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**IN THE SUPREME COURT OF FLORIDA**

SUPREME COURT CASE NO. SC2024-0652

LOWER TRIBUNAL CASE NO. 2022-CA-1562

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

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STATE ATTORNEYS FOR THE SECOND, SEVENTH, AND NINTH  
JUDICIAL CIRCUITS,

Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,

Appellees.

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**APPELLANTS' INITIAL BRIEF**

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## **STATEMENT OF CASE & FACTS**

This appeal concerns matters of great statewide, public importance and stems from the improper final judgments entered by the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida, (the “Trial Court”), related to Florida Pace Funding Agency’s, (“FPFA” or “Appellee”), September 1, 2022 Complaint for Validation, (“Complaint”), and the resulting bond validation proceeding, (“Bond Proceeding”).

FPFA brought the case under Chapter 75, Florida Statutes to validate FPFA's proposed issuance of debt under the property assessed clean energy, (“PACE”), program authorized by section 163.08, Florida Statutes. (A.1952). Specifically, FPFA sought to fund statutorily defined ‘qualifying improvements’ that would be affixed to private residential and commercial buildings or facilities and paid for through the levy and collection of non-ad valorem assessments. (A.1952).

Pursuant to section 163.01(7)(g)9., Florida Statutes, FPFA was required to serve its Complaint on the state attorney for the Second Judicial Circuit as well as the other state attorneys with FPFA members in their circuits and counties. FPFA was also required

by sections 75.06 and 163.01(7)(g)9., Fla. Stat. to publish notice of the Bond Proceeding and the Trial Court's order to show cause in Leon County and in each county that is a member of FPFA or in which a member of FPFA was located. (A.155-156).

Accordingly, FPFA's Complaint was only served on the State Attorneys of the Second, Seventh, and Ninth Judicial Circuits, (collectively, "State Attorneys"), (A.306, 311, 314, 1744). Likewise, notice of the Bond Proceeding and the Trial Court's order to show cause was published by FPFA only in the *Tallahassee Democrat* (Leon County, Second Judicial Circuit), the *Daytona Beach News-Journal* (Flagler County and Volusia County, Seventh Judicial Circuit), and the *Orlando Sentinel* (Orange County and Osceola County, Ninth Judicial Circuit). (A.1744).

Notably, no counties or tax collectors were served with the Complaint, nor were they given notice of the Bond Proceeding. (A.1744-45). Nonetheless, FPFA has disingenuously taken the position that "that every property owner, citizen, taxpayer, and general-purpose local government in the state was afforded due process, adequate notice, and made a party to this bond validation proceeding." (A.156).

Nonetheless, the State Attorneys received actual notice of the Complaint and filed Answers to the Complaint demanding strict proof of FPFA's allegations. (A.37). Moreover, as parties to the proceeding the State Attorneys also had the right to appear and participate in the October 6, 2022 Bond Proceeding, which they did. (A.37). However, without being provided actual notice, none of Florida's counties or tax collectors participated in the Bond Proceeding.

During the Bond Proceeding, the State Attorneys' were focused on the limited issues within the scope and function of a specialized bond validation proceeding, namely the basic validity of the bonds and the power of FPFA to act. (A.131). Despite the focus of the State Attorneys on the "basic validity" of the Complaint, FPFA deviated from the governance of Chapter 75 and influenced the Trial Court to adjudicate collateral matters in the Bond Validation Final Judgment, which was entered later the same day. (A.142).

While no appeal was filed, several counties filed lawsuits against FPFA seeking declaratory and injunctive relief as to the collateral matters adjudicated by the Trial Court. (A.1983). FPFA then filed mandamus actions contending that the Bond Validation Final Judgment was functionally a declaratory judgment against the

counties and tax collectors as to their constitutional and statutory authority. (A.1745, 1956-57, 1966). As these lawsuits played out, FPFA's misconduct and misrepresentations from throughout the Bond Proceeding became clear, which culminated in the filing of the Movants' Motions for Relief from Final Judgment pursuant to Rule 1.540(b), Florida Rules of Civil Procedure, ("Rule 1.540(b) Motions")<sup>1</sup>. (A.127). Significantly, Movants' Rule 1.540(b) Motions sought relief under subsections (b)(4) and (b)(3), demanding that the Trial Court vacate the collateral portions of the Bond Validation Final Judgment that "purport to determine the rights and authorities of the Counties and Tax Collectors." (A.162). Notably, however, Movants did not challenge the validity of FPFA's bonds. (A.21-23).

On February 2, 2024, the Trial Court held an evidentiary hearing on the Rule 1.540(b) Motions and entered two (2) separate but related orders on March 19, 2024: (1) Order Denying Motion for

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<sup>1</sup> The State Attorneys for the Second, Seventh, and Ninth Judicial Circuits were joined by the State Attorneys for the Fifth, Sixth, and Eighth Judicial Circuits, along with fifteen (15) counties and forty (40) tax collectors, in the October 4, 2023, Motion for Relief from Final Judgment; then, on October 5, 2023, Polk County, Palm Beach County, and their respective tax collectors also filed a Motion for Relief from Final Judgment, (collectively, "Movants"). (A.1058).

Relief from Final Judgment as to State Attorneys, (“Order Denying State Attorneys’ Relief”); and (2) Order Denying Movants’ Motions for Relief from Final Judgment, (“Order Denying Movants’ Relief”), (collectively “Orders Denying Relief”). (A.36-38, 13-35, respectively).

Remarkably, the Order Denying State Attorneys’ Relief incorrectly deems the State Attorney for the Second Circuit as representative of “the entire state by operation of law when the proceeds of the bonds to be issued will be expended statewide. See § 75.02, Fla. Stat.” (A.37). Moreover, the Trial Court further committed error in the Order Denying State Attorneys’ Relief by ruling:

Therefore, the State Attorneys are procedurally barred from seeking post-judgment relief under Florida Rule of Civil Procedure 1.540(b) at this late date. This is because, Rule 1.540(b) motions cannot serve as a "substitute for appellate review of judicial error." *Curbelo v Ullman*, 571 So. 2d 443, 444 (Fla. 1990) (citation omitted); *see also* § 75.09, Fla. Stat. (providing that when a timely appeal is not filed, a final judgment validating bonds is "*forever conclusive* as to all matters adjudicated against plaintiff and all parties affected thereby" (emphasis added)).

(A.37-38).

Similarly, the Trial Court committed reversible error in the Order Denying Movants’ Relief by determining that: (1) Movants were precluded from using “Rule 1.540 to circumvent the clear language

of the Legislature”; (2) Movants’ Rule 1.540(b) Motions were untimely; (3) that the Bond Validation Final Judgment did not adjudicate collateral matters and is not void for lack of subject matter jurisdiction; and (4) that although the Bond Validation Final Judgment adjudicates the rights, powers, and authority of the counties and tax collectors, it is not void for lack of personal jurisdiction and due process. (A.21-35).

Consequently, on April 18, 2024, the State Attorneys timely filed a Notice of Appeal seeking review of the Trial Court’s Orders Denying Relief described above.

### **SUMMARY OF THE ARGUMENT**

As parties to the Bond Proceeding under Chapter 75, the State Attorneys sought relief alongside the non-State Attorney Movants under Rule 1.540(b) seeking relief from the Trial Court’s October 6, 2022, Bond Validation Final Judgment. Specifically, the State Attorneys and other Movants sought relief from the collateral matters adjudicated in the Bond Validation Final Judgment as being void for lack of subject matter jurisdiction, personal jurisdiction, and due process.

In denying the requested relief, the Trial Court improperly held that the State Attorney for the Second Judicial Circuit “represent[s] the entire state when the proceeds of the bonds to be issued will be expended statewide. *See* § 75.02, Fla. Stat.” (A.37). As detailed below, the Trial Court committed clear, reversible error with this holding because no authority grants the State Attorney for the Second Judicial Circuit such statewide power or responsibility, but also because the Trial Court’s determination invalidly encroaches upon the powers and duties of Florida’s other state attorneys as well as its counties, tax collectors, and other entities. Florida’s state attorneys only represent the state and only within the territorial jurisdiction of their individual judicial circuits. Consequently, because of its clear error and wrongful usurpation of constitutional and statutory authorities, the Order Denying State Attorneys’ Relief must be reversed.

The Trial Court committed additional reversible error by denying the post-judgment relief sought by the State Attorneys under Rule 1.540(b) as untimely for lack of filing an appeal. (A.37). Despite this conclusion, and as further set forth below, the Order Denying State Attorneys’ Relief must be reversed because not only were the

State Attorneys authorized via Chapter 75 to raise challenges in the Bond Proceeding, but also because challenges to judgments for voidness can be asserted at any time. *See Ramagli Realty Co. v. Craver*, 121 So. 2d 648, 654 (Fla. 1960) (finding that a void judgment may be attacked at any time, even collaterally).

Moreover, the failure to file an appeal does not preclude post-judgment relief pursuant to Rule 1.540(b)(4) based on voidness. *Rinas v. Rinas*, 847, So. 2d 555, 557 (Fla. 5th DCA 2003) (“Therefore, when a final judgment is void from the outset, the requirement to file an appeal within 30 days of the rendition of the final judgment does not apply.”); *Deutsche Bank Nat. Trust Co. v. Patino*, 192 So. 3d 637, 637-38 (Fla. 5th DCA 2016) (granting 1.540(b) motion after judgment became final and despite fact that movant did not appeal judgment). (A.1975-1976). Accordingly, the State Attorneys’ requested relief based on voidness for lack of subject matter jurisdiction, personal jurisdiction, and due process was in fact timely and the Order Denying State Attorneys’ Relief must be reversed. Finally, as to the State Attorneys’ request for relief pursuant to 1.540(b)(3) regarding FPFA’s misrepresentation and misconduct, the Order Denying State

Attorneys' Relief must be reversed because it was clearly filed within the deadline set forth by the Rule and was therefore timely filed.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

The present controversy concerns bond proceedings under Chapter 75, Florida Statutes; therefore, this Court reviews the “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).

Similarly, as presented in detail below, the pure questions of law related to timeliness, voidness, and jurisdiction are subject to *de novo* review. See *Swearingen v. Rio Villa, Unit V, Homeowners Ass’n, Inc.*, 277 So. 3d 778, 780-81 (Fla. 5th DCA 2019) (Whether a court has subject matter jurisdiction is a question of law reviewed *de novo*); *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*).

Likewise, because this matter involves the Trial Court’s interpretation of Rule 1.540(b), Florida Rules of Civil Procedure, its Order Denying State Attorneys’ Relief is reviewed *de novo*. See *Barco v. School Bd. of Pinellas Cnty.*, 975 So. 2d 1116, 1121 (Fla. 2008)

(applying *de novo* standard of review when construction of a procedural rule is at issue).

**II. BY VESTING CONSOLIDATED POWER IN THE STATE ATTORNEY FOR THE SECOND JUDICIAL CIRCUIT, THE TRIAL COURT USURPED THE CONSTITUTIONAL AND STATUTORY AUTHORITY OF FLORIDA'S STATE ATTORNEYS, COUNTIES, TAX COLLECTORS, OFFICERS, AND OTHER ENTITIES.**

Of significant statewide public importance, the Order Denying State Attorneys' Relief, incorrectly held that, "The State Attorney for the Second Circuit is deemed to represent the entire state by operation of law when the proceeds of the bonds to be issued will be expended statewide. *See* § 75.02, Fla. Stat." (A.37). As further set forth below, the Trial Court's Order Denying State Attorneys' Relief must be reversed for its baseless and improper encroachment, dilution, and usurpation of the constitutional and statutory authority of Florida's remaining nineteen (19) state attorneys, as well as its counties, tax collectors, and other officers and entities.

The constitutional authority and framework behind Florida's state attorneys is found in Article V, Section 17 of the Florida Constitution, which states:

**State attorneys.**—*In each judicial circuit a state attorney shall be elected for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law; provided, however, when authorized by general law, the violations of all municipal ordinances may be prosecuted by municipal prosecutors. A state attorney shall be an elector of the state and reside in the territorial jurisdiction of the circuit; shall be and have been a member of the bar of Florida for the preceding five years; shall devote full time to the duties of the office; and shall not engage in the private practice of law. State attorneys shall appoint such assistant state attorneys as may be authorized by law.*

Article V, Section 17, Florida Constitution, (emphasis added).

Notably, the Article V, Section 17 makes clear that Florida’s state attorneys are representative of the “territorial jurisdiction of the circuit” in which they reside and that they act as the “prosecuting officer of all trial courts in that circuit.” Likewise, section 27.02, Florida Statutes sets forth the territorial authority of Florida’s state attorneys, in pertinent part as follows:

**Duties before court.**—

(1) *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 .... The state attorney shall appear in the circuit and county courts within his or her judicial circuit for the purpose of prosecuting violations of special laws and county or municipal ordinances punishable by incarceration if the*

prosecution is ancillary to a state prosecution or if the state attorney has contracted with the county or municipality for reimbursement for services rendered in accordance with s. 27.34(1).

Section 27.02, Florida Statutes, (emphasis added). Thus, the constitutional and statutory authority supporting Florida's state attorneys unequivocally places their power only in each of the twenty (20) state attorneys' separate judicial circuits and the courts therein. Accordingly, when taking into account the forgoing authority, the Trial Court's vesting of consolidated power in the State Attorney for the Second Circuit is puzzlingly based on section 75.02, Fla. Stat., which states:

**Plaintiff.**—Any county, municipality, taxing district or other political district or subdivision of this state, including the governing body of any drainage, conservation or reclamation district, and including also state agencies, commissions and departments authorized by law to issue bonds, may determine its authority to incur bonded debt or issue certificates of debt and the legality of all proceedings in connection therewith, including assessment of taxes levied or to be levied, the lien thereof and proceedings or other remedies for their collection. For this purpose a complaint shall be filed in the circuit court in the county or in the county where the municipality or district, or any part thereof, is located against the state and the taxpayers, property owners, and citizens of the county, municipality or district, including nonresidents owning property or subject to taxation therein. In actions to validate bonds or certificates of debt issued by state agencies, commissions or departments, the complaint

shall be filed in the circuit court of the county where the proceeds of the bond issue are to be expended, or *where the seat of state government is situated*, and shall be brought against the state and the taxpayers, property owners and citizens thereof, including nonresidents owning property or subject to taxation therein.

Section 75.02, Florida Statutes. While section 75.02, Fla. Stat. references that “In actions to validate bonds or certificates of debt issued by state agencies, commissions or departments, the complaint shall be filed in the circuit court of the county where the proceeds of the bond issue are to be expended, or where the seat of state government is situated,” there is no language supporting the Trial Court’s holding as to the State Attorney for the Second Judicial Circuit. (A.37). Rather, Chapter 75, Florida Statutes recognizes and incorporates the constitutional and statutory territorial jurisdictions of the state attorneys:

**Order and service.**—In the case of state agencies, commissions, or departments, a copy of the complaint and order shall be served on the state attorney of the circuit in which the action is pending and if pending in a county when the proceeds of the bond issue are to be expended in any other county, on the state attorney of each county in which it is proposed to expend the proceeds.

Section 75.05(2), Florida Statutes.

There are no known authorities related to bond validation proceedings or otherwise stating that the State Attorney for the Second Judicial Circuit represents the other state attorneys and their judicial circuits or any other State entity or constitutional officer. Rather, based on the foregoing, Florida's state attorneys represent the State only on behalf of and within the territory of their individual judicial circuits. Moreover, neither the State Attorney for the Second Judicial Circuit, nor any of the other nineteen (19) state attorneys represent Florida's counties, tax collectors, clerks, property appraisers, or any other state entity or officer in this action or any future actions brought pursuant to Chapter 75, Florida Statutes.

Through its above-described improper investiture of power and statewide representation in the State Attorney for the Second Judicial Circuit, the Trial Court likewise improperly deemed that service on a state attorney somehow constitutes service on every county, tax collector, clerk, or property appraiser in the state. (A.1975). Nonetheless, testimony from the assistant state attorney for the Second Judicial Circuit, who appeared at the Bond Proceeding, clearly stated, "I do not represent anyone but the State of Florida," thus confirming the State Attorneys' understanding that they

appeared only on behalf of the State of Florida and their respective judicial circuits. (A.2362:25-A.2363:1).

Consequently, the State Attorney for the Second Judicial Circuit represents the State only in his judicial circuit, not any of the other nineteen (19) state attorneys, nor any of Florida's counties, tax collectors, property appraisers, clerks, or any other officer or entity. Therefore, based on the foregoing, the State Attorneys respectfully request this Court reverse the Order Denying State Attorneys' Relief thereby restoring the constitutional and statutory powers of Florida's state attorneys and returning proper authority and representation to Florida's counties, tax collectors, officers, and other entities.

### **III. THE STATE ATTORNEYS TIMELY AND PROPERLY SOUGHT POST-JUDGMENT RELIEF UNDER RULE 1.540(b).**

The Order Denying State Attorneys' Relief incorrectly found that because "[n]one of the State Attorneys filed an appeal [of the Bond Validation Final Judgment] to the Florida Supreme Court," they are "procedurally barred from seeking post-judgment relief under Florida Rule of Civil Procedure 1.540(b) at this late date." (A.37). In concluding its judgment, the Trial Court ruled:

This is because, Rule 1.540(b) motions cannot serve as a "substitute for appellate review of judicial error." *Curbelo v*

*Ullman*, 571 So. 2d 443, 444 (Fla. 1990) (citation omitted); see also § 75.09, Fla. Stat. (providing that when a timely appeal is not filed, a final judgment validating bonds is "*forever conclusive* as to all matters adjudicated against plaintiff and all parties affected thereby" (emphasis added)).

(A.37). Despite the Trial Court's conclusion, pursuant to section 75.05, Fla. Stat.<sup>2</sup>, state attorneys are broadly authorized to examine bond validation complaints for any "reason to believe that it is defective," including seeking relief via Rule 1.540. Consequently, there is no authority that precludes the State Attorneys' right to challenge the Bond Validation Final Judgment and seek relief under Rule 1.540(b), which states in pertinent part:

(b) 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;  
or ...

The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after

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<sup>2</sup> Section 75.05, Fla. Stat., states in pertinent part: "The state attorney shall examine the complaint, and, if it appears or there is reason to believe that it is defective, insufficient, or untrue, or if in the opinion of the state attorney the issuance of the bonds or certificates in question has not been duly authorized, defense shall be made by said state attorney."

the judgment, decree, order, or proceeding was entered or taken.

Rule 1.540(b), Florida Rules of Civil Procedure.

This Court has made clear that “[t]he 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” and that a trial court’s jurisdiction under Chapter 75 is limited to three elements: (1) determining if a public body has the authority to issue the subject bonds; (2) determining if the purpose of the obligation is legal; and (3) ensuring that the authorization of the obligation complies with the requirements of law. *State v. Manatee Cnty. Port Auth.*, 171 So. 2d 169, 171 (Fla. 1965); *State v. City of Port Orange*, 650 So. 2d 1, 2 (Fla. 1994). (A.131).

Thus, trial courts lack jurisdiction under Chapter 75 to decide collateral issues that do not go "directly to the power to issue the securities and the validity of the proceedings relating thereto." *State v. City of Miami*, 103 So. 2d 185, 188 (Fla. 1958) (finding that trial court lacked jurisdiction and stating that bond validation statute did not give the trial court power to bring other parties into the proceedings); *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys*

*Aqueduct Auth.*, 795 So. 2d 940, 945 (Fla. 2001) (finding '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. (emphasis added)). (A.1954-1955).

Here, the October 6, 2022, Bond Validation Final Judgment went beyond validating FPFA's authority to issue bonds for PACE improvements under section 163.08 Fla. Stat., thereby exceeding the scope of a Chapter 75 bond validation proceeding, and unlawfully adjudicated collateral matters by ruling that:

(1) no county can require FPFA to enter into an interlocal agreement ("ILA") prior to FPFA operating a PACE program in such county's jurisdiction;

(2) no county can adopt resolutions or ordinances under its home rule authority prohibiting or regulating the operation of PACE programs in their jurisdiction; and

(3) no tax collector has discretion to ensure compliance with section 197.3632, Florida Statutes, and other law with respect to such tax collector's collection of PACE assessments levied by FPFA.

(A.1952-1953).

Because the above collateral matters were addressed in the Bond Validation Final Judgment, they are not only subject to attack

via Rule 1.540(b), but also may be raised by proper parties in entirely separate proceedings. *City of Gainesville v. State*, 366 So. 2d 1164, 1166 (Fla. 1979) “(holding bond validation proceedings "do not ... 'put at rest' collateral questions that were somehow brought into the proceedings but need not and should not have been brought in" and such issues can be raised by proper parties in proper separate proceedings).” (A.1679-1680).

Here, the State Attorneys and other Movants sought post-judgment relief from above collateral matters adjudicated in the Bond Validation Final Judgment based on: (1) Rule 1.540(b)(4), for voidness based on lack of subject matter jurisdiction, personal jurisdiction, and due process; and (2) Rule 1.540(b)(3), regarding FPFA’s misconduct and misrepresentation. Thus, as further set forth below, the Order Denying State Attorneys’ Relief must be reversed for error because: (1) there is no time limit or deadline applicable to the State Attorneys’ Rule 1.540(b)(4) claim for relief based on voidness for lack of jurisdiction and due process; and (2) the State Attorneys’ claim for relief based on FPFA’s misrepresentations and misconduct met the deadline set forth in Rule 1.540(b)(3), Florida Rules of Civil Procedure.

**A. As to the relief sought by the State Attorneys for lack of jurisdiction and due process, the Trial Court erred because there is no deadline for filing a Rule 1.540(b)(4) Motion for Voidness.**

It is understood that “lack of subject matter jurisdiction renders a judgment or order of a court void *ab initio*.” *14302 Marina San Pablo Place SPE, LLC v. VCP-San Pablo, Ltd.*, 92 So. 3d 320, 321 (Fla. 1st DCA 2012); *Hardman v. Koslowski*, 135 So. 3d 434,436 (Fla. 1st DCA 2014) (“[A] lack of subject matter jurisdiction renders a judgment void, ‘and a void judgment can be attacked at any time, even collaterally’ ... [and] ‘will not be given res judicata effect. ... ’”) quoting *Strommen v. Strommen*, 927 So.2d 176, 179 (Fla. 2d DCA 2006) and *Fla. Export Tobacco Co. v. Dep’t of Revenue*, 510 So.2d 936, 943 (Fla. 1st DCA 1987). (A.1679-1680).

Similarly, while the Trial Court had personal jurisdiction over the State Attorneys, the non-State Attorney Movants, (the “Counties and Tax Collectors”), were not “parties defendant” subject to the Court’s jurisdiction in a Chapter 75 proceeding. (A.1970). Rather, the state, through its subject state attorneys’ offices, is the only party that receives actual notice of bond validation proceedings. *See, e.g., § 75.05, Fla. Stat.*

Thus, while FPFA published notice of the Bond Proceeding in the Second, Seventh, and Ninth Judicial Circuits, the State Attorneys sought relief under Rule 1.540(b)(4) because FPFA's Bond Proceeding sought to adjudicate the rights, authority, and obligations of each and every county and tax collector in the state. (A.1972). Accordingly, the State Attorneys contended that it was impossible for such limited notice to constitute notice reasonably calculated to apprise all counties, tax collectors, and state attorneys outside of these jurisdictions that the Bond Proceeding was pending. (A.1972).

Despite the Trial Court's conclusion that "Rule 1.540(b) motions cannot serve as a 'substitute for appellate review of judicial error,'" the State Attorneys' Rule 1.540(b)(4) Motion, based on voidness for lack of jurisdiction and due process, was timely filed because challenges to judgments for voidness may be raised at any time. *Ramagli Realty Co. v. Craver*, 121 So. 2d 648, 654 (Fla. 1960) (finding that a void judgment may be attacked at any time, even collaterally); *E.g., Rinas v. Rinas*, 847, So. 2d 555, 557 (Fla. 5th DCA 2003) ("Therefore, when a final judgment is void from the outset, the requirement to file an appeal within 30 days of the rendition of the final judgment does not apply."); *Deutsche Bank Nat. Trust Co. v.*

*Patino*, 192 So. 3d 637, 637-38 (Fla. 5th DCA 2016) (granting 1.540(b) motion after judgment became final and despite fact that movant did not appeal judgment). (A.1975-1976).

In fact, under Rule 1.540(b)(4) the Court *must* grant relief from a void decree, order, or judgment. *Dep't of Transp. v. Bailey*, 603 So. 2d 1384, 1386-87 (Fla. 1st DCA 1992). Thus, “[w]hile it is true that Rule 1.540(b)(4) states that a motion for relief from a void judgment must be made within a ‘reasonable time,’ most courts have felt constrained to interpret the ‘reasonable time’ requirement of the rule to mean no time limit when the judgment attacked is void.” *ML Builders, Inc. v. Reserve Developers, LLP*, 769 So. 2d 1079, 1082 (Fla. 4th DCA 2000); *see also DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984) (no time limitation under rule 1.540(b) where the judgment is void); *Johnson v. State, Dept. of Revenue ex rel. Lamontagne*, 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.” (A.1976).

Here, the Trial Court committed clear, reversible error by declaring the State Attorneys procedurally barred from relief under

Rule 1.540(b)(4), because the Bond Validation Final Judgment was void from the outset for lack of subject matter jurisdiction, personal jurisdiction, and due process. *See Schmidt v. Nipper*, 287 So. 3d 1289, 1292 (Fla. 1st DCA 2020) (judgments may be rendered void for a lack of subject matter jurisdiction, personal jurisdiction, or due process). Consequently, the State Attorneys were not required to file an appeal within 30 days of Trial Court's rendition of the Bond Validation Final Judgment and the relief sought pursuant to Rule 1.540(b)(4) for voidness was timely and proper. Accordingly, the Order Denying State Attorneys' Relief must be reversed.

**B. The State Attorneys' claim for relief as to FPPA's misrepresentations and misconduct satisfied the timeliness requirements of Rule 1.540(b)(3).**

Rule 1.540(b)(3), authorizes courts to grant relief from a decree, order, or judgment for "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct." *See Greenwich Ass'n, Inc. v. Greenwich Apartments, Inc.*, 979 So. 2d 1116, 1118-19 (Fla. 3d DCA 2008) ("intrinsic fraud" warranting relief under Rule 1.540 includes the presentation of misleading information on an issue before the court that was tried or could have been tried). (A.1979). Likewise, relief for fraudulent

misrepresentation may also be granted when: (1) there is a false representation concerning a material fact; (2) the representor knows that the representation is false; (3) the representor intends to induce another to act in reliance on its false representation; and, (4) there is resulting injury to the relying party. *Johnson v. Davis*, 480 So. 2d 625, 627 (Fla. 1985). (A.1979).

The State Attorneys' Rule 1.540(b)(3) Motion asserted FPFA's multiple false representations regarding the collateral issues addressed in the Bond Validation Final Judgment. (A.1979-1980). Moreover, the State Attorneys contended that these representations were material because FPFA effectively denied the counties, tax collectors, and non-party State Attorneys an opportunity to be heard and present objections to FPFA's effort to use the Bond Proceeding to adjudicate collateral issues against them. (A.1980).

In addition to misrepresenting that it had no concerns with the counties' requirements for PACE ordinances, FPFA also misrepresented the law as to the collateral issues as "undisputed 'black letter law' when no court had ever considered or ruled on FPFA's asserted statutory interpretation of the counties' and tax collectors' authority." (A.1980). Consequently, FPFA's false

assertions went unchallenged because the counties were never given notice of FPFA's true intention: "a collateral attack on the counties' and tax collectors' authority; including on the existing resolutions, ordinances, interlocal agreements, and other actions of the counties' regulating or prohibiting operation of FPFA's PACE program in their jurisdictions per Chapter 163 and constitutional home rule authority." (A.160; 1980-1981).

Here, the Trial Court also committed reversible error when it procedurally barred the State Attorneys' motion for relief under Rule 1.540(b)(3), based on the foregoing, as untimely. (A.37). As stated above, motions filed pursuant to Rule 1.540(b)(3) for misrepresentation or misconduct must be filed "not more than 1 year after the judgment, decree, order, or proceeding was entered or taken." See Rule 1.540(b), Florida Rules of Civil Procedure. Despite the clear, unambiguous language of the Rule, the Trial Court deemed the State Attorneys' Motion for Relief as untimely when it was filed less than a year after the Bond Validation Final Judgment.<sup>3</sup>

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<sup>3</sup> The Bond Validation Final Judgment was entered October 6, 2022; and, the State Attorneys' Rule 1.540(b)(3) Motion for Relief was filed October 4, 2023.

Consequently, the Order Denying Relief as to State Attorneys must be reversed because the relief sought under Rule 1.540(b)(3) for FPFA's misconduct and misrepresentation was timely and properly before the Trial Court.

### **CONCLUSION**

Based on the foregoing, Appellants respectfully request that this Court reverse the Trial Court's Orders Denying Relief and hold: (1) that the State Attorney for the Second Judicial Circuit does not represent the entire State of Florida, nor its nineteen other state attorneys, counties, tax collectors, property appraisers, clerks, or any other officer or entity; (2) that post-judgment relief under Rule 1.540(b) was timely and properly sought; and (3) that the collateral matters adjudicated by the Bond Validation Final Judgment are void for lack of subject matter jurisdiction, personal jurisdiction, and due process.

Respectfully submitted this 7th day of June, 2024,

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**CERTIFICATE OF SERVICE**

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

/s/ Arthur I. Jacobs

## **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 13,000 or less words, calculated pursuant to Florida Rule of Appellate Procedure 9.045(e).

/s/ Arthur I. Jacobs