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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-1603

FLORIDA BANKERS ASSOCIATION,

Appellant,

L.T. Case No.: 2014 CA 000548

vs.

STATE OF FLORIDA, et al.,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

AMICUS CURIAE BRIEF FOR THE SOUTHERN ALLIANCE FOR CLEAN ENERGY, INC.

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IDENTITY AND INTEREST

The Southern Alliance for Clean Energy, Inc. ("SACE") is a nonprofit corporation whose mission is to promote responsible energy choices that create global warming solutions and ensure clean, safe, and healthy communities throughout the Southeastern United States, including the State of Florida. The organization advocates for federal, state, and local climate solutions, such as increased implementation of energy efficiency programs and policies, and meaningful renewable energy development, such as solar power. SACE has been a leading voice for energy policy to protect the quality of life in the Southeast since 1985.

SACE's interest in this case stems from its expertise and experience regarding Florida's energy policies and the impact this case will have on important and effective tools to encourage and implement energy efficiency and renewable energy solutions across the state. As an organization working throughout the Southeast region to create clean energy solutions, SACE's interest in the preservation and enforcement of section 163.08, Florida Statutes—the Florida Property Assessed Clean Energy Act (the "PACE Act" or the "Act')—is substantial.

SUMMARY OF ARGUMENT

Florida has a compelling state interest in protecting its people, its economy, and its environment from devastating climate change impacts. These impacts, which include rising sea levels, warmer temperatures, and shortages of water resources, can be mitigated through clean energy solutions that reduce the state's consumption of fossil fuels to generate electricity.

The PACE Act is an important tool reasonably chosen by the Florida Legislature to offer low-cost, upfront financing for these clean energy solutions. Energy efficiency and renewable energy property improvements made accessible by the Act combat the state's energy and environmental challenges. This Court should affirm the Act's constitutionality.

The State of Florida has the third largest electricity market and the fourth highest energy-related carbon dioxide ("CO_2") emissions in the nation.[1] CO_2 is a greenhouse gas ("GHG") that causes climate change. If considered a nation, Florida's CO_2 emissions would place it in the top thirty for GHG emissions

[1] The US Environmental Protection Agency, *State Energy CO_2 Emissions*, http://epa.gov/statelocalclimate/documents/pdf/CO2FFC_2012.pdf.

globally. The greatest source of these emissions is the electricity sector, as Florida's home electricity consumption remains one of the highest in the country.[2]

The Florida Legislature has responded to this most compelling state interest by adopting policies for renewable energy, energy conservation, and enhanced energy efficiency. It has also passed legislation, including the PACE Act, which is intended, in part, to reduce fossil fuel energy production and consumption by decreasing the energy demands from homes and other improved properties. The constitutionality of the PACE Act must be upheld.

ARGUMENT

Energy-saving improvements available to property owners under the PACE Act directly address Florida's compelling state interests in reducing energy consumption and energy-related GHG emissions through the use of alternative energy sources and increased energy efficiency. The PACE Act provides an innovative financing tool to owners of improved property in Florida, allowing them to utilize clean energy opportunities by removing upfront financial barriers. Smarter use of energy not only addresses serious environmental concerns, it also provides a low-cost economic development tool that attracts new businesses,

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[2] Center for Climate Strategies, *Final Florida Greenhouse Gas Inventory and Reference Case Projections 1990-2025*, October 2008. http://www.climatestrategies.us/library/library/view/938.

creates jobs, and stimulates economies. *See* Chad S. Friedman & MacAdam J. Glinn, *Florida Is Keeping Pace: House Bill 7179,* Fla. B.J., September/October 2010, at 44.

This Court should affirm the Act's constitutionality.

I. Energy Consumption, Greenhouse Gas Emissions, and Florida's Changing Climate

A. The Catastrophic Impacts of Fossil Fuel-Based Climate Change

There is an inextricable link between energy consumption, GHG emissions, and Florida's changing climate. The majority of Florida's GHG emissions are in the form of CO_2 that is almost entirely the result of the combustion of fossil fuels (primarily electric utility production). *See Fla. Dep't of Envtl. Prot., Div. of Air Res. Mgmt., Inventory of Fla. Greenhouse Gas Emissions: 1990-2007* (Aug. 2010), http://www.dep.state.fl.us/air/about_air/climate/FLGHG%20Inventory_1990thru2007.doc. Thus, energy efficiency programs that actually reduce fossil fuel use (primarily from the electric utility demand) will reduce Florida's largest sector of GHG emissions.

Florida's high rates of energy consumption and related GHG emissions threaten its consumers, economy, and climate. This threat led the Florida Legislature to enact the PACE Act. In part, its purpose is to help wean energy consumers from fossil fuels and to reduce GHG emissions.

In addition, the Federal Government is proposing to require states to reduce their GHG emissions. Newly proposed federal rules issued June 2, 2014, direct states to cut GHG emissions from power plants 30% by 2030 based on 2005 baseline emissions levels. To meet this requirement, Florida will have to reduce emissions by 38%. *See Carbon Pollution Emission Guidelines for Existing Stationary Sources: Elec. Util. Generating Units,* 79 FR 34830-01.

Most importantly, the reduction in GHG emissions is compelled by their effect on climate change. In the near future, Florida is expected to experience warmer temperatures, prolonged droughts, abnormal precipitation levels, and more intense storm systems—to name just a few of the anticipated effects of a warming global climate. *See* State University System of Florida, *Florida Water Mgmt. & Adaptation in the Face of Climate Change, a White Paper on Climate Change & Florida's Water Resources*, p.6 (Nov. 2011), http://floridaclimate.org/docs/ water_managment.pdf. With more than a thousand miles of coastline and low-lying topography throughout much of the state's coastal areas, Florida is more vulnerable than most states to the impacts of climate change and associated sea level rise. *Id.* at 5.

Due to warming climate, sea levels could rise in Florida by one to three feet over the next century. *See* Tatiana Borisova, Norman Breuer, & Roy Carriker, IFAS, University of Florida, *Economic Impacts of Climate Change on Florida:*

Estimates from Two Studies, (Dec. 2011) http://edis.ifas.ufl.edu/fe787. A one-foot increase could erode 100 to 200 feet of the state's beaches and lead to inundation of many coastal areas. *Id.* The impact is even more dramatic when considering a low-lying area like the Florida Keys, which could face $2.130 billion of cumulative damage to buildings from a two-foot rise in sea level by 2060. Such a rise in sea level would result in the permanent loss of nearly 2,344 parcels of property.[3] *See* J.T. Lockman & Erin L. Deady, presentation at Monroe County Public Workshop (Nov. 5, 2014), https://dl.dropboxusercontent.com/u/66876295/Sea%20Level%20Rise%20Workshop%2011-05-14.wmv?dl=1.

Florida's energy infrastructure is also particularly susceptible to sea level rise impacts: a great number of operational power plants and other energy infrastructure assets are located in areas with elevations of three feet or less. *See* T.J. Wilbanks, et. al., *Effects of Climate Change on Energy Production & Use in the United States* (Feb. 2008), http://downloads.globalchange.gov/sap/sap4-5/sap4-5-final-all.pdf.

Besides causing rising seas, climate change also will disrupt weather patterns. The duration and quantity of average rainfall and other storm events,

[3] In fact, impacts from rising seas are already affecting south Florida. To collaborate on adaptation to sea level rise and mitigation of GHG emissions that cause it, four Florida counties signed the Southeast Florida Regional Climate Change Compact in 2010. *See* Southeast Florida Regional Climate Change Compact, https://southeastfloridaclimatecompact.files.wordpress.com/2014/05/compact-1-page-flyer-ia-final-sa.pdf

including hurricanes, will have an enormous impact. *See* Gregg Greenough, et. al., *The Potential Impacts of Climate Change Variability & Change on Health Impacts of Extreme Weather Events in the United States* (May 2001), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1240666/pdf/ehp109s-000191.pdf. As Floridians know all too well, hurricanes wreak havoc on real estate, domestic production, tourism, and insurance premiums. *See* Howard C. Kunreuther & Erwann O. Michel-Kerjan, *Climate Change, Insurability of Large-Scale Disasters & the Emerging Liability Challenge – Nat'l. Bureau of Econ. Research Working Paper Series* (Jan. 2007) http://www.nber.org/papers/ w12821.pdf. Indeed, studies estimate that the impact of an average hurricane year in Florida is $3.7 billion and roughly 8 deaths. *See* Borisova at p.2.

Climate change will also cause abnormal rainfall patterns, which have other adverse economic impacts. Climate change is projected to decrease rainfall in some areas and increase rainfall in others. Reduced rainfall can cause shortages of over-allocated water resources and increased competition among agricultural, municipal, industrial, and ecological water needs. *Id.* Increased rainfall and hurricanes will also overburden the state's drainage systems, resulting in environmentally devastating discharges of water from Lake Okeechobee to the Caloosahatchee and St. Lucie Estuaries. Moreover, rainfall will occur in heavier downpours with increased dry periods between storms. These changes will

increase the risk of both flooding and drought. *See* U.S. Global Change Research Program, *Global Climate Change Impacts in the U.S.* (2009) http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf.

Moreover, current conventional electricity generation technologies consume enormous amounts of water. Shortages of over-allocated water resources will increase already tense competition among agricultural, municipal, industrial, and ecological demands.

Unfortunately, increased temperatures will drive Floridians to consume even more electricity for cooling and air conditioning, creating a vicious cycle of energy consumption and climate change. *See* Wilbanks, at p.16. For example, in the southeastern United States, a 4 to 9°F temperature increase is projected by 2080, which will increase the need for additional electric generating capacity significantly to meet that demand. *See* U.S. Global Change Research Program, at p.8 and 19. This increased electrical demand will require hundreds of billions of dollars in additional investment and result in a corresponding increase in GHG emissions. *Id.*

B. The Means to Reducing Fossil Fuel Emissions

Mitigating the adverse impacts caused by fossil fuel-based climate change is clearly a compelling state interest. Florida's PACE Act is a necessary component in the state's efforts to reduce energy consumption and GHG emissions because it

removes financial roadblocks preventing Florida's improved property owners from accessing clean energy options.

Through the PACE Act, lessening energy demand and changing the sources of energy to cleaner technologies will reduce GHG emissions and the adverse impacts outlined above. Generally, fossil fuel-based energy use can be reduced by (1) deploying technologies that increase energy efficiency and reduce electricity demand (*e.g.*, more efficient power plants, cars, and appliances) and (2) employing non-fossil-fueled energy sources (*e.g.*, solar, wind, geothermal, biomass, hydroelectric, nuclear energy, or renewables-based hydrogen). *See id.*

Data from a large number of diverse jurisdictions across the nation show that energy efficiency is the most cost-effective way to meet electricity demand. Stated another way, it generally is cheaper to save energy (which makes the unused energy available to other users) than it is to build new power generation facilities. At an average cost of 2.8 cents per kilowatt hour (kWh), electricity efficiency programs are one half to one third the cost of alternative new electricity resource options such as building new, more costly power plants. Molina, M., *The Best Value for America's Energy Dollar: A National Review of the Cost of Utility Energy Efficiency Programs*, p.iii, (Mar. 2014), http://www.aceee.org/sites/default/files/publications/researchreports/u1402.pdf.

Likewise, the use of customer-sited solar power helps to offset the customer's use of conventional electricity generation from the power grid. As with energy efficiency, this technology promotes energy conservation, energy security, and the reduction of greenhouse gases. In addition to the environmental benefit, the use of solar power provides an economic benefit to the customer by locking in a fixed long-term rate for the power produced by the solar system. *See, e.g., Database of State Incentives for Renewables and Efficiency, "Net Metering,"* (last visited Dec. 4, 2014) http://www.dsireusa.org/solar/solarpolicyguide/?id=17.

In Florida, the American Council for an Energy-Efficient Economy estimates that with 15% electricity savings and 10% natural gas savings, Florida would achieve the following benefits by 2020: (1) electricity savings of 33,500 gigawatt hours, (2) peak demand electricity savings of 10,800 megawatts, (3) total carbon dioxide emission savings of 20.6 million tons (the equivalent of taking 3.4 million cars off the road), (4) an overall energy savings of $14 billion, and (5) 20,000 net jobs created. *Southern Alliance for Clean Energy, Utility Energy Efficiency Programs: Florida,* http://www.cleanenergy.org/utility-energy-efficiency-programs-florida/.

C. The PACE Act Directly Addresses and Enables Floridians to Meet the State's Energy Goals and Policies

The property improvements that the PACE Act facilitates directly address Florida's compelling state interest in reducing GHG emissions, increasing energy

efficiency, and increasing the use of renewable energy production. The PACE Act is consistent with statutes in 30 other states, including the District of Columbia. It will greatly assist Florida's property owners in reducing dependence on fossil fuels and their vulnerability to wind storm damage.

As stated in the PACE Act, "[i]mproved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption." § 163.08(1)(b), Fla. Stat. "The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments, are **reasonable and necessary to serve and achieve a compelling state interest** and are **necessary for the prosperity and welfare of the state and its property owners and inhabitants**." § 163.08(c), Fla. Stat. (Emphasis added).

The PACE Act embodies the undeniable fact that the most cost-effective way to reduce GHG emissions in the private sector is to be more efficient in power usage. *See* Middle Class Task Force Council on Envtl. Quality, *Recovery Through Retrofit*, p.5 (2009), http://222.whitehouse.gov/assets/documents/Recovery_Through_Retrofit_Final_Report.pdf. Also, according to the Recovery Through Retrofit Report, home energy retrofits (made available by the PACE Act) could reduce home energy bills across the U.S. by $21 billion annually, thus

paying for themselves over time. *Id.* Despite these financial savings, most property owners do not take advantage of home energy retrofits because of the up-front costs. The PACE Act allows property owners to overcome this hurdle.

If allowed to be funded as intended, the PACE Act will help Florida achieve its energy efficiency goals. On the other hand, finding the Act unconstitutional will remove a critical tool in Florida's quest to reduce GHG emissions through facilitating increasing energy efficiency and the use of renewable sources of energy.

II. Florida Goals and Policies Regarding Energy Renewability, Conservation and Reduction of GHG Emissions

The Florida PACE Act is the culmination of years of legislative and executive policies designed to combat energy consumption and resulting climate change. As the nation's third largest consumer of energy, Florida's governing bodies have placed increasing importance on creating energy policies and programs—including the PACE Act—that foster the development of affordable, clean energy sources to help combat climate change and to meet our state's long-term energy needs.

During the 2008 Legislative Session, the Florida Legislature passed significant energy policies and goals that included the promotion of renewable energy, energy conservation, and enhanced energy efficiency. *See* ch. 2008-227, Laws of Fla. This legislation recognized that "in many instances improved energy

efficiency and conservation are the cheapest and most effective way to accomplish the Legislature's related goals of energy affordability and reliability while also addressing concerns with climate change." *See* Energy & Utilities Policy Committee, Florida Staff Analysis, H.B. 7179 (Apr. 14, 2010).

In 2008, the Legislature also added "energy" and "global climate change" to the program areas that the Executive Office of the Governor can include in the State Comprehensive Plan. Ch. 2008-227, Laws of Fla. § 4 (amending § 186.007(3)). It amended energy-related goals to require the State of Florida to reduce atmospheric carbon dioxide by promoting the increased use of renewable energy resources and low-carbon-emitting electric power plants. *Id.* (amending § 187.201(11)). The Legislature further amended the energy goals by establishing that it is a policy under the State Comprehensive Plan to promote low-carbon-emitting electric power plants. *Id.*

Recognizing the cost and public benefits of energy conservation, the State of Florida now requires that its buildings and facilities be constructed based upon energy efficient and sustainable principles. *See* § 255.2575, Fla. Stat. These same construction and building improvements can also be implemented by private property owners through the "Qualifying Improvements" for homes and businesses as defined under the PACE Act.

In addition to these legislative efforts, Florida voters approved a constitutional amendment in 2008, authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property. § 163.08(1)(a), Fla. Stat. (referencing art. VII, §§ 3 & 4, Fla. Const.).

These policies, including those reflected in the PACE Act, are consistent with executive agency actions over the years. Since 2005, several state executive orders have separately established targets for reducing Florida's GHG emissions and for conversion to more responsible, sustainable energy sources and uses.

For example, Executive Order 05-241 (2005) calls for continued reduction in the state's energy demands and encourages all state agencies, departments, and local governments to be models for all Floridians and engage in energy conservation practices. Fla. Exec. Order No. 05-241 (Nov. 10, 2005). On July 13, 2007, then Governor Crist signed Executive Order 07-126, entitled "Leadership by Example: Immediate Actions to Reduce Greenhouse Gas Emissions from Florida State Government." Fla. Exec. Order No. 07-126 (July 13, 2007). This order requires the state government to measure its own GHG emissions and to develop a Governmental Carbon Scorecard. *Id.* The Executive Order made it a goal for the

state government to work to reduce its emissions 10% by 2012, 25% by 2017, and 40% by 2025. *Id.*

To achieve these reduction goals, the order outlines many of the changes the PACE Act provides to private sector electric energy consumers. State buildings constructed in the future must be increasingly energy efficient and include solar panels whenever possible. *Id.* Energy-efficient buildings will also be required for office space leases. Florida Executive Order 07-126 (2007) further requires the Department of Management Services to only approve the purchase of new vehicles with the greatest fuel efficiency in a given class, as required for that vehicle to minimize emissions of greenhouse gases. *Id.*

Executive Order No. 07-127 establishes the following statewide GHG reduction targets: reduce to 2000 levels by 2017, reduce to 1990 levels by 2025, and reduce to 80% of 1990 levels by 2050. Fla. Exec. Order No. 07-127 (Jul. 13, 2007). This order further directs the adoption of maximum emission levels of GHGs for electric utilities. *Id.* Governor Crist also requested that the Public Service Commission adopt a 20% Renewable Portfolio Standard by 2020, with a strong focus on solar and wind energy. *Id.* Given the fact that these executive orders were not rescinded by Governor Scott, they continue to evidence statewide goals to have more efficient building and construction standards for state facilities, cleaner fueled vehicles, and reductions in GHG emissions.

Despite these efforts, Florida's policymakers quickly realized that Florida also needed a program to achieve more efficient buildings and increased use of alternative energy sources in private buildings, particularly homes. In 2010, the PACE Act was passed almost unanimously as a tangible, progressive, and effective means to implement Florida's energy goals. *See* §163.08, Fla. Stat. The goal of the PACE Act is to provide turnkey low cost financing to address the biggest impediment to making these types of improvements on properties: the lack of accessible funding. *See* Alliance to Save Energy, *The Inception of PACE Financing, its Support, and its Potential* (Jul. 20, 2011) https://www.ase.org/resources/inception-pace-financing-its-support-and-its-potential.

The PACE Act is replete with language explaining the public, fiscal, and widespread benefits of its provisions. The Act explains that it is "the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases." § 163.08(1)(a), Fla. Stat. The PACE Act also illuminates the Legislature's findings that "all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production." §163.08(b), Fla. Stat.

In an ideal world, energy-saving improvements would be accomplished simply because they provide economic benefit to customers and create sustainable, green communities. Yet, there are market barriers to accessing clean energy options, such as significant up-front costs. The PACE Act provides an innovative financing mechanism that overcomes that barrier. In reality, PACE is a critical tool in realizing clean energy solutions and advancing the state's compelling interest to promote energy conservation, energy security, and the reduction of greenhouse gases.

CONCLUSION

The compelling state interests addressed by the PACE Act are indisputable. The PACE Act is an essential and effective tool to combat climate change caused by fossil fuel-based energy consumption. We ask this Court to affirm the bond validation.

Respectfully submitted this 11th day of December, 2014.

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the Florida Courts E-Filing Portal upon the following attorneys, as well as all Electronic Service Recipients listed on the Electronic Service List of the Florida Courts E-Filing Portal, on this 11th day of December, 2014:

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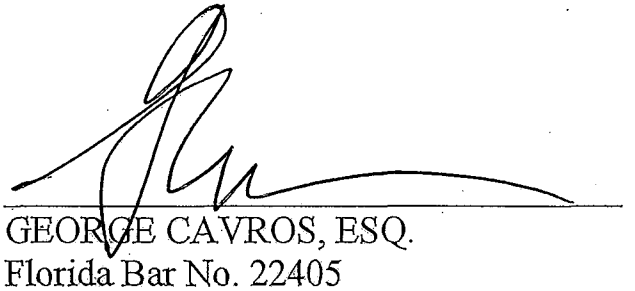
CERTIFICATE OF COMPLIANCE

I FURTHER CERTIFY that this brief is typed in 14-point Times New Roman font, and otherwise complies with the font requirements of Fla. R. App. P. 9.100(l) and 9.210(a)(2).



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