

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,
Appellants,

v.

FLORIDA PACE FUNDING AGENCY, etc.,
Appellees.

Case No. SC2024-0652

ALACHUA COUNTY TAX COLLECTOR, et al.,
Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,
Appellees.

Case No. SC2024-0656

PALM BEACH COUNTY, FLORIDA, et al.,
Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,
Appellees.

Case No. SC2024-0664

ALACHUA COUNTY, FLORIDA, et al.,
Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,
Appellees.

Case No. SC2024-0681

**INITIAL BRIEF OF APPELLANTS,
ALACHUA COUNTY, FLORIDA, ET AL.**

**GUNSTER, YOAKLEY, &
STEWART, P.A.**

SIMONE MARSTILLER
Florida Bar No. 129811
smarstiller@gunster.com

Secondary Email:
etrammel@gunster.com

KENNETH B. BELL
Florida Bar No. 347035
kbell@gunster.com

Secondary Email:
awinsor@gunster.com
215 South Monroe Street,
Suite 601
Tallahassee, Florida 32301
(850) 521-1980

Fax: (850) 576-0902
JOUNICE NEALY-BROWN
Florida Bar No. 124793
jnealy-brown@gunster.com

Secondary Email:
tkennedy@gunster.com

401 E. Jackson Street, Suite
1500
Tampa, Florida 33602
(813) 228-9080
Fax: (813) 228-6739

and

CHASITY H. O'STEEN
Florida Bar No. 659681
County Attorney
Leon County, Florida
osteenc@leoncountyfl.gov
Leon County Attorney's Office
301 S. Monroe Street,
Room 202
Tallahassee, Florida 32301
Tel: (850) 606-2520
Fax: (850) 606-2501

*Attorneys for Appellant Leon
County, Florida*

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STATEMENT OF THE CASE AND FACTS

This appeal arises from the denial of a Florida Rule of Civil Procedure 1.540 motion seeking relief from collateral matters adjudicated in a final judgment entered by the Circuit Court for the Second Judicial Circuit validating up to \$5,000,000,000 in revenue bonds to be issued by the Florida PACE Funding Agency (“FPFA”) to finance certain energy conservation and energy-efficient improvements to real property under a program authorized by section 163.08, Florida Statutes (the “Bond Validation Judgment”). Through this program, commonly known as Property Assessed Clean Energy or PACE, a county, municipality, dependent special district, or entity created by interlocal agreement pursuant to section 163.01(7), Florida Statutes, may provide financing for qualifying improvements through voluntary financing agreements with individual property owners and may incur debt for the purpose of providing such improvements, payable from revenues received from the improved property via non-ad valorem assessments. FPFA is an entity created under section 163.01(7) by an interlocal agreement between, specifically, Flagler County and the City of Kissimmee, to provide PACE program funding (“Charter Agreement”). (App. 82-3.)

Prior to 2012, section 163.08 only permitted counties, municipalities, and dependent special districts as defined in section 189.403, Florida Statutes, to operate PACE programs, and such “local governments” were authorized to enter into partnerships with other local governments to provide and finance qualifying improvements. §§ 163.08(2)(a), (5), Fla. Stat. (2011). It was under this authority and section 163.01, Florida Statutes, the “Florida Interlocal Cooperation Act of 1969,” that the Charter Agreement created FPFA, and FPFA obtained a \$2,000,000,000 bond validation judgment in 2011 (“2011 Judgment”). (App. 219-38.) Under the 2011 Judgment, FPFA was authorized to “issue its revenue bonds ... and advance the proceeds thereof to any Florida ‘local government’ as defined by Section 163.08(2), Florida Statutes, who subscribe to [FPFA’s] programs authorizing [FPFA] to operate within each such local government’s jurisdiction for purposes of financing ‘qualifying improvements’....” (App. 219, 222.) The 2011 Judgment contains no language adjudicating the counties’ home rule powers or regarding any “ministerial duties” of the tax collectors. In keeping with the Charter Agreement and the 2011 Judgment, FPFA operated in local

jurisdictions under interlocal agreements and in compliance with any PACE program-related local regulations. (A. 1744.)

In 2012, the Legislature amended section 163.08 to include in the definition of “local government” a separate legal entity created pursuant to section 163.01(7). Ch. 12-117, § 1, at 2-3, Laws of Fla. Indeed, as stated in the 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.” Fla. Legis., House of Representatives Final Bill Analysis, 2012 Reg. Sess., at 6, CS/CS/HB 7117; *see* <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7117z1.ENUS.DOCX&DocumentType=Analysis&BillNumber=7117&Session=2012> (last accessed May 12, 2024). There is no stated legislative intent to grant separate legal entities home rule authority or powers equal to those the Florida Constitution grants to counties and municipalities.

In 2017, the Charter Agreement was amended and purported to incorporate an “extension of ‘concurrent home rule powers’ to” FPFA. (App. 358, 499.) Still, FPFA continued to operate under interlocal

agreements and in compliance with local PACE program regulations as it had done since the 2011 Judgment. (App. 1744.)

On September 1, 2022, FPFA filed a complaint in the Leon County circuit court to validate \$5,000,000,000 in bonds to fund its PACE program. (App. 39.) The complaint alleged that FPFA is authorized “to serve populations throughout the State, both within and outside of members of [FPFA]” (App. 44.); that as a result of a 2012 amendment to section 163.08 FPFA has been “imbued by the Legislature with express independent authority to ... independently exercise concurrently and alternatively all power and authority described as available to [FPFA] under the Charter Agreement and general law, including without limitation, chapters 163, 189, and 197, Florida Statutes” (App. 66.); that “[s]uch express assignment of authority” may, “at the sole option of” FPFA “be implemented ... to independently, currently, and non-exclusively serve populations within and outside members of [FPFA] with its qualifying improvement financing program,” *id.*; and that collection of non-ad valorem assessments levied by FPFA is a “wholly ministerial” act by the state’s tax collectors. (App. 61.)

The complaint further alleged that the supplemental authority and non-derogation provisions in subsections 163.08(1) and (16), Florida Statutes, “does [sic] not authorize regulation of one local government by another in the financing and non-ad valorem assessment process,” (App. 68.), and that a “general purpose local government may establish its own [PACE] financing program but is not authorized to prohibit associated behavior and action by [FPFA]” or “impose conditions on or otherwise regulate the authorized exercise of general law powers by [FPFA.]” (App. 68-9.)

When FPFA filed its 2022 bond validation complaint, FPFA either (1) was operating in several counties under individual interlocal agreements and/or local PACE program regulations, (2) was not operating in counties with which it had no interlocal agreements, or (3) was actively negotiating interlocal agreements and PACE program regulations with certain counties. (App. 133-37, 1744) At no time before or after filing the complaint did FPFA advise the counties where it was operating or with which it was actively negotiating that it was seeking another bond validation or that it would be seeking in that proceeding rulings that would restrict the counties’ home rule authority to require interlocal agreements and

promulgate consumer protection or other local regulations governing FPFA's program. (App. 1744.)

FPFA served the bond validation complaint only on the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits. (App. 306, 311, 314, 1744.) And it published the circuit court's order to show cause only in the *Tallahassee Democrat*, covering Leon County, the *Orlando Sentinel*, covering Orange County and Osceola County, and the *Daytona Beach News-Journal*, covering Flagler County and Volusia County. (App. 326-29, 1744.) Notwithstanding the fact that FPFA's bond validation complaint alleged and sought a ruling that general purpose local governments throughout Florida have no authority to consent to, prohibit, or regulate operation of a PACE funding program by FPFA within their jurisdictions, and notwithstanding the fact that FPFA was at the time operating under diverse interlocal agreements and local regulations or negotiating same, no counties were named as defendants in the complaint, no counties were served with the complaint or otherwise given actual notice of the proceeding, and the show cause order was not published in any newspaper aside from the three named above. (App. 1744-45.) Moreover, nothing in the published notice indicated, in broad,

general, or even vague terms, that the bond validation proceeding would include or address anything related to county and municipal authority to regulate PACE programs. (App. 331, 335-36, 338-39.) And notwithstanding the various allegations directed to tax collectors' authority, no tax collectors were served with the complaint or otherwise given notice of the pending bond validation proceeding. (App. 1744.)

Following the October 6, 2022, hearing on FPFA's complaint, (App. 282-302.), the trial court entered its Bond Validation Judgment validating the bonds the same day. (App. 80.) In addition to adjudicating the validity of the bonds, the Bond Validation Judgment also adjudicated the following matters alleged in the complaint purporting to limit general purpose local government authority:

NINTH. General law alternatively, concurrently and expressly provides that by the Charter Agreement, the Separate Legal Entity Act, and the Supplemental Act, all power and authority available to the Plaintiff under the Charter Agreement and general law, **including without limitation, chapters 163, 189, and 197, Florida Statutes, has been duly authorized by the Legislature and may be implemented by the Plaintiff to serve populations throughout the State, both within and outside of members of the Plaintiff.** (App. 85) (emphasis added).

...

FORTY-SEVENTH. As expressly granted, authorized and provided by the Legislature in the Separate Legal Entity Act, and by the Charter Agreement ... the Plaintiff has been imbued by the Legislature with express independent authority to act by general law in all respects to independently exercise concurrently and alternatively all power and authority described as available to the Plaintiff under the Charter Agreement and general law, including without limitation, chapters 163, 189 and 197, Florida Statutes. Such express assignment of authority and responsibility to the Plaintiff, and other similarly situated separate legal entities, is duly authorized by general law to accomplish compelling state interests **and may, at the sole option of the Plaintiff in this circumstance, be implemented by the Plaintiff 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.** (App. 108-9) (emphasis added).

FORTY-EIGHTH. The power and authority of the Plaintiff to independently engage and transact with private property owners, enter into financing agreements in the manner provided by the Legislature with private property owners throughout the State to accomplish compelling state interests and impose non-ad valorem assessments, issue its obligations to fund and finance qualifying improvements, all as provided by general law is separate, alternative, concurrent with, **and in all respects independent from any other financing regime or program implemented by any other local government in Florida, unless in all respects voluntarily agreed otherwise by the Plaintiff from time to time.** (App. 109-10) (emphasis added).

...

FIFTY-FIRST. **The additional supplemental authority and non-derogation provisions of sections 163.08(1)**

and (16), Florida Statutes, (2022) relate to the authority and subject matter of the compelling state interest in enabling property owners to voluntarily finance qualifying improvements with local government assistance, and 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. (App. 110-11) (emphasis added).

FIFTY-SECOND. 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[.]** (App. 111-12) (emphasis added).

...

SEVENTY-FIRST. The character of the Bonds and the nature of the Plaintiff entitle the Plaintiff to proceed in accordance with general law and the provisions of chapter 75, Florida Statutes, **including the filing of the Complaint in this Court, for the purpose of obtaining the Court's determination of** the power and authority of the Agency to issue the Bonds, the validity of the Bonds, **the power and authority of the Plaintiff to independently and concurrently transact with property owners without interference or regulation from any other local government concerning the funding and financing of qualifying improvements,** the imposition, collection and use of non-ad valorem assessments originated by the Plaintiff throughout the State as Pledged Revenues to repay the Bonds, and all matters in connection therewith. (App. 121-22) (emphasis added).

As to tax collectors' authority, the Bond Validation Judgment held:

FORTIETH. Non-ad valorem assessments are not imposed or levied by any property appraiser or tax collector. **Any duties of a property appraiser or tax collector with regard to collection of non-ad valorem assessments under section 197.3632, Florida Statutes,** including the duty to collect the assessments and remit payment to the local government and to calculate the actual additional costs associated with the uniform method, **are wholly ministerial and the property appraiser and tax collector are without any discretion with regard to the collection of non-ad valorem assessments on the same notice as for taxes or otherwise once the local government elects to use the uniform method and complies with the requirements of section 197.3632, Florida Statutes.** (App. 103) (emphasis added).

In late December 2022 and January 2023, only after the 30-day period to appeal the Bond Validation Judgment expired without challenge because the counties and tax collectors were unaware of the judgment, FPPFA began notifying counties that, on the strength of the Bond Validation Judgment, it now had the authority to operate its PACE funding program within their jurisdictions without the need for existing or future interlocal agreements and without regard to any consumer protection regulations that may have been in place or planned. (App. 1745-50, 1754-60, 1762-65.)

During the ensuing months, several counties communicated to FPPFA their disagreement with FPPFA's position, with some counties sending cease and desist letters, as well as enacting resolutions rescinding approval for FPPFA to provide PACE loans to residents in their jurisdictions and/or declaring FPPFA's unregulated operation in their jurisdictions to be a danger to the public health, safety, and welfare. (App. 1745-50, 1754-60, 1762-65.) Similar communications occurred between FPPFA and various tax collectors when FPPFA, relying on the Bond Validation Judgment, insisted that its non-ad valorem property assessments levied in the absence of interlocal agreements must be added to the tax rolls. (App. 692, 826-28, 850,

1221-26, 1237-40, 1242-47, 1307-8.) Ignoring the counties’ and tax collectors’ express objections and disagreement over the legal effect of the Bond Validation Judgment, FPFA systematically terminated its existing interlocal agreements, operated in local jurisdictions without consent and in violation of existing regulations, and imposed non-ad valorem assessments against hundreds of properties across the state. (App. 1745-46, 1749, 1750, 1751, 1754, 1755, 1756, 1758-59, 1761, 1763, 1764, 1765.)

As a result, several counties filed suit against FPFA between April 2023 and October 2023 seeking declaratory and injunctive relief. (App. 1983.) Then, beginning in or about June 2023 and continuing into October 2023, FPFA filed mandamus actions against tax collectors across the state asserting the Bond Validation Judgment was functionally a declaratory judgment against them. (App. 1745, 1956-57, 1966.)

During the course of these lawsuits, FPFA’s misrepresentations in the 2022 bond validation proceeding were revealed. For example, FPFA misrepresented to the trial court that by amending section 163.08, Florida Statutes, in 2012 to include entities like FPFA, the Legislature “sought to impute or import home rule authority” into the

powers of entities like FPFA and indeed has granted them “broad” home rule powers, (App. 292-93, 499, 546.); 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.); that local governments have “no power to dictate” the way another local government operates its PACE program, (App. 503.); that consent of a municipality or county is not required for FPFA to operate within such local government’s jurisdiction, (App. 550.); and that “after 2012, no general purpose local government by ordinance or otherwise is authorized to interfere with or regulate” FPFA at all, (App. 556.). Notably, counsel for FPFA revealed the true impetus for seeking to curtail local government home rule authority: FPFA didn’t want the inconvenience of dealing with varying local government consumer protection regulations. (App. 291.)

With a full picture of FPFA’s misconduct and misrepresentations before and during the bond validation proceedings, and in light of FPFA’s assertion in litigation across the state that the Bond Validation Judgment is functionally a declaratory judgment against the counties and tax collectors as to their constitutional and statutory authority relative to FPFA, fourteen

counties, forty tax collectors, and six state attorneys joined in a Motion for Relief From Final Judgment pursuant to Florida Rule of Civil Procedure 1.540(b). (App. 127.) The motion was filed on October 4, 2023, within one year of the Bond Validation Judgment, and sought relief under Rule 1.540(b)(4) and (b)(3) from those portions of such judgment adjudicating matters concerning the counties' and tax collectors' constitutional and statutory authority, asserting those matters are collateral to the validity of FPFA's bonds.¹ (App. 127, 130-31.)

The movants argued that the portions of the Bond Validation Judgment adjudicating collateral matters are void for lack of subject matter jurisdiction in a chapter 75 bond validation proceeding and for lack of personal jurisdiction and due process. (App. 152-58.) The movants further argued that FPFA's misconduct, misrepresentations, and lack of candor to the movants and to the trial court allowed the collateral matters to be surreptitiously brought into the bond validation proceedings and adjudicated without

¹ Polk County, the Polk County Tax Collector, Palm Beach County, and the Palm Beach County Tax Collector filed a Motion for Relief From Final Judgment on October 5, 2023. (App. 1058.)

challenge, and that relief from those portions of the Bond Validation Judgment was warranted on that basis, as well. (App. 159-62.) Importantly, the motion expressly stated, “the Counties’ and Tax Collectors’ dispute is not with the issuance of the bonds, but rather with FPFA’s effort to misuse this bond validation proceeding to address the collateral issue of the Counties’ and Tax Collectors’ power and authority.” (App. 154.) The movants asked the trial court only to “vacat[e] those portions of the Final Judgment that purport to determine the rights and authorities of the Counties and Tax Collectors[.]” (App. 162.)

FPFA opposed the motion, arguing that it was untimely, the movants could not use Rule 1.540(b) to belatedly appeal the Bond Validation Judgment, the “doctrine of finality” and section 75.09, Florida Statutes, preclude Rule 1.540 post-judgment relief from bond validation judgments, the motion was barred by the doctrines of laches and equitable estoppel, and the motion generally failed on the merits. (App. 1640-65.) FPFA also moved to enforce the Bond Validation Judgment against the tax collectors. (App. 1666-70.) Intervenor FortiFi Financial, Inc., an entity that provides financing for FPFA’s PACE program under a bond indenture agreement with

FPFA, opposed the movants' motion on many of the same grounds. (App.1774, 1945.)

Following a day-long evidentiary hearing on February 2, 2024, the trial court entered an Order Denying Movants' Motions for Relief From Judgment on March 19, 2024 (the "Denial Order").² (App. 13.) Even though the movants did not challenge the validity of FPFA's bonds, the trial court ruled that neither the movants nor anyone else may "use Rule 1.540 to circumvent the clear language of the Legislature declaring bonds 'forever conclusive' once the time for appeal has passed." (App. 21-23.) The trial court also deemed the Rule 1.540(b) motion untimely, finding the movants all had constructive notice of the Bond Validation Judgment upon its issuance, "some counties" had actual notice of the judgment by December 2022 and January 2023, all movants "had actual notice [of the final judgment] by April 2023," and they were not diligent in seeking post-judgment relief. (App. 24-26.) On the merits of the motion, the trial court ruled that the portions of the Bond Validation

² On the same date, the trial court entered a separate Order Denying Motion for Relief From Final Judgment as to State Attorneys. (App. 36.)

Judgment adjudicating the rights, powers, and authority of the counties and tax collectors do not adjudicate collateral matters and are not void for lack of subject matter jurisdiction 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. 26-32.) Finally, the trial court ruled that the portions of the bond validation judgment adjudicating the rights, powers, and authority of the counties and tax collectors are not void for lack of personal jurisdiction and due process because jurisdiction over the state’s 67 counties and 67 tax collectors was conferred and satisfied by service of the bond validation complaint on three state attorneys and notice publication in three newspapers. (App. at 33-35.)

On April 18, 2024, the county movants timely filed a Notice of Appeal seeking review of the trial court’s Denial Order by this Court.

JURISDICTIONAL STATEMENT

This is an appeal of a trial court order denying a motion under Florida Rule of Civil Procedure 1.540(b)(4) and (b)(3), seeking relief from collateral matters adjudicated in a bond validation judgment. The county movants bring this appeal pursuant to Florida Rules of Appellate Procedure 9.030(a)(1)(B)(i) and 9.110(i).

The appealed order arises from bond validation proceedings and, thus, falls within this Court's appeal jurisdiction over final judgments in bond validation proceedings. Art. V, § 3(b), Fla. Const. This Court has previously acknowledged and accepted jurisdiction to review a similar post-judgment order arising from bond validation proceedings. In *Mize v. Seminole County*, 229 So. 2d 841 (Fla. 1969), the consolidated appeals before this Court included a bond validation judgment appeal, an appeal from an order denying a Rule 1.540(b)(5) motion for relief from the bond validation judgment, and an appeal from an order denying a post-judgment motion to strike certain items from the record in the bond validation proceedings.³ *Id.* at 842. As

³ Also before the Court was a Petition for Writ of Certiorari seeking review of a district court of appeal decision in a related declaratory judgment action which the Court reviewed under its constitutional

to its jurisdiction, this Court stated, “There is no question concerning the jurisdiction of this Court in the bond validation proceedings ... nor is there any question of our jurisdiction in [the appeals from the post-judgment orders], which arise out of the validation proceedings.” *Id.* at 843.

The appealed order is not simply related, tangential, or ancillary to a bond validation proceeding such that this Court lacks jurisdiction to review it. *Compare Rowe v. Pinellas Sports Authority*, 461 So. 2d 72, 74 (Fla. 1984) (taking jurisdiction to review declaratory judgment involving many of the issues in bond validation appeal) and *City of Niceville v. State*, 216 So. 2d 763 (Fla. 1st DCA 1968) (order awarding attorney’s fees in bond validation proceeding reviewed by district court of appeal). Rather, the order directly rules upon the permissible scope of the trial court’s jurisdiction and judicial inquiry in bond validation proceedings and applicability of Rule 1.540 to bond validation judgments. In so doing, the trial court creates significant constitutional issues of statewide importance by misconstruing chapter 75, Florida Statutes, and other provisions of

“all writs” jurisdiction. *Mize*, 229 So. 2d at 842-43; see Art. V, § 3(b)(7), Fla. Const.

Florida law in derogation of the constitutional home rule authority of counties and municipalities and writing into Rule 1.540 an exclusion for bond validation judgments. Accordingly, the order arises from bond validation proceedings and rules on issues which fall squarely within this Court's exclusive appeal jurisdiction over matters concerning bond validation proceedings.

SUMMARY OF THE ARGUMENT

The trial court concluded in its Denial Order that matters concerning the counties' constitutional home rule authority were within its subject matter jurisdiction in the bond validation proceeding and, therefore, are not collateral matters. The trial court further ruled that personal jurisdiction over the county movants was conferred and due process satisfied by service of the bond validation complaint on three state attorneys and notice publication containing generic bond validation language in three newspapers. The trial court also determined that relief under Rule 1.540 was not available to challenge the Bond Validation Judgment, even though the county movants were challenging collateral matters in the Bond Validation Judgment, not the validity of the FPFA bonds themselves. Further,

the trial court deemed the Rule 1.540 motion untimely *in toto*, reasoning that the county movants had actual knowledge of the Bond Validation Judgment by April 2023 and were not diligent in seeking post-judgment relief. For the following reasons, the trial court's rulings were incorrect, and the Denial Order should be reversed.

The responsibility of a trial court in bond validation proceedings is simply "to determine the validation of bonds and certificates of indebtedness and all matters connected therewith." § 75.01, Fla. Stat. This Court has consistently held that "all matters connected" do not include collateral issues not going *directly* to the power to issue the securities. FPPFA's authority to operate a PACE funding program, issue bonds, and generate revenue for their repayment through non-ad valorem assessments on real property is contained in section 163.08, Florida Statutes, and the Charter Agreement creating FPPFA for the public purpose of operating a PACE funding program. The trial court determined that issues related to the counties' authority to require interlocal agreements with FPPFA and regulate FPPFA's PACE program in their jurisdictions went to the economic feasibility and public purpose of FPPFA's PACE bonds.

But considering and ruling on those matters was error because the fundamental purpose of a bond validation proceeding is to determine the power of the *issuing agency* to issue bonds, not to determine the power and authority of other governmental entities. Moreover, under this Court's precedents, the fiscal feasibility of a revenue project is not within the scope of judicial review in a bond validation proceeding. Therefore, the trial court lacked subject matter jurisdiction to adjudicate collateral matters in the Bond Validation Judgment concerning the counties' constitutional home rule authority.

Because the collateral matters regarding the counties' home rule authority were adjudicated in the Bond Validation Judgment without subject matter jurisdiction, those portions of the judgment are void. The collateral matters in the Bond Validation Judgment are also void for lack of personal jurisdiction and due process because the counties were not, and could not be, properly made parties to the bond validation proceedings or given adequate notice of the proceedings by FPFA.

Service of the bond validation complaint on the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits and notice

publication in newspapers of general circulation in Leon County, Osceola County, and Flagler County was insufficient to confer personal jurisdiction over the counties as to the collateral matters in the Bond Validation Judgment concerning their home rule authority. The State Attorneys represent the state, not the counties, in bond validation proceedings. The trial court order to show cause that was published in only a handful of counties conveyed nothing more than a run-of-the-mill bond validation and contained not even a vague reference to matters concerning the counties' authority. And the counties would not normally be interested parties in a bond validation where, as here, their property was not at issue, they had no financial obligation as to the bonds, and nothing about *the bond issue itself* implicates or triggers the exercise of the counties' home rule authority. The counties stood to gain or lose nothing as a direct result of the bond issue and, thus, could not have been made parties to the bond validation proceeding. Under the circumstances in this case, FPFA's mere compliance with the statutory service and notice requirements could not confer on the trial court personal jurisdiction over the counties and was not reasonably calculated to put the

counties on notice about the collateral matters to be adjudicated in the bond validation proceeding sufficient to satisfy due process.

The trial court's ruling that post-judgment relief under Rule 1.540 is not available to the counties is contrary to authority from this Court making it clear that chapter 75, Florida Statutes, *does not* operate to put at rest collateral issues improperly brought into a bond validation proceeding. Therefore, such collateral matters remain subject to challenge post-judgment by a party seeking relief from those rulings.

Finally, the counties' motion for relief under Rule 1.540(b)(4) and (b)(3) was timely filed within one year after entry of the Bond Validation Judgment. It is well-settled that a motion seeking to set aside a void judgment under Rule 1.540(b)(4) may be reasonably filed at any time, even years after entry of the judgment.

Even so, once FPFA began notifying counties and tax collectors that, based on the Bond Validation Judgment, FPFA would no longer need to enter into or abide by interlocal agreements to operate its PACE program and levy non-ad valorem assessments, and would no longer abide by local regulations, the counties diligently worked for months to resolve the controversy without litigation through cease-

and-desist demands and individual county commission resolutions prohibiting PACE programs in their jurisdictions. When FPFA continued to operate in the absence of interlocal agreements and in violation of existing local regulations, several counties filed suit against FPFA between April 2023 and October 2023 seeking declaratory and injunctive relief. During the course of these lawsuits and mandamus actions filed by FPFA against tax collectors, FPFA's misrepresentations in the bond validation proceeding were revealed, it became apparent that concerted action among the local government entities was needed, and the county movants timely sought relief under Rule 1.540(b)(4) and (b)(3) from the collateral matters impermissibly adjudicated in the Bond Validation Judgment, filing their motion within one year after entry of such judgment.

ARGUMENT

I. THE COUNTIES' CONSTITUTIONAL HOME RULE AUTHORITY TO CONSENT TO AND REGULATE FPFA'S OPERATION OF PACE PROGRAMS WITHIN THEIR JURISDICTIONS ARE MATTERS COLLATERAL TO FPFA'S AUTHORITY TO ISSUE BONDS AND WERE BEYOND THE TRIAL COURT'S SUBJECT MATTER JURISDICTION IN THE BOND VALIDATION PROCEEDING.

The Bond Validation Judgment adjudicates that (1) no county can require FPFA to enter into an interlocal agreement prior to FPFA operating a PACE program within such county's jurisdiction, and (2) no county can otherwise adopt resolutions or ordinances under its home rule authority prohibiting or regulating the operation of a PACE program by FPFA in such county's jurisdiction. These rulings effectively invalidated existing interlocal agreements and local government regulations that were not squarely before the court, and permit FPFA to now operate PACE funding programs in every general-purpose local government jurisdiction in the state and impose non-ad valorem assessments on property owners in those jurisdictions without the local governments' consent and unconstrained by local ordinances or regulations designed to protect consumers. Through this bond validation proceeding, FPFA, which itself is a creature of

statute and not a general-purpose local government, allegedly obtained statewide jurisdiction and effectively secured for itself authority superior to that of any local government, including those that created FPFA via the Charter Agreement.

In their Rule 1.540 motion, the county movants asserted that the conclusions of law in the Bond Validation Judgment derogating their home rule authority to consent to and regulate business activity within their jurisdictions concern matters collateral to FPFA's authority to issue PACE bonds, and the trial court was without subject matter jurisdiction to rule on such matters. Disagreeing, the trial court in its Denial Order ruled these matters are not collateral 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.)

"Whether a court has subject matter jurisdiction is ... a question of law reviewed de novo." *Swearingen v. Rio Villa, Unit V, Homeowners Ass'n, Inc.*, 277 So. 3d 778, 780-81 (Fla. 5th DCA 2019). As this Court has held, "Judicial inquiry in bond validation proceedings is sharply limited. It extends only to determining if a public body has the

authority to issue the subject bonds and if the purpose of the bonds is legal and to ensuring that the bond issue complies with all legal requirements. *Other matters are collateral to a bond issuance and will not be addressed in a validation proceeding.* Warner Cable Communications, Inc. v. City of Niceville, 520 So. 2d 245, 256 (Fla. 1988) (citations omitted) (emphasis added). To the extent the Bond Validation Judgment found these three factors were satisfied, validation of FPFA's bonds was appropriate. But that is where the trial court's inquiry and judgment should have ended.

While “[c]ircuit courts have jurisdiction to determine the validation of bonds and certificates of indebtedness and all matters connected therewith,” § 75.01, Fla. Stat., this Court has consistently held that circuit court jurisdiction to determine “all matters connected” with the validity of bonds in a chapter 75 proceeding *does not extend to collateral issues or those issues not going directly to the power to issue the securities.* See *State v. City of Miami*, 103 So. 2d 185, 188 (Fla. 1958) (“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.”) (emphasis added); 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).

The county movants derive their broad home rule power and authority from the Florida Constitution. See Art. VIII, § 1(g), Fla. Const. Under this constitutional power and section 125.01, Florida Statutes, counties may, consistent with general or special law, adopt ordinances and resolutions on a wide variety of matters, including promulgating “such business regulations as are necessary for the protection of the public.” § 125.01(1)(h), Fla. Stat. FPPFA, on the other hand, is a “separate legal entity” created pursuant to section 163.01(7), Florida Statutes, by an interlocal agreement between Flagler County and the City of Kissimmee, for the public purpose of operating a PACE funding program as authorized by section 163.08, Florida Statutes, and incurring debt for this purpose by issuing bonds. It may levy non-ad valorem assessments on property for which “qualifying improvements” are installed and the property

owner has voluntarily entered into a financing agreement with FPFA. See §§ 163.08(1)-(4), Fla. Stat. These are the “parameters” of FPFA’s authority relevant to the issuance and repayment of bonds—the only matters relevant in a bond validation proceeding.

In addressing whether the counties have the power and authority to require interlocal agreements with FPFA to conduct a PACE financing program within their jurisdictions and otherwise regulate the way such a program operates, the trial court exceeded its “sharply limited” subject matter jurisdiction under chapter 75. *Warner Cable*, 520 So. 2d at 256.

The fundamental purpose of a bond validation proceeding is to determine the “power of the *issuing agency* to act in the premises,” *State v. Manatee County Port Auth.*, 171 So. 2d 169, 171 (Fla. 1965) (emphasis added), not to determine the power and authority of other governmental entities. The trial court, however, reasoned that under *Keys Citizens*, issues related to the counties’ authority to require FPFA to enter into interlocal agreements and regulate FPFA’s PACE program in their jurisdictions were appropriately decided in the bond validation proceeding because they went to the economic feasibility

and public purpose of FPFA's PACE bonds. (App. 29.) But on this point, *Keys Citizens* is inapposite.

Keys Citizens concerned the Florida Keys Aqueduct Authority sewer revenue bond validation proceedings. Monroe County had an ordinance mandating that property owners connect to any central sewer system within 30 days after being notified of a system's availability. 795 So. 2d at 943. The Aqueduct Authority had adopted a resolution to issue sewer revenue bonds to finance construction of a wastewater system, and that resolution specified that the bonds would be repaid by the fees from users who would be required to connect to the system. *Id.* The judgment validating the bonds included provisions related to the mandatory connection requirement, including all property owners within the Authority's geographical jurisdiction to connect to the sewer systems at their own expense. *Id.* at 944.

On appeal, Keys Citizens for Responsible Government, Inc., argued validation of the mandatory sewer connection requirement was beyond the scope of and collateral to the bond validation proceeding. *Id.* This Court disagreed, finding that the Aqueduct Authority's bond resolution included reference to the mandatory

sewer connection requirement and, importantly, stated the connection fees and services charges would secure payment of principal and interest on the bonds. *Id.* at 947. This Court further found the mandatory connection was required by both Florida statute and Monroe County ordinance, and thus, “both the economic feasibility of the central sewer system and the public purpose for this project are predicated on the hook-up of all property in the area of operation.” *Id.* Hence, the mandatory connection requirement was not collateral to the bond validation proceeding. *Id.*

Unlike the scenario in *Keys Citizens*, where the entire project and bond issue were “predicated on” statutorily mandated connections to the new sewer systems and customer fees, there is no statutory mandate either in section 163.08 or section 163.01(7) providing that entities like FPFA, in order to issue PACE funding bonds and successfully operate PACE funding programs, have unfettered and unregulated access to consumers in every county and municipality in the state. Moreover, the Monroe County ordinance at issue in *Keys Citizens* was “squarely” before the trial court. 795 So. 2d at 943. The existing local PACE ordinances and interlocal

agreements invalidated by the Bond Validation Judgment were not squarely before the trial court here.

Significantly, *Keys Citizens* does not stand for the broad proposition that economic feasibility of a bond issue is a proper inquiry in bond validation proceedings. As this Court more recently observed in *Miccosukee Tribe of Indians of Fla. v. South Florida Water Management District*, “the 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.” 48 So. 3d 811, 818 (Fla. 2010) (quoting *Manatee County*, 171 So. 2d at 171). Instead, *Keys Citizens* simply addressed the “financing agreement” securing the sewer revenue bonds to be validated. 795 So. 2d at 946 (reviewing the mandatory sewer connection ordinance because “[s]ubsumed within the inquiry as to whether the public body has the authority to issue the subject bond is the legality of the financing agreement upon which the bond is secured”) (quoting *State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994)).

Thomas v. Clean Energy Coastal Corridor, 176 So. 3d 249 (Fla. 2015), and *Florida Bankers Association v. Florida Development Finance Corporation*, 176 So. 3d 1248 (Fla. 2015), are instructive as to what the relevant financing agreement is for PACE bond validity. In both cases, the financing agreements securing the bond issues were form agreements to be signed by the PACE program providers and the property owners voluntarily participating in the programs. *Thomas*, 176 So. 3d at 251; *Fla. Bankers Ass’n*, 176 So. 3d at 1264; *see also Reynolds v. Leon Cnty. Energy Improvement Dist.*, 176 So. 3d 254, 254 (Fla. 2015) (affirming judgment validating PACE bonds but remanding to circuit court to require the district to remove references to judicial foreclosure from financing agreement). This makes sense considering the legislative framework spelled out in section 163.08: “A local government may incur debt for the purpose of providing such improvements, payable from revenues received from the improved property....” § 163.08(7), Fla. Stat.

Unlike financing agreements between the program provider and property owner, issues concerning whether general purpose local governments with constitutional home rule authority have the right to authorize a “separate legal entity” to operate a PACE funding

program in their jurisdictions (or preclude same) and regulate how that program must operate within their borders simply do not enter the bond validation equation here. These are fundamental constitutional issues that are clearly collateral to the “sharply limited” judicial inquiry in bond validation proceedings. As such, the trial court was without subject matter jurisdiction to rule on these issues. *City of Miami*, 103 So. 2d at 188.

II. AS TO THE COLLATERAL MATTERS ADJUDICATED, THE BOND VALIDATION JUDGMENT IS VOID FOR LACK OF SUBJECT MATTER JURISDICTION AND ALSO FOR LACK OF PERSONAL JURISDICTION AND DUE PROCESS.

In the Denial Order, the trial court ruled that the Bond Validation Judgment is neither void for lack of subject matter jurisdiction nor void for lack of personal jurisdiction and due process because jurisdiction over the county movants was conferred and due process satisfied by statutory service of the bond validation complaint on three state attorneys and notice publication with generic bond validation language in three newspapers. A trial court’s denial of a motion for relief under Rule 1.540 is usually reviewed for abuse of discretion, but where the underlying issue is whether the judgment is void for lack of subject matter jurisdiction or personal

jurisdiction, the ruling is reviewed *de novo*. See *Deluca v. King*, 197 So. 3d 74, 75-76 (Fla. 2d DCA 2016) (“Generally, orders on 1.540(b) motions are reviewed for an abuse of discretion. However, a trial court has no discretion to refuse to vacate a void judgment. Whether a judgment is void for lack of personal jurisdiction is reviewed *de novo*.” (citations omitted)); *Vercosa v. Fields*, 174 So. 3d 550, 552 (Fla. 4th DCA 2015) (“Whether a judgment is void is a question of law reviewed *de novo*.”).

- A. The trial court’s lack of subject matter jurisdiction over collateral matters adjudicated in the Bond Validation Judgment renders those matters void.

As fully discussed *supra*, the Bond Validation Judgment adjudicated matters collateral to the validity of FPFA’s bonds when it held that (1) no county can require FPFA to enter into an interlocal agreement prior to FPFA operating a PACE program in such county’s jurisdiction, and (2) no county can otherwise adopt resolutions or ordinances under its home rule authority prohibiting or regulating the operation of a PACE program by FPFA in such county’s jurisdiction. The trial court lacked subject matter jurisdiction over those collateral matters in the chapter 75 proceeding, and language

in the Bond Validation Judgment regarding those collateral matters only is void. *See Noble*, 682 So. 2d at 1090 (upholding circuit court’s determination that “the matters raised by Noble were collateral issues over which it lacked subject matter jurisdiction”); *Armand v. Amisy*, 316 So. 3d 742, 742 (Fla. 3d DCA 2021) (“A judgment entered by a court which lacks subject matter jurisdiction is void...”) (quoting *McGhee v. Biggs*, 974 So. 2d 524, 526 (Fla. 4th DCA 2008)); *Sterling Factors Corp. v. U.S. Bank Nat. Ass’n*, 968 So. 2d 658, 665 (Fla. 2d DCA 2007) (“A trial court's lack of subject-matter jurisdiction makes its judgment void.”).

- B. The Bond Validation Judgment is void for lack personal jurisdiction over the counties as to the collateral matters adjudicated because the counties were not “interested parties” in the bond validation and could not properly be made parties to the bond validation proceedings.

As this Court wrote in *Keys Citizens*, “In those instances where issues have been deemed collateral and not the proper subject of a bond validation 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 proceedings.” 795 So. 2d at 945 (citing *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252, 254 (Fla. 1980);

State v. Sunrise Lakes Phase II Special Recreation Dist., 383 So. 2d 631, 633 (Fla. 1980); *City of Miami*, 103 So. 2d at 190). That is the situation here.

The service and notice requirements of chapter 75 operate to notify and bring under the court’s jurisdiction “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, or to be affected thereby[.]” §75.05(1), Fla. Stat. Section 163.01(7)(g)9., Florida Statutes, under which FPFA proceeded for its PACE bond validation⁴, (App. 27), provides:

The notice required to be published by s. 75.06 must be published in Leon County and in each county that is a member of the entity issuing the bonds, notes, or other obligations, or in which a member of the entity is located, and the complaint and order of the circuit court must be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county that is a member of the entity issuing the bonds, notes, or other obligations or in which a member of the entity is located.

⁴ Section 163.01(7)(g), Florida Statutes, makes no reference to PACE programs but relates only to separate legal entities created to “acquire, own, construct, improve, operate, and manage public facilities, or finance” wastewater facilities, and the like.

Even assuming FPFA complied with the service and publication requirements of chapter 75 and section 163.01(7)(g)9., service of the bond validation complaint only on the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits and notice publication only in newspapers of general circulation in Leon County, Osceola County, and Flagler County could not suffice to confer personal jurisdiction over the county movants, who are not parties to the interlocal agreement creating FPFA, or provide them notice that *collateral matters* were to be adjudicated in the bond validation proceeding relative to their constitutional home rule authority to consent to and regulate PACE programs operated within their jurisdictions.

The county movants are political subdivisions of the state but are not “the state” and are not represented by the state attorneys in bond validation proceedings. *See* § 27.02(1), Fla. Stat. (providing that state attorneys are to “prosecute or defend on behalf of the state all suits, applications, or motions, civil or criminal, in which the state is a party”); *Joiner v. Pinellas County*, 279 So. 3d 860, 865 (Fla. 2d DCA 2019) (“[A] county is not ‘a mere arm or agency of the state’ or merely ‘the state acting locally.’”) (citing *Amos v. Matthews*, 126 So. 2d 308, 321 (Fla. 1930)); *cf. City of Miami*, 103 So. 2d at 190 (holding state

attorney lacked authority to bring in Dade County as a party in city's bond validation proceedings to enable court to rule on collateral issues). Therefore, service of the bond validation complaint on the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits accomplished nothing vis-à-vis the county movants.

The counties would not normally be interested or affected parties in FPFA's bond issue such that statutory constructive notice would bring them under the trial court's jurisdiction. "[T]he Legislature has authorized constructive notice of property owners or other *interested parties* in bond validation proceedings," *Keys Citizens* 795 So. 2d at 949 (emphasis added), so that they may intervene in the proceedings to formally appear and be heard. See § 75.07, Fla. Stat. And this Court has held that to be a "person interested" and thus entitled to intervene in a bond validation proceeding, one must stand "to gain or lose something as a *direct* result of the bond issuance." *Rich v. State*, 663 So. 2d 1321, 1324 (Fla. 1995) (emphasis added).

The county movants have no right, title, or interest in the *private* property affected by FPFA's PACE bonds and the non-ad valorem assessments authorized by section 163.08. Nor would they normally

be otherwise “affected” simply by the issuance of such bonds. FPFA’s PACE bonds are issued in its own behalf and do not constitute obligations of the counties. See §§ 163.08(2)(a), (7), Fla. Stat. Nothing in the framework for PACE programs set forth in section 163.08 requires a general-purpose local government to do anything relative to the *operation* of a PACE program within its jurisdiction upon the issuance of bonds by an entity like FPFA. Although under their preserved home rule authority, see § 163.08(16), Fla. Stat., counties may choose to permit, regulate, or prohibit *operation* of a PACE program within their jurisdictions by an entity like FPFA to protect the health, safety, and welfare of their residents, nothing about *the bond issue itself* implicates or triggers the exercise of such home rule authority. Nothing in the legislative history explaining the 2012 amendment to section 163.08 indicated that entities like FPFA now have home rule authority at all, let alone authority to trump the counties’ home rule authority. The counties stood to gain or lose nothing “as a direct result of” FPFA’s bond issuance and, thus, could not have intervened in the bond validation proceeding as interested parties. *Rich*; see *City of Miami*, 103 So. 2d at 90 (holding that the trial court had “no power” to bring other municipalities and Dade

County into the proceeding to decide “collateral matters wholly beyond the issues in the bond validation proceedings”).

Further, the general notice of FPFA’s bond validation published in newspapers in a few counties was simply insufficient to put those counties on notice of the need to intervene in the proceedings to protect their constitutional home rule authority, which is a matter collateral to the “sharply limited” judicial inquiry in the bond validation proceeding and beyond the trial court’s jurisdiction. Nothing in the published notice indicated, in broad, general, or even vague terms, that the bond validation proceeding would include or address anything related to county and municipal authority to regulate PACE programs. (App. 331, 335-36, 338-39.) Therefore, even where notice of the bond validation *was* published, those counties had no reason to see the notice as announcing anything other than a routine bond validation in which they are not interested parties. And, in the counties where no notice was published, those counties would have been *wholly* unaware of the proceeding. Because the statutory service and constructive notice did not, and could not, give the trial court personal jurisdiction over the counties as to the collateral matters in the Bond Validation Judgment, the provisions

therein concerning the collateral matters are void. *See Clauro Enters., Inc. v. Aragon Galiano Holdings, LLC*, 16 So. 3d 1009, 1013 (Fla. 3d DCA 2009) (“It is well-settled that ‘[a] judgment entered without valid service is void for lack of personal jurisdiction....’”) (quoting *Alvarado v. Cisneros*, 919 So. 2d 585, 587 (Fla. 3d DCA 2006)).

- C. The Bond Validation Judgment is void for lack of due process as to the collateral matters adjudicated because the statutory service and constructive notice requirements were not sufficient, under the circumstances of this case, to afford the counties reasonable notice and opportunity to be heard on the collateral matters.

“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice 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.” *Mullane v. C. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *accord Vosilla v. Rosado*, 944 So. 2d 289, 294 (Fla. 2006) (recognizing the *Mullane* standard as authoritative). Crucially here, at the time FPPFA instituted the bond validation proceedings, the status quo was that FPPFA either (1) was operating in certain counties under interlocal agreements and/or PACE program regulations as it had done since the 2011 Judgment, (2) was

not operating in counties with which it had no interlocal agreements, or (3) was actively negotiating interlocal agreements and PACE program regulations with certain counties. (App. 133-37, 1744.) The record in this case contains no evidence that FPPFA asserted the home rule authority it purports to have received via the 2012 amendment to section 163.08 in its dealings with the counties prior to late 2022 and early 2023. And, at no time before or after filing its bond validation complaint did FPPFA inform the counties it was operating in or with which it was actively negotiating that it was seeking another bond validation, or that it would be seeking in that proceeding collateral rulings that would restrict the counties' home rule authority to require interlocal agreements and promulgate consumer protection or other local regulations governing FPPFA's PACE program. (App. 1744.)

Under these circumstances, FPPFA's mere compliance with the statutory service and notice requirements was not reasonably calculated to put the counties on notice about the collateral matters to be adjudicated in the bond validation proceeding. As such, the collateral matters in the Bond Validation Judgment are void not only for lack of subject matter jurisdiction and personal jurisdiction, but

also for lack of due process. *See Shiver v. Wharton*, 9 So. 3d 687, 690 (Fla. 4th DCA 2009) (“A judgment is void if, in the proceedings leading up to the judgment, there is ‘[a] violation of the due process guarantee of notice and an opportunity to be heard[.]’”) (quoting *Viets v. Am. Recruiters Enters.*, 922 So. 2d 1090, 1095 (Fla. 4th DCA 2006)).

III. THE TRIAL COURT ERRED IN DECLARING THAT BOND VALIDATION JUDGMENTS ARE NOT SUBJECT TO MOTIONS FOR RELIEF UNDER RULE 1.540(b) BECAUSE CHAPTER 75 DOES NOT OPERATE TO PUT AT REST COLLATERAL ISSUES IMPROPERLY BROUGHT INTO A BOND VALIDATION PROCEEDING.

In denying the counties’ motion for relief under Rule 1.540(b)(4) and (b)(3), the trial court ruled that no one can “use Rule 1.540 to circumvent the clear language of the Legislature declaring bonds ‘forever conclusive’ once the time for appeal has passed.” (App. 13.) The trial court’s ruling essentially writes into Rule 1.540 an exclusion for bond validation judgments. Furthermore, the trial court’s ruling completely ignores precedent from this Court holding, as a starting point, that circuit courts simply lack jurisdiction to adjudicate collateral issues in bond validation proceedings, thereby leaving such issues open to post-judgment challenge. Indeed, collateral issues in

the Bond Validation Judgment are at the heart of this case and were the focus of the motion for relief under Rule 1.540(b)(4) and (b)(3).

Where, as in this case, denial of a motion for relief under Rule 1.540 involves interpretation of a rule of civil procedure, the ruling is reviewed *de novo*. See *Barco v. School Bd. of Pinellas Cnty.*, 975 So. 2d 1116, 1121 (Fla. 2008) (stating that appellate courts apply *de novo* standard of review when construction of a procedural rule is at issue). Rule 1.540 provides the procedural vehicle for a party to obtain relief from judgments, decrees, or orders on several grounds. Pertinent to this appeal, the Rule 1.540(b) reads:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons:

...

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) that the judgment, decree, or order is void;

...

The rule contains no language limiting or precluding the relief it affords in certain types of cases or judgments, including bond validations.

The county movants timely sought relief under Rule 1.540(b)(4) and (b)(3) from portions of the Bond Validation Judgment that adjudicated matters collateral to the validity of the bonds. The validity of the bonds themselves was not challenged. Nevertheless, FPFA argued below, and the trial court concluded, that based on section 75.09, Florida Statutes, bond validation judgments can *never* be challenged by a Rule 1.540 motion.

Section 75.09 provides that if a judgment validates bonds and either no appeal is taken or the judgment is upheld on appeal, “such judgment is forever conclusive as to all matters adjudicated against plaintiff and all parties affected thereby, ... and *the validity of said bonds*, certificates or other obligations or of any taxes, assessments or revenues pledged for the payment thereof, or of the proceedings authorizing the issuance thereof, including any remedies provided for their collection, shall never be called in question in any court by any person or party.” § 75.09, Fla. Stat. (emphasis added).

In *Lipford v. Harris*, this Court confirmed that “a validation decree once it becomes final puts at rest all questions which were raised in the validation as well as all questions which could have been raised.” 212 So. 2d 766, 768 (Fla. 1968). Importantly, however, in

later cases, this Court has made it clear that chapter 75 does *not* operate to put at rest collateral issues improperly brought into a bond validation proceeding. “[W]e do not believe that the principle announced in the *Lipford* case applies to ‘put at rest’ collateral questions that were somehow brought into the proceedings but need not and should not have been brought in.” *City of Gainesville v. State*, 366 So. 2d 1164, 1166 (Fla. 1979); *see also City of Miami*, 103 So. 2d at 188 (“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.”). This holding is squarely on point here. *Accord Donovan*, 82 So. 3d at 808; *Keys Citizens*, 795 So. 2d at 944; *Noble*, 682 So. 2d at 1090.

If collateral issues were adjudicated in a bond validation proceeding when they should not have been and are not “put at rest,” it follows that such issues and the rulings thereon remain subject to challenge post-judgment by a party seeking relief from those rulings. This is the very purpose of Rule 1.540 which “was ... designed to provide a party ‘with a convenient and orderly method for attacking

a final judgment, even after the time for appeal ha[s] expired.” *Pruitt v. Brock*, 437 So. 2d 768, 773 (Fla. 1st DCA 1983) (citation omitted). There is no authority indicating that a party cannot avail itself of the “convenient and orderly” procedure under Rule 1.540 to obtain relief from a bond validation judgment where, as in this case, the challenge is to matters collateral to the bond validation proceedings and not to the validity of the bonds themselves.

Because Rule 1.540 affords post-judgment relief from void judgments, collateral issues adjudicated in a bond validation proceeding without jurisdiction should be subject to challenge as void via a Rule 1.540(b) motion. Furthermore, because collateral issues are beyond the permissible scope of a bond validation proceeding, a Rule 1.540 motion seeking relief from such issues does not jeopardize the otherwise valid bonds. This is so because the collateral matters may simply be stricken from the Bond Validation Judgment, and the bonds’ validity upheld. *See, e.g., City of Miami*, 103 So. 2d at 190 (reversing bond validation judgment with directions to delete portions of the judgment containing rulings on collateral matters improperly adjudicated but otherwise affirming the validity of the bonds). Striking the collateral matters from the Bond

Validation Judgment was precisely the relief requested by the county movants. (App. 162, 1988.)

The county movants made it abundantly clear to the trial court they were not seeking to invalidate FPFA's bonds. They instead discretely challenged collateral matters adjudicated in FPFA's bond validation judgment as void for lack of subject matter jurisdiction, personal jurisdiction, and due process, and for having been improperly brought into the proceedings through FPFA's misrepresentations and misconduct. (App. 28, 57, 61, 425.) As such, there is no valid concern that the FPFA bonds previously validated are in jeopardy simply by virtue of this Rule 1.540(b) motion. Again, the county movants are aware of no authority holding that a party is foreclosed from challenging rulings *on collateral issues* in a bond validation judgment via Rule 1.540(b)(4) or (b)(3), or that Rule 1.540 is not available for relief at all against bond validation judgments. The trial court erred in so ruling and its ruling should be reversed.

IV. THE RULE 1.540 MOTION WAS TIMELY BECAUSE JUDGMENTS CAN BE ATTACKED AS VOID AT ANY TIME AND BECAUSE THE COUNTIES WERE DILIGENT IN SEEKING POST-JUDGMENT RELIEF.

The trial court denied the county movants' motion as untimely finding the movants all had constructive notice of the Bond Validation Judgment upon its issuance, "some counties" had actual notice of the judgment by December 2022 and January 2023, all county movants "had actual notice by April 2023," and they were not diligent in seeking post-judgment relief. (App. 24-26.)

A trial court's determination of what constitutes a reasonable time for filing a motion for post-judgment relief is reviewed for abuse of discretion. *See generally Franklin v. Franklin*, 573 So. 2d 401, 404 (Fla. 3d DCA 1991). Rule 1.540 provides that motions for relief filed thereunder "shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken." The county movants' motion asserting grounds for relief under Rule 1.540(b)(4) and (b)(3) was filed on October 4, 2023, or within one year after the Bond Validation Judgment, which was entered on October 6, 2022. (App. 26, 70.)

As to that portion of the motion seeking relief under Rule 1.540(b)(4) for voidness (because of the collateral matters discussed in detail *supra*), “most courts have felt constrained to interpret the ‘reasonable time’ requirement to mean no time limit when the judgment attacked is void.” *M.L. Builders, Inc. v. Reserve Developers, LLP*, 769 So. 2d 1079, 1082 (Fla. 4th DCA 2000); *see also Johnson v. Dept. of Revenue*, 973 So. 2d 1236, 1238 (Fla. 1st DCA 2008) (“[B]ecause the mere passage of time cannot make a void judgment valid, a motion to vacate a judgment as void may ‘reasonably’ be filed many years after the judgment was entered.”). Indeed, “subject matter jurisdiction is so vital to a court’s power ... that its absence can be questioned at anytime[.]” *84 Lumber Co. v. Cooper*, 656 So. 2d 1297, 1298 (Fla. 2d DCA 1994). The same is true for lack of personal jurisdiction. *See Clauro Enters., Inc.*, 16 So. 3d at 1013.

Thus, even if the county movants had constructive notice of the Bond Validation Judgment when entered (they didn’t) or actual notice of it by April 2023, their motion for relief from the void collateral matters filed within one year of the judgment was timely. *M.L. Builders, Inc.*, 769 So. 2d at 1082 (“[W]e do not agree that the [nearly eight-month] delay in filing a motion to vacate after learning of the

entry of a void judgment is legally significant since it is well established that the passage of time cannot make valid that which has been void from the beginning.”); *Greisel v. Gregg*, 733 So. 2d 1119, 1121 (Fla. 5th DCA 1999) (motion to vacate judgment as void filed six years after learning of judgment not precluded because “a judgment alleged to be *void* may be attacked *at any time*”; parties had tried unsuccessfully to resolve their differences during six-year period) (emphasis in original).

Even so, and pertinent to the timeliness of that portion of the motion seeking relief under Rule 1.540(b)(3), the evidence before the trial court demonstrated that the county movants acted within a reasonable time to seek relief from the Bond Validation Judgment. The county movants actively and diligently tried to resolve the controversy without litigation from the first half of 2023 to as late as September 2023 through cease-and-desist demands and individual county commission resolutions prohibiting PACE programs in their jurisdictions. (App. 1745-50, 1754-60, 1762-65.) Similar communications occurred between FPFA and various tax collectors when FPFA, relying on the Bond Validation Judgment, insisted that its non-ad valorem property assessments levied in the absence of

interlocal agreements must be added to the tax rolls. (App. 692, 826-28, 850, 1221-26, 1237-40, 1242-47, 1307-8.) When FPFA continued to operate in the absence of interlocal agreements, several counties filed suit against FPFA between April 2023 and October 2023 seeking declaratory and injunctive relief. (App. 1983.) Then, beginning in or about June 2023 and continuing into October 2023, FPFA filed mandamus actions against tax collectors across the state asserting the Bond Validation Judgment was functionally a declaratory judgment against them. (App. 1745, 1956-67, 1966.)

As a result of FPFA's actions following entry of the Bond Validation Judgment and the positions it has taken in the litigation described above, a pattern emerged and crystalized of misconduct and misrepresentations by FPFA before and during the bond validation proceedings which led to the challenged collateral matters coming into the proceedings and which caused the counties not to be on notice that matters were to be adjudicated in the proceedings that purported to curtail their constitutional home rule powers and authority. FPFA purposely did not advise the counties with which it had interlocal agreements or was actively negotiating agreements and program regulations about the intended bond validation or that it

would be seeking in that proceeding rulings that would foreclose the counties' authority to require interlocal agreements with FPFA and prohibit consumer protection or other local regulations governing FPFA's program. (App. 1744.) The published notice of the bond validation contained no reference to such matters. And during the bond validation proceeding, in its oral and written arguments, with none of the counties participating, FPFA misrepresented to the trial court that under "black letter law" it has home rule authority and powers, and the counties are prohibited from exercising theirs to authorize or regulate FPFA operations within their jurisdictions. FPFA did not present to the trial court the legislative history for the 2012 amendment to section 163.08 demonstrating the amendment was intended 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.

Once it became evident that concerted action was needed, the county movants timely pursued the "convenient and orderly" procedure under Rule 1.540 for relief from the collateral matters adjudicated in the bond validation judgment, filing their motion within one year after the judgment was entered. The county movants

acted within a reasonable time to seek relief under Rule 1.540(b)(4) and (b)(3) from the collateral matters adjudicated Bond Validation Judgment. The trial court simply dismissed these circumstances in favor of an artificial time bar based on purported “notice” of the judgment. In so doing, the trial court abused its discretion, and its denial of the Rule 1.540 motion as untimely should be reversed.

CONCLUSION

Appellants respectfully request that this Court determine the Bond Validation Judgment cannot lawfully reach collateral matters and preclude counties from (1) requiring FPFA to enter into an interlocal agreement prior to FPFA operating a PACE program in their jurisdictions, and (2) adopting resolutions or ordinances under their home rule authority prohibiting or regulating the operation of a PACE program by FPFA in their jurisdictions. Those portions of the Bond Validation Judgment are collateral and void for lack of subject matter jurisdiction, personal jurisdiction, and due process. As such, the Denial Order should be reversed.

Respectfully submitted,

/s/ Simone Marstiller

SIMONE MARSTILLER

Florida Bar No. 129811

smarstiller@gunster.com
Secondary Email: etrammel@gunster.com

KENNETH B. BELL
Florida Bar No. 347035

kbell@gunster.com
Secondary Email: awinsor@gunster.com

Gunster, Yoakley & Stewart, P. A.
215 South Monroe Street, Suite 601
Tallahassee, Florida 32301
(850) 521-1980; Fax: (850) 576-0902

JOUNICE NEALY-BROWN
Florida Bar No. 124793

jnealy-brown@gunster.com
Secondary Email: tkennedy@gunster.com

Gunster, Yoakley & Stewart, P. A.
401 E. Jackson Street, Suite 1500
Tampa, Florida 33602
(813) 228-9080; Fax: (813) 228-6739

and

CHASITY H. O'STEEN
Florida Bar No. 659681
County Attorney
Leon County, Florida
osteenc@leoncountyfl.gov
Leon County Attorney's Office
301 S. Monroe Street,
Room 202
Tallahassee, Florida 32301
Tel: (850) 606-2520
Fax: (850) 606-2501

*Attorneys for Appellant Leon County,
Florida*

/s/ Edward G. Guedes
EDWARD G. GUEDES
Florida Bar No. 768103
Primary Email:
EGuedes@wsh-law.com
MATTHEW H. MANDEL
Florida Bar No. 147303
Primary Email:
mmandel@wsh-law.com
Secondary Email:
lbrewley@wsh-law.com
WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.
200 East Broward Boulevard,
Suite 1900
Fort Lauderdale, Florida 33301
Tel: (954) 763-4242
Fax: (954) 764-7770

and

DANIEL S. MCINTYRE
Florida Bar No. 287571
County Attorney
mcind@stlucieco.org
St. Lucie County
2300 Virginia Avenue
Fort Pierce, Florida 34982

*Attorneys for Appellant St. Lucie
County, Florida*

/s/ Robert C. Swain
ROBERT C. SWAIN
Deputy County Attorney
Florida Bar No. 366961
bswain@alachuacounty.us
SYLVIA E. TORRES
County Attorney
Florida Bar No. 57706
storres@alachuacounty.us
Alachua County Attorney's
Office
12 Southeast 1st Street
Gainesville, Florida 32601
Tel: (352) 374-5218
Fax: (352) 374-5216

*Attorneys for Appellant
Alachua County, Florida*

/s/ Brian D. Leebrick
BRIAN D. LEEBRICK, ESQ.
Deputy County Attorney
Florida Bar No. 172634
bleebbrick@baycountyfl.gov
Secondary:
mhauversburk@baycountyfl.gov
eservice@baycountyfl.gov
840 W. 11th Street
Panama City, Florida 32401
Tel: (850) 248-8175
Fax: (850) 248-8189

*Attorney for Appellant Bay
County, Florida*

/s/ Morris Richardson
MORRIS RICHARDSON
Florida Bar No. 349800
morris.richardson@brevardfl.gov
cao.eservice@brevardfl.gov
Office of the Brevard County
Attorney
2725 Judge Fran Jamieson
Way, C-308
Viera, Florida 32940
Tel: (321) 633-2090
Fax: (321) 633-2096

*Attorney for Appellant Brevard
County, Florida*

/s/ Jeffrey A. Klatzkow
JEFFREY A. KLATZKOW
County Attorney
Florida Bar No. 644625
jeff.klatzkow@colliercountyfl.gov
Collier County Attorney's Office
3299 East Tamiami Trail,
Suite 800
Naples, Florida 34112-5749
Tel: (239) 252-8400
Fax: (239) 252-6300

*Attorney for Appellant Collier
County, Florida*

/s/ D. Matthew Raulerson
D. MATTHEW RAULERSON
Florida Bar No. 110630
Primary Email:
matt.raulerson@hendryfla.net
Secondary Email:
fbee@hendryfla.net
Hendry County Attorney
P.O. Box 2340
LaBelle, Florida 33975
Tel: (863) 675-5295

*Attorney for Appellant Hendry
County, Florida*

/s/ Melissa A. Tartaglia
MELISSA A. TARTAGLIA
Florida Bar No. 0116033
MTartaglia@co.hernando.fl.us
cao@co.hernando.fl.us
JON A. JOUBEN
Florida Bar No. 149561
JJouben@co.hernando.fl.us
cao@co.hernando.fl.us
Office of Jon A. Jouben,
Hernando County Attorney
20 N. Main Street, Suite 462
Brooksville, Florida 34601
Tel: (352) 754-4122
Fax: (352) 754-4001

*Attorneys for Appellant
Hernando County, Florida*

/s/ Alexis Clark

ALEXIS CLARK
Assistant County Attorney
Florida Bar No. 1039328
MELANIE MARSH
County Attorney
Florida Bar No. 136522
Primary Email:
alexis.clark@lakecountyfl.gov
Primary Email:
melanie.marsh@lakecountyfl.gov
Secondary Email:
nova.atkinson@lakecountyfl.gov
Lake County Attorney's Office
P.O. Box 7800
Tavares, Florida 32778-7800
Tel: (352) 343-9787
Fax: (352) 343-9646

*Attorneys for Appellant Lake
County, Florida*

/s/ Richard Wm. Wesch

RICHARD WM. WESCH
County Attorney
Florida Bar No. 710921
rwesch@leegov.com
Lee County Attorney's Office
P.O. Box 398
Fort Myers, Florida 33902-
0398
Tel: (239) 533-2236
Fax: (239) 485-2106

*Attorney for Appellant Lee
County, Florida*

s/ Shonda D. White

SHONDA D. WHITE
Assistant County Attorney
Florida Bar No. 1003829
Primary Email:
Shonda.White@ocfl.net
Secondary Email:
Brittney.Rachel@ocfl.net
Tertiary Email:
Maria.Vargas@ocfl.net
JEFFREY J. NEWTON
County Attorney
Florida Bar No. 887390
Primary Email:
jeffrey.newton@ocfl.net
201 S. Rosalind Avenue,
3rd Floor
Post Office Box 1393
Orlando, Florida 32802-1393
Tel: (407) 836-7320

*Attorneys for Appellant Orange
County, Florida*

/s/ Ryan P. Maher

RYAN P. MAHER
Florida Bar No. 1004173
Assistant County Attorney
Email: rmaher@pbc.gov
ldennis@pbc.gov
nvolpi@pbc.gov
Palm Beach County Attorney's
Office
301 N. Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Tel: (561) 355-3628
Fax: (561) 656-7067

*Attorney for Appellant Palm
Beach County, Florida*

/s/ Sarah Jonas

RUSSELL BROWN, ESQ.
Deputy County Attorney
Florida Bar No. 13304
SARAH JONAS, ESQ.
Assistant County Attorney
rbrown@volusia.org
sjonas@volusia.org
mefird@volusia.org
Fla. Bar No. 115989
123 W. Indiana Avenue
DeLand, Florida 32720
Tel: (386) 736-5950

*Attorneys for Appellant Volusia
County, Florida*

/s/ Kelly L. Vicari

KELLY L. VICARI
Florida Bar No. 88704 / SPN
03325558
Sr. Assistant County Attorney
Primary Email:
kvicari@pinellas.gov
Secondary Email:
eservice@pinellas.gov
Pinellas County Attorney's
Office
315 Court Street, Sixth Floor
Clearwater, Florida 33756
Tel: (727) 464-335
Fax: (727) 464-4147

*Attorney for Appellant Pinellas
County, Florida*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all counsel of record via eService through the Florida Courts E-Filing Portal this 7th day of June 2024.

/s/ Simone Marstiller
SIMONE MARSTILLER

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY this brief complies with the type size and style requirements of Florida Rule of Appellate Procedure 9.045(b) and has been prepared in Bookman Old Style 14-point font. This brief complies with the word limitations set forth in Florida Rule of Appellate Procedure 9.210(a)(2)(B). This brief contains 11,156 words, excluding the parts of the brief exempt by Rules 9.045(e) and 9.210(a)(2)(E).

/s/ Simone Marstiller
SIMONE MARSTILLER