

IN THE SUPREME COURT OF FLORIDA

CONSOLIDATED CASE NO.: SC2024-0652

On Appeal from the Second Judicial Circuit, Leon County, Florida

Lower Court Case No.: 372022CA001562

STATE ATTORNEYS for the SECOND, SEVENTH and NINTH
JUDICIAL CIRCUITS,
Appellant(s)

v.

FLORIDA PACE FUNDING AGENCY, et al.

Appellees

Case No. SC2024-0652

ALACHUA COUNTY TAX COLLECTOR, et al.,

Appellants

v.

FLORIDA PACE FUNDING AGENCY, et al.

Appellees

PALM BEACH COUNTY, FLORIDA, et al.,

Appellants

v.

FLORIDA PACE FUNDING AGENCY, et al.
Appellees

ALACHUA COUNTY, FLORIDA, et al.
Appellants

v.

FLORIDA PACE FUNDING AGENCY, et al.
Appellees

**BRIEF OF AMICUS CURIAE
THE GREEN CORRIDOR
IN SUPPORT OF APPELLANTS**

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Green Corridor Property Assessed Clean Energy (PACE) District (“Green Corridor”) is a separate legal entity created pursuant to Section 163.01(7), Florida Statutes, to implement a qualifying improvements program authorized pursuant to Section 163.08, Florida Statutes, (“the PACE Statute”) to finance energy efficiency, renewable energy and wind resistance qualifying improvements for residential and commercial property owners in Florida. This is the same statutory structure that the Florida PACE Funding Agency (“FPFA”) operates under. This case raises important legal issues about the operation of PACE programs pursuant to the PACE Statute and the scope of PACE program bond validation judgments.

The Green Corridor’s amicus brief provides the Court with background on the applicable statutory provisions at issue. It also provides helpful perspective and context for the historical operation of qualifying improvements programs statewide and the principles the Court will apply in deciding this case regarding the scope of the bond validation of the FPFA at issue.

The ramifications of this case extend beyond the FPFA’s bond validation and impact the operations of all PACE programs statewide

that are authorized “subject to” a local government ordinance or resolution. PACE programs operate pursuant to the PACE Statute providing financing for qualifying improvements to property owners “subject to” a local government ordinance or resolution. That statutory requirement and preserving local government home rule authority relative to PACE programs is the cornerstone of PACE program operations. These statutory requirements were ignored in the FPFA 2022 bond validation judgment and instead the judgment collaterally negated their effect by allowing the FPFA to “independently, concurrently and nonexclusively serve populations within and outside of the members of the Plaintiff with its qualifying improvement financing program and associated activities in Florida”. Accordingly, this case has significant implications for all the PACE programs operating in Florida because the FPFA asserts its 2022 bond validation judgment authorizes it to operate outside of these statutory procedures- and only they can operate in that manner because it is their individualized 2022 bond validation that allegedly provides that authority to ignore the existing statutory construct for PACE implementation.

The Green Corridor does not dispute the validity of the underlying 2022 FPFA bond validation, but vehemently opposes the alleged expansion of the FPFA program operation statewide through a bond validation in contravention of the PACE Statute and the scope of bond validation proceedings under Chapter 75, Florida Statutes. The 2022 FPFA bond validation judgment adjudicates collateral matters improperly within a bond validation complaint and judgment. The Green Corridor has a significant interest in ensuring the lawful operation of PACE programs statewide pursuant to the relevant statutes as an operator of one of the five (5) active programs in Florida.

SUMMARY OF ARGUMENT

This case centers on collateral issues in a bond validation judgment that expand its scope beyond that contemplated or tenable under the Florida Statutes. When the Legislature decided to authorize PACE programs to operate in 2010, it did so explicitly stating that a property owner may apply to a local government for funding to finance qualifying improvements and enter into financing

agreements “subject to” a local government ordinance or resolution.¹ Additionally, the Legislature specifically stated that the PACE statute is “additional and supplemental to county and home rule authority” and not in derogation or a limitation upon such authority.² A bond validation judgment for a PACE program that ignores these statutory provisions and includes collateral matters allowing one PACE program to operate independently statewide undermines the legislative intent of these statutory provisions to protect the role of counties and municipalities in the implementation of PACE programs.

All PACE programs operate pursuant to Section 163.08, Florida Statutes, and the FPFA’s 2022 bond validation upends over fourteen (14) years of PACE program operation statewide. The PACE Statute prohibits unilateral operation of PACE Programs on two levels: 1) it provides that “subject to local government ordinance or resolution” a property owner may participate in the PACE program and 2) it preserves county and municipal home rule authority relative to PACE program implementation. When the Circuit Court for the Second

¹ Section 163.08(4), Florida Statutes.

² Section 163.08(16), Florida Statutes.

Judicial Circuit validated the FPFA's second issuance of bonds for its PACE program in its final judgment, it significantly expanded the ability for FPFA to operate statewide as an independent general purpose local government without guardrails contravening the PACE Statute on its face. These findings, and others as more described herein, were collateral to the bond validation, and as such, they should be struck from the judgment as sought by the Appellants in their Florida Rule of Civil Procedure 1.540 motion seeking relief from those collateral matters.

ARGUMENT

I. PACE PROGRAM OPERATION PURSUANT TO FLORIDA STATUTE

A. PACE Program Structure Under Interlocal Agreements

Since the enactment of Section 163.08, Florida Statutes in 2010, PACE programs have grown in their operation statewide. Currently there are five (5) programs operating within Florida, four (4) of which are structured as separate legal entities created pursuant to Section 163.01(7), Florida Statutes and permitted to operate pursuant to partnerships of local governments.³ The Green Corridor

³ Section 163.08(5), Florida Statutes.

and FPFA are both entities structured as separate legal entities created pursuant to Section 163.01(7), Florida Statutes. These entities are formed with an Interlocal Agreement (“ILA”) under the Intergovernmental Coordination Act of 1969, Section 163.01(7), Florida Statutes.

An ILA is executed between “originating parties”. Once the ILA has been executed forming the PACE program, a bond validation is sought to authorize the issuance of debt secured by the PACE assessment and this is the underlying source of capital for funding the qualifying improvements undertaken by property owners. The financing is repaid as a non-ad valorem assessment on the property owner’s tax bill. But the local governments⁴ who join that separate legal entity expand over time generally through two actions: 1) the passage of an ordinance or resolution required pursuant to Section 163.08(4) and (2) execution of the ILA to join that separate legal entity. More local governments join the separate legal entity and this is contemplated in the bond validation judgments for the PACE

⁴ Prior to 2012, the definition of local government meant a county, a municipality, a dependent special district as defined in s. 189.012.

programs because they are designed to accommodate more local governments as they enable PACE within their county or municipality.⁵

Up until the 2022 FPFA bond validation judgment, the four (4) PACE programs structured as separate legal entities operated under the same, or substantially similar, structures recognizing the requirements of Subsection (4) under the PACE Statute requiring that the funding to finance qualifying improvements is “subject to local government ordinance or resolution”. It was widely established that this was a statutory condition precedent to PACE operation in a local government jurisdiction by general operation of all of the PACE programs including FPFA. Up until the 2022 FPFA bond validation judgment, no PACE program would operate in a jurisdiction unless an enacting ordinance or resolution was undertaken by the municipality or county to “join” a PACE program first. This local government action is an assurance measure that Subsection (4) was

⁵ *Green Corridor Property Assessment Clean Energy District v. the State of Florida*, Case No. 2012 CA 00287 (Fla. 2d Cir. Ct. October 23, 2012) at Paragraph 4.

complied with and is a necessary step to program capital providers that program operations are consistent with State law.

B. Section 163.08, Florida Statutes Change in the Definition of Local Government in 2012

FPFA represented to the trial court that in 2012, the Legislature “sought to impute or import home rule authority” into the powers of separate legal entities created pursuant to Section 163.01(7), Florida Statutes granting them “broad” home rule powers, (App. 292-93, 499, 546.) and that FPFA is “authorized *uniquely* to act statewide both inside and outside of the members that created it,” describing all this as “black letter law”, (App. 292-93.). These statements are not factually correct.⁶

In 2012, the Legislature amended the definition of “Local Government” to expand it to include “... or, a separate legal entity created pursuant to s. 163.01(7)”. The reason the statutory change was sought by the Green Corridor and other PACE stakeholders was to clarify that PACE assessments did not have to actually be placed

⁶ The Green Corridor has first-hand knowledge of the intent of these legislative amendments because it was the primary stakeholder seeking these 2012 legislative changes: the addition of s. 163.01(7) entities to the definition of “local government” in the PACE Statute.

on the tax roll by a specific municipality or county. This is borne out precisely in the bill’s legislative history: House of Representative Final Bill Analysis for CS/CS/HB 7117 (which became law in Chapter 12-117, Laws of Florida), section 163.08 was amended in 2012 merely “to *clarify* that a partnership of local governments may enter into a financing agreement and that the separate legal entity may impose the voluntary special assessments.”⁷ While a “local government” at the time had this clear authority already to levy non-ad valorem assessments to fund qualifying improvements⁸, because PACE programs were scaling quickly through the ILAs, it became necessary to clarify that these “partnerships” (the separate legal entities) could also levy and collect the assessments across county and municipal boundaries.⁹ A rationale for the statutory change was to provide clear authority to implement Subsection (5) which allowed

⁷ Fla. Legis., House of Representatives Final Bill Analysis, 2012 Reg. Sess., at 6, CS/CS/HB 7117.

⁸ Section 163.08(3), Florida Statutes.

⁹ In the earlier formative years of PACE implementation, the municipalities and counties did not want the burden of levying and collecting the non-ad valorem assessments and were more supportive of the program knowing there was clear authority for the separate legal entities to levy and collect the PACE Assessments.

a “partnership” of one or more local governments to effectuate PACE programs.¹⁰

Under an ILA, “A public agency of this state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.”¹¹ These partnerships for PACE were formed through the ILAs, but it was necessary to clarify that these separate legal entities had the clear legal authority to levy and collect the assessments for the PACE financing and do it as one single entity across municipal and county boundaries participating in the partnership. Separate legal entities have powers that the local government participants share in common and the intent of the statutory change in 2012 was not to create a “super jurisdictional local government” that could operate PACE statewide whether or not the local government wanted to participate in the program. FPFA does not have a unique enabling

¹⁰ These partnerships could do so under Subsection (5) of the PACE Statute in three methods: 1) pursuant to Section 163.08, Florida Statute, 2) as otherwise provided by law, or 3) pursuant to a local government’s home rule power.

¹¹ Section 163.01(4), Florida Statutes.

act specific to it allowing it to operate extraterritorially. Section 163.01, Florida Statutes does not bestow upon FPFA the power to do anything the sum of its parts cannot do: it can only operate pursuant to shared powers with other local governments. No PACE program can levy assessments in a local government outside of the PACE Statute requiring an enabling resolution or ordinance pursuant to Subsection (4), including FPFA.

Another reason that the statutory change was sought was under the ILAs, the separate legal entities were authorized to “... incur debts, liabilities, or obligations which do not constitute the debts, liabilities or obligations or any of the parties to the agreement.”¹² The intent of the statutory change to the definition of local government also was to align the entity levying and collecting the PACE assessments with the entity subject to the bond validation incurring the debt: the separate legal entity. These statutory changes were sought to make clear to the county and municipal participants that they would neither levy and collect nor would they incur debt for PACE implementation; this was the role of the separate legal entity.

¹² Section 163.01(7)(b), Florida Statutes.

All aspects of PACE implementation were contemplated to take place under the traditional ILA. The FPFA takes a giant leap arguing it is “authorized uniquely to act statewide both inside and outside of the members that created it.” The law simply does not support this¹³ and FPFA is not unique in Florida.

II. MUNICIPAL AND COUNTY PACE ORDINANCES AND RESOLUTIONS

While FPFA clearly argues it has been inconvenienced by operating under home rule authority (App. 291.), the other PACE programs do operate pursuant to local government home rule authority recognizing in Subsection (16), the PACE Statute is “additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation” upon it. The combination of Subsections (4) and (16) have resulted in two predominant outcomes. The first is the recognition that a local

¹³ See *Halifax Hospital Medical Center v. State of Florida*, 278 So. 3d 545 (Fla. 2019), “Also, while a municipality generally cannot exercise extraterritorial powers, it can do so when authorized by law. Art. VIII, § 2(c), Fla. Const.; Op. Att’y Gen. Fla. 2008-01 (2008); Op. Att’y Gen. Fla. 2003-03 (2003). Therefore, the fact that the Interlocal Act contemplates that some functions under interlocal agreements will be performed extraterritorially does not mean that the Legislature granted all public agencies the right to act extraterritorially.”

government action through ordinance or resolution is a required statutory condition precedent to launching a PACE program in a local government. Second, is the recognition that local governments have an interest in the proper operation of PACE programs, so the action of executing a PACE ILA is generally coupled with the passage of the ordinance or resolution that outlines the parameters of operation within that local government.

Because local governments are not homogenous, neither are the ordinances or resolutions a local government may adopt or authorize relative to PACE. Some local governments in the earlier years of PACE expansion passed simple resolutions making general findings of program benefit and would authorize execution of one or more ILAs to launch PACE in their community. As PACE evolved across the state, PACE “authorizations” from local governments became more complex including provisions related to consumer protections, indemnifications of the underlying local governments and reporting requirements back to the local government on project volume. Local governments moved away from simple resolutions to authorize PACE programs to the passage of a municipal or county ordinance in conjunction with a resolution delegating authority to a named

individual to execute the ILA. This became the dominant model of compliance with the Subsection (4) requirements. Furthermore, some counties and municipalities have updated and expanded the scope of issues included within their policy framework through the adoption of ordinance revisions. This has been the evolution of PACE enactment statewide undertaken by the four (4) primary PACE programs structured as separate legal entities pursuant to Section 163.01(7), Florida Statutes. until the 2022 FPFA bond validation upended that statutorily mandated process.

Important to note is that inclusive of the recognition of county and municipal home rule authority regarding PACE programs and the fact that these policy frameworks have become more robust in terms of “regulating” PACE programs, PACE programs are thriving within Florida. This trend is mirrored nationally. This is contrary to the arguments of the FPFA that operating under a county or municipalities’ home rule authority has had a chilling effect on PACE implementation. It indeed has not.

Residential PACE investments are estimated at \$8.46 billion across only three (3) states that have statutorily authorized residential PACE programs nationally: California, Florida and

Missouri.¹⁴ While these statistics on residential PACE are inclusive of 3 states, they indicate a robust cumulative demand for PACE since its inception in California circa 2008. PACE investments in commercial projects in Florida only are estimated at \$369 million as of December 2023.¹⁵ The demand for the program overall grows even in a time over the last few years of increased regulation of PACE programs both at the state and local levels.

By way of specific example, one of the most robust PACE markets in the State, Broward County reports a \$723,835,922 cumulative market of PACE financing as of December 2023.¹⁶ This significant amount of PACE financing has occurred even though the County adopted an Administrative Code provision in 2019, one of the first in the State to do so, including significantly enhanced consumer protections.¹⁷ Other local governments with large PACE markets that

¹⁴ PACENation, <https://www.pacenation.org/pace-programs/> (last visited June 10, 2024).

¹⁵ PACENation, <https://www.pacenation.org/pace-market-data/> (last visited June 10, 2024).

¹⁶ Email from Dr. Jennifer Jurado, Deputy Director and Chief Resilience Officer, Broward County, FL (June 10, 2024, 9:08 am EST) (on file with author).

¹⁷ Notice for adoption of Resolution No. 2019-373 Amending the Broward County Administrative Code:

have adopted PACE ordinances include Miami Dade¹⁸, Palm Beach¹⁹, and Sarasota²⁰ counties and those ordinances have been in place for a number of years.

In Florida, despite the recognition that home rule authority over PACE exists and has increased in complexity over the past several years, the market numbers show an increasingly robust demand for PACE financing. This increase in demand is contemporaneous with the required passage of an ordinance or resolution to enable PACE in a local government jurisdiction. The four (4) primary PACE programs organized as separate legal entities have all thrived in this regulatory environment. The bottom line is that compliance with Subsection (4) of the PACE Statute and compliance with local policy promulgated under county or municipal home rule embodied in Subsection (16) of the PACE Statute has not stymied its exponential growth at all.

III. COLLATERAL ISSUES IN THE FPFA BOND VALIDATION JUDGMENT: HOME RULE AUTHORITY AND BEYOND

<https://broward.legistar.com/LegislationDetail.aspx?ID=4082087&GUID=1EC23658-0246-4C27-8CFF-C2C4048B0482&Options=&Search=>

¹⁸ Article CXXXVIII of Miami Dade County Code of Ordinances.

¹⁹ Article XVII of Palm Beach County Code of Ordinances.

²⁰ Article XIV of the Sarasota County Code of Ordinances.

It is not within the trial court’s purview to adjudicate matters beyond the scope of a bond validation proceeding or “collateral matters”. This Court has held on multiple occasions that collateral matters are outside of the scope of a bond validation proceeding and adjudicating these matters is improper pursuant to Chapter 75, Florida Statutes.²¹ In its Denial Order on the Appellants Rule 1.540 motion, the trial court ruled the statutory requirements for PACE programs to operate subject to a local government ordinance or resolution and the ability of counties and municipalities to regulate PACE programs under their home rule were not collateral matters because “the parameters of [FPFA’s] authority to act independently throughout the state and to impose assessments for the revenue of the bonds sought to be validated is the very ‘authority to issue the bonds’ contemplated by chapter 75.” (App. 29.). These are collateral

²¹ (“It was never intended that proceedings instituted under the authority of [chapter 75] to validate governmental securities would be used for the purpose of deciding collateral issues or those issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereto.”); accord *Donovan v. Okaloosa County*, 82 So. 3d 801, 808 (Fla. 2012); *Keys Citizens For Responsible Govt., Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 944 (Fla. 2001); *Noble v. Martin Cnty. Health Facilities Auth.*, 682 So. 2d 1089, 1090 (Fla. 1996).

matters and by adjudicating them, the trial court has changed the statutory framework for PACE operation statewide with the practical effect of greatly expanding it beyond what the PACE Statute contemplates for the FPFA only. While FPFA will reap the benefit of that greatly expanded independent authority to operate exclusively to that program through its 2022 bond validation judgment, the three (3) other PACE programs would still have to comply with Section 163.01(7) and Section 163.08, Florida Statutes regarding the scope of PACE program operation subject to local government home rule authority.

It is within the Legislature's purview to construct the statutory framework surrounding PACE program implementation consistently and systematically statewide for all the PACE programs. And the Legislature knows how to legislate PACE programs. Even though there has only been one statutory change in 2012, it should be noted that almost every year for the last twelve (12) years there have been legislative attempts to modify Section 163.08, Florida Statutes for the purpose of enhancing PACE program operations through a myriad of modifications, including but not limited to, additional consumer protections, program authorization and deauthorization procedures

and adding to the definition of qualifying improvements.²² At least twenty-three (23) times the Legislature has considered PACE Statute modifications and the Green Corridor has been involved and a prominent stakeholder in all of them. And despite these legislative initiatives, the 2022 FPFA bond validation and Denial Order have the practical effect of doing something the Legislature up until this point has been unable to do: modify the PACE Statute except for once in 2012.²³

Up until the 2022 FPFA bond validation judgment, the four (4) primary PACE programs organized as separate legal entities,

²² The following bills have been introduced over the last 10 years in the Florida Legislature:

H.B. 927 / S.B. 770, 2024 Leg. Sess. (Fla. 2024)

H.B. 669/S.B. 950, 2023 Leg. Sess. (Fla. 2023);

H.B. 101/S.B. 228, 2022 Leg. Sess. (Fla. 2022);

H.B. 387/S.B. 1208, 2021 Leg. Sess. (Fla. 2021)

H.B. 225, H.B. 365, S.B. 770 and S.B. 824, 2020 Leg. Sess. Fla. 2020);

H.B. 63/S.B. 282, 2019 Leg. Sess. (Fla. 2019);

H.B. 1225/S.B. 1858, 2018 Leg. Sess. (Fla. 2018)

H.B. 973/S.B. 404, 2015 Leg. Sess. (Fla. 2015)

H.B. 1237/S.B. 1632, 2014 Leg. Sess. (Fla. 2014)

H.B. 7117, 2012 Leg. Sess. (Fla. 2012) modifying the definition of “local government”)

H.B. 7179/S.B. 2322, 2010 Leg. Sess. (Fla. 2010) Section 163.08, Florida Statutes enactment)

²³ It should be noted that S.B. 770, 2024 Leg. Sess. (Fla. 2024) is currently pending final action by Governor DeSantis.

including the FPFA, operated under the same statutory framework and similar bond validation judgments. The 2022 bond validation and Denial Order rewrite the PACE Statute by voiding Subsections (4) and (16) for the benefit of FPFA only. Ruling these matters as “not collateral” simply negates Subsections (4) and (16) of the PACE Statute and over fourteen (14) years of program operation and statutory operation in compliance with these provisions. Not only do these adjudications void provisions of statutory operation, they also expand upon the PACE Statute.

Another very clear example of how the 2022 FPFA bond validation adjudicates “collateral matters” are the findings relative to the scope of qualifying improvements. In the 2022 FPFA Final Judgment paragraphs 53-56, the trial court finds that seawall improvements are indeed considered to be wind resistance improvements under the definition of qualifying improvements in the PACE Statute.²⁴ The scope of qualifying improvements for PACE

²⁴ Section 163.08(2) Florida Statutes: As used in this section, the term:

(b) “Qualifying improvement” includes any:

3. Wind resistance improvement, which includes, but is not limited to:

programs is controlled by the PACE Statute, not the broadly expanded independent authority conferred upon the FPFA under its 2022 bond validation judgment and/or a unilateral act by the Board of the FPFA determining that seawalls can now be considered as qualifying improvements. All PACE programs want to deliver meaningful qualifying improvements to property owners, but PACE programs do not have the independent authority to change the definition of qualifying improvements in the PACE Statute including the FPFA. The reason this is such a clear example of overreach by the trial court into the legislative arena is that seawalls specifically had been included in the proposed legislative amendments to the PACE Statute in 2023 and most recently are incorporated into 2024's S.B. 770. Very clearly, circumventing the Legislature's role in determining the scope of qualifying improvements²⁵, the FPFA, its

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- a. Improving the strength of the roof deck attachment;
 - b. Creating a secondary water barrier to prevent water intrusion;
 - c. Installing wind-resistant shingles;
 - d. Installing gable-end bracing;
 - e. Reinforcing roof-to-wall connections;
 - f. Installing storm shutters; or
 - g. Installing opening protections.

²⁵ The legislature also has considered modifying the definition of qualifying improvements over the years to include fire suppression

2022 bond validation judgment and the trial court’s Denial Order, through adjudicating “collateral matters”, have greatly expanded the scope of FPFA’s program operations exclusive to their program by including qualifying improvements (seawalls) that other PACE programs cannot offer. The trial court has no subject matter jurisdiction over this “collateral matter” of expanding the definition of qualifying improvements to include seawalls in addition to negating the operation of Subsection (4) and (16) because it is placing itself in the role of the Legislature regarding PACE programs.

CONCLUSION

The 2022 FPFA bond validation judgment and Denial Order effectively rewrite the PACE Statute, a legislative function, and void Subsections (4) and (16) of the PACE Statute adjudicating a greatly expanded scope for the FPFA to operate. By this bond validation judgment, FPFA can completely ignore any home rule authority for

equipment, sinkholes and other improvements. See examples: H.B. 63/S.B. 282, 2019 Leg. Sess. (Fla. 2019) and the addition of fire suppression equipment offered as a qualifying improvement in H.B. 723/S.B. 908 2019 Leg. Sess. (Fla. 2019); H.B. 973/S.B. 404, 2015 Leg. Sess. (Fla. 2015) which attempted to add sinkhole improvements as a qualifying improvement)

their program, but the rest of the PACE programs must operate pursuant to statute and local government home rule authority. The FPFA 2022 bond validation and the Denial Order essentially rewrite the PACE Statute as applied to only one PACE program: the FPFA. PACE programs are not unique or individualized, they operate in exactly the same manner under the same statutory framework. The trial court erred in finding these matters as not collateral to the 2022 FPFA bond validation in the Chapter 75 proceeding. As such, the Green Corridor requests that this Court determine the 2022 FPFA bond validation cannot reach the collateral matters it adjudicates. The Green Corridor requests that Subsections (4) and (16) of the PACE Statute be upheld and this Court strike any other collateral matters from the FPFA 2022 bond validation judgment as void for lack of subject matter jurisdiction.

Respectfully submitted,

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CERTIFICATE

I HEREBY CERTIFY that undersigned counsel has consulted counsel and is authorized to represent that Appellants have no objection to the filing of this amicus curiae brief. Appellee Florida PACE Funding Agency does not oppose the filing of this amicus curiae brief and Appellee FortiFi has not provided a position on its filing.

/s/ Erin L. Deady
ERIN L. DEADY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via the Florida Courts E-Filing Portal to John A. Tomasino, Clerk of the Florida Supreme Court, via eService to all counsel of record, and via E-mail to Simone Mastiller, Gunster, Marstiller, SMarstiller@gunster.com, James Dinkins, CivForge Law, P.A., jamy@civforgelaw.com, and Olga Vieira, Quinn Emanuel Urquhart & Sullivan, LLP, olgavieira@quinnemanuel.com, on this XX day of June, 2024.

/s/ Erin L. Deady
ERIN L. DEADY

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this amicus brief complies with the font requirements by utilizing Bookman Old Style 14-point font and is consistent with the applicable word count limits.

/s/ Erin L. Deady
ERIN L. DEADY