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IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO. SC2024-0652; SC2024-0656; SC2024-0664; SC2024-0681

LOWER TRIBUNAL CASE NO. 372022CA1562XXXXXX

ON APPEAL FROM A FINAL BOND VALIDATION JUDGMENT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

STATE ATTORNEYS for the SECOND, SEVENTH and NINTH JUDICIAL CIRCUITS,

Appellants,

v.

FLORIDA PACE FUNDING AGENCY, etc.,

Appellees

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

INITIAL BRIEF OF APPELLANTS PALM BEACH COUNTY, FLORIDA, ANNE GANNON, in her official capacity as PALM BEACH COUNTY TAX COLLECTOR, POLK COUNTY, FLORIDA, JOE TEDDER, in his official capacity as POLK COUNTY TAX COLLECTOR, and NOELLE BRANNING, in her official capacity as LEE COUNTY TAX COLLECTOR

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STATEMENT OF CASE & FACTS

This appeal concerns issues of critical statewide importance arising from a flawed decision by a Leon County trial court bond validation proceeding that: (1) determined that the Florida Legislature, in enacting chapter 75, preempted the application of Rule 1.540 of the Florida Rules of Civil Procedure in bond validation proceedings notwithstanding the Florida Constitution's express directive, repeatedly recognized by this Court, that this Court –not the Legislature – has exclusive authority over rules of court procedure; (2) purportedly adjudicated sweeping limitations on the home rule powers and constitutional authority of all Florida counties and tax collectors, notwithstanding the fact that these counties and tax collectors were not parties to, nor given notice of and the opportunity to participate in, the proceeding where their rights and powers were purportedly adjudicated; and (3) grossly expanded the statutorily limited scope of chapter 75 bond validation proceedings to permit the adjudication of collateral matters barred by this Court's precedent which involve the rights and obligations of government entities and officers not parties to the proceeding.

The net result of this flawed trial court ruling, if allowed to stand, is that a small, local governmental separate legal entity, created through an interlocal agreement ("ILA") between Flagler County and the City of Kissimmee, will be permitted to operate in all local jurisdictions across Florida without regard to the mandates of such jurisdictions, to wholly ignore the local consumer protection requirements and ordinances that many of Florida's counties or municipalities have enacted to protect their citizens related to "Property Assessed Clean Energy" or "PACE" programs, and to mandate that all Florida tax collectors act even if such acts violate requirements of law. This consolidated appeal is collectively brought by a total of 63 counties and tax collectors, and also impacts some 23 lawsuits pending in the lower courts involving these same issues. Simply stated, this appeal presents a uniquely appropriate opportunity for this Court to resolve and provide guidance to Appellants and the many lower courts faced with the same questions on these important legal issues.

I. Florida's Statutory Framework for PACE Programs

Appellee Florida Pace Funding Agency ("FPFA") was the Plaintiff in the trial court. FPFA is a small, local governmental separate legal

entity created via ILA to provide "PACE" funding opportunities to property owners. (A.1742). The Florida Legislature enacted section 163.08 in 2010 to allow local governments the option to create PACE programs to fund improvements for residential and commercial energy conservation and efficiency through the levy of non-ad valorem assessments. Pursuant to section 163.08(4), Florida Statutes, valid non-ad valorem assessments for costs incurred to fund PACE improvements are collected using the "uniform method" for levy, collection, and enforcement under section 197.3632, Florida Statutes.

While FPFA was created pursuant to an ILA between Flagler County and the City of Kissimmee, other Florida counties have their own rights under chapter 163 and their home rule authority to create their own PACE programs, as well as to regulate and control the operation of PACE programs within their jurisdiction in accordance with general law. These rights to regulate and control the operation of PACE programs within their jurisdiction include the right under chapter 163 to require that FPFA (and any other PACE program) enter into an ILA with the county prior to operating within the jurisdiction, and the right to exercise their constitutional home rule authority to

adopt ordinances that govern FPFA's operation of a PACE program within the county's jurisdiction. Section 163.08 recognizes this broad discretion provided to local governments by expressly giving local governments the *option* of entering into partnerships with other local governments (§ 163.08(5)), by providing that the method for administration of programs is "at the discretion" of the local government (§ 163.08(6)), and by providing that the provisions of section 163.08 are "additional and supplemental to county and municipal home rule authority *and not in derogation of such authority or a limitation upon such authority*." (§ 163.08(16) (emphasis added.))

Consistent with this statutory framework of allowing local governments to determine whether, and how, they offer PACE financing services, FPFA is only one of numerous entities that Florida local governments have created to provide PACE financing to property owners. Despite calling itself "the Agency" and claiming a statewide mandate from the Florida Legislature, FPFA is not a state "Agency" like the Agency for Health Care Administration. *See, e.g.*, § 20.03(1), Fla. Stat. (defining "agency" in the context of Florida's executive branch). Rather, FPFA is merely a local government entity created through an ILA between Flagler and Kissimmee, which until 2019

had no employees, and even now has only five employees. (A.2282). In addition to numerous single-jurisdiction PACE programs, the Florida Department of Commerce identifies three other PACE entities created by ILA offering PACE programs throughout the state, *after* signing ILAs with the local jurisdiction to operate therein: Florida Green Finance Authority, Florida Resiliency and Energy District, and Green Corridor PACE District. (A.713).

II. FPFA's Formation and Initial Operations

Following the enactment of section 163.08, Flagler and Kissimmee formed FPFA in June 2011. FPFA then filed a chapter 75 bond validation proceeding in Leon County court to validate $2 billion dollars in PACE bonds. (A.39-79). The Leon County court entered final judgment validating FPFA's bonds, which did not include language adjudicating the collateral matters at issue here, nor limiting the home rule powers of the Florida counties or mandating that Florida tax collectors collect FPFA's assessments regardless of other legal requirements. (A.1352-1371). Following this 2011 bond validation judgment, FPFA used its bonds to offer PACE financing in jurisdictions throughout the state *that had agreed* to its presence,

including Palm Beach County, municipalities within Polk County, and many other Appellant counties. (A.1744).

As part of this process, where a local government had enacted consumer protection requirements to protect local residents[1] or required that FPFA enter into an ILA governing FPFA's action in their local jurisdiction, FPFA entered into the requested ILAs and complied with the local ordinances, just like all other PACE providers. Because FPFA did so, the tax collectors in these jurisdictions placed the FPFA assessments on their tax rolls without issue. This practice continued for over a decade, with FPFA able to operate in local jurisdictions across the state and to have its assessments collected by tax collectors without incident – all under the 2011 bond validation judgment that did not adjudicate the collateral matters at issue here.

[1] Many counties like Palm Beach were concerned that, because the PACE assessments are collected as part of the property owners' property tax bill, property owners faced a greater risk of losing their home if the assessments were unpaid. As a result, Palm Beach and other counties enacted various consumer protection ordinances that included requirements such as a 3-day right to cancel, right of pre-payment without penalty, and disclosures to borrowers concerning the assessment and that failure to pay may result in loss of even homestead property. (A.972).

In 2012, the Florida Legislature made one slight revision to section 163.08 as a small part of legislation dealing with "energy" and relating primarily to the Department of Agriculture and Consumer Services' renewable energy program. Specifically, the legislation slightly modified the definition of a "local government" to include "a separate legal entity created pursuant to s. 163.01(7)." But the bill's legislative history establishes that this change was not intended to expand the scope of Florida's PACE program, noting that PACE programs are available within a jurisdiction only "if a local government passes an ordinance or adopts a resolution[.]" House of Representatives Final Bill Analysis for CS/CS/HB 7117 at p.5 (April 17, 2012) (available at: https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7117z1.ENUS.DOCX&DocumentType=Analysis&BillNumber=7117&Session=2012). This legislative history confirms that the change was not to authorize the creation of a roaming statewide "local government" with unchecked independent authority overriding every local jurisdiction's home rule powers, but instead only "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." *Id.*

FPFA took no action following this new legislation until February 20, 2017, when Flagler and Kissimmee amended their ILA to purportedly provide that the "non-exclusive jurisdiction of the Agency" includes "the territory of any county or municipality throughout the state within which any person owning property" enters into a financing agreement with FPFA, and to assert that a local jurisdiction need not "take any action" to permit "the Agency to act, provide its services, or conduct its affairs within the local governments' boundaries." (A. 358-390, 1744). After this amendment, FPFA nevertheless continued to enter into ILAs and comply with local ordinances in the jurisdictions throughout Florida where it operated. (A.1744).

III. The 2022 Bond Validation Proceeding

In September 2022, FPFA attempted to change all of this through its complaint to validate additional bonds in Case No. 2022-CA-1562, the "Bond Proceeding" at issue here. Pursuant to chapter 75, FPFA published notice of the Bond Proceeding only in select few counties (not encompassing Palm Beach, Polk or Lee Counties).

(A.1744). FPFA also served process only on the State Attorneys of the Second, Seventh, and Ninth Judicial Circuits, and not on any other State Attorneys. (A.1744-1745).

As a result, the Palm Beach, Polk and Lee County Appellants (and virtually all other Appellants) received no notice, nor had any opportunity to participate and be heard on matters purporting to impact their rights and duties, prior to entry of the final judgment in the Bond Proceeding ("Final Judgment") and expiration of the appeal period. Further, the evidence presented during the hearing on Appellants' motions for relief from final judgment was that FPFA was actively meeting with Palm Beach County officials regarding FPFA's compliance with Palm Beach County's consumer protection ordinances *simultaneously* with its pursuit of the Bond Proceeding, but deliberately concealed from Palm Beach the existence of the 2022 Bond Proceeding – and that FPFA sought therein declarations on collateral matters that would purportedly bar Palm Beach County, and all other Florida counties, from enforcing consumer protection and related ordinances against FPFA. Indeed, an internal email from FPFA's counsel during the pending Bond Proceeding stated that counsel was waiting until the appeal period expired before informing

Palm Beach and other counties of the decision, and recognized that Palm Beach and other counties and tax collectors would be "shocked" when they learned that the Final Judgment included language that allowed FPFA to ignore local ordinances and excused FPFA from entering into any ILAs to operate in other jurisdictions. (A.2609-2611).

Consistent with this intent, FPFA's complaint in the 2022 Bond Proceeding made no reference to any issues involving local ordinances or ILAs to operate in other local jurisdictions, nor stated that FPFA disputed the authority of counties to regulate FPFA or require an ILA to operate therein. (A.39-79). Instead, FPFA's complaint made only generic and intentionally vague assertions about its purported authority to operate throughout the state in accordance with "general law" and the purported inability of general-purpose local governments to require or prohibit actions of FPFA contrary to "general law," for example:

> 21. . . . . The Legislature has provided express **general law** authority to the Plaintiff to independently fund and finance qualifying improvements for interested private property owners throughout the State in a concurrent, alternative, but non-exclusive manner. . . .
>
> ***

> 52. Any local government defined in section 163.08(2)(a), Florida Statutes, is free to govern and regulate its own activities, but cannot frustrate the announced necessity to serve and achieve the compelling state interest, expressly determined by the Legislature in the Supplemental Act as necessary for the welfare of the State and its property owners and inhabitants, by interfering in governance and the scope of general law powers and procedures of an independent special district or special purpose local government exercised independently, concurrently and non-exclusively as expressly authorized by the Legislature. For example, regarding the circumstance of the Supplemental Act, a general purpose local government may establish its own financing program *but is not authorized to prohibit associated behavior and action by the Plaintiff otherwise expressly allowed by* ***general law****, require actions of the Plaintiff prohibited by or fundamentally contrary to* ***general law****, provide for or require another way to do the same act to the exclusion of an act expressly authorized by* ***general law****, impose conditions on or otherwise regulate the authorized exercise of* ***general law*** *powers by the Plaintiff, frustrate the accomplishment of compelling state interests specifically articulated as desirous statewide by general law, or provide for different methods for doing a particular act by the Plaintiff than the methods set forth by authorizing State legislation.*

(A. 50, 68) (emphasis added).

These vague assertions were, apparently, intended to lull the trial court into a false sense of comfort and obscure FPFA's true intent: to obtain an effectively-unopposed judgment that it could later claim

"settled" what are actually fiercely-contested questions of law regarding its statutory authority.

Similarly, at the original hearing in the 2022 Bond Proceeding, FPFA also misrepresented to the trial court and States Attorneys that "in 2012, th[ere] was an expansion of authority and power allowing [FPFA] to operate statewide independently, concurrently within a city or county and non-exclusively with all other local governments," and claimed that this authority was "black letter law." (A.1399, 1401). Critically, at no point in the hearing did FPFA's counsel explain that it sought a judgment that adjudicated that every Florida county lacked home rule authority to regulate FPFA's operations in their jurisdictions. Instead, FPFA's counsel acknowledged that FPFA "has agreements throughout the State with various other communities" and that while FPFA finds it "difficult" to deal with a "wide variety of items" allegedly raised by various local jurisdictions, FPFA was committed to "work with the other local governments that are defined within 163.08, the Supplemental Act, to better serve private property owners, to seek uniformity, work with communities and carry out the general law directions of the Legislature." (A.1626-1627).

IV. FPFA's Conduct After the Final Judgment

Consistent with FPFA's undisclosed intent, only after the appeal period had expired and FPFA believed its Final Judgment to be secure from challenge, did FPFA then communicate to Palm Beach County and the other Appellants the existence of the Bond Proceeding and the purported breadth of the Final Judgment. In those communications, FPFA used very different language to identify the collateral matters it had only vaguely mentioned to the trial court and counsel in the Bond Proceeding. For example, in its letter to Polk County, FPFA asserted that the Final Judgment "means that PACE financing, which was previously only available to property owners in [municipalities that had entered into ILAs with FPFA], is now available to property owners throughout your county, and every county in the state." (A.1227). FPFA likewise transmitted to counties a "legal memorandum" asserting that the Final Judgment excused it from complying with local ordinances, stating that:

> Some general purpose local governments have attempted to use home-rule power to limit the authority of other local governments to impose PACE assessments. This can come in the form of prohibiting PACE assessments altogether, imposing a fee on assessments, or requiring adherence to particular contracts or extra-statutory conditions. The recent judicial validation clarifies that such ordinances

> apply only to those programs administered by the municipality or county adopting the ordinance, but not to those PACE programs administered by other local governments. The judicial validation further clarifies that, because the [FPFA] derives its authority to impose assessments from state statute, it does not need further authority or permission from a general purpose local government to operate within any particular territory, and no local government has liability, responsibility, or authority relating to PACE programs of another local government.

(A.1031). FPFA also informed Palm Beach County and other Appellant counties that because of the ruling, FPFA now need not enter into ILAs and was therefore terminating such agreements. In its letter to Palm Beach County, FPFA announced that it was immediately terminating the ILA because of the County's consumer protection requirements, that FPFA refused to participate in the County's regulatory structure, and would nevertheless continue operating in the County and on a "uniform statewide basis" based on its "independent authority" as adjudicated in the Final Judgment. (A.973, 1029).

FPFA also sent correspondence to the Palm Beach and other Appellant Tax Collectors telling them that the 2022 Final Judgment required that the tax collectors include and collect any FPFA assessments on their tax rolls regardless whether FPFA had an ILA

to operate, had complied with local ordinances, or had complied with the statutory requirements for including such assessments on the tax rolls.

Palm Beach County and other Appellant Counties responded and told FPFA that they were never notified of the Bond Proceeding nor given an opportunity to participate and be heard, that the County was not bound by portions of the Final Judgment purporting to adjudicate collateral matters related to its home rule powers, and that to operate in the County, FPFA must enter into an ILA and comply with the County's ordinances. *E.g.*, (A.1306). FPFA refused to do so, and Palm Beach (and other Appellant Counties) then sued FPFA in the local circuit court to enjoin FPFA's operations in the County. In total, 8 counties filed such lawsuits against FPFA, all of which remain pending.

Similarly, the Palm Beach Tax Collector notified FPFA that, because FPFA had terminated the ILA in January 2023 and thereafter not complied with the local ordinances, the Palm Beach Tax Collector was not authorized to include and collect the FPFA

assessments created after January 2023[2] on its tax rolls. *E.g.*, (A.1307-1308). Many other Appellant Tax Collectors took similar steps. In response, FPFA then filed 15 actions in the circuit courts around the State seeking writs of mandamus to require the tax collectors to place and collect the unauthorized FPFA assessments. These actions remain pending.

V. The Motion for Relief From Judgment

As the Appellant Counties and Tax Collectors learned of the common issues pending in numerous courts across the State, they determined that for reasons of efficiency and finality, the best course to address the improper inclusion of the collateral matters in the 2022 Final Judgment was to file motions for relief from judgment in the Leon County circuit court.

The Motion for Relief from Final Judgment filed by the Palm Beach and Polk County Appellants sought relief under subparts (1), (3), and (4) of Rule 1.540(b), alleging that: portions of the Final Judgment were void under subpart (4) due to a lack of subject matter

[2] Palm Beach County Tax Collector and the other Appellant Tax Collectors have included on their tax rolls the FPFA assessments created before FPFA terminated the ILAs and stopped complying with local ordinances.

jurisdiction over collateral issues, personal jurisdiction over the movants, and a lack of due process; that portions of the Final Judgment relating to the movants were procured through fraud, misrepresentations, and misconduct and thus voidable under subpart (3); and that portions of the Final Judgment resulted from surprise and were voidable under subpart (1). (A.1048-1082). Appellee FortiFi, one of FPFA's financial service providers who originates and provides funding for assessments, was granted leave to intervene. (A.1946). After limited discovery, the Leon County court convened an evidentiary hearing and thereafter denied the motions for relief from judgment appealed from. (A.13-38).

Importantly, by the motions in the circuit court and by this appeal, Appellants do not challenge the portion of the Final Judgment authorizing FPFA to issue bonds to provide PACE financing, similar to FPFA's decade-long actions following the 2011 Final Judgment. Rather, Appellants seek only to strike the portions of the 2022 Final Judgment dealing with the collateral matters because the trial court lacked subject matter jurisdiction to determine them, and lacked personal jurisdiction over Appellants to render a decision that has binding res judicata effect, and since

Appellants were not parties and had no opportunity to participate and be heard, binding Appellants on such issues would violate their due process rights.

SUMMARY OF ARGUMENT

The core issue here is whether FPFA may use a chapter 75 bond proceeding—which is statutorily strictly limited in scope—to adjudicate collateral matters impacting the rights and duties of non-parties. This issue is most critical given that the collateral matters purportedly decided involve matters related to the home rule powers of all Florida counties as well as the statutory rights and duties of all Florida tax collectors—issues neither briefed nor argued before decision, and purportedly decided in a proceeding where the counties and tax collectors were not parties, not served with the Complaint, and where notice was not published in the vast majority of Florida's counties. Florida law does not permit FPFA to manipulate the bond validation process in such a manner, and the trial court erred in not remedying such conduct and striking the portions of the 2022 Final Judgment that involved collateral matters.

Preliminarily, this appeal involves the trial court's erroneous determination that chapter 75 preempts and bars Rule 1.540

motions in bond validation proceedings. This determination was plain error as the Florida Constitution vests exclusive authority over rules of court procedure in this Court, which this Court has repeatedly recognized. Further, this Court has previously considered Rule 1.540 in the chapter 75 context.

The trial court's order denying the motions as untimely was also error. Appellants' rule 1.540(b) motion was based on subparts (1) (surprise), (3) (fraud, misrepresentation, or other misconduct) and (4) (that the judgment was void). Again, binding precedent clearly provides that relief from a void judgment may be granted at any time. Indeed, this legal principle is grounded in the notion long recognized by this Court that "the passage of time cannot make valid that which has always been void." *Ramagli Realty Co. v. Craver*, 121 So. 2d 648, 654 (Fla. 1960). Indeed, FPFA *conceded* in the trial court that there is no time limit to vacate a void judgment. The order as to subparts (1) and (3) being untimely was also plainly erroneous and not supported by substantial competent evidence—rather, Appellants filed these motions within a reasonable time *under the circumstances*, which included initial communication informing FPFA that Appellants were not bound by the Final Judgment, then waiting to

determine if FPFA ignored such communication, then filing local lawsuits to address the issues on an individual basis, and then, as Appellants later understood that the issues with FPFA were statewide, communicating, coordinating and filing joint motions to address the issues collectively and most efficiently.

Ultimately, the trial court's order was in error because it lacked subject matter and personal jurisdiction to adjudicate collateral matters. Adjudicating the home rule powers of all Florida counties and duties of tax collectors is not within the limited subject matter jurisdiction of a chapter 75 proceeding. Nor did the Court have personal jurisdiction over Appellants who were not joined as parties nor even given notice of the proceeding, and pursuant to this Court's precedent, *could not* have been parties to the proceeding. The fact that the 2011 Final Judgment did not adjudicate such collateral matters and that FPFA was nonetheless able to issue bonds and operate throughout the State for over a decade before the 2022 Final Judgment establishes that the adjudication of collateral matters was neither necessary nor directly related to FPFA's authority to issue the bonds, nor the placement and collection of the assessments.

Finally, the trial court erred in determining that the adjudication of collateral matters directly involving all Florida Counties and Tax Collectors, when none were parties or had the opportunity to be heard, did not violate due process. The trial court's decision that compliance with chapter 75's notice requirements satisfied due process ignores the reality of the case, which evidences a total lack of sufficient and meaningful process. Fundamentally, due process requires that, to be bound by a decision in the courts, one must be afforded the opportunity to be a party to and be heard in the proceeding. Without such opportunity, as here, courts must protect due process and not validate a fundamentally-flawed process.[3] Further, the trial court's holding that the State Attorneys represented all political subdivisions and constitutional officers of the State is error. Indeed, according to the trial court's holding, there would be no reason to serve *three* State Attorneys in this proceeding as chapter 75 required, because each State Attorney represents all State offices

[3] Appellants note that the chapter 75 notice requirements are not *per se* violative of due process, but are only violative here because the trial court adjudicated collateral matters impacting the rights and duties of non-parties.

and political subdivisions, making service on and participation by three State Attorneys unnecessary.

ARGUMENT

I. Standard of Review

In chapter 75 bond proceedings, this Court reviews a "trial court's findings of fact for substantial competent evidence and its conclusions of law de novo." *Strand v. Escambia Cnty*, 992 So. 2d 150, 154 (Fla. 2008) (citations omitted). Accordingly, the applicable standard of review differs as to the discrete issues on appeal, as identified *infra*.

II. The Trial Court Erred in Determining that Rule 1.540 is Inapplicable in Bond Proceedings (*de novo* review).

The trial court committed not only error, but constitutional error, in holding that the Legislature's enactment of chapter 75 preempts and bars Rule 1.540 in bond validation proceedings. This pure question of law is subject to *de novo* review.

Article V, Section 2 of the Florida Constitution establishes that this Court—not the Legislature—is vested with the power to promulgate procedural court rules: "The supreme court shall adopt rules for the practice and procedure in all courts[.]" In turn, Article II, Section 3, provides that one branch of state government cannot

exercise the constitutional powers of another: "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." This Court has consistently held unconstitutional any attempt by the Legislature to preempt the Court's procedural rulemaking authority. *See State v. Raymond*, 906 So. 2d 1045, 1048 (Fla. 2005) (holding any statute that purports to create or modify a court procedural rule is unconstitutional because "[i]t is a well-established principle that a statute which purports to create or modify a procedural rule of court is constitutionally infirm," and "powers constitutionally bestowed upon the courts may not be exercised by the Legislature," including court practice and procedure); *Allen v. Buttersworth*, 756 So. 2d 52, 63 (Fla. 2000) ("article V, section 2(a) of the Florida Constitution grants the Supreme Court the *exclusive* authority to adopt rules of procedure") (emphasis added).

Further, this Court has consistently instructed lower courts that, where two interpretations exist and one is consistent with the constitution, the courts should choose the interpretation that does not violate the constitution. *State v. Presidential Women's Ctr.*, 937 So. 2d 114, 116 (Fla. 2006). Also, this Court has itself recognized the

application of Rule 1.540 in a chapter 75 proceeding in *Mize v. Seminole*, 229 So. 2d 841 (Fla. 1969), where this Court expressly considered Rule 1.540 in the context of a chapter 75 bond proceeding, noting "[t]he successful parties in the litigation in the District Court *moved for relief under Rule 1.540(b)(5) . . . from the final judgment validating the bonds*. Upon hearing, such motion was denied and this appeal is from that order." *Id.* at 842 (emphasis added). Finally, the trial court's observation that the Rule 1.540 motion in *Mize* concerned a different subpart – (b)(5) – is of no consequence. The salient question is whether a Rule 1.540 motion is barred in a chapter 75 proceeding generally, regardless of the subpart involved.

III. The Trial Court Erred in Holding the Motions Untimely Because Arguments Raising Voidness Can be Raised at Any Time (*de novo* review), and the Arguments Raising Surprise, Fraud or Misconduct Were Brought Within a Reasonable Time Under the Circumstances (clearly erroneous review).

Appellants' Motion sought relief pursuant to Rule 1.540 under three separate subparts: (b)(1) by reason of surprise, (b)(3) by reason of fraud or misconduct, and (b)(4) by reason that portions of the Final Judgment improperly purporting to decide collateral matters are

void. The standard for determining the timeliness of the motion differs based on the subpart.

A. Appellants' Motion Challenging Portions of the Final Judgment as Void Cannot Be Untimely (*de novo* review).

Motions challenging a judgment as void can be raised at any time and *cannot* be untimely. *See Miller v. Preefer*, 1 So. 3d 1278, 1282 (Fla. 4th DCA 2009) ("A void judgment is one entered in the absence of the court's jurisdiction over the subject matter or the person. A void judgment may be attacked at any time."); *Gonzalez v. Gonzalez*, 654 So. 2d 257, 259 (Fla. 3d DCA 1995) (portion of final judgment addressing matters outside of the court's subject matter jurisdiction "is void and must be reversed"); *Dep't of Rev. ex rel. Prinzee v. Thurmond*, 721 So. 2d 827, 828 (Fla. 3d DCA 1998) ("[A] judgment entered without notice to a party is void ab initio. In accordance with rule 1.540(b)(4), relief from a void judgment may therefore be granted at any time . . .'[T]he passage of time cannot make valid that which has always been void.'") (*quoting Ramagli Realty Co. v. Craver*, 121 So. 2d 648, 654 (Fla. 1960)). Indeed, FPFA conceded in the proceedings below that there is no time limit for seeking to vacate a void judgment. (A.1656) ("[J]udgments that are

void—as opposed to voidable—are not strictly subject to the timing requirement. … a void judgment can never be valid."). The timeliness of the Motion on the basis of voidness is a pure question of law subject to *de novo* review, and the trial court's conclusion that the Motion was untimely in such respect is plainly incorrect as a matter of law.[4] This error is critical because where a final judgment (or a portion thereof) is void, the court lacks discretion and *must* vacate such portions when relief is sought. *See Metro. Mortg. Co. v. Rose*, 353 So. 3d 1230, 1232 (Fla. 3d DCA 2022) ("'[a] decision whether or not to vacate a void judgment is not within the ambit of a trial court's discretion; if a judgment previously entered is void, the trial court must vacate the judgment.'") (quoting *Wiggins v. Tigrent, Inc.*, 147 So. 3d 76, 81 (Fla. 2d DCA 2014)); *Horton v. Rodriguez Espaillat y Asociados*, 926 So. 2d 436, 437 (Fla. 3d DCA 2006); *State, Dep't of Transp. v. Bailey*, 603 So. 2d 1384, 1386-87 (Fla. 1st DCA 1992).

B. Appellants' Motion Challenging Portions of the Final Judgment Because of Surprise, Fraud and/or

[4] The trial court's statement that its untimeliness holding is further supported by its determination that the Final Judgment was not void improperly conflates two distinct issues: (1) the timeliness of the Motion; and (2) the merits of the Motion. Regardless of the merits, the Motion seeking relief on the basis of voidness was plainly timely under well-established Florida law.

Misconduct Was Timely Under the Circumstances (clearly erroneous review).

As to the portions of Appellants' Motion involving subparts (b)(1) (surprise) and (b)(3) (fraud and/or misconduct), the trial court's determination that Appellants did not file such Motion within a reasonable time was clearly erroneous. The trial court's rationale for reaching this conclusion was twofold. First, the court held that Appellants had "constructive notice" of the proceedings since 2022 by the statutory chapter 75 notice requirements. However, the record is uncontroverted that the statutory public notices did not occur in any of these Appellants' counties, nor were the State Attorneys for these counties served. (A.1744-1745). Accordingly, to hold that Appellants should have acted within a reasonable time from "constructive notice" in 2022 was clear error, wholly unsupported by the record.

The trial court also based its decision on its finding that the Appellants, having known about the Final Judgment by April 2023, and not filing the Motion until approximately six months later on October 5, 2023, had not filed within a reasonable time. The trial court further held that Appellants were aware that FPFA (and FortiFi)

"continued to act in reliance on the Final Judgment" during that time period. These holdings were not supported by the evidence and were clearly erroneous for several reasons. First, the record is uncontroverted that Appellants reasonably sought to resolve the issues raised in their Motion before filing. As *stipulated*, after learning of the Bond Proceeding, Appellants promptly informed FPFA that they disputed that the Final Judgment gave FPFA the right to act without an ILA and contrary to local ordinances. (A.1745-1765). Appellants reasonably anticipated that FPFA then would comply with such ordinances and with Appellants' home rule authority. The record is also uncontroverted that, when Appellants learned FPFA still intended to use the Final Judgment as a basis not to comply with local ordinances, Appellant Palm Beach County and others took legal action—first filing litigation to enjoin FPFA's actions, as well as defending FPFA's mandamus actions. *See*, *e.g.*, *Palm Beach Cnty. v. Florida PACE Funding Agency*, Case No. 2023-CA-009882 (Fla. 15th Cir. Ct., filed Apr. 28, 2023); *Pinellas Cnty. v. Florida PACE Funding Agency*, Case No. 23-CA-006631 (Fla. 6th Cir. Ct., filed Apr. 19, 2023); *Leon County v. Florida Pace Funding Agency*, Case No. 2023-CA-002050 (Fla. 2d Cir. Ct., filed Aug. 11, 2023). Later, as Appellants

learned of the proliferation of related litigation around the State, and FPFA's reliance on the purported precedent of the Final Judgment in such litigation, Appellants coordinated and collectively filed joint Rule 1.540 motions with other affected counties and tax collectors, hoping that doing so would efficiently end FPFA's overreaching conduct.

The trial court's conclusion that the six-month period constituted an unreasonable delay was clearly erroneous and not supported by the substantial evidence. Indeed, that the 63 Appellants did all the foregoing in the six-month period before filing cannot properly be considered an unreasonable delay. The ill-advised corollary of the trial court's holding is that Appellants should have immediately rushed to litigate in a Leon County court where they had not been parties, without first attempting to resolve the issues without the need for judicial intervention or seeking to address the issues in the local circuit courts (where they enjoy home venue privilege), and without coordinating the filing of the Motions with the 60 other Appellant counties and tax collectors who were also dealing with these issues.

The trial court's determination that Movants were aware that FPFA (and FortiFi) "continued to act in reliance on the Final Judgment" during these six months is also contrary to the record evidence. FPFA's and FortiFi's witnesses testified that they were aware from the start of the six-month period that Appellants disagreed that the Final Judgment bound them and contested FPFA's interpretation of the Final Judgment in the local lawsuits, and that FPFA and FortiFi *risked continuing to operate* under the Final Judgment under such circumstances, as opposed to *acting in reliance* on Appellants' acceptance of the Final Judgment. (A.2297-2298). Indeed, the trial court noted during the hearing that FPFA (and FortiFi) alone decided where and when to operate, including whether to risk operating in counties like Palm Beach and Polk after being informed by the counties that FPFA had no such right. (A.2271).

IV. The Trial Court Erred in Not Striking Portions of the Final Judgment That Adjudicated Collateral Matters (*de novo* review).

Appellants' Motion argued that portions of the final judgment that purported to adjudicate collateral matters – the home rule powers of the Appellant counties and the constitutional rights and duties of Appellant tax collectors – are void for three distinct reasons:

(1) the trial court lacked subject matter jurisdiction to adjudicate such collateral matters in the chapter 75 proceeding; (2) the trial court lacked personal jurisdiction over the non-party Appellant Counties and Tax Collectors and therefore could not adjudicate matters related to their rights and duties; and (3) the adjudication of non-party Appellants' powers and duties violated due process and fundamental fairness because Appellants were not provided with notice or an opportunity to be heard on such matters. The trial court denied these arguments, holding that the adjudication of Appellants' powers and duties was central to the bond validation and not collateral, that because FPFA complied with statutory notice requirements, Appellants were bound by the Final Judgment, and were represented by the State Attorneys who purportedly represented "the State," including every local government within Florida. These legal holdings are plain error, which this Court should correct following its *de novo* review.

A. The Trial Court Erred in Holding that the Adjudication of Appellants' Home Rule Powers and Constitutional

Duties Was Central to the Bond Validation (*de novo* review).

The scope of proceedings under chapter 75, Florida Statutes, is exceptionally limited: "The function of a validation proceeding is merely to settle the basic validity of the securities and the power of the issuing agency to act in the premises." *State v. Manatee Cnty. Port Auth.*, 171 So. 2d 169, 171 (Fla. 1965). As this Court has explained, jurisdiction in such proceedings extends to only three basic inquiries: "(1) [to] determine if a public body has the authority to issue the subject bonds; (2) [to] determine if the purpose of the obligation is legal; and (3) [to] ensure that the authorization of the obligation complies with the requirements of law." *State v. City of Port Orange*, 650 So. 2d 1, 2 (Fla. 1994); *see also Noble v. Martin Cty. Health Facilities Auth.*, 682 So. 2d 1089, 1090-91 (Fla. 1996).

Long-standing Florida law provides that a court's chapter 75 subject matter jurisdiction does not extend to deciding collateral issues that do not go "directly to the power to issue the securities and the validity of the proceedings with relation thereto." *State v. City of Miami*, 103 So. 2d 185, 188 (Fla. 1958). As this Court has consistently made clear since *City of Miami*, the catch-all phrase in

section 75.01 providing "[c]ircuit courts [the] jurisdiction to determine the validation of bonds and certificates of indebtedness *and all matters connected therewith*," does not permit determination of collateral issues simply because they have *some* connection to the bonds. Rather, the phrase "all matters connected therewith" remains limited to matters involving the authority to issue the bonds and whether issuance is legal.

Multiple decisions of this Court are instructive as to matters core to bond validation, and conversely, as to collateral and void matters. First, in *City of Miami*, the City sought to validate proposed bonds for City waterwork systems extensions. In the final judgment validating the bonds, the trial court also determined that the *county* lacked power to acquire portions of the waterworks system or affect its operation, and that the City's waterworks system was not taxable. On appeal, this Court noted validation proceedings were statutory, and that "[i]t was never intended that the proceedings instituted under the authority of [chapter 75] to validate 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." 103 So. 2d at 188. This Court

also observed that allowing injection of collateral questions "would seriously handicap the speedy and efficient disposition of bond proceedings in this state, and as a result, would defeat the purpose of the statute ...." *Id.*[5] This Court then held that the questions whether the County could acquire portions of, or take action regarding, the waterworks system, and whether such system was taxable – while related to the bonds – were collateral matters not determinable in a bond proceeding. *Id* at 190. This Court also noted that the County and other local municipalities who would be impacted by such determinations were not parties to the bond proceeding, nor could they be, and that any "attempt to bring these various municipalities outside of the City of Miami, as well as Dade County, was without authority and void." *Id.*[6] This Court therefore

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[5] Indeed, if collateral matters could be injected, due process and fundamental fairness would require joining all parties impacted by the collateral matters, transforming limited bond validity proceedings into wide-ranging, lengthy proceedings concerning matters immaterial to bond validation. As the trial court observed during the hearing, collateral matters are more properly the subject of a declaratory judgment proceeding—not chapter 75 proceedings—where all interested parties could be joined.

[6] This holding also demonstrates that publication of the statutory notices in Miami-Dade County, and service upon the State Attorney for the Miami-Dade County Circuit, did not mean that the County was a party to the proceeding or represented by the State Attorney.

reversed the final judgment in part and remanded to the trial court *to delete the portions of the judgment related to the collateral matters as void,* with the remaining portions of the final judgment affirmed. *Id.*

This Court confirmed the limited focus of chapter 75 proceedings in *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252 (Fla 1980), holding that in a bond proceeding, the trial court could not determine the validity of airline leases that were to be used as funding to repay the airport authority bonds being validated. This Court held that such matters, while related to the bonds, were collateral to the core issue of the validity of bond issuance, and noted that "[t]he airlines and other interested parties are not parties to this action, and the trial court has no jurisdiction to determine the validity of the leases in this type of proceeding." *Id.* at 254.

Similarly, in *Donovan v. Okaloosa County*, 82 So. 3d 801 (Fla 2012), this Court held that permitting questions concerning the work the bonds would fund were collateral issues not determinable in the limited chapter 75 proceeding, "[t]hese permitting issues raised by appellants exceed the court's scope of review in a Bond Proceeding," and observed that "[t]he proper forum for such issues is available

through administrative proceedings regarding the permits." *Id* at 808.

Finally, *Keys Citizens for Responsible Government, Inc. v. Florida Keys Aqueduct Authority*, 795 So. 2d 940 (Fla. 2001), the lone case cited and relied upon by the trial court in its decision, also applied these same principles. There, this Court considered whether a bond validation judgment that involved a county ordinance requiring citizens to connect to the sewer system being financed by the bonds was proper. In its analysis, this Court observed:

> In those instances where issues have been deemed collateral and not the proper subject of a Bond Proceeding, this Court has noted that 'the interested parties' to the collateral issue were not parties to the bond validation action and thus the trial court had no jurisdiction to decide the collateral issue in the proceeding.

Id at 945. This Court then noted that in the *Keys Citizens* bond proceeding, "the citizens and property owners in the area affected by the sewer bonds *were* parties to the Bond Proceeding and the circuit court had jurisdiction over them," *id* at 946 (emphasis added), and that:

> [the] bond resolution, which authorizes the issuance of sewer revenue bonds in various series to finance the Authority's sewer projects in the Florida Keys, includes a provision requiring compulsory connection by every

> property owner in the area of operation in order that the connection fees and service charges may "secure the prompt payment of the principal; and interest on the Bonds."

Id at 947. Upon these facts, this Court held "the validity of the mandatory connection ordinance was not a collateral issue, but part of the trial court's inquiry into whether the public body has the authority to issue the bonds." *Id.*

Applied here, the foregoing principles establish that the identified portions of the Final Judgment are collateral matters the trial court should have stricken as void, because their determination was unnecessary to and irrelevant to the core issues of whether FPFA had the authority to issue bonds and their legality. Importantly, striking these collateral matters as void will not invalidate FPFA's ability to issue its bonds, but merely strike from the Final judgment language purporting to adjudicate Appellants' home rule powers, including the validity of their consumer protection requirements. Just as in *City of Miami* (which reversed as collateral adjudication of the validity of the non-party County's powers related to the waterworks system), *McCoy* (which reversed as collateral adjudication of the validity of non-party airlines' leases with the

bonding authority), *Donovan* (which reversed as collateral adjudication of the legality of planned projects involving non-party administrative agencies), and in contrast to *Keys* (which properly adjudicated the validity of the bond resolution, and where all interested parties were before the court), the purported adjudication of Appellants' home rule powers and the validity and enforceability of their local ordinances was neither necessary nor core to the chapter 75 determination whether FPFA was authorized to issue bonds. Moreover, this Court's precedent further establishes the collateral nature of such matters, because the adjudication involves interests of Appellants, who were not and could not be parties to the Bond Proceeding.

It is also undisputed that FPFA has the power to issue bonds and impose assessments *without adjudication of these collateral matters*. Indeed, FPFA operated and issued bonds across the State for over a decade following the 2011 Final Judgment that validated similar PACE bonds, but which did not include any adjudication of the collateral matters FPFA wrongfully included in the 2022 Final Judgment. (A.1352-1371, 1744). Further, FPFA's purpose in surreptitiously including the collateral matters in the 2022 Final

Judgment is plain and wrong – to avoid compliance with the local consumer protection ordinances that Appellant Counties enacted, while gaining a competitive advantage over other PACE providers who have not attempted to manipulate chapter 75 proceedings to avoid such ordinances.

The surreptitious inclusion of these collateral matters was even more improper because these collateral matters were never briefed, argued, or considered by the trial court, resulting in a decision that was wholly incorrect. Simply put, the purported determination that section 163.08 provides the statutory authority to override Appellants' home rule powers is simply incorrect. Nowhere does the statute provide that entities like FPFA are not required to enter into ILAs to operate in other local jurisdictions, or to comply with local ordinances, nor was such a change made by the 2012 legislation. As noted above, neither the statute nor legislative history supports such interpretation, and such is certainly not black-letter law as FPFA represented. Instead, the 2012 minor change merely permitted separate entities created by ILAs equal footing as other local governments, clarifying that they could issue bonds or impose assessments in their own name rather than in the name of their

member governments. No one would contend that the City of Starke may operate PACE programs and levy non-ad valorem assessments on homes within Miami-Dade County without the consent of the Miami-Dade County government, or vice versa, and the same is true as to FPFA.

Instead, as this Court has long held and as the Florida Statutes make clear, separate legal entities created by ILAs may exercise only those powers which the parties to the ILA share in common and which each might exercise separately. *See* § 163.01(4), Fla. Stat. ("A public agency of this state may exercise jointly with any other public agency of the state … *any power, privilege, or authority which such agencies share in common and which each might exercise separately*.") (emphasis added); *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 549 (Fla. 2019). Because neither Kissimmee not Flagler independently possessed the power to operate PACE programs within the Appellant Counties without those counties' consent and cooperation (or in violation of their ordinances), they cannot by ILA vest FPFA with such power.

The collateral matters in the Final Judgment did not just involve the home rule powers of the Appellant Counties, but also the

statutory rights and duties of Appellant Tax Collectors. For example, paragraph 40 of the Final Judgment states the responsibilities and duties of the tax collectors "are wholly ministerial" and that the tax collectors "are without any discretion" with respect to collection of non-ad valorem assessments. (A.103). However, the authority and discretion of tax collectors when performing their constitutional duties are collateral matters distinct from FPFA's power to issue bonds or the validity thereof. Indeed, were the trial court's conclusion otherwise correct, *every* bond validation judgment would have to adjudicate such matters. Yet the absence of such language in the 2012 Final Judgment under which FPFA issued bonds and collected assessments for over a decade without incident establishes that such matters are not core.

Further, tax collectors are constitutional officers distinct from FPFA, with no relation to FPFA's bonds. More fundamentally, section 197.3632, Florida Statutes, establishes numerous prerequisites before a tax collector can utilize the uniform method of collection, and tax collectors must ensure each of these requirements is satisfied before including assessments on tax bills, including determining whether a non-ad valorem assessment has been imposed by a local

government authorized to impose such assessments in the jurisdiction. *See* § 197.3632(1)(a). The Final Judgment, however, need not, did not, and *could not* determine prospectively whether FPFA would perpetually be in compliance with all section 197.3632 requirements such that tax collectors must include particular assessments on tax bills.

The trial court's holding that such matters were necessary for the bonds' validity because, without such, Appellee FPFA (and FortiFi) may not be able to collect the assessments for bond repayment was also legal error. This Court considered and rejected this argument in *Manatee County Port Authority*, 171 So. 2d at 171, holding that whether the revenue generation mechanism a government intended to use for bond repayment would actually be sufficient for repayment is a collateral matter outside a bond validation court's jurisdiction: "[T]he fiscal feasibility of a revenue project is an administrative decision to be concluded by the business judgment of the issuing agency. Such problems as the advisability of the project and its income potential, must be resolved at the executive or administrative level. They are beyond the scope of judicial review in a validation proceeding."

Similarly, in *McCoy Restaurants*, 392 So. 2d 252, this Court held that the validity of the airport's lease agreements was "clearly a collateral issue and not properly the subject of a Bond Proceeding" notwithstanding that the proposed bond issuance was to be repaid solely through funds derived from the leases. Additionally, this Court noted that deciding such collateral matters was further improper because "[t]he airlines and other interested parties [were] not parties to th[e] action, and the trial court ha[d] no jurisdiction to determine the validity of the leases in this type of proceeding." *Id.* at 254; *see also Taylor v. Lee County*, 498 So. 2d 424, 425 (Fla. 1986) (holding "[a]lthough the generation of revenue to fund this bond issue depends on the county's authority to impose tolls, placing a toll on an existing toll-free bridge is collateral to this bond validation"). Similar to *Manatee*, *McCoy*, and *Taylor*, whether FPFA can collect certain assessments or repay the bonds is a collateral issue, and the trial court erred in determining otherwise.

In sum, the portions of the Final Judgment that adjudicated collateral issues outside the limited scope of the Bond Proceeding should be stricken following this Court's *de novo* review.[7]

B. The Trial Court Erred in Adjudicating Appellants' Rights and Duties When Appellants Were Not Parties and Had No Opportunity to Participate and Be Heard (*de novo* review).

Appellants also raised lack of personal jurisdiction and denial of due process as grounds for relief under Rule 1.540(b)(4). The trial court denied these arguments in Part V of its order, essentially holding that, because FPFA provided the section 163.01(7)(e) and section 75.06 statutory notices, Appellants received "constructive

[7] The collateral matters which should be stricken are: Paragraph 4 ("Fourth"), lines 5-6, the phrase "throughout Florida"; Paragraph 8 ("Eighth"), in entirety; the last three (3) lines of Paragraph 9 ("Ninth"), beginning with "has" on line 6; Paragraph 21 ("Twenty-First"), line 3, the phrase "black letter law", line 6, the phrase "act alone to", line 12, the phrase "throughout the state"; the last four (4) lines of Paragraph 22 ("Twenty-Second"), beginning with "and (iv)" on line 8; at Paragraph 38 ("Thirty-Eighth"), line 6, the phrase "as a ministerial act"; the last ten (10) lines of Paragraph 40 ("Fortieth"), beginning with "any duties" on line 2; the last eight (8) lines of Paragraph 47 ("Forty-Seventh"), beginning with "such" on line 10; Paragraph 48 ("Forty-Eighth"), in entirety; Paragraph 51 ("Fifty-First"), beginning with "and" on line 5, and continuing through "Legislature" on line 7; Paragraph 52 ("Fifty-Second"), in entirety; Paragraph 59 ("Fifty-Ninth") in entirety; and Paragraph 71 ("Seventy-First"), beginning with "the power" on line 6, and continuing through "improvements" on line 9, and on line 11, the phrase "throughout the State".

notice" sufficient for purposes of personal jurisdiction and due process. The trial court also held that the three State Attorneys who were served and participated represented "the State" and all its subdivisions, again satisfying any issues of personal jurisdiction or due process. These decisions are subject to *de novo* review and should be reversed.

The trial court lacked personal jurisdiction because the Appellants were not and *could not* have been parties to the Bond Proceeding, as the *City of Miami* decision and its progeny make clear. There, this Court held in a chapter 75 bond validation proceeding that the lower court lacked personal jurisdiction over Dade County and other local municipalities who were not, and could not be, parties in the bond proceeding brought by the City of Miami even with Dade County's consent: "the attempt to bring these various municipalities outside of the City of Miami before the Court, as well as Dade County, was without authority and void. No such power exists under the [chapter 75] statute and none may be conferred by consent of the parties." 103 So. 2d at 190. Similarly, in *McCoy*, this Court held that even contractual counterparties, whose lease payments would fund

bond repayments, could not be parties to the bond proceeding because they were not parties identified by statute. 392 So. 2d 252.

The same is true as to Appellants. Section 75.05 identifies the *proper* parties in a bond validation as "the state and the several property owners, taxpayers, citizens and others *having or claiming any right, title or interest in property to be affected by the issuance of bonds* or certificates." (Emphasis added). Appellants fall into none of these categories. Similarly, section 75.07 barred Appellants from intervening in the Bond Proceeding, providing that only a "*property owner, taxpayer, citizen or person interested* may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing." (Emphasis added). Thus, Appellants were not entitled to intervene. *See Rich v. State*, 663 So. 2d 1321, 1324 (Fla. 1995) (holding to be a "person interested" entitled to intervene in a bond proceeding, one must stand "to gain or lose something as a direct result of the bond issuance.").

Similarly, the trial court's holding that Appellants' interests were adequately represented in the Bond Proceeding because FPFA published statutory notice and several State Attorneys appeared, is error. The statutory notice provision of section 75.06, Florida

Statutes, required the clerk to "publish a copy of the order in the county where the complaint is filed," and in each affected county, providing

> [b]y this publication all property owners, taxpayers, citizens, and others having or claiming any right, title or interest in the county, municipality or district, or the taxable property therein, are made parties defendant to the action and the court has jurisdiction of them to the same extent as if named as defendants in the complaint and personally served with process.

Id. But again, Appellants are not property owners, taxpayers or citizens with rights, title, or interests in the affected property. Further, and as FPFA stipulated, the statutory notice was not published in Palm Beach, Polk, or Lee County, nor were the State Attorneys for these counties noticed or involved in the Bond Proceeding. (A.1744-1445). Thus, these Appellants were not made party to the proceeding from mere publication of the complaint under section 75.06, whether labelled "constructive notice" or otherwise.[8]

[8] Appellants do not ask this Court to second-guess the legislative policy for the chapter 75 notice requirements. Chapter 75's statutory notice properly provides notice to, and participation by, parties with an interest in the core bond validation issues. In a bond proceeding not involving collateral matters, Appellants would have no interest in the proceeding and the statute need not require notice to, or allow participation by, Appellants. The requirement for notice to and participation by Appellants only arises here because FPFA improperly

In addition, mere compliance with statutory notice provisions does not equate to constitutionally-adequate notice when, as here, a party whose rights were affected did not in fact receive notice. In *Vosilla v. Rosado*, 944 So. 2d 289 (Fla. 2006), property owners challenged a tax foreclosure sale of their property, contending they had no notice of the sale even though the statutory notice requirements had been met. This Court recognized that even where statutory notice is given, to satisfy due process, the "notice must be 'reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). In short, where statutory notice does not actually inform the affected party of the proceeding and provide the opportunity to defend, such notice does not satisfy due process and fundamental fairness protections because "[d]etermining whether a particular method of

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injected collateral matters which Appellants had an interest in and would need to be joined as parties to properly resolve. Thus, when chapter 75 proceedings remain properly limited to core issues, the legislative policy behind chapter 75's notice and publication requirements is sound.

notice is 'reasonably calculated' to provide adequate notice requires 'due regard for the practicalities and peculiarities of the case.'" *Vosilla*, 944 So. 2d at 294. Where such considerations are not satisfied, resulting judgments violate constitutional due process and fundamental fairness protections.[9]

For much the same reasons, Appellants are also entitled to relief under Rule 1.540(b)(1) because of surprise. *See Paulino v. Hardister*, 306 So. 2d 125, 129-30 (Fla. 2d DCA 1974) (holding that the "surprise" prong of Rule 1.540(b)(1) would apply if the moving party did not know of the pending suit in time to become involved). Again, Appellants only learned of the 2022 Final Judgment after the appeal deadline expired; and FPFA's own counsel, in an email just prior to

[9] FPFA and FortiFi argued below that Appellants, as government entities or officers, are not entitled to due process, which the trial court properly rejected. Florida courts have recognized that a government entity, when an interested party in a court proceeding, has the same fundamental right to notice and an opportunity to be heard as other parties. *See State v. Rosario*, 303 So. 3d 555, 563 (Fla. 5th DCA 2020) ("[a]s an interested party, the State (as any other party would be) is entitled to basic, fundamental fairness, including notice and an opportunity to be heard and to present any objections to matters pending before the court.") (internal citations omitted). Indeed, to hold otherwise would be nonsensical, with the corollary that no government entity is entitled to notice or an opportunity to be heard when party to a court proceeding.

the expiration of the appeal period, prophetically predicted that Appellants would be "shocked" – which the Merriam-Webster Dictionary defines to include "surprised" – when they learned of the Final Judgment and the purported adjudication of Appellants' powers, rights, and duties therein. (A.2300-2302, 2610-2611). Under these circumstances, as in *Paulino*, Appellants' lack of notice and an opportunity to be heard on matters impacting them constituted surprise, and this Court should reverse the trial court and strike as void the collateral portions of the Final Judgment.

The trial court's holding that the State Attorneys represented the "State" including every local government body or State officer is equally wrong as a matter of law. The State Attorneys are not the alter egos of, nor do they even represent, the counties or tax collectors. Instead, the State Attorneys represent *the State of Florida itself*. *See* Fla. Const. Art. V, sec. 17 ("the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law"); § 27.02(1), Fla. Stat. ("The state attorney shall appear in the circuit and county courts within his or her judicial circuit and prosecute or defend ***on behalf of the state*** all suits, applications, or motions, civil or criminal, in which

the state is a party") (emphasis added); § 75.05(1), Fla. Stat. (providing that the court shall order in a bond validation proceeding the appearance of "***the state through its state attorney*** or attorneys of the circuits where the county, municipality or district lies") (emphasis added). Further, the only evidence during the hearing on this issue was the testimony of one of the State Attorneys that the State Attorneys do not represent counties, municipalities, or local government officials, but only the State of Florida itself. (A.2362-2363). Additionally, this Court's *City of Miami* opinion establishes that a final bond judgment is not binding on every public body in Florida, or even within the same geographic area, simply because the State Attorney in the circuit was notified and participated. *See* 103 So. 2d at 190 .

Accordingly, the trial court lacked personal jurisdiction over Appellants, rendering the portions of the Final Judgment determining their rights and powers void.

V. The Trial Court Erred in Not Striking Portions of the Final Judgment on the Basis of Fraud and Misconduct (*de novo* and substantial competent evidence review).

As stated above, not only were the Appellant Counties and tax Collectors not parties to or provided notice of the Bond Proceeding,

FPFA and its counsel intentionally avoided informing them of the proceedings until after the appeal period for the 2022 Final Judgment had expired. Nor did FPFA and its counsel inform the trial court or the three State Attorneys of the monumental decision it surreptitiously sought in the Final Judgment, lulling counsel and the trial court into a sense of comfort with vague and general language in the Complaint and proposed final judgment, together with FPFA counsel's representation that the contents of the proposed final judgment were black-letter law. Yet in a single sentence the trial court incorrectly denied relief under Rule 1.540(b)(3), stating that Appellants had not established that FPFA's fraud affected the outcome of the Final Judgment, and that the importance of finality to the judgment barred a Rule 1.540(b) motion, citing *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc.*, 20 So. 3d 952, 958 (Fla. 4th DCA 2009). (A.24). In doing so, the trial court clearly erred and relied on an inapposite case.

In *Coleman*, the Rule 1.540 movant sought a new trial based on *de minimis* discovery misconduct that did not affect the case outcome because the topic "was extensively explored and affirmatively, unambiguously addressed by the Court at trial," including the

imposition of sanctions for such misconduct, and further, the Rule 1.540 motion relied upon "assumption upon assumption." *Id.* at 956. Indeed, the *Coleman* movant was denied even an evidentiary hearing because his plainly deficient motion was unsupported by any evidence of meaningful fraud. *Id.* The *Coleman* court therefore denied the movant a "second bite at the apple" to rehash matters already litigated at trial, under the guise of de minimis fraud. *Id.* at 954.

In stark contrast to *Coleman*, and wholly contrary to the trial court's erroneous and unsupported factual finding, Appellants introduced specific evidence regarding the significance of FPFA's intentional fraud/misconduct—which prevented Appellants from having *any* "bite at the apple" to protect their rights.

Specifically, the evidence established that FPFA deliberately concealed the existence of the Bond Proceeding from Appellants, and that FPFA sought an adjudication that it no longer needed to enter into an ILA with Palm Beach County or comply with its consumer protection ordinances, until *after* expiration of the appeal period. Indeed, FPFA's internal email *sent during the Bond Proceeding* establishes that FPFA and its counsel were meeting with Palm Beach County on matters related to Palm Beach's ordinances, but had

deliberately determined not to inform Palm Beach County (or the other counties) of the pending Bond Proceeding and the adjudications FPFA sought therein until after the appeal period for the final judgment had expired, when FPFA and its counsel believed that Appellants would be "shocked" to be bound by the final judgment. (A.2300-2301, 2610-2611).

FPFA expected Palm Beach (and the other counties) to be "shocked" because FPFA knew the Final Judgment was contrary to the county's position regarding FPFA's operations therein, *i.e.*, that FPFA had to enter into an ILA and comply with the county's consumer protection ordinances.[10] (A.2300-2301). Such purposeful conduct by FPFA and its counsel to keep Palm Beach and other

[10] On November 15, 2022, Palm Beach County amended its existing PACE Ordinance to clarify and strengthen qualifications and consumer protection disclosure requirements for PACE programs in Palm Beach County. (A.1006-1027). FPFA's counsel had participated in the discussions preceding the amendment, and conveyed FPFA's vehement opposition, yet at no time disclosed to Palm Beach County the existence of the then-pending Bond Proceeding or FPFA's intent to obtain an adjudication that it need not comply with these requirements. (A.1028-1031, 1242-1248, 1744-1745, 1758, 2610-2611). Similarly, FPFA represented it had "no issues" with Leon County regulating its operations, but suddenly, after expiration of the Bond Validation appeal period, advised the county that the Final Judgment excused it from complying with the county's regulations. (A.942).

Appellant counties uninformed of a legal proceeding that FPFA intended to impact the counties' rights is a textbook example of fraud warranting relief. *See Declaire v. Yohanan*, 453 So.2d 375, 377 (Fla. 1984); *see also United States v. Throckmorton*, 98 U.S. 61, 65-66 (1878) ("Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, … or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff . . . are reasons . . . to set aside and annul the former judgment or decree . . . .").

And again, the foregoing is in addition to FPFA's representations to mislead the trial court and opposing counsel regarding: (i) the scope of the holdings FPFA sought to include in the final judgment; and (ii) that the law on the matters to be adjudicated in the final judgment were settled and "black letter."

Simply stated, neither FPFA's pleadings nor presentations informed the trial court or opposing counsel that FPFA sought a groundbreaking ruling that it could operate statewide without entering into ILAs with counties, without complying with local ordinances, or even that FPFA requested adjudications on these

matters that were far from settled law—and were in fact contested by non-party counties, including Palm Beach and other Appellant Counties. Rather than risk opposition to FPFA's intended overreaching, the record established that FPFA concealed its intent by purposely filing vague pleadings, using innocuous and misleading references to "general law" without identifying in plain terms what FPFA sought—a binding judicial determination against all Florida counties, local governments, and tax collectors, none of whom were present to defend. Again, FPFA's intent and strategy in doing so is evidenced by, among other things, the night-and-day difference between the language in FPFA's complaint and FPFA's proposed final judgment, which used vague, general and confusing terms like "independent, concurrent, and nonexclusive," and its later communications with Appellants. Paragraph 51 of the FPFA-proposed and trial court-entered Final Judgment provides a prime example of the obfuscation by FPFA, stating that section 163.08:

> does not authorize regulation of one local government by another in the financing and non-ad valorem assessment process described by the Legislature, which in the instance of the Supplemental Act and its consensual general law authority providing for voluntary imposition of assessments for qualifying improvements on private

> property, is within the reserved general law domain of the Legislature.

(A110-111). This largely-incomprehensible paragraph drafted by FPFA is neither a restatement of the statute or law, nor a finding necessary to establish the validity of FPFA's proposed bonds. Section 163.08 simply does not state that counties cannot require FPFA to enter into ILAs and comply with county ordinances to operate within county boundaries, and FPFA's misleading description to the contrary plainly does not bear on the core validation issues.

In stark contrast to this purposeful vagueness, FPFA's post-Bond Proceeding January 3, 2023, letter to Palm Beach County and other Appellant Counties stated with perfect clarity that the Final Judgment was binding precedent on Palm Beach County and other Appellant Counties, that by reason of the judgment an "[ILA] is not necessary to provide PACE in your county," and that counties' local ordinances no longer applied to FPFA. (A.1028-1031). Further, the letter identified the following "takeaways from the judicial validation proceeding":

> Some general purpose local governments have attempted to use home-rule power to limit the authority of other local governments to impose PACE assessments. This can come in the form of prohibiting PACE assessments altogether,

> imposing a fee on assessments, or requiring adherence to particular contracts or extra-statutory conditions. **The recent judicial validation clarifies that such ordinances apply only to those programs administered by the municipality or county adopting the ordinance, but does not to those PACE programs administrated by other local governments.** The judicial validation further clarifies that, because the Florida PACE Funding Agency derives its authority to impose assessments from state statute, it does not need further authority or permission from a general purpose local government to operate within any particular territory, and no local government has liability, responsibility, or authority relating to PACE programs of another local government."

Id. (bolding in original). A studied review of the Bond Proceeding pleadings and the final hearing transcript evidences that FPFA and its counsel provided no such clarity prior to the expiration of the Final Judgment's appeal period.

Indeed, a review of the validation hearing transcript reveals the opposite: FPFA's counsel never informed the trial court or opposing counsel that it sought such a groundbreaking holding—instead, FPFA's counsel misrepresented the status of the law and the contents of FPFA's proposed final judgment, repeatedly asserting that all was well-settled or "black letter." As one State Attorney who attended the validation hearing testified, FPFA's representations concerning

"black letter" law misled him regarding what he now knows to be far-from-settled legal issues. (A.2361-2368, A.2373).

The joinder of counties and/or tax collectors from well over half of Florida's counties in the Rule 1.540 motions, each of whom has a contrary opinion to FPFA as to the purported "black letter" law, further evidences FPFA's counsel's misrepresentations. Such fraud/misconduct resulted in the Final Judgment improperly including adjudications of collateral matters without the briefing, consideration, analysis, and joinder of affected parties that such momentous decisions require. *See Greenwich Ass'n, Inc. v. Greenwich Apartments, Inc.*, 979 So. 2d 1116, 1118-19 (Fla. 3d DCA 2008) (fraud warranting relief under Rule 1.540 includes the presentation of misleading information on an issue before the court).

The evidence also established that had Appellants known of the pending Bond Proceeding—and FPFA's improper intent—at a minimum, Appellants could have informed the State Attorneys involved in the proceeding of FPFA's improper intent, and opposed entry of what FPFA misrepresented as a routine, "black letter" bond validation order. Indeed, but for FPFA's misrepresentations to the trial court and opposing counsel, the State Attorney testified at the

hearing that he would have investigated the legal propriety of the adjudications FPFA sought, questioned the propriety of FPFA's representations to the trial court, and prevented injection of collateral matters. (A.2367-2368, 2371-2373). Additionally, Appellants could have filed a motion to intervene which, even if properly denied under the *City of Miami* precedent, would have informed the trial court and counsel of these issues, increasing scrutiny on what FPFA masked as a routine Bond Proceeding involving "black letter" legal principles.

This evidence included Palm Beach counsel's letter to FPFA (A.1306) in response to FPFA's January 3, 2023 letter (A.1249-1256) informing the County of the Final Judgment and the alleged determination of the County's home rule powers, which response stated that the Final Judgment was not binding on the County, that the County wholly disagreed with the "conclusion that FPFA may operate independent of local government regulation on a statewide basis," and that such a decision was "beyond the statutory scope of Bond Proceedings, and infringes upon the County's constitutional authority." (A.1306). The response letter further stated that Palm Beach was "troubled" by FPFA's lack of notice to the County concerning the Bond Proceeding, which was "a clear violation of the

County's constitutional and statutory due process rights because the County was deprived of a real opportunity to be heard on a matter that ultimately infringed upon the County's substantive rights." *Id.* Consistent therewith, the Palm Beach County Tax collector sent FPFA a letter stating that the tax collector "no longer had the authority to collect non-ad valorem assessments on [FPFA's] behalf on those properties in unincorporated Palm Beach County or any municipality where FPFA does not have an active Interlocal Agreement." (A.1307-1308).

Similarly, the Polk County Board of Commissioners adopted a Resolution that found "the placement of a PACE assessment in unincorporated Polk County without Polk County joining an ILA would infringe upon Polk County's constitutional and Home Rule authority." (A.1153-1155). The Polk County Tax Collector likewise sent a letter to FPFA advising FPFA that "the placement of a PACE assessment in unincorporated Polk County without joining an ILA would infringe upon Polk County's constitutional and Home Rule authority," and that the Polk County Tax Collector's "office is not authorized to collect assessments for this year or any future years not covered by a current agreement." (A.1237-1238, 1762). The

stipulated evidence included many similar response letters to FPFA sent by other Appellants after FPFA informed them for the first time of the Bond Proceeding and FPFA's overreaching interpretation of the Final Judgment. *E.g.*, (A.795-796, 850, 941-943).

Upon this substantial and uncontroverted evidence, the trial court's determination that Appellants had not established that FPFA's fraud affected the outcome of the Final Judgment was error that this Court should reverse.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the trial court and hold that the identified portions of the Final Judgment are void and of no effect.

Respectfully submitted this 7th day of June, 2024,

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I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon the following via the Court's E-Filing Portal on this 7th day of June, 2024:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the type size and style used in this brief is double-spaced 14-point Bookman Old Style font in compliance with Florida Rule of Appellate Procedure 9.045(b), and that this brief contains 12,442 words, calculated pursuant to Florida Rule of Appellate Procedure 9.045(e).

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