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IN THE SUPREME COURT OF FLORIDA

FLORIDA BANKERS ASSOCIATION,	)	
Appellant,	)	
vs.	)	
	)	**APPEAL NO. SC14-1603**
STATE OF FLORIDA, et al.,	)	**L.T. CASE NO. CA14-548**
Appellees.	)	

APPEAL FROM THE CIRCUIT COURT
IN AND FOR VOLUSIA COUNTY
STATE OF FLORIDA

ANSWER BRIEF OF APPELLEE STATE ATTORNEY, SEVENTH JUDICIAL CIRCUIT

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I. Preliminary Statement

Pursuant to its duty under *Lakes of Emerald Hills v. Silverman*, 558 So. 2d 442, 443 (Fla. 4th DCA 1990), to respond to appellate briefs, R. J. Larizza, the State Attorney for the Seventh Judicial Circuit, by and through Phillip Dale Havens his undersigned Assistant State Attorney, all named as parties in the instant cause, hereby herein responds to the Appellant's brief filed on October 6, 2014, and intends to apply the same conventions as the Appellant in referring to the *Appendix* to Appellant's initial brief. *See Initial Brief, Fla. Bankers Assoc. v. State*, Case No. SC14-1603 at 4, n.1 (Fla. Oct. 6, 2014)(*Initial Brief*).[1]

This responsive pleading hereby adopts and incorporates the arguments and citations contained in the answer brief of appellees State Attorney Tenth Judicial Circuit of Florida filed October 20, 2014 in this cause which are repeated herein verbatim as follows:

II. Statement of the Case, Jurisdictional Statement, and Standard of Review

Appellant appeals a final order of Second Circuit Judge, the Honorable John Cooper, rendered on July 18, 2014, granting the prayer of the Florida Development Finance Corporation (FDFC), a Legislatively-created corporation, to validate a bond issue pursuant to the Florida PACE Act, § 163.08 Fla. Stat. Appellant did not appear or object at the bond validation hearing in this

[1] Appellee will refer to the Appendix filed by Appellant herein as (A).

matter, but nevertheless will probably take position that it has authority to appeal pursuant to § 75.08 Fla. Stat. (2013). *See Meyers v. St. Cloud*, 78 So. 2d 402, 403 (Fla. 1955). In its Argument *infra*, Appellee will take position that pursuant to *Rich v. State*, 663 So. 2d 1321, 1323-24 (Fla. 1995), Appellant has no standing to appeal because it is not a "party" to the action below, not being properly a "property owner, taxpayer, citizen, or interested person" as § 75.07 Fla. Stat. required.

The Seventh Circuit State Attorney was joined below because § 163.01 Fla. Stat. (2013), and § 288.9606 Fla. Stat. (2013), require service of a complaint for bond validation upon the state attorney in each circuit where a project lies or the bonds are to be issued. (A. 129). Section 75.05 Fla. Stat. (2013) requires the state attorney to "examine" a complaint for bond validation, and to defend against it if it appears on its face to be defective, insufficient, untrue, or otherwise unauthorized.[2] The Seventh Circuit State Attorney, as a separate party to this action below, therefore bears the responsibility to brief the Court in this matter. *See* Phillip J. Padovano, *Florida Appellate Practice*, § 16:2, at 292 n.7 (West 2013). The undersigned is a duly appointed Assistant State Attorney in the Seventh Circuit, and therefore may wield the State Attorney's power and bear his duties in this appeal. *See* § 27.181 Fla. Stat. (2013).

Appellant attacks § 163.08 Fla. Stat. (2013), also known as the Property Assessment Clean Energy ("PACE") Act, claiming it to be facially unconstitutional under Art. I, § 10 of the Florida

Constitution as impairing an existing contract between homeowners and banks financing the homeowners' residential mortgages. *See Initial Brief* at 14. Appellant claims that the Legislature's grant of equal dignity to PACE Act non-*ad valorem* special assessment liens as to tax liens impairs existing mortgages. *See id.* at 12. This Court has direct appellate jurisdiction over bond validation appeals. *See* Fla. R. App. P. 9.030(b)(1)(A). It reviews the trial court's application of law to the facts herein *de novo*, as Appellant suggests. *See Initial Brief* at 10-11, *citing City of Gainesville v. State*, 863 So. 2d 138, 143 (Fla. 2003). The standing question aside, Appellant is incorrect that the PACE Act is facially unconstitutional, as it does not unconstitutionally impair existing mortgages. The Court should find the PACE Act constitutional, and **affirm**.

III. Facts

Appellee accepts the statement of facts set out in the *Initial Brief* at 3-7, other than arguments made in their presentation, and subject to additional facts from the available record to be related in its own argument herein.

IV. Summary of the Argument

First, Appellant has no standing to intervene in the bond validation proceedings, as it is not a citizen, property owner, or other interested person as the law provides. Should the Court conclude otherwise, Judge Cooper properly validated the bonds, because the PACE Act does not unconstitutionally impair existing contracts; any impairment is minimal and does not override a

[2] The Second Circuit State Attorney's Office appeared for Appellee below.

compelling state interest. As Appellant observes, a non-*ad valorem* special assessment may take priority over an earlier-recorded mortgage on a property. *See Initial Brief* at 8. The Legislature specifically provided for such assessments in the PACE Act, and the special assessments here do not interfere with a mortgage's value; the law is that a special assessment is treated the same as property taxes and obtains the same priority rights. Here, the Legislature conferred a significant public benefit on affected residential properties, to achieve a compelling state interest in reducing dependence on foreign energy sources and in mitigating windstorm damage. The law allows for such. As Appellant mistakenly predicates its argument upon the claim that the PACE Act sets forth an unconstitutional financing scheme, the Court should **affirm**.

V. Argument

The PACE Act does not create an unlawful impairment to existing purchase-money mortgages. Florida has a compelling public interest in energy security, energy conservation, and hurricane preparedness that overrides the mortgage interest to the extent of any such impairment. In its argument, Appellee will first briefly take position that Appellant lacks standing to intervene in this matter because it is not a citizen, a taxpayer, or a property owner. It will then describe the PACE Act, § 163.08 Fla. Stat., and the public policies motivating over sixteen states to develop such programs. It will then argue that PACE Act special assessments do not unlawfully impair existing mortgages, as any impairment is de *minimis* in comparison to the overriding

public interest surrounding them. It will then respectfully move the Court to find the PACE Act facially constitutional, and **affirm** the lower court.

Issue I. Appellant lacks standing.

Appellant does not indicate in its *Initial Brief* how it has standing to appeal. At page 7 of its brief, it indicates that it is an organization whose members are "more than 300 banks and financial institutions." *See id.* It believes that its member institutions' constitutional interest in pre-existing contracts for residential mortgages is at stake in this proceeding. *See id.* However, to intervene in a bond validation proceeding, an intervenor must show more than an interest in the outcome.

Rich, 663 So. 2d at 1323, is instructive. There, two homeowners' associations opposed validation of Lake County bonds for improvements in the Village Center Community Development District. *See id.* The homeowners who were members of the associations did not own property within the Village Center District. *See id.* They did, however, pay contractual fees for the use of the affected facilities. *See id.* Importantly, their positions as contractual users of those facilities were not altered by the bond issue. *See id.* This Court held that the homeowners were not properly "interested persons" within the statute. *See Rich*, 663 So. 2d at 1324. This is because their interests would not be adversely affected; their contractual interests in the property would remain unabated. *See id.* That was the associations' only interest in the proceedings; they were

neither property owners, taxpayers, nor citizens of the Village Center District. *See id.*

Compare with Rich. Appellant, to Appellee's knowledge, did not appear below. It may turn to *Meyers*, 78 So. 2d at 402-4, to argue that its interests compel being allowed to appeal, and *Meyers did allow* parties to appear for the first time in an appeal of a bond validation proceeding. But since Appellant has not shown that it is properly a party to the action, it has not shown the right to appeal, *as Rich*, 663 So. 2d at 1324, observed when distinguishing *Meyers* from its own facts. Further, as in *Rich*, it can show no adverse effect upon itself or its members. An "interested person" for § 75.07 *must "stand[] to gain or lose* something as a direct result of the bond issuance." 663 So. 2d at 1324. As detailed *infra*, PACE Act special assessments do not diminish the value of preexisting mortgages. The homeowner's obligation to pay his or her mortgage is likewise unchanged. Thus, Appellant has not shown standing to appeal, and this Court should **affirm** the bond validation.

Issue II. The PACE Act does not unlawfully impair mortgages.

The heart of Appellant's argument on the merits is its claim that the PACE Act's grant of equal dignity for non-*ad valorem* special assessments with tax liens unconstitutionally overrides its interest in earlier-recorded mortgages. *See Initial Brief* at 12. It skirts the well-settled rule that special assessments may be constitutionally granted that dignity by claiming that PACE Act assessments are, by any other name, loans and not assessments. *See id.* at 17. In this section, Appellee will show

how PACE programs are constitutional, and then demonstrate how PACE Act assessments are indeed special assessments and not camouflaged loans. They confer a clear public benefit to advance an overriding public interest, as the law provides. They are thus constitutional, and the Court should **affirm** the bond validation.

A. The PACE Act: What the Legislature provided.

It is helpful first to examine the PACE Act and see how the Legislature found a compelling interest that needed to be addressed and what that interest is. This Court has held that "[a]cts of the legislature are presumed to be constitutional." *Cilento v. State*, 377 So. 2d 663, 665 (Fla. 1979). Further, "[w]here a factual predicate is necessary to the validity of an enactment, it is to be presumed that the necessary facts were before the legislature." *Id.* Moreover, the trial court's validation of the bonds comes to the Court clothed in a presumption of correctness. *See Citizens Advocating Responsible Environmental Solutions, Inc. v. City of Marco Island*, 959 So. 2d 203, 206 (Fla. 2007). In this subsection, Appellee will examine the PACE Act and describe some of the protections it affords mortgage holders, before exploring their interplay with existing constitutional provisions *infra*.

By 2010, sixteen states had adopted legislation authorizing "property assessment clean energy" programs, colloquially known as "PACE" programs. *See* Chad S. Friedman and MacAdam J. Glinn, *Florida is Keeping PACE: House Bill 7179*, 84 Fla. Bar J. 44 at ¶2 (Oct. 2010). The town of Cutler Bay proposed what would become Florida's version of the PACE legislation, and Senator Michael

Bennett and Representative Adam Hasner initially sponsored the legislation in the Florida Legislature. *See id.* The legislation's intent was to advance Florida's public policy of leading the nation in energy management and security, and reduction of greenhouse gases. *See* § 163.08(1)(a) Fla. Stat. (2014). The Legislature made specific findings of a compelling state interest in providing government assistance for such improvements, to reduce Florida's dependence on fossil fuels and for hurricane mitigation. *See* § 163.08(1)(b) Fla. Stat. (2014).

The bill created § 163.08 Fla. Stat. (2010), allowing local governments to levy non-*ad valorem* special assessments to fund energy conservation improvements to homes. *See* Friedman et al. at ¶3; *see also* § 163.08(4) Fla. Stat. (2014). The "qualifying improvements" set forth in the PACE statute currently include three things: (1) Improvements for energy conservation; (2) Appliances using renewable energy such as wind, hydrogen, solar, or other such sources; and (3) Improvements enhancing wind resistance. *See* § 163.08(2)(b)1-3 Fla. Stat. (2014). Qualifying improvement programs may be administered both by profit and non-profit organizations for the local governments involved. *See* § 163.08(6) Fla. Stat. (2014). The Legislature allows for non-*ad valorem* special assessments for qualifying improvements to hold equal dignity to property tax assessments, from the date of recording the financing agreement between the local government and the property's record owner. *See* § 163.08(8) Fla. Stat. (2014). This is the portion of the PACE Act with which Appellant takes issue. *See, e.g. Initial Brief* at 17.

The bill placed protections into law for mortgage holders. Before a property owner can enter into a PACE agreement, the local government must "reasonably determine" that property taxes, other assessments on the property, and the mortgage are current, and no delinquency has been recorded in the previous three years. *See* § 163.08(9) Fla. Stat. (2014). The mortgage holder must agree to a PACE Act encumbrance of no more than twenty percent of the property's assessed value. *See* § 163.08(12)(a) Fla. Stat. (2014). Mortgage holders must receive at least 30 days' prior notice of a property owner's intent to enter a PACE Act program, and acceleration provisions in an existing mortgage, solely because of entrance into a PACE agreement, are not enforceable. *See* § 163.08(13) Fla. Stat. (2014). However, lienholders may increase the property owner's monthly escrow payment by the amount required to account for the PACE special assessment. *See id.*

The PACE Act advances the public policy of this state to enhance windstorm mitigation, energy security, and energy conservation. The Legislature found these concerns to be overriding public policy interests. It addressed those issues while providing protections to pre-existing mortgage holders, to protect their interests as well. This mitigates any impairment to the mortgage holder's interests. In the next subsection, Appellee will review the constitutional tests for mortgage impairments by government, preparatory to applying those tests to our facts.

B. The test for lawful impairment of contract

As noted *supra*, Appellant's problem with the PACE Act is that special assessments are of higher dignity to existing

mortgages. However, it is well known that legislatures may impose liens on properties for assessments that are superior to other claims, mortgages included. *See, e.g. Zipperer v. City of Ft. Myers*, 41 F.3d 619, 624 (11th Cir. 1995). Such interests "do not constitutionally impair or deprive a mortgagee of his interest in mortgaged land." *Id. Zipperer* is a helpful Florida case arising under due process. There, a mortgage holder challenged § 170.01 Fla. Stat. (1993), which set up a scheme whereby local governments could finance public improvements through special assessments. *See* 41 F.3d at 621. Specifically, Zipperer loaned a large amount of money to Gerald DiSimone and secured it with a mortgage on DiSimone's land. *See id.* After this, DiSimone took advantage of Chapter 170, and obtained money for improvements thereon. *See* 41 F.3d at 621. These improvements included roads, water, and sewage connections. *See id.*

The Ft. Myers City Council levied special assessments to pay for these improvements and duly recorded the assessments, which under Chapter 170, would take priority over Zipperer's mortgage. *See id.* Zipperer was not noticed of these proceedings directly. *See id.* Four years later, Zipperer foreclosed on the land, and sued to establish that his mortgage took priority over the assessment. *See id.* The 11th U.S. Circuit Court of Appeals held that a mortgage is deserving of constitutional protection under the Florida and federal constitutions. *See Zipperer*, 41 F.3d at 623. But it also found that Zipperer retained a significant interest in the land even after subordinating his interest to the special assessment, and his land obtained a significant benefit

from the improvements as well. *See id.* at 624. His due process rights were therefore not violated by subordinating his mortgage to the assessment under Chapter 170. *See id.* at 625.

Appellant might say that its claim has nothing to do with due process, and that *Zipperer* is therefore inapposite. But it does illustrate that constitutional protections are not offended where a mortgage holder still retains a significant interest in land secured by a mortgage, even after a subsequent special assessment takes priority over it. Appellant charges impairment of contract, but in federal terms, the U.S. Supreme Court has for the most part eliminated grounds for attacking legislation that impairs preexisting contracts as long as the legislature is not attempting to avoid its <u>own</u> contractual commitments. *See Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 412 (1983). The federal Constitution's Contracts Clause, Art. I, § 10, is qualified by Florida's inherent police power to legislate in safeguarding its electorate's vital interests. *See Energy Reserves Group*, 459 U.S. at 410. The U.S. Supreme Court established a threefold inquiry for an unconstitutional governmental contract impairment: (1) whether a <u>substantial</u> impairment exists; (2) if so, does the state have a "significant and legitimate purpose" behind the legislation at issue; and (3) whether the change to the rights of the contracting parties is (a) based on reasonable conditions, and (b) is appropriate to the public purpose in question. *See id.* at 411-13. The First District Court of Appeal adopted this analysis in construing a federal

Contracts Clause claim in *West Fla. Reg'l. Med. Ctr. v. See*, 18 So. 3d 676, 687 (Fla. 1st DCA 2009).

Florida's version of this analysis, applying to Art. I, § 10 Fla. Const., predates *Energy Reserves Group* and can be found in this Court's decision in *Pomponio v. Claridge of Pomponio Condominium, Inc.*, 378 So. 2d 774, 779-80 (Fla. 1979). There, this Court established that a local government's impairment of contract is lawful as long as it is not intolerably burdensome to the pre-existing obligation. *See id.* The Court

> must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective.

Id. at 780. Significantly, in *Pomponio* this Court was applying the same U.S. Supreme Court precedent that *Energy Reserves Group* later did. *See Pomponio*, 378 So. 2d at 776-80 and *Energy Reserves Group*, 459 U.S. at 410-14, *both analyzing Home Blg. & Loan Assoc. v. Blaisdell*, 290 U.S. 398 (1934), and subsequent cases. The Court construes the federal and state contract clauses in the same way. *See Florida Ins. Guar. Assoc. v. Devon Neighborhood Assoc.*, 67 So. 3d 187, 193 (Fla. 2011). It continues to apply *Pomponio*'s approach in contract impairment disputes. *See Scott v. Williams*, 107 So. 3d 379, 395 (Fla. 2013); *see also United States Fidelity & Guar. Co. v. Dep't. of Ins.*, 453 So. 2d 1355, 1360

(Fla. 1984)(*observing that* this Court applies U.S. Supreme Court methodology in resolving contract impairment claims).

C. Applying *Pomponio* and *Energy Reserves Group*

Now that we have derived the test for an unlawful legislative contract impairment, we can apply it to our facts. To do this, we first must review Appellant's contention that PACE Act special assessments are undeserving of identification as a special assessment rather than a loan. We then can apply the legislative purpose to the *Pomponio* and *Energy Reserves Group* balancing tests, showing the Court that the enactment is lawful.

Appellee correctly defines a "special assessment" as that "charge assessed against property . . . because [it] derives some special benefit for the expenditure of [public] money." *Initial Brief* at 18, *quoting Workman Enterprises Inc. v. Hernando Co.*, 790 So. 2d 598, 599 (Fla. 5th DCA 2001)(*quoting Atlantic Coast Line R.R. Co. v. City of Gainesville*, 91 So. 118 (Fla. 1922)). It also properly recognizes that for special assessments to prove valid, the property assessed must obtain a public benefit from the provided service. *See Initial Brief* at 18, *citing Sarasota Co. v. Sarasota Church of Christ, Inc.*, 667 So. 2d 180, 183 (Fla. 1995).

From this point, Appellant's analysis begins to err. It likens the PACE Act assessments to user fees, claiming that their voluntary nature renders them so. *See Initial Brief* at 20. But in *City of Gainesville v. State*, 863 So. 2d 138, 144 (Fla. 2003), this Court described the difference between fees and special assessments, and there is more to the test than their voluntary

or involuntary character. Charges made for improvements to property generally are considered assessments rather than fees. *See id.* at 144, *quoting* 70C Am. Jur. 2d. *Special or Local Assessments* §2, at 631-32 (2000). Several factors apply to the analysis, including (1) what the legislation itself calls the payment; (2) the relationship between its amount and the service; (3) whether it is charged to users of the service to or to all in a given area; (4) whether it is voluntary; (5) whether it is monthly or one-time only; (6) whether it is charged for an ongoing service or for recovering costs to infrastructure; (7) whether it is for a traditional utility service; (8) and whether it is statutorily authorized as a fee. *See id.* The analysis is under totality of circumstances. *See id.*

In *City of Gainesville*, the question was whether a stormwater fee could be considered a special assessment, which would exempt a state agency from paying it. *See* 863 So. 2d at 141. But the City called it a user fee; it was charged monthly, as fees are; it had created a stormwater utility funded by the fees, as statute allowed, showing that it was doing a traditional utility service; and it was also involuntary. *See id.* at 145-46. This Court emphasized that the voluntary/involuntary nature of a fee or assessment is only one factor in the analysis, and those factors my not be considered in isolation. *See id.* In fact, the state agency fought the stormwater fee on the basis that it was involuntary, claiming that such could only be an assessment, not a fee. *See id.* at 146. This is the direct reverse of Appellant's claim that special assessments can never be voluntary. *See*

Initial Brief at 22. As this Court rejected this analysis in *City of Gainesville*, so should it reject its reverse here; instead, the Court should employ the *Pomponio*-style totality analysis.

Here, the statute plainly labels the PACE Act assessment assessment as a non-*ad valorem* special assessment. *See* § 163.08(3) Fla. Stat. It is charged in the amount of the qualifying improvements, and charged to those who avail themselves of the improvements. *See* § 163.08(2) Fla. Stat. It is voluntary. *See* § 163.08(4) Fla. Stat. It is not recurring, however; rather, the amount charged is for the improvement and the mortgage holder may increase monthly escrow payment to cover the cost of the improvements; it is therefore recovery of cost for improvement to that property. *See* § 163.08(3), (13) Fla. Stat. Finally, it is neither a traditional utility service such as stormwater drainage; nor is it statutorily authorized as a fee. *See generally* § 163.08 Fla. Stat. The balance of factors militates in favor of this being a special assessment at law.

Moreover, as Appellant points out, a question the Court should examine is whether a "special benefit" to property is derived from the expenditure of public money under the PACE Act. Florida law examines whether property values rise in value as a result of the improvement or service rendered. *See Sarasota Church of Christ, Inc.*, 667 So. 2d at 184-86. Here, special benefits derived from energy consumption reductions benefit all improved properties. *See* § 163.08(1)(b) Fla. Stat; *see also* Friedman et al. at ¶7. One 1998 study concluded that a reduction of $1 in annual energy costs equaled an increase in a home's

value of $10 to $25. *See id.* Additionally, improved properties not resistant to wind damage affect adjacent properties, thanks to potential storm winds. *See* § 163.08(1)(b) Fla. Stat. Thus, all properties adjacent to a property improved for wind resistance under the PACE Act receive that special benefit for mitigating potential wind damage. *See id.; see also* Friedman, et al. at ¶ 8. An example is that installing hurricane shutters will have the effect of decreasing the cost of windstorm insurance for a property, and increase its property value accordingly. *See* Friedman, et al. at ¶ 8. It should be indisputable that properties subject to PACE Act special assessments do receive a special benefit as the law construes it. Applying the law, the PACE Act levies special assessments, not user fees.[3]

How does the PACE Act fare against the constitutional test described *supra*? Again, the factors are: (1) whether a substantial impairment exists; (2) if so, does the state have a "significant and legitimate purpose" behind the legislation at issue; and (3) whether the change to the rights of the contracting parties is (a) based on reasonable conditions, and (b) is appropriate to the public purpose in question. *See Energy Reserves Group*, 459 U.S. at 411-13. As the Court will see, it passes with flying colors.

[3] *First Nationwide Mortgage Corp. v. Brantley*, 851 So. 2d 885 (Fla. 4th DCA 2003), cited by appellant in his Initial Brief at 24-25 as illustrating how assessments levied under the City of Ft. Lauderdale's home improvement program were not special assessments, is not helpful. The distinguishing factor is that there, the enabling legislation for the City's program apparently did not specify the protections to prior mortgage liens that the PACE Act does, and did not specify that the assessments involved were special assessments to be treated with equal dignity as property taxes.

As to the first *Energy Reserves Group* criterion, no "substantial" impairment exists here. A special assessment may be imposed with superior dignity to pre-existing obligations. Section 163.08(8) Fla. Stat. places PACE Act special assessments on equal footing with property taxes, and it has long been true that taxes take priority over mortgage interests. *See, e.g. Gailey v. Robertson*, 123 So. 692, 693 (Fla. 1929)(*observing that* the sovereign's "proper and lawful taxes" override non-governmental encumbrances). Other statutes make similar provisions. Section 170.09 Fla. Stat. provides that special assessments imposed thereunder shall be superior to all other obligations. As to the second criterion, a "significant and legitimate" purpose is present here; the legislation attacks the problems of wind damage to properties and the need for energy independence. As to the third criterion, as explained *supra*, mortgage holders are afforded substantial, reasonable protections in the legislation. Finally, the program accomplishes its public purpose by reducing our dependence on foreign oil and homeowners' vulnerability to storm damage, as well as the immediate benefits of lower utility bills and premiums for insurance. *See* Friedman, et al. at ¶17.

This Honorable Court should presume this legislative enactment to be constitutional. It should apply the totality of circumstances analysis, and hold that the PACE Act establishes a lawful financing arrangement backed by special assessments on affected properties. As the legislation is constitutional, the remainder of Appellant's arguments fail, because they are

predicated on the conclusion that the PACE Act is unlawful. Therefore the Court should **affirm** the bond validation.

VI. Conclusion

More than sixteen states have established PACE acts, to enhance property values, conserve energy, and in Florida, mitigate windstorm damage. Reductions in energy consumption and risk of property damage through expenditures of public finds confer a direct public benefit, not only on directly affected properties, but on all adjacent properties as well. Any impairment to existing mortgages through PACE legislation is *de minimis* in comparison to the great public benefits reaped thereby. This Honorable Court should apply the presumption of constitutionality of legislative enactments and the presumption of adequate legislative fact-finding to uphold this good law, and **affirm** the bond validation.

VII. Certificate of Service and Font Compliance

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been served via the Florida Courts E-Filing Portal upon the following on this, the 31st day of October, 2014:

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I FURTHER CERTIFY that this brief is typed in 12-point Courier New font, in compliance with the font requirements of Fla. R. App. P. 9.100 (*l*) and 9.210(a)(2).

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