

IN THE SUPREME COURT OF OHIO

08-1104

ANDRE BUCKLES,

Case No. _____

Appellant,

On Appeal from the Franklin County
Court of Appeals, Tenth Appellate
Judicial District.

v.

THE BOARD OF REVISION OF
FRANKLIN COUNTY, et al.,

Court of Appeals
Case No. 07AP-932

Appellees.

AMICUS CURIAE OHIO FARM BUREAU FEDERATION'S MEMORANDUM IN
SUPPORT OF JURISDICTION

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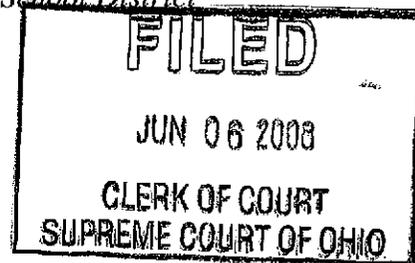


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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

Founded in 1919, the Ohio Farm Bureau Federation is a federation of 87 county Farm Bureaus representing all 88 counties in Ohio, with more than 235,000 rural Ohio family members. Generally, the Ohio Farm Bureau addresses a variety of issues on behalf of its members, such as legislation concerning the environment, taxes, trade, regulation, livestock, land use, health and safety, property rights and wildlife. It also develops and promotes various education campaigns and programs.

The Current Agricultural Use Valuation (“CAUV”) program at issue in this case is one of, if not the most, important programs for the Ohio Farm Bureau and its members. The Ohio Farm Bureau’s members own millions of acres of farmland that are enrolled in the CAUV program. Many of the Ohio Farm Bureau’s members would not be able to continue farming without the tax relief provided by the CAUV program. The Ohio Farm Bureau actively works with many of the county auditors around the State with respect to operation of the CAUV program. As a result of this work, the Ohio Farm Bureau is intimately familiar with the real-world problems and challenges facing farmers who seek CAUV status for their land.

Here, the Ohio Farm Bureau urges this Court to accept review of this case because the legal analysis in the Court of Appeals’ opinion threatens to seriously undermine the CAUV program – a program created in 1974 when the voters of Ohio amended the Ohio Constitution to provide tax relief to owners of farmland. Specifically, the Court of Appeals’ analysis permits county auditors to make subjective determinations regarding a property’s qualifications for CAUV status based on factors that are not found anywhere in current law. For example, the Court of Appeals focused on appellant’s testimony that part of the subject property is difficult to farm because of soil and drainage issues. April 10, 2008 Opinion at ¶¶ 15-16, 19-20. It then

faulted appellant for failing to make “any effort to improve the recognized deficiencies on the property[.]” Id. There is no requirement, however, in current law to make improvements to property in order to qualify for CAUV. In fact, the opposite is true inasmuch as the formula used to determine land value makes adjustments for poorly drained soils and other management challenges. Yet, under the Court of Appeals’ analysis, county auditors are now free to make a subjective determination regarding what “improvements” they – not the farmer – believe are necessary for the property.

The Court of Appeals (and the trial court) also focused improperly on the purported intent of the appellant in seeking CAUV status for his property. October 2, 2007 Trial Court Decision at 5; April 10, 2008 Court of Appeals Opinion at ¶¶ 15-16, 19-20. The intent of the landowner, however, is not a requirement of the CAUV program, or any tax valuation program for that matter. Unfortunately, the Ohio Farm Bureau has seen an increase in the number of instances where the county auditor attempts to look to the intent of the landowner when deciding whether the land should be in the CAUV program, and this case is no exception.

Finally, in order to qualify for CAUV status, the subject land must be “devoted exclusively to agricultural use.” Ohio Constitution, Section 36, Article II; O.R.C. §§ 5713.30 and 5713.31. There is no definition or guidance provided in the Constitution or the Revised Code, however, regarding the farming methods that would satisfy this requirement. This case demonstrates the problems created by this lack of definition. For example, part of the dispute in this case involves appellant’s use of “no-till” farming methods. April 10, 2008 Opinion at ¶¶ 21-23. With the advent of “no-till” farming, it has been the experience of the Ohio Farm Bureau that county auditors are having an increasingly difficult time recognizing when farmers are engaged in commercial agricultural production. The simple fact is that county auditors are not

experts in acceptable farming methods. Yet, permitting county auditors to make judgments regarding acceptable farming methods opens the door to inconsistent application of the CAUV program across Ohio's 88 counties. Review by this Court would provide guidance to county auditors and farmers throughout Ohio regarding the proper interpretation of "devoted exclusively to agricultural use" and would assist with implementation of the CAUV program on a consistent and objective basis.

STATEMENT OF THE CASE AND FACTS

The Ohio Farm Bureau adopts the statement of the case and facts in appellant Buckles' Memorandum In Support Of Jurisdiction. Additionally, the Ohio Farm Bureau hereby provides the Court with a brief history of the CAUV program.

CAUV is a constitutionally mandated program implemented when the voters of Ohio passed a statewide referendum in 1974 amending Section 36, Article II, of the Ohio Constitution. As this Court has recognized, the purpose of the amendment was "to give relief to farmers whose land was slowly being engulfed by commercial land through the growth of towns and cities and who were being driven out of business by the soaring real property taxes attendant upon revaluation of their property under the 'highest and best use' rule." Bd. of Edn. v. Bd. of Revision, (1979) 57 Ohio St.2d 62, 66 fn.4. The Ohio General Assembly implemented the constitutionally mandated CAUV program in O.R.C. §§ 5713.30 through 5713.37. Pursuant to the statutory scheme, the county auditors in each of Ohio's 88 counties are charged with administration of the CAUV program.

The CAUV program – enacted by the voters of Ohio – is the second largest tax relief program in the State of Ohio, and encompasses approximately two-thirds of the land in Ohio. See Petry, Jeff, Current Agricultural Use Valuation, Legislative Budget Office Policy Brief

(March 8, 2000).¹ It has been credited with relieving agricultural landowners from excessive tax burdens, maintaining a strong agricultural base in Ohio, and also contributing to the preservation of open space in Ohio. Id.

At the same time, the experience of the Ohio Farm Bureau and its members indicates that the CAUV program is coming under increasing pressure from local governmental entities seeking to raise tax revenues. See, e.g., Graves, Amy Beth, School boards, courts putting pressure on CAUV program, Ohio Farm Bureau Federation (November 13, 2006).² The facts of this case also demonstrate the pressures faced by landowners when development surrounds their property, making the property more difficult to farm. Unfortunately, the Court of Appeals' legal analysis in this case undermines the CAUV program by permitting county auditors to ignore the real world pressures these farmers face and to reject CAUV status based on subjective and improper criteria not found anywhere in Section 36, Article II, of the Ohio Constitution, or its implementing statutes.

ARGUMENT

In the interest of brevity, the Ohio Farm Bureau will only summarize the legal arguments presented by this case, and which are set forth more fully in appellant Buckles' Memorandum In Support Of Jurisdiction.

Proposition of Law No. 1. A county auditor may not revoke CAUV status because a property owner does not improve the land to possibly increase the chances of a successful harvest.

By law, land qualifies for CAUV status if it is "devoted exclusively to agricultural use." See Ohio Constitution, Section 36, Article II; O.R.C. §§ 5713.30 and 5713.31. There is no

¹ Available at <http://www.lbo.state.oh.us/123ga/publications/periodicals/policybriefs/cauv.pdf>.

² Available at <http://ofbf.org/page/REVN-6WDRUA>.

requirement for a farmer to make “improvements” to his land in order to qualify for the CAUV program. Nonetheless, the Court of Appeals’ improperly faulted appellant for failing to make “any effort to improve the recognized deficiencies on the property[.]” April 10, 2008 Opinion at ¶ 20. Under this analysis, county auditors are now free to deny CAUV status based on a subjective determination regarding what “improvements” they – not the farmer – believe are necessary for the property. If permitted to stand, this analysis will lead to inconsistent and subjective results, and again, will open the door for county auditors to deny CAUV status based on subjective criteria not found anywhere in the Ohio Constitution or statutory law. This Court should accept review to make clear that there is no requirement to make “improvements” to farmland in order to qualify for CAUV status.

Proposition of Law No. 2. A county auditor may not revoke CAUV status because he believes the farming practices conducted are incorrect given the failure to produce a harvestable crop.

Although the CAUV program requires the subject land to be “devoted exclusively to agricultural use,” current law does not provide any guidance or definition with respect to the farming methods that would satisfy this requirement. See Ohio Constitution, Section 36, Article II; O.R.C. §§ 5713.30 and 5713.31. In the absence of any further definition, county auditors are free to impose their own subjective views regarding proper farming methods. Unfortunately, the Ohio Farm Bureau’s experience in the real world indicates that county auditors often do not fully understand modern farming techniques, including the “no-till” farming method at issue in this case. Accordingly, this Court should accept review of this case in order to clarify the standards applicable when a county auditor (or a court) makes a determination regarding the farming methods utilized by a farmer seeking to take part in the CAUV program.

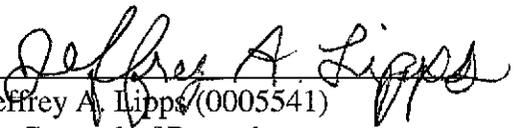
Proposition of Law No. 3. A county auditor has no authority to infer the subjective intent of the landowner in determining whether to revoke CAUV status as to property which was planted with crops and cultivated according to commercially acceptable agricultural practices.

The “intent” of the landowner is not a requirement of the CAUV program. See Ohio Constitution, Section 36, Article II; O.R.C. §§ 5713.30 and 5713.31. Nonetheless, the lower courts in this case improperly considered the purported intent of appellant Buckles. October 2, 2007 Trial Court Decision at 5; April 10, 2008 Court of Appeals Opinion at ¶¶ 15-16, 19-20. Permitting county auditors (or courts) to consider the “intent” of the landowner is not only illegal, but will also lead to inconsistent and subjective determinations by the 88 county auditors charged with administering the CAUV program in Ohio. This Court should accept review to clarify that the “intent” of the landowner is not a proper consideration in determining the CAUV status of land.

CONCLUSION

The CAUV program is one of the most important programs available to Ohio farmers, and without it, many of those farmers would undoubtedly go out of business. The Court of Appeals, however, has seriously undermined the constitutionally mandated CAUV program, by permitting county auditors to reject CAUV status based on criteria not found anywhere in Section 36, Article II, of the Ohio Constitution or its implementing statutes. Accordingly, this Court should accept review of this case to clarify the legal standards applicable to the CAUV program, and to ensure that Ohio farmers continue to receive the benefits of this important, constitutionally mandated tax relief program.

Respectfully submitted,


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of June, 2008, a true copy of the foregoing Amicus Curiae Ohio Farm Bureau Federation's Memorandum In Support Of Jurisdiction was served by regular U.S. mail, postage prepaid, upon the following:

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