably than longer-term residents who are the only ones who have ‘past contributions’ within the state to reward.” Farrell, *supra* n. 158, at 572 (discussing the Supreme Court’s decision in *Zobel*).

paid into local government coffers.¹⁶¹ To allow newcomers to bear most of the property tax burden may be constitutional at the moment, but it may be bad public policy for a state like Florida that depends on newcomers, young and old, to travel to Florida, establish residences, and spend money that accounts for a substantial portion of the State's revenue—the sales tax.¹⁶²

Finally, would the additional homestead tax exemption really provide “tax relief” to all Florida homeowners, even under an acquisition-value taxation system? The Florida Supreme Court did not believe so, reasoning that if the homestead exemption was raised to \$50,000, some counties would then raise millage rates to try and recoup the lost revenue.¹⁶³ The Florida Supreme Court's discussion of this effect in its 2004 advisory opinion led the Court to declare that the text of the amendment was misleading to voters because not all homeowners would experience “tax relief.”¹⁶⁴ In addition, an increased homestead exemption in conjunction with the Save Our Homes Cap could create such a disparity in tax treatment that it would violate equal protection principles, notwithstanding *Nordlinger*. The Florida Supreme Court has not had the opportunity to address the Save Our Homes amendment as violative of the Equal Protection Clause of the Florida Constitution,¹⁶⁵ and in *Florida League of Cities v. Smith*,¹⁶⁶ Justice Over-

161. However, at the same time that Save Our Homes rewards homeowners it also penalizes them, because when homestead property owners move, any new property they buy will be taxed at fair market value; thus many property owners choose not to move because they fear an unaffordable property tax bill. Braga, *supra* n. 156. In addition, a law that prefers “long-term residents over newcomers . . . create[s] undeserved rewards simply for staying in one place.” Farrell, *supra* n. 158, at 570.

162. *Supra* n. 127 (discussing the importance of the sales tax and tourism to Florida's economy).

163. *Advisory Op. Additional Homestead*, 880 So. 2d at 652. If millage rates were raised, those who own high value property would actually pay more in taxes and not get the “tax relief” promised by this proposed amendment, thus creating even more disparities in tax treatment. *Id.* at 652–653. *But see supra* pt. III(C) (noting that only thirty-nine of Florida's sixty-seven counties would be able to recoup their lost revenues through raising millage rates).

164. *Advisory Op. Additional Homestead*, 880 So. 2d at 652–654; *see also* Martin Dyckman, *Floridians Can't Afford to Fall for This Homestead Initiative Scam*, St. Petersburg Times 3P (May 30, 2004) (stating that “the sponsors' claim that ‘every Florida homeowner will save \$500 per year in Florida property taxes’ is untrue. It would be true only if every home were already assessed at \$50,000 or more, if every home were taxed at the statewide average rate of [twenty] mills, and if it could be guaranteed that every taxing authority would swallow the loss without raising its tax rates.”).

165. Fla. Const. art. I, § 2.

ton stated, “While the adoption of amendment 10 might be constitutional under the federal [C]onstitution . . . the issue of whether amendment 10 is constitutional under Florida’s equal protection clause has not been resolved [T]he question arises as to whether Florida’s equal protection clause is also being modified and amended by implication without appropriate notification to the voters.”¹⁶⁷ Under the Court’s reasoning in *Osterndorf*, an increased homestead exemption may not provide tax relief, but would combine with the Save Our Homes amendment to treat similarly situated homeowners so differently in terms of tax treatment that it might violate the Florida Constitution.

B. Alternative Sources of Funding

Let us assume that an increase in the homestead tax exemption passes constitutional muster and is approved by voters in a future general election. The question then becomes, What will local governments do in order to make up lost revenue? In theory, one could argue that local governments should not look for alternative sources of funding at all, but merely become more efficient at allocating the resources available to them.¹⁶⁸ However, this theory is flawed because “[t]axes are only one type of many charges imposed by government”¹⁶⁹ and the reduction in revenue resulting from the current exemptions has not slowed government spending.¹⁷⁰ Although in Florida there are constitutional restrictions on the imposition of taxes, these constitutional restrictions do not always apply to other fees or charges that local governments may impose.¹⁷¹ Non-tax types of charges that governments

166. 607 So. 2d 397 (Fla. 1992).

167. *Id.* at 404 (Overton, J., dissenting).

168. *See* Morrow, *supra* n. 26, at 617 (noting that the citizens of California adopted an acquisition-value taxation system not because they wanted governments to find alternative sources of funding, but because they wanted to lower their property tax liability and force local governments to be more efficient); *see also* Maurice Tamman & Michael Braga, *Tax Revolt Doesn’t Hold Down Revenue*, Sarasota Herald Trib. A1 (Sept. 21, 2005) (stating that making government cut down on spending was precisely the reason for the original support behind Save Our Homes).

169. Cooper & Marks, *supra* n. 5, at 435.

170. Tamman & Braga, *supra* n. 168 (noting that the Saves Our Homes amendment “didn’t constrain government spending”).

171. Cooper & Marks, *supra* n. 5, at 435.

impose include everything from impact fees¹⁷² to special assessments.¹⁷³ Sometimes, to avoid going through the constitutional and statutory quagmire associated with imposing taxes, governments will try to impose charges as fees rather than taxes.¹⁷⁴ Thus, Florida courts have heard and continue to hear cases on whether local governments are actually imposing unconstitutional taxes under the guise of “fees.”¹⁷⁵ In recent years, Florida courts have been less stringent in applying the rules that have traditionally distinguished taxes from special assessments because of the financial difficulties that local governments face.¹⁷⁶

172. “Impact fees are one-time charges on new construction that pay a proportional share of the cost of the capital outlay needed to serve the new development.” Denslow & Weissert, *supra* n. 19, at 43. Because impact fees “are a relatively easy way to raise revenues” they are favored in rapidly growing areas as a way to meet infrastructure needs. *Id.* at 43–44.

173. Cooper & Marks, *supra* n. 5, at 435. Special assessments are levied to “provide a special benefit to the assessed property.” Dubov, *supra* n. 11, at 1484. Although they too are involuntary payments, special assessments differ from taxes “because taxes are levied for the general benefit of the community.” *Id.* An example of a special assessment would be a charge to a specific property owner whose property benefited from a street improvement, sewer system improvement, or drainage improvement. *Id.* at 1485.

174. Cooper & Marks, *supra* n. 5, at 435; *see also* Dubov, *supra* n. 11, at 1484 (stating that “[l]ocal governments have found new and creative ways to raise revenue . . . [by] collect[ing] regulatory fees, user and impact fees, and special assessments”).

175. In *Contractors and Builders Assn. v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976), the Florida Supreme Court held that revenue that the city collected for “capital improvements to the [water and sewage] system as a whole” constituted an *ultra vires* attempt by the City to impose taxes. 329 So. 2d 314, 316–317 (Fla. 1976). In *Lake County v. Water Oak Management Corp.*, property owners filed suit to invalidate the County’s special assessments for fire protection and solid waste disposal services. 695 So. 2d 667, 668 (Fla. 1997). The Florida Supreme Court held that Lake County’s services, which were funded by the special assessment, provided “a special benefit to the assessed properties,” and therefore it upheld the assessment as valid. *Id.* at 670. In 1999, the Fourth District Court of Appeal upheld the validity of a St. Lucie County ordinance that imposed special assessments for waste collection on only a designated portion of the unincorporated area of the County. *Sockol v. Kimmins Recycling Corp.*, 729 So. 2d 998, 1001 (Fla. 4th Dist. App. 1999). *See* Cooper & Marks, *supra* n. 5, at 435 (stating that courts are often needed “to delineate the boundaries between taxes and other governmental fees”).

176. Dubov, *supra* n. 11, at 1494 (noting the “erosion of the special benefits test” that occurred when comparing its application by the Florida Supreme Court in *City of Ft. Lauderdale v. Carter*, 273 So. 2d 260 (Fla. 1954) and *Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997)).

1. Special Assessments and Impact Fees

Florida counties impose special assessments to pay for services, facilities, works, and improvements.¹⁷⁷ Special assessments are the subject of much debate because they are not assessed based on property value, and the purpose of special assessments is to provide a special benefit only to the assessed property, not to the general community.¹⁷⁸ A concern exists that local governments are imposing unconstitutional taxes in the form of special assessments by simply using the term “special assessment.”¹⁷⁹

In general, there is a two-part test used to evaluate the validity of special assessments.¹⁸⁰ “First, the property assessed must derive a special benefit from the service provided.”¹⁸¹ Second, “the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.”¹⁸² A problem with special assessments arises when all properties in a community benefit from a project or service that is supposed to be beneficial only to the assessed property.¹⁸³ For example, because assessments for sewer systems, drainage, and pavement of roads have traditionally been upheld as valid, local governments have attempted to use special assessments to finance system rehabilitation projects that will ultimately benefit the community at large and not just the assessed property owners.¹⁸⁴ In *Hanna v. City of Palm Bay*,¹⁸⁵ a road rehabilitation project funded through special assessments came on the heels of the voters failing to approve a millage rate

177. Van Assenderp & Solis, *supra* n. 51, at 835. In the late 1980s, the use of special assessments was “increasing in Florida counties, unlike in the rest of the country.” *Id.*

178. Dubov, *supra* n. 11, at 1484; van Assenderp & Solis, *supra* n. 51, at 831. One problem with special assessments and impact fees is that, because they are not based on property value, they can have a disproportionate impact on low-income property owners. For example, “the charge is the same for a \$125,000 or \$500,000 home.” Leroy Collins Inst., *supra* n. 26, at 21.

179. Dubov, *supra* n. 11, at 1490 (discussing the author’s opinion that local governments are levying impermissible taxes by labeling them as “special assessments”).

180. *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992); *see also* van Assenderp & Solis, *supra* n. 51, at 853–864 (discussing the two-part test for what constitutes a special assessment versus a tax).

181. *City of Boca Raton*, 595 So. 2d at 29.

182. *Id.*

183. Dubov, *supra* n. 11, at 1485–1486.

184. *Id.* at 1485–1487 (discussing the special benefit requirements).

185. 579 So. 2d 320 (Fla. 5th Dist. App. 1991).

increase to fund the project.¹⁸⁶ Although the Fifth District Court of Appeal ultimately concluded that the special assessment was an unconstitutional tax, the situation in *Hanna* is merely one example of how many local governments will try to impose alternative fees on homeowners when needed revenue is not available to them through permissible taxation.¹⁸⁷

In addition, local governments use special assessments to “sidestep property tax exemptions and to levy assessments against properties that are partially or wholly exempt from taxation,” including church, hospital, and non-profit organization property.¹⁸⁸ If the homestead tax exemption increases and local governments have less revenue to work with, it is possible that local governments will routinely fund community-wide services with special assessments until they are challenged in the courts.¹⁸⁹ Due to the blurred line between what constitutes a tax and a special assessment, some have suggested that Florida’s system needs to be revamped to create a uniform understanding of special assessments.¹⁹⁰

Impact fees are another alternative source of funding for local governments. Generally, impact fees are imposed on new development “to recoup or offset a proportionate share of public capital costs required to accommodate such development with necessary public facilities.”¹⁹¹ Local governments are continually turning to impact fees to finance necessary infrastructure.¹⁹² The govern-

186. *Id.* at 323.

187. *Id.*; Dubov, *supra* n. 11, at 1484–1488 (discussing other attempts by local governments to use special assessments to fund community-wide projects).

188. *Id.* at 1488; *see supra* nn. 118–119 and accompanying text (discussing the constitutional exemptions for certain types of property).

189. *See id.* at 1484–1490 (suggesting that special assessments are routinely used as an alternative funding source and are therefore frequently challenged as improper taxation).

190. *E.g.* van Assenderp & Solis, *supra* n. 51, at 854–856 (recommending specific steps that governing bodies should take in ascertaining what constitutes a “special benefit”).

191. Snyder & Bird, *supra* n. 102, at 13 (citation omitted).

192. *See* Michael W. Woodward, *Free Schools and Cheap Mobile Homes: School Impact Fees Come to Rural Florida*, 70 Fla. B.J. 70, 70 (May 1996) (stating that local governments “are turning to impact fees as a means of financing the building of roads, sewage treatment plants, and other capital facilities required as a result of the increase in population”). California’s local governments have also had to find alternative sources of revenue to fund infrastructure. After Proposition 13, local governments established special assessment districts, raised existing fees, and enacted new local taxes, such as “new development fees, real estate transfer fees, business license fees, utility user fees, sewer charges, and park and recreation fees.” Terri A. Sexton et al., *Proposition 13: Unintended Effects and Feasible*

ment's power to impose impact fees is derived from two sources: police power and proprietary power.¹⁹³ "The validity of impact fees turns on the closeness of the relationship between the fee paid and the public service provided (or, alternatively, the public harm prevented)."¹⁹⁴ In some poorer counties, schools have been the latest beneficiaries of user impact fees, but questions arise regarding whether schools can be funded through impact fees because under the Florida Constitution, children are entitled to a "free" public education.¹⁹⁵ An additional conflict lies in the fact that without specific legislative authorization, school districts have no power to impose impact fees.¹⁹⁶ Yet, because of financial constraints, some school districts are willing to take a chance until they are challenged in court.¹⁹⁷ If local governments are constricted because of the increased homestead tax exemption, they too may opt to impose impact fees, which may be unconstitutional, thus wasting additional government resources on litigation.

One argument against impact fees is that they tend to be regressive.¹⁹⁸ Impact fees may be challenged in the courts on three

Reforms, 52 Natl. Tax. J. 99, 107 (Mar. 1999).

193. Woodward, *supra* n. 192, at 70. Local governments have the "proprietary power to charge user fees for government-owned facilities and services . . . [and] police power to protect the public by means of . . . regulatory fees." *Id.*

194. *Id.* at 71.

195. *Id.* at 70. The problem arises because the State Constitution guarantees a free public education, and impact fees levied by the school board may be seen as an impermissible school user fee or tuition charge. *Id.* Article IX, Section 1 of the Florida Constitution states that "[a]dequate provision shall be made by law for a uniform . . . system of free public schools . . ."

196. Woodward, *supra* n. 192, at 70. Because "school districts have no police power authority to regulate land use," and only counties and municipalities have that power, school districts "have no power to impose fees on land development." *Id.*

197. *See id.* at 73 (stating that the implementation of school impact fees "continues to be an experiment each county must conduct for itself"). Small rural counties with less financial resources "are being faced with the task of adopting impact fees in order to deal with the formidable costs of the rapid population influx." *Id.* at 75. *See e.g. id.* at 71-72 (discussing Putnam County's attempt to charge user fees in a rural area with a median home value of \$49,900); *see also* Leroy Collins Inst., *supra* n. 26, at 21 (stating that "[r]oughly a third of [Florida's] county-wide [school] districts now charge a fee specifically for schools").

198. Snyder & Bird, *supra* n. 102, at 25 (stating that impact fees tend to be more burdensome on low-income property owners). Impact fees "are usually passed on to consumers," and "are volatile income streams dependent on the growth of the building industry." Denslow & Weissert, *supra* n. 19, at 43. Furthermore, "[g]roups concerned with affordable housing are worried that impact fees push lower-income working families out of the owner-occupied housing market." *Id.*

grounds: whether they have been authorized by state statute, whether they violate the Equal Protection Clause because they discriminate between existing and new developments, and whether they are an unreasonable exercise of police power.¹⁹⁹ The trend has been for the courts to uphold impact fees as long as the fees are appropriately set, because there is a public perception that new growth pays for itself.²⁰⁰

2. Increasing Existing Taxes or Imposing New Taxes

Increasing the sales tax is a suggestion that routinely appears when alternative sources of revenue are discussed, even though Florida already relies heavily on the sales tax.²⁰¹ Even with an increase in the sales tax, it is impossible to predict whether the sales tax can be a long-term stable revenue source.²⁰² During times of recession, sales tax collections decrease dramatically, because people buy fewer durable goods, defer purchases of

199. Snyder & Bird, *supra* n. 102, at 28–29.

200. *Id.* at 27, 29–30. While the perception is that new growth pays for itself, the statistics tell a different story. Although there have been many studies, there is “no agreed-upon answer, to the question of what it takes in impact fees for growth to pay for itself.” Leroy Collins Inst., *supra* n. 26, at 20. In addition, there is a potential for fiscal disaster in counties that depend too heavily on impact fees. Denslow & Weissert, *supra* n. 19, at 43. Because impact fees depend heavily on the housing industry, “[a] county could find itself in a fiscal crisis if there is a rise in interest rates or any other shock to the housing market.” *Id.*

201. Blanton, *supra* n. 3, at 445–446; *see also* Denslow & Weissert, *supra* n. 19, at 24 (stating that the sales tax is one of two taxes that raise the most local government revenue in Florida).

202. *See* Blanton, *supra* n. 3, at 448–449 (stating that sales tax revenue is not keeping pace with the growth of Florida’s economy). While the housing boom and rising tax rates have kept the sales tax as a strong revenue source, “[e]xperts on sales taxes think that states will be forced to rely more and more heavily on income taxes . . . [because the] sales tax base . . . is eroding.” Denslow & Weissert, *supra* n. 19, at 14, 33–34. Experts argue that “decline in the ratio of goods to services in consumer spending,” pressure from citizens’ groups, the competitive advantage of Internet vendors, and the fact that businesses, not consumers, end up paying many of the sales taxes, are all efficiency arguments against heavy reliance on the sales tax. *Id.* at 34. In the alternative, there are scholars who believe that Florida is not a low-tax state in comparison to other southeastern states, that Florida’s tax structure is effective, and that the State is prepared for the financial demands of the twenty-first century. *E.g.* Randall G. Holcombe, *Is Florida’s Tax Structure Ready for the 21st Century?* 3 (James Madison Inst. Policy Rpt. #42 Dec. 2004) (available at <http://www.jamesmadison.org/pdf/materials/298.pdf>) (asserting that Florida’s total revenues are growing along with the economy and that the current taxation system is structurally sound). Scholars note that the revenue generated from the sales tax has doubled since fiscal year 1990–1991 and revenues per person have increased. *Id.* at 8–9. They also argue that Florida’s economic shift toward a service economy does not cause a problem for Florida’s tax base. *Id.* at 6.

non-durable goods, delay or eliminate recreational expenditures, and reduce business investment, thereby resulting in fiscal crises.²⁰³ Furthermore, like California's Proposition 13, Save Our Homes and an increased homestead exemption may actually encourage local governments to act imprudently where reliance on sales taxes is concerned.²⁰⁴ It is argued that in California,

the reliance on sales taxes to replace lost property tax revenues has motivated planning and economic development decisions that sacrifice the long-term fiscal and environmental health of communities for short-term gains in sales tax[,] producing land uses like shopping centers, car dealerships, and large-scale discount retailers.²⁰⁵

The result is that cities compete with each other to attract the types of businesses that generate large amounts of sales taxes, thus sacrificing quality of life for strip malls.²⁰⁶ In general, an over-reliance on the sales tax can cause the fiscalization of land, which will "devalue a community's existing businesses, fail to favor beneficial housing and manufacturing developments, and lead to declining property values for nearby residents."²⁰⁷ Florida voters must decide whether reliance on the sales tax in exchange for quality of life is worth a few hundred extra dollars per year.

203. Blanton, *supra* n. 3, at 447–448. In addition, in Florida "[t]here is the danger the housing boom will lull [policymakers] into complacency. . . . The costs are the gradually declining levels of public services as government operations are stretched thin and infrastructure is increasingly crowded." Denslow & Weissert, *supra* n. 19, at 14.

204. Schwartz, *supra* n. 129, at 183–184; see Tamman & Braga, *supra* n. 168 (stating that the Save Our Homes amendment "hasn't forced county officials across the state to curtail their spending . . . [and] tax increases . . . are outpacing growth and inflation"). Some critics feel that "Save Our Homes gave elected officials tacit permission to raise taxes year after year. . . ." *Id.* See also Denslow & Weissert, *supra* n. 19, at 14 (noting that "all governments should strive to improve the efficiencies of their taxes and services, but their leaders face political and practical constraints hampering such efforts"); Therese J. McGuire, *Proposition 13 and Its Offspring: For Good or for Evil?* 52 Natl. Tax. J. 129, 130 (Mar. 1999) (stating that even though public finance economists like the argument that fiscally empowered local governments are held accountable by citizens voting for spending practices, "[l]ocal elected officials may be no more immune than state and federal officials to the temptations of using the public purse for personal gain").

205. Schwartz, *supra* n. 129, at 184. "The fundamental conflict inherent in Proposition 13 . . . is the impulse among voters to reduce taxes while protecting, or expanding, most government spending programs." *Id.* at 187.

206. *Id.* at 184.

207. *Id.* at 201–202. In addition, the poor, who are more dependent on public services than the wealthy, would be directly impacted by service cuts. *Id.* at 188–189.

One highly unpopular alternative for raising local government revenue is the imposition of a state income tax. The Florida Constitution currently prohibits a personal income tax,²⁰⁸ which “is considered to be a political ‘bombshell.’”²⁰⁹ Because imposing the tax would require a constitutional amendment, it is unlikely that voters will impose such a tax on themselves.²¹⁰ However, there has been discussion that Florida no longer needs the lack-of-state-income-tax benefit to attract wealthy investors to the State, and that an income tax could be structured in a way that would meet the State’s revenue needs and provide a tax restructuring, rather than a tax increase, to property owners.²¹¹

A restructuring of Florida’s estate tax could also help replace lost revenue if the homestead exemption should increase. Florida’s current estate tax structure is often described as a “pick-up” tax, because it only allows the state to collect, or “pick up,” death taxes that are otherwise due to the federal government.²¹² If the homestead tax exemption were to increase, a perfect opportunity would present itself for the State to enact a new estate tax. Even

208. Fla. Const. art. VII, § 5.

209. Blanton, *supra* n. 3, at 460 (citations omitted). Florida is one of the few states that do not have a state income tax. *Id.* at 446. Besides Florida, eight other states do not impose a state income tax: Alaska, Nevada, New Hampshire, South Dakota, Texas, Tennessee, Washington, and Wyoming. IRS, *States without a State Income Tax*, <http://www.irs.gov/efile/article/0,,id=130684,00.html> (accessed Jan. 16, 2006).

210. Blanton, *supra* n. 3, at 460. State leaders have said for many years that “the time has come to stop selling the state as a cheap paradise.” *Id.* Florida originally expressed such strong anti-tax sentiments in order to attract wealthy investors to the State. *Id.*

211. *Id.* at 460–461. However, some argue that “[w]ith so many visitors and temporary residents, Florida would be foolish to attempt to impose an income tax.” Denslow & Weisert, *supra* n. 19, at 15.

212. Edward F. Koren, *The Florida Estate Tax*, in *Florida State and Local Taxes* vol. 1, 55, 55, ¶ 2.01 (Fla. B. 1984). The Constitution prohibits “imposing any death taxes on the estates of Florida residents in excess of the applicable federal credit for state death taxes.” Fla. Const. art. VII, § 5(a). This means that the “Florida estate tax is directly linked to the federal estate tax . . . [and] if no federal estate tax is due, then no Florida estate tax [is] due.” Benjamin A. Jablow, *The Ins and Outs of the Florida Estate Tax*, 79 Fla. B.J. 41, 41 (Jan. 2005). If a federal estate tax is due, then Florida collects the amount of the federal tax credit allowed for state death taxes. William S. Forsberg, *The Snowbird’s Plight: Migratory Minnesotans Must Beware Where They Land*, 61 Bench & B. Minn. 32, 33 (Apr. 2004). However, the Federal Economic Growth and Tax Relief Reconciliation Act of 2001 virtually eliminated the Florida estate tax, because the Act phased out the federal tax credit for state death taxes over a four-year period. *Id.* at 33–34. The sunset provisions in the Act allow the Florida estate tax to return in 2011, unless Congress takes further action to eliminate state death tax credits completely. Jablow, *supra* n. 212, at 44.

under the current constitutional limitation on the estate tax,²¹³ the Legislature could “pick up” another portion of the federal estate tax, such as the deduction for state inheritance taxes.²¹⁴ Arguably, a change like this runs contrary to constitutional philosophy because, unlike a credit, a deduction is not a dollar-for-dollar offset.²¹⁵ In addition, some have argued that Florida may be better off allowing the estate tax to remain in its current form, even if the State is losing revenue, because the lack of estate taxes may attract more residents to Florida.²¹⁶ Analysts have forecasted that states like Florida may see an increase in new residents as people relocate from states that impose death taxes.²¹⁷ If this is true, Florida may not need to bring back the estate tax to make up for lost revenue from an increased homestead exemption. However, one should keep in mind that although new residents generate additional revenue for the State, they also place more demand on existing infrastructure, and new infrastructure must be built to accommodate them.²¹⁸

Another option for generating additional revenue is for Florida to increase or enforce the use of its intangibles tax. Most Floridians are completely unaware that Florida is one of the only states that imposes an intangibles tax, and some may not even be aware that they legally owe the tax.²¹⁹ In fiscal year 2001–2002,

213. See *supra* n. 212 (explaining Florida’s current estate tax structure).

214. Interview with Prof. Thomas Allison, Prof. of L., Stetson U. College of L. (Mar. 9, 2005) (notes on file with Author).

215. *Id.*

216. E.g. Susan K. Hill, Student Author, *Leaping Before We Look? Repeal of the State Estate Tax Credit and the Consequences for States, Americans, and the Federal Government*, 32 Pepp. L. Rev. 151, 174 (2004) (explaining that states like Florida that have not changed their estate tax system in response to the federal phase-out “are being hailed as estate friendly and favorable to residents”).

217. *Id.* at 174–175.

218. *Supra* pt. III(B) (discussing the demands that Florida’s population influx places on the State’s infrastructure).

219. Randall G. Holcombe, *Florida’s Intangibles Tax: The Case for Repeal* 8 n. 6 (James Madison Inst. Policy Rpt. #40 June 2003) (available at <http://www.jamesmadison.org/pdf/materials/134.pdf>). It has been reported that “[w]hile a few states tax intangible assets to some degree, no state has a tax similar to Florida’s. Four states have repealed intangible taxation since 1995—North Carolina, Georgia, Kentucky, and West Virginia.” Fla. Intangibles Tax Task Force, *Final Report of the Florida Intangibles Tax Task Force* 1 (Mar. 1998) (available at <http://www.floridataxwatch.org/resources/pdf/ITREP.pdf>). Florida’s intangibles tax is an annual tax on stocks, bonds, limited partnerships, and other specific financial assets; thus, the tax targets wealthy residents. Holcombe, *supra* n. 219, at 2, 6. Eighty percent of assets subject to this tax are stocks, with bonds making up most of the

the “[t]otal revenue from the intangibles tax was \$783 million,” but this amount “decline[d] to about \$600 million in [2003–2004] because of the scheduled increase in exemption levels.”²²⁰ Because the revenue raised under this tax currently accounts for less than two percent of Florida’s total budget,²²¹ additional revenue for local governments could be raised by increasing the intangibles tax and ensuring the accurate reporting of assets. However, scholars argue that the “burdens the intangibles tax places on Florida’s economy are greater than the benefits from the revenue it generates,” and that a repeal of the tax would be more beneficial for the State.²²²

Finally, an obvious alternative would be for counties to raise millage rates, assuming that they can still do so. Many of Florida’s smaller or more rural counties are already at, or are approaching, their millage rate limits.²²³ Overall, increasing millage rates is just a temporary solution to a much larger problem. “Florida’s cities and counties have absorbed an unpredicted, indeed unpredictable population increase in the last [thirty] years, a population that is far from homogeneous in language, culture, or

remainder. *Id.* at 3. Currently, the annual tax on these assets is one mill, but there are exemptions from the tax that have increased dramatically in the past few years. *Id.* at 2. An exemption of \$250,000 per person became effective in 2003, as well as a \$250,000 exemption for businesses. *Id.*

220. Holcombe, *supra* n. 219, at 2.

221. *Id.*

222. *Id.* First, the intangibles tax “is a tax on saving and investment” because it taxes those who hold financial assets. *Id.* at 6. Thus, the tax “discourages economic growth and discourages wealthy people from living in Florida” and “creates a disincentive for all Floridians to invest in assets that will be taxed.” *Id.* In addition, there are many ways to legally avoid the intangibles tax; thus, wealthy people who can afford accountants and financial planners often do not pay the tax, leaving seniors and retirees to pay the tax on their hard-earned retirement savings. *Id.* This is poor public policy. These seniors are the very people that Florida should be working to attract, because the taxes they pay exceed their cost in state expenditures. *Id.* Furthermore, Florida’s reporting requirements are a nuisance to the taxpayer and costly to the Department of Revenue. *Id.* at 5–6.

It is believed that eliminating the intangibles tax would not cause a reduction in the State’s budget, because the State’s tax revenues would ultimately increase due to the State’s economic growth, especially if the private sector can save and invest without the burden of the intangibles tax. *Id.* at 7. Therefore, the weightier argument is that the intangibles tax is a huge burden on the State in exchange for a small return, which supports the notion that increasing or enforcing the intangibles tax is not the most efficient replacement for lost property tax revenues. *Id.*

223. *Supra* nn. 110–114 and accompanying text (discussing millage rates in Florida’s counties).

needs for government services.”²²⁴ Increasing millage rates, while doing nothing to address the underlying problem of too much double-dipping into local governments’ pockets, merely sets up future generations of Floridians for a quagmire of infrastructure, public school, and basic services shortages and problems.

V. POLICY IMPLICATIONS

Beyond the practical effects of an increased homestead exemption are the policy considerations that underlie the purpose of the constitutional structure of taxation in Florida. On one hand, the historical purpose of the homestead was to protect the family home and to keep residential property off the tax rolls as a safety net for lower-income families.²²⁵ However, did the framers of Florida’s Constitution intend for young families and recent homebuyers to be responsible for the majority of the tax burden? No—these were the very people that the framers wanted to protect from financial burden.²²⁶ In addition, one of the oldest principles of property law is that property should be freely alienable, but Florida’s system of taxation can actually discourage property transfers, because sellers are reluctant to leave their tax shelters for new homes when their taxes may double or triple.²²⁷

Next, should an increase in the exemption take effect, owners of high-value homes, rental and investment property, businesses, and anyone who chooses to purchase a different residence will shoulder even more of the tax burden.²²⁸ In a State that relies on the sales tax and buying power of individuals for revenue generation, is it not bad public policy to heavily tax those with the most

224. Joni A. Coffey, *The Case for Fiscal Home Rule*, 71 Fla. B.J. 54, 56 (Apr. 1997).

225. *Supra* pt. II(A) (setting forth the origin and purpose of the homestead exemption).

226. *See Law v. Law*, 738 So. 2d 522, 525 (Fla. 4th Dist. App. 1999) (stating that “the purpose of the homestead exemption . . . [is] so that the homeowner and his or her heirs may live beyond the reach of financial misfortune . . .”); Cooper & Marks, *supra* n. 5, at 759 (asserting that one intended purpose of the homestead exemption was to protect the owner’s heirs).

227. *See Braga*, *supra* n. 156 (noting that because of Save Our Homes, people who want to move to a different home are staying in their current home to avoid paying substantially higher taxes on the new home). When people feel that they cannot afford to move because their tax bill will double or triple, there are fewer houses for sale and prices rise because supply is limited. *Id.* *See also LaFrance*, *supra* n. 24, at 844 (discussing the disincentives to buying and selling property subject to an acquisition-value taxation system).

228. *Supra* pt. IV(A) (discussing the disproportionate tax burden on certain property owners).

spending power? Persons who own real estate or small businesses, as well as those who move to new residences, are contributing heavily to the State's economy, whereas those who are discouraged to move because of the current tax system are paying a disproportionately low share of property taxes.

Furthermore, charitable, religious, and other exempt properties are not necessarily exempt from special assessments, user fees, or other charges that governments may impose to recoup lost revenue.²²⁹ If public policy warranted that these entities should pay a share of the tax burden, then they would be required to pay property taxes on their land like any other property owner. But society has decided that these entities provide benefits to the community that are worth more than requiring them to pay property taxes. However, by allowing and encouraging the imposition of special assessments and user fees, these entities are essentially losing their tax-exempt status.²³⁰

Other policy concerns lie in the constitutional homestead exemption provision itself. Many, including then-Florida Supreme Court Justice Grimes, believed that Save Our Homes met the criteria to trigger the homestead "repealer" in the Constitution and that the exemptions in the Constitution would be rendered meaningless by allowing both systems of property assessment to co-exist.²³¹ Although a majority of the Florida Supreme Court ultimately held that the Save Our Homes amendment would not trigger the "repealer" under the plain language of the constitutional provision,²³² the co-existence of the Save Our Homes Cap and the homestead exemption have eroded the ability of local governments to collect revenue, a power also granted in the Constitution.²³³ Numerous constitutional revisions limiting local taxing

229. Dubov, *supra* n. 11, at 1488.

230. *Id.* at 1490.

231. *Fla. League of Cities*, 607 So. 2d at 397, 404 (Grimes, J., dissenting). "If the amendment passes, any homestead property which appreciates by more than [three percent] of the prior year's assessment will have to be assessed at an amount which is a specified percentage of its just value. It is illogical to conclude that the repealing sentence of section 6(d) only becomes activated by an amendment which requires an across-the-board reduction in homestead assessments." *Id.* at 404. *See also* Dubov, *supra* n. 11, at 1489–1490 (discussing how provisions in the Constitution are becoming meaningless because courts routinely allow local governments to fund community-wide services though special assessments).

232. *Fla. League of Cities*, 607 So. 2d at 401.

233. Fla. Const. art. VII, § 9(a).

authority have left local governments with no financial planning tools, and in passing these amendments, little thought was given to the needs of counties and local governments twenty to thirty years down the road.²³⁴ It is poor public policy to leave the next generation worse off than the one before.

The fact remains that every resident of Florida, wealthy or poor, is owed the provision and protection of government services. Revenue generated from the sales tax has increased, and revenue per person has increased over the past decade, but Florida's population and demand for infrastructure and government services has also multiplied. A tax structure that depends so heavily on the sales tax may provide ample revenue during times of economic health, but in times of economic downturn consumers will be more conservative with their buying power. The Author believes that Florida should not take a "wait and see" approach. Instead, Florida should enact sound financial-planning laws now that will enable the State to continue to be attractive to current residents, residents seeking to relocate, and tourists, but at the same time will allow local governments to collect the revenue necessary to maintain and expand the state's infrastructure.

VI. ALTERNATIVE PROPOSALS

Floridians should examine California's history with Proposition 13 and understand that, notwithstanding an increased homestead exemption, Save Our Homes alone limits local government revenue to the point that residents trade quality of life and public services for tax savings. Whether one agrees with an acquisition-value taxation system will most likely depend on one's economic situation and stage of life, and one's opinion about this type of tax system can shift with changes in financial circumstances. It may be that Floridians as a whole prefer the acquisition-value type system, and if that is the case, then the homestead tax exemption's time may have passed. There likely will come a time when Save Our Homes and the homestead tax exemption cannot continue to co-exist and still provide local governments with the

234. See Coffey, *supra* n. 224, at 55-56 (discussing the effects of constitutional revisions on local governments' ability to meet their fiscal needs).

revenue they require to support the rising need for infrastructure and basic public services.

The Author's first suggestion for redesigning the tax structure is for voters to repeal either the homestead exemption or the Save Our Homes Cap, after the Constitutional Revision Commission or a Task Force determines which would be more beneficial in the long term for property owners—including small businesses and commercial property owners—and local governments.²³⁵ Another alternative would be to repeal the constitutionally imposed tax structure and allow the amount of the homestead exemption and Save Our Homes Cap to be determined by the Legislature, giving legislators the freedom to determine exemption levels based on changes in the state economy. Of course, this would “fly in the face of” Floridians' history of expressing anti-tax sentiment through the Constitution,²³⁶ but it would still allow the people to speak through their elected representatives. The Legislature and local governments, and effectively their constituents, would then have control in deciding whether to raise millage rates beyond ten mills, implement a state income tax, or raise the cap limit on Save Our Homes to meet financing needs.

One widely discussed proposition is a graduated scale for the homestead exemption.²³⁷ Under this system, the exemption's maximum amount would be tied to “the average cost or value of

235. The Author realizes that it is highly unlikely that Florida voters would repeal either the Save Our Homes Cap or the homestead exemption, and even more unlikely that a political candidate would propose such a constitutional amendment. *E.g.* Maurice Tammann & Michael Braga, *Portable Tax Break Seen As Fix, Mistake*, Sarasota Herald-Trib. A1 (Sept. 24, 2005) (quoting Lake County Property Appraiser Ed Havill, who when asked about doing away with the Save Our Homes Cap stated, “Nobody wants to shoot Santa Claus and lose the next election”). What is more likely, however, is that voters would enact a “portable” Save Our Homes Cap, which would “allow homeowners to keep their tax break when they move to a new home in the state.” *Id.* Ken Wilkinson, Lee County Property Appraiser and one of the original proponents of Save Our Homes, supports a portability amendment for the 2006 election ballot. *Id.* However, this amendment would just further compound the problems already presented in this Comment, including more of the tax burden being placed on non-homesteaders, renters, businesses, and commercial property owners and creating more inequalities and problems for Florida's economy and local governments. *Id.*

236. Dubov, *supra* n. 11, at 1507 (stating that “creative attempts to generate revenue sometimes fly in the face of constitutional provisions adopted by the citizens of Florida specifically to limit local government ad valorem taxing powers”).

237. Blanton, *supra* n. 3, at 462. In the mid-1980s, before Save Our Homes was passed, the Taxation and Budget Reform Commission discussed a variety of options for proposed changes to the homestead exemption. *Id.*

housing in the county.”²³⁸ The logic is that this type of formula “would reduce the exempt amount in rural or slow growing counties where property values are low and increase the exempt amount in large, fast growing counties.”²³⁹ Another proposal indexes the homestead exemption to inflation or increases in property values, and would be designed to “prevent the erosion of the relative value of the exemption.”²⁴⁰ Furthermore, the property tax could be made more progressive by “phasing out the homestead exemption for properties with high values.”²⁴¹ This type of phase-out would prevent wealthy homeowners from using their home as a tax haven.

If Floridians value equal taxes for similarly situated properties and permanent residents’ contributions to the State, a homestead exemption that is tied to the rate of inflation and average housing values, in lieu of the Save Our Homes Cap, would provide both. While saving on property taxes through the Save Our Homes Cap is beneficial to property owners who do not intend to move, a homestead tax exemption that was instead tied to inflation would not create the type of disparities in tax treatment that point to possible equal protection violations.²⁴² This proposal could achieve much of the same benefits as Save Our Homes, yet would not create as much disparity and resentment between owners of similar properties.²⁴³ It is likely that the only way to per-

238. *Id.*

239. *Id.*

240. *Id.* The proposal more commonly discussed was to tax the “first increment of value (such as the first \$5,000, \$10,000 or \$15,000) and then apply[] the exemption.” *Id.* However, this proposal would actually make the property tax more regressive and would negate the underlying purpose of the homestead exemption—to protect low-income families from losing the family home. *Id.*

241. *Id.* Even though this proposal might seem to treat all property owners unequally, “we can . . . agree that a millionaire is differently situated than a person living below the poverty level. Even if the poor person could pay the same tax as the millionaire, we can agree that their different circumstances justify making the millionaire pay more taxes.” John A. Miller, *Equal Taxation: A Commentary*, 29 Hofstra L. Rev. 529, 544–545 (2000).

242. *Supra* pt. IV(A) (discussing possible equal protection violations posed by Save Our Homes).

243. Had the Budget and Reform Commission enacted one of these changes in the 1980s, it is possible that Save Our Homes would not have been necessary. Floridians concerned about increasing property values took the matter into their own hands instead of waiting for the Legislature to react. Blanton, *supra* n. 3, at 456–457. Some Florida government leaders also believe that “the state is teetering on the edge of a crisis.” Tamman & Braga, *supra* n. 235 (quoting Sarasota County Administrator Jim Ley, “The Florida property tax system sucks . . . Save Our Homes has created a train wreck in our tax base”).

suade Floridians to repeal the Save Our Homes amendment and retain the homestead exemption would be to provide a homestead exemption benefit that correlates to property value.²⁴⁴

VII. CONCLUSION

Because of Florida's rapid population influx and increasing demand for infrastructure, increasing the homestead exemption would be unfavorable to the ability of local governments to generate revenue and may actually cause taxation by other, less obvious means. If an amendment to raise the exemption appears on an election ballot, it is imperative that Florida voters understand the significance of their affirmative vote. Voters may unwittingly be voting to impose special assessments, impact fees, or even a state income tax on themselves in the future, or may be voting to sacrifice quality of life and green space for shopping malls and car dealerships.²⁴⁵

The Author questions whether the Save Our Homes Cap and homestead exemption can continue to co-exist and generate property tax revenue sufficient to meet local government needs without creating equal protection problems or imposing unconstitutional taxes on property owners. An alternative would be for Florida voters to select one or the other, possibly repealing the Save Our Homes Cap in favor of an indexed or graduated scale homestead exemption that correlates to housing values and inflation. The Author's other suggestion is to amend the Constitution to give local governments more power to create alternative sources of revenue or to repeal the constitutionally imposed tax structure altogether.

Finally, it is certain that there were enough signatures on the citizen initiative petition in 2004 to place an amendment of this nature on the election ballot. If another group or political action committee proposes a similar amendment in the future, which is likely, and the amendment appears on the general election ballot, it has a high chance of success for two reasons. First, Florida vot-

244. See Blanton, *supra* n. 3, at 462 (noting that, in 1986, voters "strongly indicated their unwillingness to give up any part of the exemption, despite widespread publicity about the number of rural residents who pay no property taxes whatsoever").

245. See Schwartz, *supra* n. 129, at 184 (discussing the trade-offs that occur when local governments are forced to rely on sales tax revenue to replace property tax revenue).

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ers have a history of passing constitutional amendments.²⁴⁶ Second, the average homeowner sees “tax relief” in bold print and automatically thinks that the amendment will translate into more money in his or her pocket. Hopefully, the Florida Supreme Court will again be able to strike down this type of amendment as misleading, or voters may learn, too late, that they were misled.

246. Bailey, *supra* n. 21, at 5 (noting that Florida voters have amended the Constitution fifty-eight times since 1968).