IN THE SUPREME COURT OF FLORIDA

CONSOLIDATED CASE NO. SC2024-0652

LOWER TRIBUNAL CASE NO. 372022CA001562

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

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

v.

FLORIDA PACE FUNDING AGENCY, etc.,
Appellees.

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

APPELLANT COUNTY TAX COLLECTORS' REPLY BRIEF

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ARGUMENT

I. TAX COLLECTORS DO NOT HAVE A MINISTERIAL DUTY TO COLLECT FPFA'S NON-AD VALOREM ASSESSMENTS ("assessments") USING THE UNIFORM METHOD OF COLLECTION ("uniform method").

A. Tax Collectors have no duty to collect assessments because FPFA failed to comply with Section 197.3632 requirements of a local notice and local hearing.

FPFA contends erroneously that it has satisfied all statutory requirements. Tax Collectors have the express discretion to require FPFA to comply with the full notice requirements of Section 197.3632 before levying, imposing, and collecting any of FPFA's assessments within their county political divisions, unless "the property appraiser, tax collector, and local government agree" otherwise. §163.08(4), Fla. Stat. FPFA ignored the Tax Collectors demand that FPFA comply with the notice requirements of Section 197.3632. (A. 1704). Tax Collectors have the discretion to require that FPFA satisfy the notice requirements of the uniform method. §163.08(4), Fla. Stat. Because the Tax Collectors did not agree to waive the notice requirements, FPFA is required to comply with the notice requirements of Section 197.3632 before levying, imposing, and collecting any of FPFA's

assessments within the Tax Collectors' political subdivisions. Accordingly, Tax Collectors are not required under the uniform method to collect the assessments at issue because FPFA failed to satisfy the notice requirements of Section 197.3632, Florida Statutes.

FPFA's reliance on *Escambia* is misplaced. The authority to levy and impose assessments within a County's political subdivision is present "once the [local government]…elects to use this statutory uniform method for collection and complies with…[Section 197.3632] requirements." *Escambia Cnty. v. Bell*, 717 So. 2d 85, 88 (Fla. 1st DCA 1998). In *Escambia*, all parties stipulated that the County had authority to levy and impose assessments within Escambia County and that the County "complied with '[a]ll provisions of Section 197.3632.'" *Id.* at 87. Unlike *Escambia*, FPFA failed to satisfy the requirements of Section 197.3632 and the parties do not stipulate that FPFA has authority to levy and impose assessments within the Counties' political subdivisions. Therefore, this Court should not follow *Escambia* and hold that FPFA cannot levy and impose assessments in non-participating County political subdivisions.

B. Florida Homeowners must not lose their homes without proper notice and hearing.

FPFA disregards the severe consequences citizens will face if FPFA is granted statewide authority without guaranteeing the citizens' rights to proper notice and hearing. The Florida Constitution provides that homestead properties are exempt from forced sale unless ad valorem taxes and assessments are unpaid. Art. X, §4, Fla. Const. Because of the severe consequence that a homeowner will lose their home if taxes and assessments are unpaid, Section 197.3632 requires a hearing and notice within the counties' political subdivisions when collecting assessments utilizing the uniform method. Tax Collectors did not waive this requirement because to do so would deprive citizens of the right to proper notice and to be heard. Accordingly, FPFA must provide the citizens of the nonparticipating Counties with local notice and hearing. Failure to do so deprives a citizen of due process and can lead to increased homelessness – a public policy concern that this Court should consider, given the well-documented lending abuses within the PACE industry. (A. 318, 1566, 1707).

C. FPFA argues that Tax Collectors' duties to collect assessments in a "uniform, fair, efficient, and accountable" manner are ministerial; however, contrary to this position, Tax Collectors have discretion as State-Constitution officers.

FPFA disregards and undermines the authority and independence granted to Tax Collectors under the Florida Constitution and Statutes. Tax Collectors are "elected by the electors of each county" and therefore, given discretionary authority to act in the best interests of their electors. Art. VIII, §1(d), Fla. Const. Tax Collectors possess the plenary power of sovereign office delegated from the people. *Alachua Cnty. v. Powers*, 351 So. 2d 32 (Fla 1977) (holding that "a county officer under Article VIII, Section 1(d), Florida Constitution . . . is delegated a portion of the sovereign power," and "is responsible for the effective operation of his office"). Tax Collectors serve "certain responsibilities of local governance [that] are separately entrusted to independent constitutional officers who . . . are independently accountable to the electorate." *Demings v. Orange Cnty. Citizens Review Bd.*, 15 So. 3d 604, 606 (Fla. 5th DCA 2009). Accordingly, Tax Collectors are directly accountable to their constituents and are not subject to the direction and control of any

local government, including the special district, FPFA, and its un-elected Board.

FPFA fails to rebut that the Legislature requires Tax Collectors to eliminate the "appearance of undue influence" in the collection of assessments. §197.603, Fla. Stat. Tax Collectors must collect assessments in a manner that, "ensur[es] due process" and fosters a sense of "public confidence in a uniform, fair, efficient, and accountable collection." *Id.* This independence ensures that each Tax Collector maintain accountability to the electorate in her/his local county political subdivision, and prevent subjectivity to the "undue influence" of those government officials responsible for imposing and levying assessments. *Id.* Accordingly, allowing FPFA to operate outside of its statutorily prescribed jurisdiction vitiates the Tax Collectors' duty to collect assessments in a uniform, fair, efficient, and accountable manner. *Id.*

FPFA's failure to rebut the Tax Collectors' argument as to its non-compliance with the notice requirements of Section 197.3632 is fatal to its claim that Tax Collectors have a ministerial duty to collect assessments under the uniform method. Tax Collectors only have a

"ministerial duty to place the special assessment on the tax notice upon…compliance with all applicable statutory…requirements." *Escambia Cnty.*, 717 So. 2d at 87. Because FPFA has failed to comply with the notice requirements of Section 197.3632, FPFA has not satisfied "all applicable statutory…requirements." Therefore, Tax Collectors do not have a ministerial duty, but instead, have discretion in deciding whether to place the assessment on the tax notice.

D. FPFA is not authorized by law to levy assessments in the Tax Collectors' political subdivisions.

Contrary to the FPFA's position that Tax Collectors are required to collect assessments, Tax Collectors may only collect assessments that are levied and imposed lawfully. §197.3632, Fla. Stat. Under Section 197.3632(1)(a), Florida Statutes, "'Levy' means the imposition of a non-ad valorem assessment…against all appropriately located property by a governmental body authorized by law to impose non-ad valorem assessments." FPFA is an entity created under Section 163.01, Florida Statutes, and Section 163.01(4), Florida Statutes, allows Flagler County ("Flagler") and the City of Kissimmee ("Kissimmee") to agree to exercise jointly "any power, privilege, or authority" which they, "share in common and

which each might exercise separately." Accordingly, Flagler and Kissimmee are not "authorized by law to impose non-ad valorem assessments" in the Tax Collectors' political subdivisions. FPFA must first enter an interlocal agreement with the Counties for it to be authorized under law. Since FPFA is not authorized by law to levy assessments outside of Flagler and Kissimmee, the Tax Collectors cannot collect FPFA's loans because the loans do not meet the definition of "levy" under Section 197.3632, Florida Statutes.

II. THE LOWER COURT'S RULING ADDRESSES MATTERS COLLATERAL TO THE UNDERLYING BOND VALIDATION PROCEEDING.

A. Collateral matters are never conclusive.

FPFA argues erroneously that this bond validation proceeding is conclusive. This Court has ruled consistently that collateral matters cannot be addressed in bond validation proceedings. *See City of Gainesville v. State*, 366 So. 2d 1164 (Fla. 1979). Accordingly, the underlying bond validation proceeding is not conclusive because collateral matters were addressed, and collateral matters are never conclusive.

B. The lower court's ruling restricts the Counties' future decision-making.

While arguing erroneously that the underlying bond validation proceeding does not address collateral matters, FPFA fails to rebut that a bond validation proceeding cannot resolve matters related to a local government's future decision-making. *DeSha v. City of Waldo* 444 So. 2d 16 (Fla. 1984). In *DeSha*, this Court held that the appellant's argument "is a collateral matter beyond the scope of judicial scrutiny in bond validation proceedings" because a government's future decision-making can resolve the matter. *Id.* at 17.

Similarly, the lower court lacked jurisdiction to hold in the underlying bond validation proceeding that FPFA has statewide jurisdiction and thus, can mandate Counties to levy PACE assessments in their political subdivisions. A county's participation in a PACE program is "completely voluntary." *Fla. Bankers Ass'n v. Fla. Dev Fin. Corp.* 176 So. 3d 1258, 1261 (Fla. 2015). The lower court's holding impacts the Counties' ability to determine whether to participate in this "completely voluntary" program and ultimately restricts the Counties' future-decision making. Accordingly, the lower

court lacked jurisdiction in the underlying bond validation proceeding to mandate that the Counties must allow FPFA to levy PACE assessments in perpetuity in their political subdivisions, because this mandate restricts the Counties' future decision-making and thus, is collateral to the underlying bond validation proceeding.

FPFA's reliance on *Keys Citizens for Responsible Gov't v. Fla. Keys Aqueduct Auth.* 795 So. 2d 940 (Fla. 2001) is misplaced. In *Keys*, the County's enactment of an ordinance resolved the matter at issue and therefore, the court's ruling did not restrict the local government's future decision-making. *Id.* at 946. Unlike *Keys*, the Counties have not enacted any ordinances mandating the levy of PACE assessments. Therefore, any ruling that mandates the Counties to levy these assessments restricts the Counties' future decision-making and is a collateral matter. Collateral matters are never conclusive.

C. Chapter 163 must be construed as a whole.

FPFA asserts correctly that statutory text must decide this case; however, FPFA's argument contradicts this proposition. Statutes must be "construed as a whole" under the whole-text canon and

therefore, individual statutory provisions must be interpreted in the context of the overall statutory scheme. Antonin Scalia & Bryan A. Garner, Reading Law at §24, 167-169. Scalia & Garner, Reading Law at §24, 167. FPFA relies on language adopted by the Legislature in 1997 in "an act relating to water protection"[1] to assert that it has statewide authority, but this cannot be the case when considering the overall statutory scheme. FPFA operates under Chapter 163 and Section 163.01(4) provides the foundation for which governments may cooperate with one another:

> 163.01(4): A public agency of this state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.

FPFA ignores this provision and asks this Court to focus only on Section 163.01(7)(g), Florida Statutes. This language cannot be read in isolation and must be interpreted within the broader statutory scheme. The only way to read these two provisions in *pari materia* is to require an interlocal agreement as set forth in Section

[1] *See Ch. 97-236, Laws of Fla.*

163.01(4), Florida Statutes.

D. Absent the consent of local governments, FPFA lacks authority outside of its limited jurisdiction.

FPFA does not have the authority to operate statewide because FPFA is a special district; therefore, its jurisdiction is within its limited geographical boundaries of Flagler and Kissimmee. As provided in Section 189.012(6) Florida Statutes, "Special district means a unit of local government …which has jurisdiction to operate within a limited geographic boundary." The Florida Supreme Court explained in *Halifax Hospital Medical Center v. Florida,* 278 So. 3d 545, 548 (Fla. 2019) that:

> Because the very essence of a chapter 189 'special district' is statutorily prescribed as operation within 'a limited geographic boundary,' §189.012(6), that inescapably becomes the default authority for all special districts. In other words, although the Legislature certainly can grant a special district authority to operate outside of its defined geographic boundary, that extraordinary grant of authority would need to be express and unambiguous—clear enough to demonstrate that the Legislature has created a special district that will operate with a power not generally contemplated for chapter 189 special districts.

As described above, when reading the provisions of Chapter 163 in *pari materia,* FPFA clearly lacks any "express and unambiguous" authority to operate throughout the State of Florida and thus, its

jurisdiction is confined to Flagler and Kissimmee. In addition to the lower court's ruling addressing a collateral matter, the ruling violates Chapter 189, Florida Statutes, which provides expressly that FPFA as a special district can only operate within a "limited geographic boundary."

Additionally, Chapter 163, Florida Statutes, requires FPFA to enter an interlocal agreement with the Counties to have authority within their respective County political subdivisions. Section 163.01(4), Florida Statutes, only allows Flagler and Kissimmee to exercise jointly "any power, privilege, or authority which such agencies share in common and which each might exercise separately." Section 163.01(5) further provides that "a joint exercise of power pursuant to this section shall be made by contract in the form of an interlocal agreement." Because the Counties have not participated, nor entered any interlocal agreements with FPFA, FPFA does not have authority outside of its prescribed "limited geographic boundary." Furthermore, assessments can only be imposed against "all appropriately located property." §197.3632(1)(a), Fla. Stat. Therefore, FPFA lacks authority to operate outside Flagler and

Kissimmee, absent any interlocal agreements with other Counties. Because the FPFA lacks authority, the lower court's ruling granting FPFA statewide jurisdiction is a collateral matter.

FPFA incorrectly analogizes *State v. City of Miami*, 103 So. 2d 185 (Fla. 1958) to this present case. This Court in the *City of Miami* held that the matter was not collateral to the bond validation proceeding because the parties were the city and the respective state to which the city belonged, the State of Florida. *Id.* Therefore, the State of Florida properly had jurisdiction over the City of Miami. Unlike *City of Miami*, this case involves a special district, which under Section 189.012(6) Florida Statues and *Halifax Hospital Medical Center,* lacks jurisdiction over Counties that neither consented nor entered the interlocal agreement.[2] Accordingly, the lower court erred in granting FPFA statewide jurisdiction in a bond validation

[2] Article VIII of the Florida Constitution provides the powers, rights, and obligations of local governments. Article VIII Section 4 provides:" **Transfer of powers.—...** any function or power of a…special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee…" Granting FPFA statewide jurisdiction, absent any form of approval, violates Article VIII Section 4 of the Florida Constitution.

proceeding – a collateral matter to the bond validation proceeding. Collateral matters are never conclusive.

III. SENATE BILL 770 CLARIFIES EXISTING LAW ON THE JURISDICTION OF PACE ENTITIES TO OPERATE IN PARTICULAR COUNTIES AND CITIES IN THE STATE OF FLORIDA.

The Florida Legislature passed Senate Bill 770, which "provides that a program administrator may only offer a program…within the jurisdiction of a county or municipality which has authorized by ordinance or resolution the administration of the program" to "clarify"[3] that PACE entities may only operate in limited geographical boundaries as outlined in Section 189.012(6), Florida Statutes.

This Court has consistently recognized that the Florida Legislature passes new law to clarify existing law. This Court stated in *Lowry v. Parole & Prob. Comm'n,* 473 So.2d 1248, 1250 (Fla.1985) that when "an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the

[3] *See* Staff of Fla. H.R. Comm. On Ways and Means, CS/CS/CS/HB 927 (2010) Staff Analysis (final Feb. 21, 2024) ("clarified that a PACE program can only operate within the jurisdiction of the authorizing local government(s).")

original law and not as a substantive change thereof…This Court has recognized the propriety of considering subsequent legislation in arriving at the proper interpretation of the prior statute." (citing *United States ex rel. Guest v. Perkins,* 17 F. Supp. 177 (D.D.C.1936); *Hambel v. Lowry,* 264 Mo. 168, 174 S.W. 405 (1915); *Gay v. Canada Dry Bottling Co.,* 59 So.2d 788 (Fla.1952)). *See also Leftwich v. Fla. Dep't of Corr.*, 148 So. 3d 79 (Fla. 2014) ("legislation *can* be used to clarify the intent behind the prior version of the statute.").

Similarly, the Florida Legislature passed Senate Bill 770 following the controversy over the PACE entities' unlawful attempt to operate statewide. The Legislature's purpose for passing Senate Bill 770 was to protect the discretion of the Counties, its Tax Collectors, and its constituents' homesteaded properties from any assessments that are imposed, levied, and collected in a nonuniform, unfair, inefficient, and unaccountable manner, which aligns with the goals of Section 197.603, Florida Statutes. As this Court stated in *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So. 2d 249, 250 (Fla. 1987), "[T]he legislature is presumed to pass subsequent enactments

with full awareness of all prior enactments and an intent that they remain in force." Accordingly, the Florida Legislature passed Senate Bill 770 will full awareness of FPFA's rights and limitations as a special district formed under Section 163.01, Florida Statutes and with an intent to clarify and reinforce existing law. Accordingly, Section 189.012(6), Florida Statutes, and Senate Bill 770 provide that PACE entities have limited jurisdiction and do not have jurisdiction to operate lawfully within the Tax Collectors' political subdivisions.

CONCLUSION

Tax Collectors cannot be ordered in a bond validation proceeding to force the sale of homesteaded properties due to loans that were imposed in violation of homeowners' due process rights to a local notice and local hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been filed using the Florida Courts E-Filing Portal and electronic service has been directed to all parties of record listed on the Court's E-Filing Portal, including all alternate email addresses, on this 21st day of August, 2024.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the type size and style used in this brief is double-spaced 14-point Bookman Old Style font in compliance with Florida Rule of Appellate Procedure 9.045(b), and that this brief contains 4,000 or less words, calculated pursuant to Florida Rule of Appellate Procedure 9.045(e).

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