LAST WORDS ON RECENT DEVELOPMENTS

NOTHING IS CERTAIN IN LIFE EXCEPT DEATH AND TAXES: PROVIDING FAMILIES WITH CONSTITUTIONAL RIGHTS THEY CAN DEPEND ON UNDER FLORIDA'S HOMESTEAD TAXATION REGIME

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Floridians enjoy a constitutional right to a Homestead Tax Exemption:

> Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law.[1]

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1. Fla. Const. art. VII, § 6(a); *De La Mora v. Andonie*, 51 So. 3d 517, 519–520 (Fla. 3d Dist. App. 2010). The *De La Mora* court stated that

> [t]he plain language of [A]rticle VII, [S]ection 6(a) provides that an owner of residential real estate in Florida is constitutionally entitled to an exemption from ad

In addition to the Homestead Tax Exemption, Floridians also enjoy a constitutional right to a cap on homestead taxation (the Save-Our-Homes Cap), which limits the extent to which the value of a homestead can increase each year for purposes of taxation.[2] Both the Tax Exemption and Cap have been described as a "coordinated constitutional scheme."[3]

The phrase "legally or naturally dependent," which is contained within both schemes, illustrates how the Homestead Tax Exemption and the Save-Our-Homes Cap may at times overlap. As noted above, the Tax Exemption may be claimed by a "person who has the legal or equitable title to real estate and maintains thereon the permanent residence" of another who is "*legally or naturally dependent* upon the owner."[4] In turn, the Cap provides that after a "*change of ownership*" of a homestead, such property "shall be assessed at just value"[5] (which removes the Cap); but Florida Statutes Section 193.155, which implements the Cap, states that "[t]here is no *change of ownership* if . . . [u]pon the death of the owner, the transfer is between the owner and

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valorem taxation—more accurately, a reduction in the assessed value—under either of the following two separate and independent scenarios: 1. Where the owner of the property is a permanent resident on the property, or 2. Where someone legally or naturally dependent on the owner is a permanent resident on the subject property.

Id.

2. Fla. Const. art. VII, § 4(d); *Zingale v. Powell*, 885 So. 2d 277, 285 (Fla. 2004). An annual increase in the assessed value of homestead property cannot exceed the lesser of "[t]hree percent . . . of the assessment for the prior year" or "[t]he percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics." Fla. Const. art. VII, § 4(d)(1)(a), (b). The Cap creates a significant benefit to homeowners by insulating the tax base of a homestead from fluctuations in the real estate market.

3. *Zingale*, 885 So. 2d at 284–285.

> The purpose of the [Save-Our-Homes] amendment is to encourage the preservation of homestead property in the face of ever increasing opportunities for real estate development, and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to [H]omestead [T]ax [E]xemption (Article VII, Section 6, Florida Constitution), exemption from forced sale (Article X, Section 4(a), Florida Constitution), and the inheritance and alienation of homestead (Article X, Section 4(c), Florida Constitution).

Smith v. Welton, 710 So. 2d 135, 137 (Fla. 1st Dist. App. 1998).

4. Fla. Const. art. VII, § 6(a) (emphasis added).

5. *Id.* at § 4(d)(3) (emphasis added); *see State Dep't of Revenue v. Markham*, 426 So. 2d 555, 557–558 n. 2 (Fla. 4th Dist. App. 1982) (stating that "just valuation or just value is legally synonymous with full cash value").

another who is a permanent resident and is *legally or naturally dependent* upon the owner" (which effectively preserves the Cap).[6] Evidently, the scope of the phrase "legally or naturally dependent" is significant in that it not only sets the boundaries with regard to who is entitled to claim the Homestead Tax Exemption, but also determines who may retain the Save-Our-Homes Cap after a "change of ownership" is effected.[7]

Importantly, whether a person is "legally or naturally dependent" on a homestead owner is becoming an increasingly significant issue as more people claim the Tax Exemption and Cap,[8] while local governments and school districts correspondingly struggle with declining revenues.[9] Therefore, people who are interested in purchasing property in Florida need clarity with regard to the scope of the Homestead Tax Exemption,[10] and people concerned about the tax consequences of a homestead's "change of ownership" need clarity with regard to the scope of the

6. Fla. Stat. § 193.155(3)(a)(4) (emphasis added).

7. *Id.* at § 193.155(3)(a) (providing that "a change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person" and then listing exceptions, one of which is when a homestead is transferred to a person who is "legally or naturally dependent" on the property owner).

8. *See generally* Richard S. Franklin & Roi E. Baugher III, *Protecting and Preserving the Save Our Homes Cap*, 77 Fla. B.J. 34, 34 (Oct. 2003) (explaining that the Cap "saves untold numbers of Floridians thousands of dollars in tax, and in some cases tens of thousands of dollars in tax" and noting that the Cap "protected about $80 billion in assessed value from taxation" in 2002).

9. *See also* Amanda S. Coffey, *Pillow Talk and Property Taxes: Florida's Family Unit Requirement for Homestead Exemption and the Modern Marriage*, 41 Stetson L. Rev. 401, 403 n. 7 (2012) (citing to multiple articles discussing declining revenues in different cities); *see e.g.* Martha Brannigan, *Property-Tax Cheats Facing Crackdown*, Miami Herald, http://www.miamiherald.com/2012/07/28/2918219/property-tax-cheats-facing-crackdown.html (July 28, 2012) (reporting on Miami–Dade's crackdown on illegal homestead exemption claims that cost the City millions of dollars each year); *see generally* Josephine W. Thomas, *Increasing the Homestead Tax Exemption: "Tax Relief" or Burden on Florida Homeowners and Local Governments?* 35 Stetson L. Rev. 509 (2006) (arguing against the enactment of an increased Homestead Tax Exemption).

10. This is particularly true in light of the Florida Supreme Court's recent decision expanding the Tax Exemption to people who live outside of the United States when the foreign homeowner supports a person who is: (1) "legally or naturally dependent" on the owner; and (2) who permanently lives on the property. *Garcia v. Andonie*, 101 So. 3d 339, 342 (Fla. 2012); *see also* Nestor Gasset & Katerina Gasset, Active Rain, Blogs: Nestor & Katerina Gasset Realtors® Wellington Florida Homes for Sale, *Florida Supreme Courts Rules on Homestead Exemption Case*, http://activerain.com/blogsview/3469100/florida-supreme-courts-rules-on-homestead-exemption-case (accessed Apr. 27, 2012) (reporting that *Garcia* "will affect thousands of families in the international arena that purchase homes in South Florida").

Cap.[11] Moreover, property appraisers who must investigate and make these significant determinations affecting both homeowners and the state could use assistance in decrypting this archaic phrase.[12] Indeed, although Florida Attorneys General provided nonbinding guidance after the phrase was enshrined in Florida's Constitution in 1938,[13] more than seventy years passed before an appellate court weighed in.[14]

In that sense, the decision in *Willens v. Garcia*[15] represents a watershed in the development of an obscure yet increasingly relevant area of taxation jurisprudence governing Florida homesteads.[16] The decision, therefore, provides a useful framework for exploring the meaning of the phrase "legally or naturally dependent" contained within Florida's homestead-taxation regime. Part I of this Article outlines the facts and circumstances underlying the decision in *Willens*. Part II discusses the judicial canons of statutory construction that may apply to the phrase. Part III analyzes the relation between the phrase and the legal duty of a parent to support a child. Part IV compares the different Attorney

11. *See* Franklin & Baugher, *supra* n. 8, at 38–40 (discussing the scope of the phrase "legally or naturally dependent" within the "change of ownership" exception under Florida Statutes Section 193.155 without addressing the meaning of the phrase).

12. *See* Coffey, *supra* n. 9, at 403 (explaining that appraisers (and practitioners and judges) need legislative guidance so that exemptions are uniformly granted in each county, which will minimize the likelihood that appraisers will develop ad hoc standards for granting exemptions, and which in turn will reduce inequitable impacts on homeowners and government agencies).

13. Fla. Att'y Gen. Op. 39-438 at 445–446 (Jan. 19, 1939). The phrase "legally or naturally dependent" was first inserted into the 1938 amendment to the 1934 Homestead Tax Exemption. *Compare* Fla. Const. art. X, § 7 (as amended in 1938) (adding the dependency language) *with* Fla. Const. art. X, § 7 (1934) (lacking the dependency language). The phrase also appears within Florida Statutes Section 196.031 and Rule 12D-7.007 of the Florida Administrative Code, both of which implement the Tax Exemption but neither of which contain a definition of the phrase. Fla. Stat. § 196.031(1); Fla. Admin. Code r. 12D-7.007(4) (WL current through Nov. 2012).

14. *Willens v. Garcia*, 53 So. 3d 1113 (Fla. 3d Dist. App. 2011); *see* J. Allen Maines & Donna Littman Maines, *Our Legal Chameleon Revisited: Florida's Homestead Exemption*, 30 U. Fla. L. Rev. 227, 294 (1978) (name changed to Fla. L. Rev. after volume 40) (stating that "[n]o appellate cases have been reported which consider the definition of 'legally or naturally dependent'"); *see generally* 51A Fla. Jur. 2d *Taxation* § 1293 (2012) (discussing the "legally or naturally dependent" requirement in the Tax Exemption without referencing any appellate decision which has construed the phrase).

15. 53 So. 3d 1113.

16. *See* Attorney's Title Fund Servs., LLC, *Case Reviews, 'Legally or Naturally Dependent' Defined for Homestead Tax Exemption*, 43 The Fund: Concept, Fla. Ed. 32, 33 (Apr. 2011) (available at http://www.mapoftheweek.net/Post/437/042011_FundConcept.pdf) (discussing the decision in *Willens*); *City, County & Local Government Law Table of Cases for Recent Developments*, 41 Stetson L. Rev. 531, 556–557 (discussing the significance of *Willens*).

General opinions that have interpreted the phrase. Part V explores the origins of the phrase and the Legislature's intention with the language. Part VI provides a brief conclusion.

I. FACTUAL BACKGROUND

In 1989, Shane Willens experienced a series of tragedies.[17] First, his father suffered a stroke that resulted in permanent paralysis and the need for constant nurse supervision.[18] Next, while his father was hospitalized and being treated, Willens' mother died of a heart attack.[19] After his father's release from the hospital, Willens made the difficult decision to quit his job and take care of his father full time because the family could not afford a nurse.[20] Willens' caretaking "responsibilities included dressing his father, taking his father to doctors, changing his father's sheets, assisting his father [in] go[ing] to the bathroom, washing his father's clothes, cooking for and feeding his father, and managing his father's business affairs."[21] During this period, Willens' father provided him with living expenses because he could not earn a living while caring for his father.[22] This symbiotic "state of mutual dependence" lasted until Willens' father's death, which occurred approximately twenty years later.[23]

Willens' father owned and resided in a homestead property from 1992 until his death, during which time he claimed the Save-Our-Homes Cap to limit his property tax liability.[24] Willens' father retained a life estate in the property while residing thereon, and upon his death, the property transferred to Willens, the remainderman.[25]

After the transfer, Willens filed a petition with the Miami–Dade County Property Appraiser to determine the homestead status of the property. Based on the transfer to Willens, the Appraiser determined a "change of ownership" took place under

17. Petr. Amend. Pet. for Writ of Cert., *Willens v. Garcia* at 2 (Fla. 3d Dist. App. Sept. 15, 2009) (No. 3D09-2497, 53 So. 3d 1113 (Fla. 3d. Dist. App. 2011)).
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Willens*, 53 So. 3d at 1115.
25. *Id.* at 1115–1116.

Florida Statutes Section 193.155.[26] Therefore, the Appraiser reassessed the value of the homestead property.[27] As a consequence of the reassessment, Willens lost eighteen years of caps on the increase in the value of the property.[28]

Particularly upset with the outcome, Willens sought relief from the Value Adjustment Board, challenging the Appraiser's decision to reassess the value of his homestead.[29] Offering his tax returns as evidence, Willens argued that no "change of ownership" occurred because he could not *both* provide for himself *and* care for his father at the same time; thus, Willens reasoned, the property was transferred to a person "naturally dependent" on an owner, meaning he was entitled to retain his father's tax cap.[30] Disagreeing with Willens, the Value Adjustment Board upheld the Appraiser's decision to reassess the value of his homestead.[31]

Willens then filed an action in the Miami–Dade County Circuit Court in which he challenged the decision of the Value Adjustment Board.[32] In an effort to find a definition of the phrase "naturally dependent," the circuit court examined the legislative history of Florida Statutes Section 193.155 but failed to find anything probative.[33] The court then recognized that the caselaw discussing "the definition of natural dependence" was scarce but stated that it must presume that the Legislature was aware of preexisting definitions.[34] The court then concluded:

> A review of these cases and statutes leads the Court to conclude that dependency describes a condition where a person is not able to sustain oneself without the aid of another. Natural dependency would appear to describe dependency based on the age of a child. *1 A.L.R.*[ ] *2d* at page 914 stands for the proposition that the common law went no further than to impose on parents the duty of supporting their minor children, and that

26. Or. on Cross Mots. for S.J., *Willens v. Garcia*, 2009 WL 2003015 (Fla. 11th Cir. May 18, 2009) (No. 09-1608-CA-01).

27. *Id.*

28. *Id.*; Petr. Amend. Pet. for Writ of Cert., *Willens v. Garcia* at 1.

29. Or. on Cross Mots. for S.J., *Willens v. Garcia*, 2009 WL 2003015.

30. *Id.*; *see also infra* n. 42 and accompanying text (explaining that the phrase "naturally dependent" encompasses persons who are "dependent based on moral considerations").

31. Or. on Cross Mots. for S.J., *Willens v. Garcia*, 2009 WL 2003015.

32. *Id.*

33. *Id.*

34. *See id.* (quoting Florida Statutes Sections 440.16 and 743.07, neither of which defines a "natural" dependent).

> as a general rule there is no obligation on the part of a parent to support an adult child. This is unquestionably the rule with respect to able-bodied children. As a general rule, the legal duty of a parent to support his children ceases at the age of majority.[35]

The court then upheld the decisions of both the Appraiser and the Value Adjustment Board, reasoning that because "Willens did not demonstrate that he suffered from either a mental or physical incapacity which began before his [eighteenth] birthday," "Willens moved from the condition of natural dependence upon his [eighteenth] birthday."[36] Concerned about the increase in his property tax liability, Willens sought relief on appeal.[37]

II. THE CANONS OF CONSTRUCTION

In its analysis, the court in *Willens* began by describing what it perceived as the relevant canons of statutory construction:

> Where, as in this case, a statute does not define a term at issue, courts commonly resort to canons of statutory instruction to derive the proper meaning. One of the fundamental tenets of statutory construction requires courts to give the words of a statute the plain and ordinary meaning usually attributed to them, unless a different meaning or connotation necessarily is implied from the manner or context in which the words are used. When necessary, the plain and ordinary meaning of words can be ascertained by reference to a dictionary.
>
> A "dependent" is defined as, "One who relies on another for support; **one not able to exist or sustain oneself without the power or aid of someone else.**" A "legal dependent" is defined as, "A person who is dependent according to the law; a person who derives principal support from another and [usually] may invoke laws to enforce that support." "Natural" is defined as being . . . "[i]n accord with the regular course of things" or "[o]f or relating to birth."[38]

35. *Id.* (citations omitted).
36. *Id.*
37. *Willens*, 53 So. 3d at 1115.
38. *Id.* at 1116 (emphasis in original) (citations omitted).

Notably, the court in *Willens* recognized that a different meaning or connotation may be "implied from the manner or context" in which particular language is used.[39] Yet the court did not address whether a different meaning or connotation is implied from the manner or context in which the phrase "legally or naturally dependent" is used.

Further, despite the court's recognition that the "meaning of words can be ascertained by reference to a dictionary," and despite the court's reference to a definition of "natural" within a 2009 version of Black's Law Dictionary,[40] the court failed to recognize another definition of "natural" within Black's Law Dictionary, which preceded the year 1938 when the Legislature first used the phrase "legally or naturally dependent" in an amendment to the Tax Exemption:

> The juristic meaning of [natural] does not differ from the vernacular, *except in the cases where it is used in opposition to the term "legal[";] and then it means* proceeding from or determined by physical causes or conditions, as distinguished from positive enactments of law, or attributable to the nature of man rather than to the commands of law, or *based upon moral rather than legal considerations or sanctions.*[41]

According to this definition, the phrase "legally or naturally dependent," which uses the term "natural" in opposition to the term "legal," signifies the following two classes of dependents: people who are "legally dependent" on a homestead owner for support—that is, dependent based on legal considerations or sanctions—and people who are "naturally dependent" on a homestead owner for support—that is, dependent based on moral considerations or sanctions.[42]

The distinction between those who are "legally dependent" on a homestead owner for support and those who are "naturally dependent" on a homestead owner for support is important in light of the court's discussion of the *legal* duty of a parent to support a child, as the following Part explains.

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39. *Id.*

40. *Id.*

41. *Black's Law Dictionary* 1222 (3d ed., West 1933) (emphasis added).

42. The word "'[o]r' when used in a statute is generally to be construed in the disjunctive," which requires alternatives to be treated separately. *Telophase Soc'y of Fla., Inc. v. St. Bd. of Funeral Dirs. & Embalmers*, 334 So. 2d 563, 566 (Fla. 1976).

III. THE LEGAL DUTY OF A PARENT TO SUPPORT A CHILD

After discussing the canons of construction, the court proceeded to discuss caselaw recognizing the legal duty of a parent to support a child:

> As a general rule, the legal duty of a parent to support his child ceases at the age of majority. One exception to the general rule imposes a continuing duty on a parent to care for an adult child suffering from physical or mental deficiencies. Willens is an able-bodied adult who is long past nonage. He possesses none of the traits an ordinary observer might associate with a dependent. He nevertheless contends the phrase "legally or naturally dependent" encompasses the concept of the "moral obligation," pursuant to which he, with the full support of his siblings, undertook to keep his father alive for those many laudable years.[43]

The court's discussion of the legal duty of a parent to support a child is in fact relevant to the issue of whether Willens was "legally dependent" on his father for support.

As the court previously noted, the term "legal dependent" is defined as: "[a] person who is dependent according to the law; [or] a person who derives principal support from another and [usually] may invoke laws to enforce that support."[44] Because minors and disabled adult children derive "principal support from another" and "may invoke laws to enforce that support," minors and disabled adult children would appear to be "dependent according to the law."[45] Moreover, because the duty of a parent to support a child does not extend to an able-bodied adult, Willens would not appear to be "dependent according to the law" when he received the home.[46]

Yet although the court's discussion of the duty of a parent to support a minor or disabled adult child is relevant to whether Willens was "legally dependent" on his father for support, the court then appears to questionably reason that because Willens is not a minor or disabled child, "[Willens] possesses none of the

43. *Willens*, 53 So. 3d at 1116 (citations omitted) (alterations added).
44. *Id.* (quoting *Black's Law Dictionary* 503 (9th ed., West 2009)).
45. *Id.*
46. *Id.*

traits an ordinary observer might associate with a dependent."[47] For starters, the court's reasoning fails to address the cases in which a "dependent" is neither a minor nor a disabled adult.[48] Moreover, because minors and disabled adults are subsumed within the "legally dependent" class, such reasoning fails to consider whether Willens fell in the "naturally dependent" class.[49] Therefore, the court's discussion of the legal duty of a parent to support a child is not relevant to the precise legal issue at hand: whether an able-bodied adult (not a minor or a disabled adult) can be "naturally dependent" (not "legally dependent") on a parent for support.[50]

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47. *Id.*

48. *See* Maines & Maines, *supra* n. 14, at 244 (noting that "dependents residing on the homestead do not have to be minors or invalids" under the Florida Constitution's Homestead Creditor Exemption); Vernon W. Clark, *Homestead Tax Exemption in Florida*, 13 U. Miami L. Rev. 261, 275 (1959) (discussing cases under the Homestead Creditor Exemption in which able-bodied adult children were held to be dependent upon a parent for support).

49. *See Hechtman v. Nations Title Ins. of N.Y.*, 840 So. 2d 993, 996 (Fla. 2003) (describing the "elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage") (citations omitted); Clark, *supra* n. 48, at 275 (describing dependent relationships that may not "be sufficient to warrant considering the person being supported a legal dependent" but which "might be properly classified in the 'natural dependent' category").

50. Moreover, if the phrase "legally or naturally dependent" were construed to only encompass minors and disabled adults (as the circuit court opinion suggests), such a construction raises a potential problem by discriminating between the following classifications of homestead owners: homestead owners who claim the Tax Exemption based on a minor child or a disabled adult; and homestead owners who claim the Tax Exemption based on an able-bodied adult. Moreover, such a construction of "legally or naturally dependent" also has a discriminatory effect on the right of the aforementioned types of dependents to retain the Tax Cap when a "change of ownership" of a homestead is effected under Florida Statutes Section 193.155. Therefore, such a construction implicates the Equal Protection Clauses of the Florida and the United States Constitutions, which require "at least a rational basis for disparities to exist." *Osterndorf v. Turner*, 426 So. 2d 539, 545 (Fla. 1982) (holding that "there is no rational basis for distinguishing between *bona fide residents* of more than five consecutive years and *bona fide residents* of less than five consecutive years in the payment of taxes on their homes"); *see also Reinish v. Clark*, 765 So. 2d 197, 203–207 (Fla. 1st Dist. App. 2000) (holding that the Florida's Homestead Tax Exemption "permanent residence" requirement did not violate the Equal Protection Clause); *see generally* Franklin & Baugher, *supra* n. 8, at 37–38 (discussing the constitutional implications of the Save-Our-Homes Cap in light of California's homestead tax cap that was challenged under the Equal Protection Clause in the United States Supreme Court). Although there may be a rational basis for such a construction of the phrase "legally or naturally dependent"—that is, there may be a legitimate governmental interest that is furthered by the discriminatory grant of rights under the Tax Exemption and Cap—a full discussion of the equal protection issue is beyond the scope of this Article.

IV. ATTORNEY GENERAL OPINIONS

After discussing the canons of statutory construction and the legal duty of parents to support their children, the court discussed two Florida Attorney General opinions in which the phrase "legally or naturally dependent" was interpreted.[51]

A. The 1982 Attorney General Opinion

At issue in the 1982 Attorney General opinion was whether the Homestead Tax Exemption could "be claimed by an individual living out of state who purchases real estate in Florida for his or her dependent children to live upon while attending college in the state of Florida."[52] In the analysis, the Attorney General explained:

> [T]he exemption could be available if property is being used as a permanent residence by one who is naturally dependent on the owner, even though not legally dependent on him or her.
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> The phrase "naturally dependent" has not been defined or construed in the Constitution, statutes, [caselaw], administrative rules, or previous opinions of this office. The word "natural" has been defined in Black's Law Dictionary 1177 (Rev. 4th ed. 1968), as follows:
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> The juristic meaning of this term does not differ from the vernacular, except in the cases *where it is used in opposition to the term "legal*[";] and then *it means* proceeding from or determined by physical causes or conditions, as distinguished from positive enactments of law, or attributable to the nature of man rather than to the commands of law, or *based on moral rather than legal considerations or sanctions.* (e.s.)
>
> Since the [S]tate Constitution and statutes use the word "naturally" in opposition to "legally," the latter portion of this definition would appear applicable so that the exemption could be available where property was the permanent residence of one who was morally dependent on the owner for support, even though not legally dependent on him. Even the preceding cases which refused to order support for an adult student recognize the moral obligation of a parent to provide an education

51. *Willens*, 53 So. 3d at 1116–1118.

52. Fla. Att'y Gen. Op. 82-27 at 63 (Apr. 20, 1982) (available at http://myfloridalegal.com/ago.nsf/Opinions/31CBD49A4B454AE785256586005797FC).

> for his children, and the continued moral dependency of adult college students.[53]

Some evidence suggests that the legislative and executive branches have approved this construction. For example, as Attorney General opinions serve as guides for state executive and administrative officers in performing their various official duties,[54] the Department of Revenue—the agency with statewide control over the administration of property taxes[55]—has issued a Technical Assistance Advisement[56] in which it construed the phrase "naturally dependent" to mean "morally dependent."[57] Furthermore, the fact that the Attorney General issued his opinion in 1982, and the Department of Revenue issued its opinion 1991, and approximately one year later the Legislature used the phrase "legally or naturally dependent" in the Save-Our-Homes Cap, supports the view that the Legislature implicitly affirmed the construction of "naturally dependent" as "morally dependent."[58] Yet despite these signs of approval from Florida's legisla-

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53. *Id.* at 66.

54. *See State v. Fam. Bank of Hallandale*, 623 So. 2d 478 (Fla. 1993) (stating that "[t]he official opinions of the Attorney General, the chief law officer of the state, are guides for state executive and administrative officers in performing their official duties until superseded by judicial decision").

55. *See Dep't of Revenue v. Ford*, 438 So. 2d 798, 800 (Fla. 1983) (citation omitted) (stating that "the Florida Department of Revenue is clearly charged with implementing the legislature's intention that Florida's ad valorem taxation laws are enforced, implemented and administered uniformly throughout the state" and that "[c]entral to this duty is the Department's responsibility of supervising Florida property appraisers and other local taxation officials and ensuring that they comply with the laws which govern the assessment, collection and administration of ad valorem taxes").

56. The Legislature has authorized the Department of Revenue to issue Technical Assistance Advisements "on the tax consequences of a stated transaction or event, under existing statutes, rules, or policies." Fla. Stat. § 213.22(1) (2012).

57. *See* Fla. Dep't of Revenue Advisement Ltr. OPN 91-0035 (May 30, 1991) (available at https://revenuelaw.state.fl.us/LawLibraryDocuments/1991/05/OTH-77232_117112b0 -d924-499e-8d90-97d70d0ab1cd.pdf) (explaining that "if the minor child is morally dependent on the [grandparent] owners for support, then the test of dependency would appear to be met"). Although not binding, courts may rely on Technical Assistant Advisements issued by the Department of Revenue. *See e.g. Dep't of Revenue v. Quotron Sys., Inc.*, 615 So. 2d 774, 777 (Fla. 3d Dist. App. 1993) (stating that "[t]he Technical Assistance Advisements issued by the Department during the relevant period of time, although binding only on the taxpayer who requested such ruling, contradict the Department's assertion that services such as Quotron's were considered taxable as tangible personal property").

58. *See State ex rel. Szabo Food Servs., Inc. of N.C. v. Dickinson*, 286 So. 2d 529, 531 (Fla. 1973) (stating that "[w]hen the Legislature reenacts a statute, it is presumed to know and adopt the construction placed thereon by the State tax administrators"); *Dep't of Revenue v. Bonard Enters., Inc.*, 515 So. 2d 358, 359 (Fla. 2d Dist. App. 1987) (stating in a tax stamp case that "[t]he legislature is presumed to have been aware of the Department's

tive and executive branches, the court identified three reasons for which it chose to abandon the 1982 Attorney General Opinion.[59]

First, the court noted that college is a temporary condition.[60] The court seemed to assume that the period during which a person can be "naturally dependent" must be permanent; yet the court provided no basis for this assumption. Second, the court noted that tax exemptions must be strictly construed and concluded that construing "naturally dependent" to mean "morally dependent" would not be a strict construction; yet the court did not explain why.[61] Finally, the court noted that the ordinary understanding of a "moral obligation" is one that is not legally enforceable; yet the court did not explain the relevance of this fact to the issue in dispute.[62] In other words, the fact that a moral obligation to support a person is not legally enforceable has no relevance to whether the phrase "naturally dependent" means dependence arising from a moral obligation.

In sum, after rejecting the 1982 Attorney General opinion for the aforementioned reasons, the court proceeded to discuss the 1939 Attorney General opinion.[63]

B. The 1939 Attorney General Opinion

In 1939, the Attorney General issued an opinion to address questions arising from an amendment to the 1934 Homestead Tax Exemption. In the opinion, the Attorney General addressed which people fall within the "legally or naturally dependent" class contained therein:

> I am of the opinion that all persons are entitled to claim this exemption where there are other persons legally dependent upon them for support in the sense that the word "legally"

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foregoing position" and that "[n]ot having thereafter amended the relevant legislation, the legislature may be considered to have thereby implicitly affirmed that position as reflecting the legislative intent").

59. *Willens*, 53 So. 3d at 1117.

60. *Id.*

61. *Id.*

62. *Id.* (noting that a "moral obligation" is "[a] duty that is based only on one's conscience and that is **not legally enforceable**; an obligation with a purely moral basis, as opposed to a legal one") (emphasis in original) (citing *Black's Law Dictionary* 1180 (9th ed., 2009)).

63. *Id.*

> there means where they are required by law so to do; such as the duty cast upon the husband by law to support his wife and minor children. Section 5873, Compiled General Laws, 1927, provides for support in certain instances. I quote the same:
>
> > "The children of parents who are unable to support themselves shall be required to make provision for their support."
>
> The words "naturally dependent" as used in the amendment, in my opinion, are persons related by blood to the owner of the property, and who otherwise qualify with the requirements set forth by the Supreme Court of Florida in the case of *Duval v. Hunt*, 15 So. 876. I quote the pertinent part thereof:
>
> > "He must show . . . that he or she was either from the disability of age, or nonage, physical or mental incapacity, coupled with the lack of property means, dependent in fact . . . for support. There must be, when adults claim such dependence, an actual inability to support themselves, and an actual dependence upon someone else for support, coupled with a reasonable expectation of support, or with some reasonable claim to support, from the deceased"[64]

In finding the 1939 Attorney General opinion more persuasive than the 1982 Attorney General opinion, the court in *Willens* relied on a test of dependence applied in the wrongful-death context as the test to apply in the homestead-taxation context.[65]

Yet the decision of the court (and the Attorney General) to extend the test of dependence applied in the wrongful-death context to the homestead-taxation context is questionable. Indeed, the test of dependence announced in *Duval* governs whether a person who is "dependent" for support on a decedent is thereby entitled to institute a wrongful-death action to recover damages.[66] Alternatively, the test of dependence in *Willens* governs whether a person to whom a homestead is transferred was "legally or naturally dependent" on the former homestead owner (which would entitle such transferee to retain the Cap), and whether a person is "legally or naturally dependent" on a current homestead owner (which would entitle such owner to claim the Exemption). Hence,

64. Fla. Att'y Gen. Op. 39-438 at 445–446 (Jan. 19, 1939) (typeface altered).

it is unclear why the test of dependence applied in *Duval* should apply in such a different legal context.[67]

Significantly, the court in *Willens* not only failed to explain why *Duval* is persuasive, but also failed to discuss a 1955 Attorney General opinion that squarely addressed the meaning of the "naturally dependent" class:

> The mere fact that a person is the parent-in-law or the daughter (including grandchildren) of a landowner, not otherwise claiming [H]omestead [T]ax [E]xemption, does not, as a matter of law, make such persons natural dependents of the landowner so as to entitle him to tax exemption. However, *circumstances may have so arranged matters as to make a parent morally obligated to support an adult child* or even grandchildren.[68]

Yet perhaps the most important reason the test of dependence applied in the wrongful-death context should not be applied in the homestead-taxation context is that the Legislature that amended

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65. *Willens*, 53 So. 3d at 1117–1118.

66. In *Duval*, a mother lived together with her grandchild, three unmarried daughters, and an unmarried son. 15 So. 876, 878 (Fla. 1894). The son supported the entire family with his wages until he died in an accident while working. *Id.* The members of the household brought an action for support under Florida's wrongful-death statute, which provided that

> the right of action [for damages resulting from death by wrongful act belongs] (1) to the widow or husband, as the case may be; and, if there be neither of these, then (2) to the minor child or children; and, where there is neither a husband, nor widow, nor minor child, then (3) to any person or persons who are *dependent* for a support upon the person killed; and, if there is no one belonging to either of the above three classes, then (lastly) to the executor or administrator of the person killed.

Id. at 877–880 (emphasis added).

67. Functionally, the wrongful-death statute in *Duval* grants *dependents* the right to *sue for damages*, whereas the Florida Constitution grants *homestead property owners* the right to the *Tax Exemption and Cap* (which may be based on legal or natural dependents). Moreover, the court in *Duval* excluded adult children from the "dependent" class based on specific terms in the wrongful-death statute (which was modeled after a Georgia statute), coupled with principles that were rooted in the wrongful-death context. *Id.* at 879–880. Although the court in *Willens* recognized that the 1939 opinion was rendered "at the time the homestead provision we must now interpret was approved by Florida's citizens close to its present form," the court not only failed to provide any other possible reason for which it may have found the 1939 opinion persuasive, but also failed to provide a reason for which the Legislature would intend to extend a test of dependence in the wrongful-death context to the homestead-taxation context. *Willens*, 53 So. 3d at 1117; *see* Clark, *supra* n. 48, at 275 (stating that "[w]hether a Florida appellate court would approve of such a strict concept of dependency with relation to [H]omestead [T]ax [E]xemption remains to be seen").

68. Fla. Att'y Gen. Op. 55-205 at 263 (Aug. 18, 1955) (emphasis added).

the Homestead Tax Exemption in 1938 intended that a different test would apply, as the following Part explains.[69]

V. ORIGINS OF THE PHRASE "LEGALLY OR NATURALLY DEPENDENT"

In the final portion of the *Willens* opinion, the court rejected Willens' interpretation of the phrase "legally or naturally dependent":

> We finally reject Willens['] effort to draw succor from an interpretation by the Florida courts of the "head of a family" requirement for claiming the benefit or protection of the "other" homestead provision of the Florida Constitution, found in every iteration of the provision from the time homestead protection first appeared in the Florida Constitution in 1868, until it was replaced by the term "natural person" in 1984. Willens points out that during these years, a property owner could base his claim that his property was homestead on a moral obligation assumed by that individual to care for another. He further points out when the ad valorem homestead exemption provision—the provision we are called upon to interpret in this case—first was proposed and approved by the people of the State of Florida in 1934, it not only appeared in Article X of the Florida Constitution, the same article as did its older cousin, but also it included the same "head of a family" qualifying condition to receive the benefit. Willens deduces from all of this that when the [L]egislature drafted the homestead taxation provision for consideration by the electorate on November 6, 1934, it must have borrowed the "head of a family" phrase together with all of its meanings and connotations from the then existing "forced sale" homestead provision. Although Willens concedes the phrase "head of a family" was deleted from the ad valorem homestead provision in 1938, he nevertheless argues it and its interpretive meanings were subsumed in the word "natural" in the phrase "legally or naturally dependent" which was then inserted.
>
> We find Willens' argument creative and intriguing, but not persuasive. First, as Willens concedes, the "head of a family" requirement appeared in the ad valorem homestead taxa-

69. *See Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960) (noting that "[t]he fundamental object to be sought in construing a constitutional provision is to ascertain the intent of the framers").

> tion provision of the Florida Constitution, for a mere four years of its existence. We find no evidence it was interpreted. Second, this Court and others have often cautioned against relying upon other homestead exemptions as authority. In this context, we note that, unlike the ad valorem homestead exemption, the "forced sale" provision is to be "liberally construed for the benefit of those whom it was designed to protect."[70]

This Article now addresses the reasons for which the court rejected Willens' "effort to draw succor from an interpretation by the Florida courts of the 'head of a family' requirement for claiming the benefit or protection of the 'other' homestead provision of the Florida Constitution."[71]

A. The "Head of a Family" Test of Dependence

First, the court in *Willens* noted that the "head of a family" requirement appeared in the 1934 Homestead Tax Exemption for four years but found no evidence that it was interpreted.[72] As the following discussion explains, the courts that construed the 1934 Homestead Tax Exemption's predecessor—the 1868 Homestead Creditor Exemption—issued opinions that not only reveal the meaning of the phrase "head of a family" contained within the 1934 Tax Exemption, but also reveal the meaning of the phrase "legally or naturally dependent" within the 1938 Tax Exemption. Hence, to understand the meaning of the phrase "legally or naturally dependent," this Part discusses the following: (1) the "head of a family" requirement contained in the 1868 Homestead Creditor Exemption; (2) the "head of a family" requirement contained within the 1934 Homestead Tax Exemption; and (3) the "legally or naturally dependent" language inserted into the 1938 Tax Exemption.[73]

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70. *Willens*, 53 So. 3d at 1118–1119 (citations omitted).

71. *Id.*

72. *Id.* at 1119.

73. *See Fla. Dep't of Revenue v. Gainesville*, 918 So. 2d 250 (Fla. 2005) (analyzing the Tax Exemption in light of its legislative history). The Court in *Florida Department of Revenue* described the method by which it conducted its analysis as follows: "Article VII, [S]ection 3(a) was adopted in the 1968 revision to the Florida Constitution. To place this provision in historical perspective, we explore its antecedent provisions in the Florida Constitution of 1885, which also provided an exemption from ad valorem taxation for property used for 'municipal purposes.'" *Id.* at 257.

1. The 1868 Homestead Creditor Exemption

The Florida Constitution of 1868 was ratified with homestead-creditor provisions "intended to prevent families from losing their homes and farms after the end of the Civil War."[74] Located within Article X of the Constitution, the Creditor Exemption stated:

> A homestead to the extent of one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this State, together with one thousand dollars worth of personal property, and the improvements on the real estate, shall be exempted from forced sale under any process of law.[75]

To determine whether a claimant qualified as a "head of a family" under the Creditor Exemption,

> Florida courts have long used a test which requires a showing of either: (1) a legal duty to support which arises out of a family relationship[;] or (2) continuing communal living by at least two individuals under such circumstances that one is regarded as in charge. While the former requirement looks to a "family in law," the latter looks to a "family in fact," *which arises out of a moral obligation to support.*[76]

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74. *See generally* Thomas, *supra* n. 9, at 517–518 (discussing the history of the Homestead Creditor Exemption).

75. Fla. Const. art. IX, § 1 (1868). This provision was moved to Article X of the Florida Constitution in 1885. Fla. Const. art. X, § 1 (1885).

76. *Holden v. Est. of Gardner*, 420 So. 2d 1082, 1083 (Fla. 1982) (emphasis added) (citations omitted); *see generally* Harold B. Crosby & George John Miller, *Our Legal Chameleon, the Florida Homestead Exemption I–III*, 2 U. Fla. L. Rev. 12, 24 (1949) (stating that "[t]he decisions, though numerous, disclose two basic tests, which may be met together or in the alternative: (1) the legal duty to maintain arising out of the family relationship at law[;] and (2) continuing communal living by at least two individuals under such circumstances that one is recognized as the person in charge" and that "[s]tated broadly, there must be a family at law, or a family in fact, or both"); Donna Litman Seiden, *An Update on the Legal Chameleon: Florida's Homestead Exemption and Restrictions*, 40 U. Fla. L. Rev. 919, 923–937 (1988) (stating that "[f]or purposes of determining whether the owner was the head of a family, a test evolved that established the existence of a person who was the head of a family in law or a family in fact").

In legal retrospect, a series of Creditor Exemption cases decided at the beginning of the twentieth century created what could be dubbed the "legally or morally obligated" principle.[77]

De Cottes v. Clarkson[78] is an early example of the Florida Supreme Court applying the "legally or morally obligated" principle to circumstances similar to those in *Willens*.[79] Mary Moody resided in a house with her husband and two adult daughters, Hattie and Rosa.[80] After her husband died, Mrs. Moody continued residing in the house with her adult daughters.[81] After Rosa married, Ms. Moody stopped supporting her but continued supporting Hattie.[82]

At issue in *De Cottes* was whether Mrs. Moody was a "head of a family" under the Homestead Creditor Exemption.[83] In resolving the issue, the Florida Supreme Court emphasized how Mrs. Moody and her daughter Hattie were dependent on one another for support:

> Hattie P. Moody was *vigorous and healthy*, and capable of attending to household affairs, besides assisting her mother in transacting business connected with the latter's estate, that amounted in value to some $60,000. It is shown that Hattie P. Moody did materially assist her mother in her household and business affairs, and nursed and cared for her in her last illness. All of this was done, it appears, as was natural, out of a sense of filial duty and affection, and there was no agreement about it, or stipulated price to be paid for it. [Hattie] continu-

77. *Willens*, 53 So. 3d at 1118; *see also Smith v. Stewart*, 390 So. 2d 178, 180 (Fla. 4th Dist. App. 1980) (stating that "[t]o be accorded head of a family status, one must be *legally or morally obligated* to support the other family members") (emphasis added).

78. 29 So. 442 (Fla. 1901).

79. *Id.* at 443. The court in *Willens* cited to *De Cottes* and *Caro v. Caro*, cases with circumstances substantially similar to those in *Willens*. In *Caro*, a case in which a mother was declared to be a "head of a family" (who was therefore restricted by the Homestead Exemption's rules with regard to the devise of homestead property), the Court described the mother's daughters as "both continuously members of their mother's family and household [and] *[b]oth of them were of age, and had been for several years prior to their mother's death*, and both of them, by sewing, earned enough money to supply all of their wants except their food, which they ate at their mother's table." *Caro v. Caro*, 34 So. 309, 310 (Fla. 1903) (emphasis added).

80. *De Cottes*, 29 So. at 444.

81. *Id.*

82. *Id.*

83. *Id.* at 442.

> ously lived with her mother, and was provided for and supported by her up to the time of her death.[84]

Although the Court concluded that Rosa was not part of Mrs. Moody's "family" after her marriage, the Court held that Mrs. Moody was a "head of a family" based on her continued support of Hattie.[85] Importantly, the Court emphasized that in determining who may qualify as a "head of a family," it was not "authorized to establish an invariable test based solely on dependence, *and especially legal dependence.*"[86] The Court then declared that "[t]he true test of who is the head of a family, within the contemplation of our homestead provision, must be found in the facts and circumstances of the case."[87]

In sum, the "head of a family" test was born in Florida—with cousins in other states[88]—decades before the birth of Florida's Homestead Tax Exemption in 1934.[89]

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84. *Id.* at 444 (emphasis added).

85. *Id.*

86. *Id.* (emphasis added).

87. *Id.*

88. *See e.g. Union Trust Co. v. Cox*, 155 P. 206 (Okla. 1916) (discussing general principles underlying the "head of a family" test).

> The general rule is all the property of a debtor is applicable to the payment of his debts. The effect of the exemption laws is to create exceptions to this rule, and permit a debtor to retain into his possession property which, following the general rule, should be applied to the payment of his debts. The law permitting this says that, while it is the honorable duty of all persons to pay their just debts, *yet under certain conditions a higher duty may rest upon them*, and that is to maintain and support those dependent upon them. Some jurisdictions limit this rule to those who are legally dependent upon them, but it seems that this limitation is too circumscribed, and *the weight of authority seems to place the limitation at those who are morally dependent upon them for support.*

Id. at 210 (emphasis added); *Roco v. Green*, 50 Tex. 483, 490 (Tex. 1878). The Court in *Roco* deduced

> from the authorities the following general rules to determine when the relation of a family, as contemplated by law, exists: (1) [i]t is one of social status, not of mere contract[;] (2) [l]egal or moral obligation on the head to support the other members; [and] (3) [c]orresponding state of dependence on the part of the other members for this support.

89. *Johns v. Bowden*, 66 So. 155, 159 (Fla. 1914). The Court in *Johns* explained that

> [w]hen the natural relation of husband and wife or parent and child, or that of being *in loco parentis*, does not exist, the relation should be one in which an established and continuing personal authority, responsibility, and obligation actually rests upon one as "the head of a family" for the welfare of the others.

Id. (typeface altered); *see also Davis v. Miami Beach Bank & Trust Co.*, 128 So. 817, 819 (Fla. 1930). The Court in *Davis* concluded that in a family consisting

2. The 1934 Homestead Tax Exemption

In 1934, sixty-six years after the Creditor Exemption was enshrined within Article X of Florida's Constitution in response to the Civil War,[90] the Legislature and the people of Florida moved a Tax Exemption into the Article X neighborhood in response to the Great Depression.[91]

Notably, the 1934 Tax Exemption used the same "head of a family" phrase as its neighboring 1868 Creditor Exemption: "There shall be exempted from all taxation, other than special assessments for benefits, to every *head of a family* who is a citizen of and resides in the State of Florida, the homestead as defined in Article X of the Constitution of the State of Florida."[92]

Although the court in *Willens* stated that it found no evidence indicating the phrase "head of a family" in the 1934 Tax Exemption was interpreted, there is evidence indicating the Legislature intended the phrase to apply the same way as it did under the Creditor Exemption rather than having the courts apply two different tests to determine "head of a family" status. First, the plain language of the 1934 Tax Exemption indicates that the Legislature intended the same test of dependence to apply to determine qualification for the Creditor and Tax Exemption. Specifically, the 1934 Tax Exemption states that the property exempt from taxation is "the homestead as defined in Article X of the Constitution"—the very same homestead to which the Creditor Exemption applied.

Second, to the extent that the meaning of the phrase "head of a family" contained in the 1934 Tax Exemption was ambiguous,[93] there are well-established canons of construction supporting the conclusion that the Legislature intended that the same test of dependence apply to determine qualification for both exemptions.

> of a mother and an adult afflicted son[,] . . . the mother [was] under no legal obligation to care for him, to support and maintain him, but she [did so] because of natural love and affection[,] . . . and there appear[ed] to be no dispute between them as to who [was] the head of the family.

90. *Thomas*, *supra* n. 9, at 517–518.

91. *Willens*, 53 So. 3d at 1117 n. 5.

92. Fla. Const. art. X, § 7 (emphasis added).

93. *See Osborne v. Dumoulin*, 55 So. 3d 577, 581 (Fla. 2011) (explaining that "[o]nly when the statutory language is unclear or ambiguous is it necessary to apply principles of statutory construction to discern [the statute's] meaning").

Florida courts have long recognized that when a precise phrase is used in two different provisions, courts should assume the Legislature intended the phrase to mean the same thing.[94] Florida courts have also long recognized that amendments to the Constitution must be construed *in pari materia* with the other portions of the Constitution having a bearing on a same subject.[95]

Third, in 1935, a commentator addressed the question of who falls within the scope of the phrase "head of a family" within the newborn Tax Exemption:

> The head of a family is that person who maintains a home and has some person, as a member of the family living with him or her, who is to some extent dependent upon and recognizes the head of the family. One person is not a family; there must be at least two persons, of whom one must be recognized by the other as the head of the family. A man and his wife constitute a family, with the man as the head of it. Father and son, mother and daughter, brother and sister, two brothers, two sisters, grandparent and grandchild, a person and grand parent or parent, and any other such relationship, when living together and maintaining a home, constitute a family. Relationship as used here does not mean kinship, as kinship is not necessary between the parties, but there must be some degree

94. *Cf. Steuart v. State ex rel. Dolcimascolo*, 161 So. 378, 378–379 (Fla. 1935) (holding that the word "citizen" in the Tax Exemption's phrase "head of a family who is a citizen of and resides in the State of Florida" is "limited in its meaning to the term 'citizen' as that term is employed and defined in and by [S]ection 1 of the Fourteenth Amendment to the United States Constitution") (superseded by amendment of the Tax Exemption in 1938, which removed the term "citizen"); *see Goldstein v. Acme Concrete Corp.*, 103 So. 2d 202, 204 (Fla. 1958) (holding that in construing a phrase from different statutes, "the lawmakers use similar phrasing in dealing with construction projects [and] [w]e may assume that in both chapters they intended certain exact words or exact phrases to mean the same thing"); *see also Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (recognizing that repetition of language implies legislative intent that the language should "be construed in accordance with pre-existing . . . interpretations").

95. *See Advisory Op. to Gov.*, 12 So. 2d 876, 877 (Fla. 1943) (stating that "[i]n response to the above request for an advisory opinion, we might first observe that under Section 1 of Article XVII of the Constitution of Florida, the amendment which you quote became a part of the Constitution upon its adoption by the people at the general election in 1942, as Section 46 of Article V, and must be construed *in pari materia* with other sections of the Constitution which have a bearing upon the same subject matter") (typeface altered); *cf. also State ex rel. Orrell v. Johnson*, 147 So. 254, 256 (Fla. 1933) (stating that "Chapter 14486, Acts 1929 (Ex. Sess.), and [C]hapter 14776, Acts 1931, both apply to the Ocean Shore improvement district of Flagler and Volusia counties, have the same object in view, and contain almost the same language and terms" and that "[s]uch acts are accordingly *in pari materia* and must be interpreted and given effect together, and likewise construed") (typeface altered).

> of dependence. That person upon whom the family depends or relies for leadership, guidance or support, is the head of that family.[96]

Significantly, the commentator then cited to decisions that applied the "head of a family" test within the context of the Creditor Exemption.[97]

In sum, although the court in *Willens* stated that it found no evidence indicating that the phrase "head of a family" contained within the 1934 Homestead Tax Exemption had been interpreted, the plain language of the exemption, canons of construction, and contemporary commentary, support the following conclusion: from the time the Tax Exemption was first enshrined in 1934 until the time it was amended in 1938, the Legislature intended that the same "head of a family" test would apply under the Homestead Creditor and Tax Exemption.[98]

3. The 1938 Homestead Tax Exemption

In 1938, four years after the Tax Exemption was enacted, it was amended to the following:

> Every *person* who has the legal title or beneficial title in equity to real property in this State and who resides thereon and in good faith makes the same his or her permanent home, or the permanent home of another or others *legally or naturally dependent* upon said person, shall be entitled to an exemption.[99]

Among other things, the Legislature deleted the phrase "head of a family" (substituting the phrase with the term "person") and then inserted the phrase "legally or naturally dependent." Thereafter, commentators in Florida concluded that the phrase "legally or naturally dependent" refers to the same "head of a family" test applied under the Creditor Exemption:

> The words 'legally or naturally dependent' are but a synonym for members of a family at law or a family in fact. . . . [D]iscussion [of the Homestead Creditor Exemption] is appli-

96. H.J. Dame, *The Homestead Exemption Amendment*, 9 Fla. L.J. 399, 402–403 (1935).

> cable here, though with less emphasis on communal living in instances of those "morally dependent."[100]

In addition to the analogies that commentators have drawn from the Creditor Exemption cases, there is historical and linguistic evidence indicating the phrase "legally or naturally dependent" refers to the "head of a family" test of dependence applied under the Creditor Exemption.

a. Historical Context

During the 1930s, when the Homestead Tax Exemption was enacted and amended, Florida courts recognized the useful role historical context can play in interpreting a provision.[101] In this regard, it makes sense to examine the language of the Homestead Tax Exemption in light of the social and economic conditions that existed in the United States during the 1930s.

On October 23, 1929, the crash of the stock market precipitated the worst economic depression in the history of the United

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97. *Id.*

98. *See also Fleming v. Turner*, 165 So. 353, 354 (Fla. 1936) (describing the appellant as "a widow, the *head of a family* residing upon certain real estate . . . that she, *with her dependent family*, occupies the same as, and that it is, her homestead; that she has filed with the tax assessor her claim for homestead exemption from all taxes on the property") (emphasis added). The fact that the Court in *Fleming* did not refer to a separate test of dependence under the Homestead Tax Exemption suggests the same "head of a family" test applied.

99. Fla. Const. art. X, § 7 (1940) (superseded 1968 by Fla. Const. art. VII, § 6) (emphasis added).

100. Harold B. Crosby & George John Miller, *Our Legal Chameleon, the Florida Homestead Exemption: V*, 2 U. Fla. L. Rev. 346, 364 (1949) [hereinafter Crosby & Miller V]; *see also* Clark, *supra* n. 48, at 274 (noting "proper analogies" to construe the phrase "legal or natural dependent" "probably may be drawn, to a limited [extent], with situations considered by the Supreme Court of Florida having to do with other provisions of the constitution of Florida and with Florida statutes which are concerned with dependents"); Maines & Maines, *supra* n. 14, at 294 (suggesting that "cases defining families at law or in fact for the homestead forced sale exemption may be helpful in the concept of legal or natural dependents").

101. *See Lummus v. Fla. Adirondack Sch.*, 168 So. 232, 239 (Fla. 1936) (examining the history of educational facilities in Florida and stating that "[i]n construing both the Constitution and the statutes, we may look to the historical background to determine the cause and intent of the enactments"); *Ideal Farms Drainage Dist. v. Certain Lands*, 19 So. 2d 234, 239 (Fla. 1944) (citing *Amos v. Conkling*, 126 So. 283 (Fla. 1930)) (stating that "[i]n construing statutes courts are required to look to the conditions of the country to be affected by an Act, as well as the purpose declared, so as to ascertain the intention of the Legislature, and will read all parts of the Act together").

States, which languished for the following ten years.[102] What followed throughout the 1930s was a fundamental shift with respect to American housing patterns:

> People migrated from the cities back to the countryside in the hope of scratching out a living. People starved, they lost their homes through foreclosures; they took charity where they could find it; they begged for help. There was a profound loss of confidence in both business and government.[103]

Near the end of 1933 (close to the time when the 1934 Homestead Tax Exemption was enacted), "the income of most Americans had declined by half," and "[a] million or more individuals had been evicted from their homes when they could not pay the rent or meet their mortgage payments."[104] Then, in 1938 (close to the time when the 1934 Tax Exemption was amended), a sharp recession resulted "in part from Roosevelt's efforts to balance the budget at the same time that the new Social Security Tax was imposed, that brought a decline of industrial production, higher unemployment, and another stock market decline."[105]

Supplementing the federal government's attempts to stem the tide of the Great Depression,[106] state legislatures throughout the country began enacting *and expanding* the scope of constitutional homestead provisions to provide taxation relief to struggling citizens.[107] Consistent with this historical context, the 1938 amendment to Florida's Homestead Tax Exemption indicates that the Legislature intended to alleviate the plight of struggling Floridians by broadening its scope.[108]

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102. *See* Robert V. Remini, *A Short History of the United States* 215 (Harper-Collins 2008) (discussing the cause and impact of the Great Depression).

103. *Id.* at 215–216.

104. *Id.* at 223.

105. *Id.* at 228–229.

106. One early success was the launch of the United States Housing Authority, created by the National Housing Act in September 1937, which led to over five hundred million dollars in low-cost housing loans. *Id.* at 228.

107. *See e.g. Jones v. Williams*, 902 So. 2d 1154, 1156 (La. App. 2d Cir. 2005) (noting that "[i]n 1934, during the throes of the Great Depression and in the midst of the Huey P. Long era, state leaders expanded the homestead exemption to protect families from municipal taxing authorities"); *Lund v. Co. of Hennepin*, 403 N.W.2d 617, 622 (Minn. 1987) (Yetka, Kelley & Wahl, JJ., dissenting) (describing a case that "was decided in the midst of the Great Depression when the legislature felt compelled to limit real estate taxes in order to protect people's homes").

108. *See* Clark, *supra* n. 48, at 261 (describing the 1934 addition of Article X, Section 7 to the Florida Constitution and amendment "*with more liberality*" in 1938, as "the greatest

After 1938, to qualify for the amended Homestead Tax Exemption, a homeowner "was required to both 'reside' on the property in question *and* make the property either[:] (1) his or her permanent home[;] or (2) the permanent home of others legally or naturally dependent upon the owner."[109] Evidently, the first category, which allows a person to claim the Tax Exemption if the homestead is "his or her permanent home," expanded the 1934 Exemption because a person could now claim it without satisfying the "head of a family" test of dependence.[110] As to the second category, which allows a person to claim the Tax Exemption if the homestead is the "the permanent home of others legally or naturally dependent upon the owner," one can draw an inference about the scope of the dependent classes announced therein.

If the phrase "legally or naturally dependent" encompasses a class of dependents narrower than the class upon which a "head of a family" could claim the 1934 Tax Exemption, then a "head of a family" under the 1934 Exemption might not be able to receive the 1938 Exemption.[111] Such a previous "head of a family" would have to establish that the dependents on which he or she based a claim to the 1934 Exemption also fit in the new "legally or naturally dependent" class. Yet in such economically depressed times, it strains credulity to think that the Legislature and the people of Florida who voted to amend the 1934 Tax Exemption would sup-

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benevolence ever shown by the people of any state toward exemption of homesteads from taxation") (emphasis added).

109. *Garcia*, 101 So. 3d at 342.

110. *See Judd v. Schooley*, 158 So. 2d 514, 516 (Fla. 1963) (stating that "Article X, Section 7, Florida Constitution, as amended in 1938, eliminated from the exemption requirements, the necessity that one be the 'head of a family,' or even a 'citizen' of Florida to enjoy the homestead exemption tax benefit" and that "[a]n individual property owner enjoys the benefit even though he occupies the property alone"). Notably, a 1935 statute enacted in the wake of the 1934 exemption appears to grant the Tax Exemption to the first category of the 1938 exemption—*individuals* permanently residing on a homestead. *See* Crosby & Miller V, *supra* n. 100, at 351–352 (discussing how the 1935 statute was the "father" of the 1938 exemption). The parallel between the statutory exemption and the amendment to the constitutional exemption indicates the Legislature intended to expand the constitutional exemption so it would encompass individuals within the statutory exemption. *See De La Mora*, 51 So. 3d at 523–524 (explaining the Exemption was amended in 1938 because there "was some doubt at the time concerning whether the 1935 statutory exemptions were covered by the 1934 amendment").

111. A "head of a family" under the 1934 Tax Exemption who resided on the homestead and made it his "permanent home" would fall in the first category of the 1938 Exemption; but a "head of a family" under the 1934 Exemption who resided on the homestead but who did not make it his "permanent home" would fall in the second category of the 1938 Exemption only if such "head of a family" made the homestead the "permanent home of others legally or naturally dependent on the owner."

port an amendment that limited rather than expanded the scope of such a desperately needed constitutional right.[112]

In that regard, the historical context in which the phrase "head of a family" was deleted from the Tax Exemption and in which the phrase "legally or naturally dependent" was inserted supports the conclusion that the latter phrase contained the same class of dependents encompassed within a "family in law" or a "family in fact" under the "head of a family" test of dependence.

b. Linguistic Evidence

In addition to the historical context in which the 1938 Tax Exemption was amended, there is also linguistic evidence indicating that the phrase "legally or naturally dependent" refers to the "head of a family" test of dependence applied under the 1868 Creditor Exemption.

As previously discussed, evidence indicates the phrase "head of a family" within the 1934 Tax Exemption was modeled after the same phrase contained within the 1868 Creditor Exemption, which required homestead owners to establish they were the "head" of a "family in law" or a "family in fact" by proving that another person was "legally or morally dependent" for support.[113] With this meaning of the phrase "head of a family" in mind, an inference may be drawn when comparing the phrase "head of a family," which was deleted from the 1938 Tax Exemption, with the phrase "legally or naturally dependent," which was inserted in the 1938 Tax Exemption. Based on symmetry between the *words* of the new phrase—"legally or naturally dependent"—and *judicial constructions* of the deleted phrase—"legally or morally dependent"—one may infer that the Legislature was codifying a prong of the "head of a family" test of dependence.[114]

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112. Although the 1938 amendment may appear to have limited the right to the Tax Exemption by requiring that a claimant "reside" on the homestead, this does not indicate that the Legislature intended to limit the scope of dependents upon which a person could claim the Exemption because a 1935 statute already required that claimants "reside" on the homestead. *De La Mora*, 51 So. 3d at 523–524; *supra* n. 110 and accompanying text.

113. *Supra* nn. 72–98 and accompanying text.

114. *See Dickinson*, 286 So. 2d at 531 (stating that "[t]he language of the amendment in 1971 was intended to make the statute correspond to what had previously been supposed or assumed to be the law"); *Presbyterian Homes of Synod of Fla. v. Wood*, 297 So. 2d 556, 559 (Fla. 1974) (discussing whether the Legislature's amendment to a provision within the Florida Constitution occurred in response to the Florida Supreme Court's holding in a case in which it interpreted that provision); *Cerro Corp. v. Dep't of Revenue*, 336 So. 2d 628, 629

Admittedly, one might question this linguistic inference by pointing out that it assumes the Legislature was using the phrase "naturally dependent" and "morally dependent" as synonyms. In fact, one canon of construction requires courts to *presume* the Legislature had such intent. Four areas of specialized meaning factor into statutory construction: (1) technical; (2) trade; (3) commercial; and (4) legal.[115] Generally, there is a *presumption* that the Legislature uses terms in these areas in accordance with their *common* meaning rather than their specialized meaning; yet legal terms must be presumed to have been used in accordance with their legal meaning.[116] Accordingly, if one were to question the above inference by pointing out that it assumes the Legislature was using the phrase "naturally dependent" and "morally dependent" as synonyms, the issue under this canon would be whether the word "natural" had acquired a specialized legal meaning by 1938, when the phrase "legally or naturally dependent" was inserted into the Tax Exemption.

There is in fact evidence that in 1938 the term "natural" had been well-subjected to "the rigors of the playing fields of the law which would render it of specific legal significance."[117]

(Fla. 1st Dist. App. 1976) (stating that "[t]he statute as amended coincides with our construction of the statute as it existed prior to the amendment"); *see also Keck v. Eminisor*, 104 So. 3d 359, 369 (Fla. 2012) (stating that "'the court may consider subsequent enactments of a statute as an aid to interpreting the original legislation' and '[t]he amendment of a statute does not necessarily indicate that the [L]egislature intended to change the law'") (alterations in original) (citations omitted); *Brannon v. Tampa Tribune*, 711 So. 2d 97, 100 (Fla. 1st Dist. App. 1998) (citing *Collins Inv. Co. v. Metro. Dade Co.*, 164 So. 2d 806 (Fla.1964)) (stating that "Florida, like most other states, follows the rule that the legislature is presumed to know the judicial constructions of a law when enacting a new version of that law").

115. *See* Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* vol. 2A, at § 47:27, 443 (7th ed., Thomson West 2007).

116. *Id.* at § 47:30, 481–483; *see Tampa v. Thatcher Glass Corp.*, 445 So. 2d 578, 579 n. 2 (Fla. 1984) (citations omitted) (clarifying that the common meaning of a term is presumed unless the term belongs to the legal profession). As the Florida Supreme Court explained in 1949:

> Technical words and phrases which have acquired a peculiar and appropriate meaning in law, cannot be presumed to have been used by the legislature in a loose popular sense, but, to the contrary, have been presumed and assumed to have been used according to its legal meaning, and will ordinarily be interpreted, not in its popular, but in its fixed legal sense and with regard to the limitations which the laws attaches to them.

Davis v. Strople, 39 So. 2d 468, 471 (Fla. 1949) (quoting 50 Am. Jur. *Words of Special Legal Signification* § 278).

117. *Thatcher*, 445 So. 2d at 579–580 n. 2; *see also Lee v. CSX Transp., Inc.*, 958 So. 2d 578, 582 (Fla. 2d Dist. App. 2007) (indicating that the court could not consider the term at

Specifically, in a variety of different legal contexts, Florida courts were already using the word "natural" in a way that was synonymous or nearly equivalent in meaning to the word "moral."[118] Yet beyond the narrow confines of Florida jurisprudence, there is even greater support for the broader proposition that the word "natural" had acquired a specialized legal meaning by 1938. At that time, Black's Law Dictionary defined the word "natural" as meaning "moral rather than legal considerations" whenever the word "natural" was used in opposition to the word "legal."[119]

Therefore, because the word "natural" had acquired a specialized legal meaning of "moral" by 1938 when used in opposition to the word "legal," then under the above canon, the Legislature *presumably* intended that courts would attach such meaning when applying the "legally or naturally dependent" provision.[120]

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issue separate "from the broader legal context in which the term [was] used" and that when making reference to the term at issue, "'Congress borrow[ed] [a] term[ ] of art . . . and adopt[ed] the cluster of ideas that [is] attached to [that term of art]'") (citing *Morissette v. United States*, 342 U.S. 246, 263 (1952)); *cf. Barber v. State*, 988 So. 2d 1170, 1173 (Fla. 4th Dist. App. 2008) (holding that "[t]he use of the undefined term 'in custody' by the legislature in this context cloaks it with legal significance that cannot be ignored[;] . . . [t]hus, we cannot casually dismiss the possibility that the legislature intended that this term encompass more than its colloquial meaning"); *compare Ocasio v. Bureau of Crimes Compen. Div. of Workers' Compen.*, 408 So. 2d 751, 752 (Fla. 3d Dist. App. 1982) (holding the term "affinity" had acquired a specific legal meaning and must be presumed to have been used by the Legislature in accordance with such meaning) *with State v. Brown*, 412 So. 2d 426, 428 (Fla. 4th Dist. App. 1982) (reasoning that the term "nonconsumable" does not have a specific legal meaning and therefore must be presumed to have been used in accordance with its common meaning).

118. *See e.g. State ex rel. Gibbs v. Bloodworth*, 184 So. 1, 5 (Fla. 1938) (quoting *Tarbell v. Rutland R. Co.*, 51 A. 6, 7 (Vt. 1901)) (identifying both things that "[tend] to injustice or oppression, restraint of liberty, and natural or legal right" and anything that is "against good morals" as against public policy and void if it is the subject of a contract); *Johnson v. Wilson*, 37 So. 179, 180 (Fla. 1904) (noting that even if "children have no natural right to inherit[,] . . . the moral considerations are so strong that many people regard the right a natural one"); *see also In re Est. of Kionka*, 113 So. 2d 603, 607 (Fla. 2d Dist. App. 1959) (pointing out that in situations in which children "were strangers in blood and the party therefore had no natural or legal obligation, it has been held there is no moral duty to support"); *De Moya v. De Pena*, 148 So. 2d 735, 736 (Fla. 3d Dist. App. 1963) (discussing a statute's purpose, which was to transform the "natural and moral obligation of a father to support his illegitimate offspring into a legal obligation").

119. *Black's Law Dictionary* 1222 (3d ed., West 1933) (listing a "juristic" definition of "natural"); *see generally* Singer & Singer, *supra* n. 114, at § 47:30, 481–483 (explaining that cases discussing the rule that "legal terms in a statute are presumed to have been used in their legal sense" may speak of "terms with a common[ ]law meaning, terms which have been judicially interpreted, terms with a meaning in the jurisprudence of the country or terms possessing a meaning in law").

120. *But see* Fla. Att'y Gen. Op. 39-438 at 438 (choosing to interpret the 1938 Tax Exemption using "the ordinary rather than the technical meaning of its words wherever

Thus, the above canon indicates that the Legislature used the phrase "naturally dependent" and "morally dependent" as synonyms, which bolsters the inference that the Legislature was codifying the "legally or morally dependent" prong of the "head of a family" test.

In light of the above, there is both linguistic and historical evidence supporting the conclusion that the "head of a family" test is subsumed in the phrase "legally or naturally dependent" contained within the Tax Exemption and Cap.

B. Construing the Homestead Tax Laws

As noted above, the first reason the court in *Willens* declined to extend the "head of a family" test from the homestead-creditor context to the homestead-taxation context was that the court found no evidence indicating the phrase in the 1934 Tax Exemption had been interpreted. As this Article has explained, the courts that construed the 1868 Homestead Creditor Exemption issued opinions that reveal the origins of the phrase "head of a family" within the 1934 Homestead Tax Exemption and the phrase "legally or naturally dependent" within the 1938 Tax Exemption. This Article now addresses the other two reasons for which the court in *Willens* declined to extend the "head of a family" test: (1) because courts often caution against relying on other homestead exemptions as authority; and (2) because the Tax Exemption (unlike the Creditor Exemption) must be strictly construed.

1. Other Homestead Exemptions as Authority

Although the court in *Willens* cited to cases in which courts have cautioned against relying on homestead exemptions specific to one area of law[121] as authority to interpret other exemptions,[122]

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there might be a difference in meaning, believing such meaning to best convey the intent of the electorate"). Unfortunately, the 1939 Attorney General did not elaborate upon why he came to this conclusion, nor did he opine on the "ordinary" meaning of the phrase "naturally dependent." *Id.*

121. *See Snyder v. Davis*, 699 So. 2d 999, 1001–1002 (Fla. 1997) (noting that the Florida Constitution protects homesteads in three ways: (1) by exempting them from taxation; (2) by shielding them from forced sale by creditors; and (3) by restricting the ways in which they can be alienated and devised).

122. *Willens*, 53 So. 3d at 1119; *see also Phillips v. Hirshon*, 958 So. 2d 425, 427 n. 3 (Fla. 3d Dist. App. 2007) (finding that the definition of the Tax Exemption is not determi-

the court failed to address the cases in which courts have done so. Ironically, one of the cases the *Willens* court cited to in support of the proposition that courts often caution against relying on other exemptions as authority did just that in its analysis.[123]

Southern Walls, Inc. v. Stilwell Corp.[124] addressed whether a cooperative apartment qualified as a homestead under the Creditor Exemption, which would shield the property from forced sale.[125] Tellingly, the court answered in the affirmative by relying on the Homestead Tax Exemption: "Although, as we have previously indicated, homestead provisions relating to taxation do not necessarily control the determination of homestead status as it relates to the exemption from forced sale, we do find this provision of the Constitution and these statutes persuasive."[126]

Significantly, the Florida Supreme Court has recognized when it may be appropriate for a court to rely on the Homestead Creditor Exemption to interpret the Homestead Tax Exemption:

> [W]e think it can fairly be said that *the Legislature intended to adapt to the [H]omestead [T]ax [E]xemption* privilege conferred by Section 7 . . . *the rules previously developed by this court* with respect to the homestead character of property within the meaning of Sections 1 and 4 of Article X. While this court has not expressly so held in any previous decision, we have done so impliedly by citing cases involving the exemptions granted by Sections 1 and 4 and authority for a decision involving the character of property for the purpose of [H]omestead [T]ax [E]xemption under Section 7.[127]

Accordingly, when "it can fairly be said" that the Legislature intended to "adapt" to the Homestead Tax Exemption the rules

native of the Creditor Exemption); *but see* Crosby & Miller V, *supra* n. 100, at 348–349 (discussing similarities between the exemptions).

123. *S. Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 570–571 (Fla. 5th Dist. App. 2002).

124. 810 So. 2d 556.

125. *Id.* at 568.

126. *Id.* at 570–571; *see also e.g. Manda v. Sinclair*, 278 F.2d 629, 633 (5th Cir. 1960) (recognizing that although there are "substantial differences between the [T]ax [E]xemption . . . and the . . . exemption from enforced sale[,] . . . *this circumstance was relevant in determining the status of Bankrupt as head of a family*, his residence on the property[,] and its use as an actual homestead") (emphasis added); *see also Bonner v. Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (adopting all Fifth Circuit precedent as binding in the Eleventh Circuit).

127. *L'Engle v. Forbes*, 81 So. 2d 214, 216 (Fla. 1955) (emphasis added); *see also Garcia*, 101 So. 3d at 345 (discussing the residency requirement within the Tax Exemption and citing to the residency requirement within the Creditor Exemption).

developed by the courts under the Homestead Creditor Exemption, upholding the Legislature's intent demands that a court rely on the Creditor Exemption.

Hence, although the court rejected Willens' interpretation of the phrase "legally or naturally dependent" because courts caution against relying on other homestead exemptions as authority, the court in *Willens* should have relied on the Creditor Exemption because "it can be fairly said" that the Legislature intended the "head of a family" test would apply under both exemptions.[128]

2. "Liberal" and "Strict" Constructions

As the court in *Willens* indicated in its final analysis, "a purported grant of a tax exemption is to be strictly construed against the claimant [of such exemption] and in favor of the taxing authority."[129] In a basic sense, a "strict" construction is one that "limits the application of the statute by the words used," whereas a "liberal" construction "signifies an interpretation which produces broader coverage or more inclusive application of statutory concepts."[130]

With that said, the grounds for concluding a provision "is entitled to either a liberal or a strict interpretation . . . are seldom . . . so clear as to fully resolve questions of construction without the use of other interpretive aids and guidelines."[131] Evidently,

128. *L'Engle*, 81 So. 2d at 216; *supra* nn. 70–119 and accompanying text (discussing the Homestead Creditor Exemption origins of the phrase "legally or naturally dependent"). The Creditor Exemption and the Tax Exemption have similar constitutional origins and similar legislative objectives; this may illustrate why the Legislature, in certain instances, would intend to extend the rules courts developed under the Creditor Exemption to the Tax Exemption. *See* Coffey, *supra* n. 9, at 408–410 (noting that the Tax Exemption originated as part of the Constitution's Article X Creditor Homestead Exemption, "which was designed to protect a family home from forced sale and devise," but was subsequently transferred to Article VII in 1968); *compare In re Quraeshi*, 289 B.R. 240, 243 (Bankr. S.D. Fla. 2002) (quoting *In re Kellogg*, 197 F.3d 1116, 1120 (11th Cir. 1999)) (stating that "'[t]he purpose of Florida's homestead [creditor] provision is to protect families from destitution and want by preserving their homes'") *with Zingale*, 885 So. 2d at 285 (stating that the Homestead Tax Exemption and Save-Our-Homes Cap "have as their underlying purpose the protection and preservation of homestead property"). Therefore, despite the differences in their application (which may be a reason for courts to be cautious in relying on other exemptions as authority), there are instances in which the Legislature may have the same objectives with both exemptions and therefore intend that the same rules apply.

129. *State ex rel. Green v. Pensacola*, 126 So. 2d 566, 569 (Fla. 1961).

130. Singer & Singer, *supra* n. 115, at § 58:2, 106–108 (discussing the difference between liberal and strict interpretation).

131. *Id.* at § 58:1, 103–105; *see also Harrison v. N. Trust Co.*, 317 U.S. 476, 479 (1943) (noting that "words are inexact tools at best").

the grounds the court in *Willens* had for concluding that the phrase "legally or naturally dependent" is entitled to a strict construction did not resolve what that language actually means.[132] Moreover, Willens' theory regarding the phrase "legally or naturally dependent" was supported by other canons of construction, which the court could have used to resolve the meaning of that elusive phrase.[133]

Significantly, the rule of strict construction does not mean the Tax Exemption should be subjected to a strained construction, which defeats the legislative intent with the exemption.[134] This raises the issue of whether the court in *Willens* failed to consider the legislative intent underlying the phrase "legally or naturally dependent" in its final analysis:

> We find no authority in the [caselaw] of this state . . . which has held that a moral obligation to support an able-bodied adult child is sufficient to render that person "legally or naturally dependent upon the owner" for ad valorem homestead exemption purposes. We conclude, therefore, that more than mere familial ties must exist to bring a person under the

132. *Supra* nn. 59–62 and accompanying text (discussing the reasons for which the court in *Willens* declined to construe "naturally dependent" to mean "morally dependent").

133. *Supra* nn. 94–120 and accompanying text (applying various canons of construction that reveal the meaning of the phrase "head of a family" in the 1934 Tax Exemption and the phrase "legally or naturally dependent" in the 1938 Tax Exemption).

134. *See Johnson v. Presbyterian Homes of Synod of Fla., Inc.*, 239 So. 2d 256, 262 (Fla. 1970) (explaining that "the rule of strict construction does not require that the narrowest possible meaning be given to words descriptive of the exemption"); *Lummus v. Cushman*, 41 So. 2d 895, 897 (Fla. 1949) (determining that despite strict construction of the statute, it "does not mean that where an exemption is claimed in good faith the provision of law under which the claimant attempts to bring himself is to be subjected to such a strained and unnatural construction as to defeat the plain and evident intendments of the provision"); *Dep't of Revenue v. Imperial Builders & Supply, Inc.*, 519 So. 2d 1030, 1032 (Fla. 5th Dist. App. 1988) (rejecting narrow construction of tax exemption because it would thwart the "salutary purpose" underlying the exemption); *see also Bancroft Inv. Corp. v. Jacksonville*, 27 So. 2d 162, 171 (Fla. 1946) (Terrell, J., dissenting) (arguing that while the appellant focused on the literal interpretation of a statute, the court "is authorized to look through form to fact and substance to answer the question of tax exemption or tax liability"); *see generally* 10 Fla. Jur. 2d *Constitutional Law* § 55 (2012) (discussing the applicability of liberal and strict constructions to provisions within the Florida Constitution). Although it has been said that construction of constitutional provisions is more liberal than statutory provisions, it has also been said that constitutional construction should be neither liberal nor strict; rather, courts should fairly interpret the language in a way that effectuates the intention of the people. *Id.*

> change of ownership exception to the re-assessment requirement of the ad valorem [H]omestead [T]ax [E]xemption.[135]

Although the court cited authority holding that a moral obligation to support an able-bodied adult child is sufficient to render that person dependent on the owner *under the Creditor Exemption*,[136] one can infer the court concluded this authority was irrelevant because, as the court emphasized, the Creditor Exemption must be liberally construed.[137] However, as this Article has explained, the court in *Willens* should have relied on the Creditor Exemption because "it can be fairly said" that the Legislature intended the "head of a family" test would apply under both exemptions.[138]

In sum, although the court was correct in pointing out that the Tax Exemption and Cap must be strictly construed, this neither precluded the court from relying on the Creditor Exemption, nor did it preclude the court from relying on other interpretive canons, nor did it permit the court to construe the phrase in such a way that would ultimately defeat the Legislature's intent. Therefore, in an effort to uphold the intent of the Legislature and the people of Florida, the "head of a family" test of dependence, which courts previously applied under the Creditor Exemption, should also be applied under the "legally or naturally dependent" provisions of the Tax Exemption and Cap.[139]

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135. *Willens*, 53 So. 3d at 1119.

136. *Id.* at 1118 (citing *De Cottes*, 29 So. 442 and *Caro*, 34 So. 309).

137. *Id.* at 1119.

138. *L'Engle*, 81 So. 2d at 216; *supra* nn. 70–119 and accompanying text (discussing the Homestead Creditor Exemption origins of the phrase "legally or naturally dependent"). Despite the court's caution in relying on the Creditor Exemption as authority to construe the phrase "legally or naturally dependent" contained within the Tax Exemption and Cap, the court in *Willens* did not express any problem with relying on a test of dependence from the wrongful-death context. *Willens*, 53 So. 3d at 1117–1118 (relying on an Attorney General opinion that adopted a test of dependence applicable to the wrongful-death context); *supra* n. 67 and accompanying text (distinguishing the wrongful-death test of dependence).

139. Significantly, the fact that the phrase "head of a family" was deleted from the Creditor Exemption in 1985 does not eliminate the relevance of the jurisprudence construing the phrase. *See In re Ensenat*, 2007 WL 2029332 at *3 (explaining that "one no longer must be held to be a 'head of household' in order to enjoy the protections of the homestead exemption, or the restrictions on devise of the homestead[;] . . . [yet] what constitutes a family is still a necessary determination under the precise language of the Florida Constitution, and therefore, the cases that [preceded] the 1985 amendment are instructive"); *see also Moore v. Rote*, 552 So. 2d 1150, 1151 (Fla. 3d Dist. App. 1989) (relying on precedent existing before 1985 to determine whether a divorced woman qualified as the "head of the family"); *Mazzella v. Boinis*, 617 So. 2d 1156, 1157 (Fla. 4th Dist. App. 1993) (holding that a "plain meaning interpretation is also consistent with the [caselaw] construing the phrase 'head of family'").

VI. CONCLUSION

This Article argues that the "head of a family" test of dependence applied under the 1868 Homestead Creditor Exemption is subsumed within the phrase "legally or naturally dependent" contained within the Homestead Tax Exemption and the Save-Our-Homes Cap. Although the court in *Willens* rejected this argument, there is one observation it made with which the Author agrees: "Mr. Willens' reward for his two-decade sacrifice in the name of his father lies with a higher authority."[140] Indeed, consistent with the truism that nothing is certain in life except death and taxes,[141] the reward for Willens' sacrifice may ultimately lie with a "higher authority" in another world. However, as to the rewards of other dependents in Florida who have sacrificed to support others, only time will tell if the Florida Supreme Court, the Florida Legislature, or the people of Florida, take steps to ensure that such rewards are not confined to the jurisdiction of a "higher authority" but rather lie within the power of a tax appraiser.

140. *Willens*, 53 So. 3d at 1119.

141. As Benjamin Franklin famously quipped, "in this world nothing can be said to be certain, except death and taxes." Benjamin Franklin, *The Works of Benjamin Franklin* 161 (G.P. Putnam's Sons, The Knickerbocker Press 1904).