

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

INITIAL BRIEF OF APPELLANT COUNTY TAX COLLECTORS

TIMOTHY R. QUALLS, ESQ.
Florida Bar Number 15658
Young Qualls, P.A.
216 South Monroe Street
Tallahassee, Florida 32301
Telephone: (850) 222-7206
Email: tqualls@yvlaw.net;
stalevich@yvlaw.net

STEPHEN G. WEBSTER, ESQ.
Florida Bar Number 14054
Webster + Baptiste, PLLC
1785 Thomasville Road
Tallahassee, FL 32303-5707
Tel: (850) 597-7142
Email:
sw@websterandbaptiste.com;
jw@websterandbaptiste.com

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STATEMENT OF FACTS AND LAW

The Florida PACE Funding Agency (“Appellee”) was formed pursuant to Section 163.01, Florida Statutes, through an interlocal agreement between the County of Flagler and the City of Kissimmee. (A.15, 41). Appellee’s Charter Agreement establishes that it shall be governed by non-elected, appointed Board members. (A.876).

Appellee is not a state agency but an special district as defined in Chapter 189, Florida Statutes, with five employees. (A. 44, 199, 245, 266, 421, 499, 201, 546, 578, 875, 878, 879, 889, 1867, 2282-4). Appellee operates under an Amended and Restated Interlocal Agreement dated February 20, 2017, between Flagler County, Florida, and the City of Kissimmee, Florida (A.1744).

Appellee is funded by fees that are assessed when a bond closes, which are approximately 6.99%. (A. 2283).

None of the Appellant County Tax Collectors or any respective local governments within their county political subdivisions were parties to the Amended Restated Interlocal Agreement when it was first executed, and they have not since subscribed to that agreement. (A.1744).

Historically, prior to the entry of the bond validation Final Judgment in this matter, when Appellee operated within any of the County Tax Collectors' political subdivisions, Appellee executed an interlocal agreement with the County-Appellant. (A.1744). Appellee also executed a mandatory collection agreement with Appellant County Tax Collectors under Section 197.3632(2), Florida Statutes, and thereby acquiesced to the Appellant County Tax Collectors' local oversight in the collection of non-ad valorem assessments (A. 104, 133).

Likewise, every other PACE entity operated only within a political subdivision in which there was an interlocal agreement that allowed for local county and/or city oversight and transparency. (A. 133; 2049).

Appellee filed the underlying bond validation complaint on September 1, 2022 (A.18, 79). Notice of the bond validation hearing in this case was published exclusively in the Tallahassee Democrat (Leon, Gadsden, Jefferson, and Wakulla Counties), Orlando Sentinel (Osceola and Orange Counties), and Daytona Beach-News Journal

(Flagler and Volusia Counties) under Section 163.08(7)(e)(4), and Chapter 75, Florida Statutes. (A.1744).

In addition to having failed to publish notice of the bond validation hearing in a newspaper of general circulation in each of the Appellant Counties' jurisdictions, Appellee likewise failed to serve a copy of the bond validation complaint on any of the Appellant Counties or County Tax Collectors. *Id.*

Appellee provided actual notice to the State Attorneys of the Second, Seventh, and Ninth Judicial Circuits as required by Sections 75.06 and 163.08, Florida Statutes, but it did not serve a copy of the complaint filed in the bond validation proceeding with the office of the State Attorneys in any of the other affected counties, and did not provide actual notice to any other County Appellants prior to the entry of the bond validation Final Judgment in the underlying proceeding. (A. 1744-1745).

A bond validation hearing was held on October 6, 2022. Appellee did not notice any of the Appellant County Tax Collectors of the hearing and did not notify the counties within Appellant County Tax Collectors' political subdivisions. (A. 1744-45).

Given that FortiFi is not a government entity, it cannot enter into interlocal agreements with any county or county Tax Collector (A.1745). FortiFi is a for-profit corporation that, “services the Appellee's PACE program by promoting the program . . . and facilitating and financing the transactions.” (A. 15).

The Bond Validation proceeding was litigated, and Appellee submitted a 47-page proposed order that was entered by the Honorable Judge Marsh on October 6, 2022. (A. 80).

Appellee asserts that the underlying bond validation Order established it as a local government with statewide jurisdiction and therefore is no longer required to cooperate with any local government in any other political subdivision in the state of Florida. (A. 136).

Appellee waited until the time to appeal the final order had expired before notifying Appellant Counties and Appellant County Tax Collectors of its novel contention that it is a local government with statewide jurisdiction and could therefore operate throughout the entire state of Florida without agreeing to cooperate with any local

government within Appellants' political subdivisions. (A.1704, 1710-11).

In January 2023, Appellee sent a letter to several counties wherein for the first time it notified Appellant Counties of its assertion of statewide jurisdiction. (A.143-8). The January 2023 letter marked the first occasion where Appellant Counties were notified of Appellee's intent to continue operating within the jurisdictions of the Appellant Counties without executing an interlocal agreement. *Id.*

Non-ad valorem assessments are collected using the uniform method of collection set forth in Section 197.3632, Florida Statutes. When collected in this manner, the non-ad valorem tax assessments become a first and superior lien that runs with the land until collected. §197.3632 and §197.122, Fla. Stat. Unpaid non-ad valorem assessments are collected pursuant to the uniform method of collection and, therefore, can ultimately result in the forced sale of real property, including homesteaded properties under the Florida Constitution pursuant to the Uniform Method of Collection. *See* Art. X, § 4, Fla. Const. and §197.3632, Fla. Stat.

Section 197.3632, Florida Statutes, defines “local government” as, “a county, municipality, or special district levying non-ad valorem assessments.” §197.3632(1)(b), Fla. Stat.

A special district is defined as, “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary. §189.012(6), Fla. Stat. All special districts authorized to impose and levy non ad valorem assessments must be either a dependent special district or an independent special district. See Chapter 189, Fla. Stat.

Sections 189.02(2) and 189.02(3), Florida Statutes, provide that dependent special districts must be created by a county or city and can only operate within the limited geographic boundary of that county or city. Special Districts must operate within a limited geographic boundary. §189.012(6), Fla. Stat.

Section 197.3632, Florida Statutes, requires that local governments authorized to levy and impose assessments within a particular county political subdivision must provide notice of the intent to impose, levy and collect the non-ad valorem assessments utilizing the uniform method of collection. As required by the uniform

method of collection, the notice must be sent to every property owner and each property owner must be afforded an opportunity to offer objections and comment at a public hearing. §197.3632(4), Fla. Stat.

PACE special district entities are unique under Section 163.08(4) in that such entities may be afforded an opportunity to impose, levy and collect non-ad valorem assessments without meeting all of the stringent notice requirements provided to property owners under Section 197.3632(4), Florida Statutes. County Tax Collectors have discretion to waive the stringent notice requirements of the uniform method of collection as provided in Section 197.3632(4) and Section 163.08(4), Florida Statutes.

Appellant County Tax Collectors notified Appellee they did not agree to waive the notice requirements of Section 197.3632, Florida Statutes. (A. 1704, 1713). Since receiving that notification, Appellee has not complied with the notice requirements provided in Section 197.3632, Florida Statutes, in violation of Florida law and the Tax Collectors' discretion.

Appellant County Tax Collectors received the Appellee's claimed non-ad valorem assessment rolls from the Appellee on or about the

deadline to certify the roll to the Tax Collector, which was September 25, 2023. (A. 352). The receipt of the Appellee's rolls marked the first time that Appellee claimed that the Appellant County Tax Collectors' duties were triggered under the uniform collection method with respect to Appellee's purported non-ad valorem assessments. §197.3632, Fla. Stat.

Tax Collectors notified the Appellee that due to its failure to cooperate with Appellant Counties as required by Chapter 163.01, Florida Statutes, that Appellant County Tax Collectors could not lawfully collect Appellee's claimed non-ad valorem assessments. (A. 1704,1713). Appellant County Tax Collectors notified the Appellee that collecting the claimed non-ad valorem assessments on behalf of Flagler County and the City of Kissimmee without any local oversight would violate Florida Interlocal Government Cooperation law. *Id.*

Appellee filed suit in Sarasota seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. Barbara Ford-Coates – Case No.: 2023-CA-5078.*

On or about April 20, 2023, the Hillsborough County Tax Collector first learned of Appellee's claim to be a local government with statewide jurisdiction and of Appellee's intent to operate in Hillsborough County without renewing its expired interlocal agreement and without renewing its collection agreement with the County Tax Collector. (A.1753)

Appellee filed suit in Hillsborough seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. Nancy Millan – Case No.: 2023-CA-13775*. On September 18, 2023, Hillsborough Circuit Judge Robert Bauman entered an Order denying Appellee's Petition for Writ of Mandamus against the Tax Collector. (A. 150).

Appellee filed a suit in Volusia seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. Will Roberts – Case No.: 2023-32217-CICI*. (A. 149-50).

Appellee filed suit in St. Lucie seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-

ad valorem assessments. *Florida PACE Funding Agency v. Chris Craft*
– Case No.: 2023-CA-2265A. *Id.*

Appellee filed suit in Union seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. Lisa Johnson*
– Case No.: 2023-CA-0067. *Id.*

The Alachua County Tax Collector responded to Appellee by letter on June 7, 2023, stating that the Tax Collector “has no authority under general law” to collect any assessments on behalf of the Appellee that were imposed after the expiration of the Interlocal Agreement between Appellee and Alachua County on August 13, 2001. (A. 1747). Thereafter, Appellee filed suit in Alachua seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. John Power* – Case No.: 2023-CA-003844. (A. 149).

Appellee filed suit in Glades seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. Gail Jones*
– Case No.: 2023CA000150. *Id.*

Appellee filed suit in Seminole seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. J.R. Kroll – Case No.: 2023CA003487. Id.*

Appellee filed suit in Gadsden seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. W. Dale Summerford – Case No.: 2023CA000675A. Id.*

Appellee filed suit in Washington seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. Ken Naker – Case No.: 67-2023-CA-000094-CAAM. Id.*

On August 22, 2020, Hernando County cancelled its interlocal agreement with Appellee (A.1751). After August 22, 2020, Appellee discontinued the operating of its PACE program in Hernando County. *Id.* On or about January 1, 2023, Appellee resumed operations in Hernando County without a valid interlocal agreement and recorded approximately 170 assessments against property owners in Hernando County. *Id.*

Thereafter, Appellee filed suit in Hernando seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency v. Sally Daniel* – Case No.: 2023CA004528 (A. 149).

Appellee filed suit in Bradford seeking Mandamus relief against the County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency Matter v. Teresa G. Phillips* – Case No.: 2023CA000395. *Id.*

Appellee filed a suit in Leon seeking Mandamus relief against County Tax Collector to compel the collection of its claimed non-ad valorem assessments. *Florida PACE Funding Agency Matter v. Doris Maloy* – Case No.: 2023CA002132. *Id.*

Appellee filed suit in Highlands seeking Mandamus relief against County Tax Collector to collect its claimed non ad valorem assessments. *Florida PACE Funding Agency Matter v. Eric Zwayer* – Case No.: 2023CA000610. *Id.*

Appellee filed a suit in Hamilton seeking Mandamus relief against the County Tax Collector to collect its claimed non ad valorem

assessments. *Florida PACE Funding Agency v. Mary Sue Adams – Case No.: 2023-CA-00072. Id.*

On October 5, 2023, the Circuit Courts in Alachua, Bradford, and Union, entered Orders denying Appellee’s Writs of Mandamus.

On September 28, 2023, the Circuit Court in Volusia conducted an evidentiary hearing regarding Appellee’s Petition for Writ of Mandamus and thereafter issued an order on October 13, 2023 denying Appellee’s Writ of Mandamus.

On October 4, 2023, the Appellant Counties filed a Motion pursuant to Rule 1.540, Florida Rules of Civil Procedure, seeking relief from the underlying bond validation order. (A. 163). Appellant County Tax Collectors joined in the Counties’ Motion as non-parties to the underlying proceeding, less than ten days after receiving Appellee’s claimed non-ad valorem assessment roll from Appellee. *Id.*

On December 29, 2023, Appellee filed a reply to the Appellants’ Motion for Relief. (A. 1670). On February 2, 2024, a hearing regarding the 1.540 Motion was held. On March 8, 2024, the Parties submitted closing statements. (A. 2051). On March 19, 2024, Judge Marsh entered his order denying the motions for relief. (A. 35).

In his order, Judge Marsh noted that he did not rule upon, “the constitutionality of Chapter 163, Florida Statutes, nor the policy of its enactment,” given that those questions were “not before th[at] court.” (A. 14). However, the Lower Court held that the Appellee’s “authority to act independently throughout the state” was derived from “the very ‘authority to issue the bonds’ contemplated by Chapter 75,” and was therefore not a collateral matter to the underlying bond validation proceeding. (A. 29). On April 18, 2024, Appellants’ notice of appeal was filed with the Lower Court.

THE PARTIES

Appellant County Tax Collectors

Article VIII, Section 1 of the Florida Constitution provides: “The state shall be divided by law into political subdivisions called counties.” The Constitution provides further: “COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.” Art. VIII, § 1(d), Fla. Const. Accordingly, Appellants are the elected “County Officers” within their county political subdivisions. Art. VIII, § 1(d), Fla. Const.

Tax Collectors must carry out the collection of taxes and non-ad valorem assessments in a manner that comports with the State of Florida's: "[S]trong interest in ensuring due process and public confidence in a uniform, fair, efficient, and accountable collection of property taxes by county tax collectors. . . ." §197.603, Fla. Stat. In collecting taxes and non-ad valorem assessments, Appellant County Tax Collectors are further required to ensure that such collection: "be free from the influence or the appearance of influence of the local governments that levy property taxes and receive property tax revenues. *Id.*

County Tax Collectors must follow the uniform method of collection and can only collect non-ad valorem assessments that are imposed lawfully "by a governmental body authorized by law to impose non-ad valorem assessments." §197.3632(1)(a). Fla. Stat. Tax Collectors must therefore ensure that any non-ad valorem assessments they collect have been imposed lawfully by a governmental body authorized to impose the assessments within their county political subdivision. Under the Uniform Method of Collection, the legislature has ensured that property owners are

afforded notice and other due process protections given that the failure to pay non-ad valorem assessments will result in the forced sale of real property, including homestead property that would otherwise be protected by the Florida Constitution in Article X, Section 4.

Appellee

Appellee was created initially on June 22, 2011, by an Interlocal Agreement between Flagler County and the City of Kissimmee (“Appellee Creation Interlocal”). (A. 15, 41). It was created under the Florida Interlocal Cooperation Act of 1969, pursuant to Chapter 163 *Florida Statutes*. See §163.01, Fla. Stat. (A. 15, 41). The purpose of the Florida Interlocal Cooperation Act is to:

[P]ermit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on the basis of mutual advantage and thereby to provide services and facilities in a manner and according to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

§163.01(2), Fla. Stat.

As provided in its charter, Appellee is a special district as defined in Chapter 189, Florida Statutes. (A. 44, 199, 245, 266, 421, 499, 201, 546, 578, 875, 878, 879, 889, 1867, 2282-4). The Florida Interlocal Cooperation Act provides that: “[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 with any power, privilege, or authority which such agencies share in common and which each might exercise separately.” §163.01(4), Fla. Stat.

The Supreme Court has held that: “[u]nder the [PACE] program, [PACE Entities] and participating local governments enter into interlocal agreements that will provide the PACE program benefits in those localities. Participation in the program by local governments . . . is completely voluntary.” *Fla. Bankers Ass’n v. Fla. Dev Fin. Corp.* 176 So. 3d 1258, 1261 (Fla. 2015).

Appellee’s Creation Interlocal was subsequently amended and restated, effective February 20, 2017 (“Amended Interlocal”). While both the Appellee Creation Interlocal and the Amended Interlocal allowed additional local governments to join a “Subscription Agreement,” as either “Incorporators” or “Subscribers,” none of the

governments within the political subdivisions where the Appellant County Tax Collectors serve have joined as incorporators or subscribers. (A. 1744).

SUMMARY OF THE ARGUMENT

Appellants adopt the arguments of Alachua County *et al.*, as well as those of Palm Beach County *et al.*, as outlined in their respective briefs pertaining to the Rule 1.540 Motion. Any alleged duty to collect Appellee's claimed non-ad valorem assessments would have been triggered, at the earliest, on or about September 25, 2023, when Appellee sent its claimed non-ad valorem assessment rolls to Appellant County Tax Collectors. Prior to that occasion, Appellant County Tax Collectors had no lawful duty or means to address the legitimacy of the claimed non-ad valorem assessments of Appellee. Appellant County Tax Collectors joined the Rule 1.540 Motion less than ten (10) days after the claimed duty to collect was triggered. As such, Appellant County Tax Collectors deny Appellee's contention that they failed to raise a timely challenge to the underlying bond validation order.

The Lower Court determined incorrectly that Appellee, as an entity created pursuant to Section 163.01 and Chapter 189, Florida Statutes, lawfully possesses statewide jurisdiction to operate without a limited geographic boundary as required in Section 189.012(6), Florida Statutes. Flagler County and the City of Kissimmee agreed pursuant to Section 163.01, Florida Statutes, to create Appellee as a Special District as provided in Chapter 189. Section 163.01(4), Florida Statutes, allows Flagler County and the City of Kissimmee, by agreement, to exercise jointly “any power, privilege, or authority” which they, “share in common and which each might exercise separately.” §163.01(4), Fla. Stat. As such, the lower court’s ruling that Flagler County and the City of Kissimmee have the authority to create a special district pursuant to Chapter 163 that can operate statewide was in error. §163.01(4), Fla. Stat. Flagler County and the City of Kissimmee cannot exercise power, privilege, or authority to operate PACE programs outside of their limited defined geographic boundaries. *Id.*

Likewise, the Lower Court erred in determining that the Appellee, as a special district, pursuant to Chapter 189, can lawfully

operate with statewide jurisdiction. Section 189.012(6), Florida Statutes, defines a special district as a: “unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a **limited geographic boundary.**” §189.012(6), Fla. Stat. (emphasis supplied). Accordingly, the lower court ruling violates Section 189.012, Florida Statutes, given that Flagler County and the City of Kissimmee cannot lawfully create a special district that can operate without clearly defined or limited geographic boundary.

Pursuant to Section 197.603, Florida Statutes, Appellant County Tax Collectors are obligated to collect non-ad valorem assessments in a manner that ensures due process and which is fair and accountable. Appellant County Tax Collectors have the duty to collect delinquent non ad valorem assessments through the tax deed application process, which ultimately results in the forced liquidation of a citizen’s home. §197.3632(8), Fla. Stat. This extraordinary responsibility is outlined in Article X, Section 4 of the Florida Constitution, which exempts the forced sale of homesteaded

properties for reasons apart from the nonpayment of taxes and non-ad valorem assessments.

Section 197.603, Florida Statutes, requires that the collection of non-ad valorem assessments be free from “even the appearance of undue influence.” Public officials in Flagler County and the city of Kissimmee cannot be held accountable at the ballot box within Appellant County Tax Collectors’ political subdivisions, which is the most viable means by which citizens can hold public officials accountable for their policy decisions. Accordingly, requiring Appellant County Tax Collectors to collect non ad valorem assessments imposed by unelected public officials, who are not accountable to the Appellant County Tax Collectors’ local electorate, creates an appearance of undue influence and violates the Appellant County Tax Collectors’ duties outlined in Section 197.603, Florida Statutes.

Pursuant to Section 163.08(4), Florida Statutes, Appellant County Tax Collectors have the discretion to require that Appellee comply with the notice and hearing requirements guaranteed to property owners under the uniform method of collection provided in

Section 197.3632(4), Florida Statutes. PACE special districts operating under Section 163.08(4), Florida Statutes, hold a unique status, as PACE special districts can avoid complying with the full notice and hearing requirements afforded to property owners under Section 197.3632(4), Florida Statutes. However, PACE special districts must comply with the full notice and hearing requirements provided in the uniform method of collection if the Appellant County Tax Collectors do not agree to waive the notice and hearing requirements provided in Section 197.3632(4), Florida Statutes. As such, Tax Collectors have the statutory discretion to demand that the Appellee provide the full panoply of notice requirements outlined in the uniform method of collection.

In the absence of an interlocal agreement, with its concomitant cooperation and oversight, citizens within Appellant County Tax Collectors' political subdivisions have no ability to participate in the operation of the PACE program that was created by Flagler County and the City of Kissimmee. Accordingly, Appellant County Tax Collectors exercised their discretion and demanded that Appellee comply with the full notice and hearing requirements contained

within the uniform method of collection. The lower court's order unlawfully invalidates the Appellant County Tax Collectors' discretion, and duty to ensure that non-ad valorem assessments are free from even the appearance of undue influence.

Finally, the Lower Court order conflicts with this Court's ruling in *De Sha v. Waldo*, 444 So. 2d 16, (Fla. 1984), given that it improperly resolves future decisions with respect to how Appellant Counties will operate any PACE programs. This Court held in *De Sha*, any decision pertaining to a matter to be resolved by future decision-making on the part of a local government's operations, "is a collateral matter beyond the scope of judicial scrutiny in bond validation proceedings." *De Sha* at 17 (Citing *City of Gainesville v. State* 366 So. 2d 1164) (Fla. 1979). This Court held in *Florida Bankers*, a county's participation in a PACE program is "completely voluntary." *Fla Bankers Assn* at 1261. As such, the lower court's *carte blanche* mandate that Appellant Counties must allow Appellee to operate its PACE program within every county political subdivision in perpetuity is a determination that is collateral to the underlying bond validation proceeding, as this ruling necessarily resolves the future decisions

that Appellant Counties have the authority to make regarding the operation of any PACE program.

STANDARD OF REVIEW

Under Bond Validation Orders pursuant to Chapter 75, Florida Statutes, the standard of review is *de novo*. *Strand v. Escambia Cnty*, 992 So. 2d 150, 154 (Fla. 2008) (citations omitted). Also, the questions of law related to timeliness, voidness, and jurisdiction are subject to *de novo* review. *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*). Finally, because this matter involves the Lower Court's interpretation of Rule 1.540(b), Florida Rules of Civil Procedure, its Order Denying Appellant County Tax Collectors' Motion for Relief is reviewed *de novo*. *Barco v. School Bd. of Pinellas Cnty.*, 975 So. 2d 1116, 1121 (Fla. 2008).

ARGUMENT

I. THE LOWER COURT HELD INCORRECTLY THAT APPELLEE, AS AN ENTITY CREATED PURSUANT TO SECTION 163.01, HAS STATEWIDE JURISDICTION TO OPERATE WITHOUT A LIMITED GEOGRAPHIC BOUNDARY, AS REQUIRED IN SECTION 189.012, FLORIDA STATUTES.

A. Section 163.01, Florida Statutes, Requires Appellee to Enter Into an Interlocal Agreement with County Appellants.

Appellants adopt the arguments of Alachua County et al. and Palm Beach County et al. as if incorporated fully herein. Appellant County Tax Collectors may only utilize the uniform method of collection to collect non-ad valorem assessments that are lawfully levied and imposed. §197.3632, Fla. Stat. Section 197.3632(1)(a), Florida Statutes provides: “Levy’ means the imposition of a non-ad valorem assessment, stated in terms of rates, against all appropriately located property by a governmental body authorized by law to impose non-ad valorem assessments.” Section 163.01(4), Florida Statutes, allows Flagler County and the City of Kissimmee, by agreement, to exercise jointly “any power, privilege, or authority” which they, “share in common and which each might exercise separately.” Accordingly, Flagler County and the City of Kissimmee

do not constitute a “governmental body authorized by law to impose non-ad valorem assessments” in the Appellant County Tax Collectors’ political subdivisions; therefore, Appellant County Tax Collectors cannot lawfully collect the claimed non-ad valorem assessments at issue.

B. Pursuant to Section 189.012, Florida Statutes, Appellee, as a Special District, Can Only Operate Within its Limited Geographic Boundary.

The Appellee was created as a special district. (A. 39, 42, 44, 83, 199, 245, 266, 368-369, 421, 499, 201, 546, 578, 875, 878, 879, 889, 1867, 2282-4). As provided in Florida law, “Special district means a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a **limited geographic boundary**” §189.012(6), Fla. Stat. (emphasis supplied). As was explained by the Florida Supreme Court:

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.

Halifax Hospital Medical Center v. Florida, 278 So. 3d 545, 548 (Fla. 2019).

Appellee does not have an express and unambiguous grant of authority to operate throughout the entire state of Florida, as Flagler County and the City of Kissimmee could not lawfully bestow to the Appellee any such authority. Prior to the interlocal agreement between Flagler County and the City of Kissimmee, Appellee did not exist and therefore had no geographic boundaries. Upon the execution of the Amended Interlocal, Appellee was only authorized to operate within the clearly defined, limited geographic boundaries of Flagler County and the City of Kissimmee, consistent with Appellee's status as a special district within those express jurisdictions. Therefore, the lower Court's ruling violates Chapter 189 in the same respect that it violates Chapter 163, given that the lower court incorrectly determined that Appellee can operate independently

throughout the entire state of Florida and without any limited geographic boundary, contrary to Florida Statutes.

II. PURSUANT TO SECTION 197.603, FLORIDA STATUTES, APPELLANT COUNTY TAX COLLECTORS ARE OBLIGATED TO ENSURE THAT NON-AD VALOREM ASSESSMENTS ARE COLLECTED WITHIN THEIR OWN POLITICAL SUBDIVISIONS IN A MANNER WHICH ENSURES DUE PROCESS, IS FAIR, ACCOUNTABLE, AND WHICH AVOIDS ANY APPEARANCE OF UNDUE INFLUENCE.

A. Article X Section 4 of the Florida Constitution Prohibits the Forced Sale of a Citizens' Homestead Unless for Nonpayment of Taxes and Assessments Thereon.

The Florida Constitution provides that homestead properties are exempt from forced sale unless ad valorem taxes and non-ad valorem assessments are unpaid.

Homestead; exemptions.—

- (a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, **except for the payment of taxes and assessments thereon**, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:
- (1) a homestead

Art. X, §4, Fla. Const.

Appellants are the state constitution's Tax Collectors elected in and for their various political subdivisions. The state constitution county office of Tax Collector is created and established by Article VIII, Section 1(d) of the Florida Constitution. Appellant County Tax Collectors must collect non-ad valorem assessments pursuant to the legislative direction provided by Florida Statutes. §197.3632, Fla. Stat. Moreover, as the state constitution's Tax Collectors, Appellants possess the plenary power of sovereign office delegated from the people. *Alachua County v. Powers*, 351, So. 2d 42 (Fla 1977) (internal citation omitted) (holding that "a county officer under Article VIII, Section 1(d), Florida Constitution . . . is delegated a portion of the sovereign power," and that such officer "is responsible for the effective operation of his office").

Tax Collector Appellants hold a constitutional sovereign status. *Demings v. Orange County Citizens Review Bd.*, 15 So. 3d 604, 606 (Fla. 5th Dist. Ct. App. 2009); *see also* Art. VIII, §1(d), Fla. Const. As the court discussed in *Demings*:

Under Florida's Constitution, certain responsibilities of local governance are separately entrusted to independent constitutional officers

who . . . are independently accountable to the electorate.

Id.

Appellant County Tax Collectors are directly accountable to their constituents at the ballot box, but are not subject to the direction and control of any local government. The independence of the Constitution's County Tax Collectors is designed to eliminate even the "appearance of undue influence" in the collection of non-ad valorem assessments. §197.603, Fla. Stat. This independence ensures that county Tax Collectors maintain accountability to the electorate in their local county political subdivision, and that they are not subject to the influence of those government officials responsible for imposing and levying taxes and non-ad valorem assessments and who receive the revenue therefrom. *Id.*

Appellant County Tax Collectors must undertake the collection of taxes and non-ad valorem special assessments in a manner that, "ensur[es] due process" and fosters a sense of "public confidence in a uniform, fair, efficient, and accountable collection of property taxes." *Id.* Non-ad valorem assessments, like ad valorem taxes, may be imposed on homestead property, and that property is subject to

forced sale upon nonpayment. Art. X, §4, Fla. Const. Accordingly, Appellant County Tax Collectors do not participate in the levy and imposition of any taxes or non-ad valorem assessments they are charged with collecting, and rely on the constituents they serve to hold the government officials imposing and levying taxes and assessments accountable. If in fact Flager County and the City of Kissimmee allowed for predatory PACE loans outside of their boundaries, this would result in the forced sale of a delinquent property owner's property with no oversight or ability to hold the public officials accountable. This irreparably undermines Florida's vigorous homestead protections.

B. Local Government Oversight is Critical to Ensure that PACE Non-ad Valorem Assessments are Collected in a Manner which Ensures Due Process, is Fair, Accountable, and which Avoids Any Appearance of Undue Influence.

Understandably, Appellant County Tax Collectors give the utmost consideration when executing their statutory duty of collecting delinquent non ad valorem assessments through tax deed sales of homesteaded properties. (A. 1699-1700). Within that consideration is a duty to ensure that the non-ad valorem assessments were lawfully imposed, levied, and collected and that

the property owner's due process rights have been vigorously protected. *Id.* In short, a County Tax Collector's duty to collect delinquent assessments through a tax deed sale of a homesteaded property is a solemn responsibility, and one which Appellants must be circumspect in executing. *Id.*

Allowing unelected officials from outside of the County Tax Collectors' clearly defined political subdivision to levy and impose non-ad valorem assessments without any local oversight, is contrary to the homestead protections contained in the Florida Constitution, and do not allow Appellant County Tax Collectors to ensure that non-ad valorem assessments are collected in a manner that is fair and accountable. §197.603, Fla. Stat.

Public officials in Flagler County and the city of Kissimmee cannot be held accountable at the ballot box within Appellant County Tax Collectors' political subdivisions, which is the most viable means by which citizens can hold public officials accountable for the taxes and non-ad valorem assessments levied and imposed. Property owners outside of Flagler County and the City of Kissimmee have not been afforded due process protections as required by law. Moreover,

Appellant County Tax Collectors have no reason to expect that the public officials in Flagler County and the City of Kissimmee understand or appreciate the nuanced characteristics of their local political subdivisions.

There are documented instances where PACE loans have been made in a predatory and abusive fashion. *See eg (A. 1707). Report of Hillsborough County Consumer Protection Concerning Abuses by PACE Industry.* Local government oversight is critical to combat any such predatory practices, and is the only manner in which accountability can be guaranteed. Appellant County Tax Collectors have noticed a substantial increase in delinquencies associated with PACE assessments, and they will, unfortunately, bear the burden of collecting any delinquent non-ad valorem assessments via the forced sale of homestead properties. As such, Appellant County Tax Collectors must ensure that these assessments are lawfully imposed, levied, and collected by officials that are authorized to levy the assessments and that the public officials levying the assessments are accountable for the assessments they levy and impose. The lower court's ruling that the Appellant County Tax Collectors' utilize the

uniform method of collection to collect non-ad valorem assessments on behalf of Flagler County and the City of Kissimmee contradicts the Appellant Tax Collectors' solemn duty to protect their constituents' homesteaded properties and to ensure that any non-ad valorem assessments are imposed, levied, and collected in a fair and accountable manner. §197.603, Fla. Stat.

III. PURSUANT TO SECTION 163.08(4), FLORIDA STATUTES, APPELLANT COUNTY TAX COLLECTORS HAVE THE DISCRETION TO REQUIRE THAT APPELLEE COMPLY WITH THE NOTICE AND HEARING REQUIREMENTS GUARANTEED TO PROPERTY OWNERS UNDER THE UNIFORM METHOD OF COLLECTION FOUND IN SECTION 197.3632, FLORIDA STATUTES.

Section 163.08(4), Florida Statutes, provides:

Subject to local government ordinance or resolution, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632 (8)(a), shall not be subject to discount for early payment. **However, the notice and adoption requirements of s.197.3632(4) do not apply if . . . the property appraiser, tax collector, and local government agree.** (emphasis supplied).

As such, Tax Collectors have the express discretion to insist that Appellee comply with the full notice requirements of Section 197.3632, Florida Statutes, before any of Appellee's non-ad valorem assessments are added to the local county tax notice.

Section 163.08(4) is extraordinary given that it allows a PACE special district to impose, levy, and collect non-ad valorem assessments without first demonstrating full compliance with Section 197.3632(4), Florida Statutes. In every other instance where the uniform method of collection is utilized, a local government is required to follow Section 197.3632(4), Florida Statutes without exception. Section 197.3632(4), Florida Statutes, requires:

[a]t least 20 days prior to the public hearing, the local government shall notice the hearing by first-class United States mail and by publication in a newspaper generally circulated within each county contained in the boundaries of the local government. The notice by mail shall be sent to each person owning property subject to the assessment and shall include the following information: the purpose of the assessment; the total amount to be levied against each parcel; the unit of measurement to be applied against each parcel to determine the assessment; the number of such units contained within each parcel; the total revenue the local government will collect by the

assessment; a statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title; a statement that all affected property owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and the date, time, and place of the hearing. However, notice by mail shall not be required if notice by mail is otherwise required by general or special law governing a taxing authority and such notice is served at least 30 days prior to the authority's public hearing on adoption of a new or amended non-ad valorem assessment roll. The published notice shall contain at least the following information: the name of the local governing board; a geographic depiction of the property subject to the assessment; the proposed schedule of the assessment; the fact that the tax collector will collect the assessment; and a statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice.

As was stated above, PACE loans are extraordinary given that they can be imposed without full compliance with Section 197.3632, Florida Statutes. However, as is provided in Section 163.08(4), Florida Statutes, Appellant County Tax Collectors have the express discretion to demand that Appellee satisfy the full notice requirements of Section 197.3632(4), Florida Statutes, before levying,

imposing and collecting any non-ad valorem assessments within their county political subdivisions.

Appellants have not agreed to waive the notice requirements of §197.3632(4), and Appellee has ignored Appellant County Tax Collectors' insistence that it comply with the full notice requirements contained within the uniform method of collection. (A. 1704). As such, the lower court erred in negating the clear grant of statutory discretion the Appellant County Tax Collectors possess. At a minimum, the lower court's disregard of the Tax Collectors' express statutory discretion is in error because it is a determination that is collateral to the underlying bond validation proceeding. (A. 1705-1708).

IV. PURSUANT TO THIS COURT'S RULING IN *DE SHA V. WALDO* 444 SO. 2D 16 (FLA. 1984), THE UNDERLYING BOND VALIDATION PROCEEDING IMPROPERLY RESOLVES FUTURE DECISIONS WITH RESPECT TO THE OPERATION OF APPELLANT COUNTIES.

The lower court erred in determining that this Court's holding in *Keys Citizens for Responsible Gov't v. Fla. Keys Aqueduct Auth.* 795 So. 2d 940 (Fla. 2001), supported a conclusion that Appellee's claim

of statewide jurisdiction was not collateral to the underlying bond validation.

In *Keys*, this Court upheld a Monroe County lower court order that was entered as part of a bond validation proceeding, and which impacted only the citizens of Monroe County. *Id.*

Importantly, prior to the bond validation proceeding in *Keys*, Monroe County enacted an ordinance mandating that the citizens of Monroe County connect to the central sewer system funded by the underlying bonds. *Id at 946*. As such, the bond validation proceeding in *Keys* did not restrict or resolve any future operational decisions of the local government officials, as the issue regarding mandatory connection had already been resolved by enactment of the county ordinance. This is a critical distinction.

Rather than looking to *Keys* for guidance, this Court must look to its holding in *De Sha v. Waldo* 444 So. 2d 16 (Fla. 1984). In *De Sha*, this Court held that a bond validation proceeding cannot resolve issues restricting a local government's future decision-making, given that any determination which involves, "future decision-making," is necessarily collateral to a bond validation proceeding. *Id. at 17-18*.

Unlike the situation in *Keys*, which presented a factual scenario that was the “flipside” to the facts presented in *De Sha*, the lower court’s holding in this instance necessarily impacts the future operational decision making of the Appellant Counties and therefore involves matters which are collateral to the underlying bond validation proceeding. *Keys at 946; De Sha at 17.*

As this Court held in *Florida Bankers*, a county’s participation in a PACE program is “completely voluntary.” *Fla Bankers Assn at 1258.* Given that Appellant Counties’ participation in a PACE program is voluntary, it is necessarily dynamic and subject to Appellant Counties’ future decision-making. None of the Appellant Counties have adopted an ordinance mandating participation in any future PACE program so therefore the holding in *Keys* is the flipside of this Court’s holding in *De Sha*. Accordingly, the lower court lacked jurisdiction in the underlying bond validation proceeding to mandate that Appellant Counties must allow Appellee to levy PACE non-ad valorem assessments in perpetuity in their political subdivisions, because that ruling resolves future decisions that Appellant Counties’ have the home rule authority to make and is therefore a

determination that was collateral to the to the underlying bond validation proceeding. *Id. De Sha at 17-18.*

CONCLUSION

Appellants do not challenge the ability of Appellee to validate bonds and do not dispute that it has the authority to operate throughout the state when following the Interlocal Agreement Cooperation Act. Likewise, Appellants do not dispute that Tax Collectors, as the state's constitution county officer within their political subdivision, must collect those assessments imposed by a local government authorized to impose assessments.

Rather, Appellants reject the Appellee's utilization of a bond validation proceeding as a trojan horse in its attempt to surreptitiously grab a grant of statewide jurisdiction in contradiction to well-established law designed to protect Florida property owners. Appellant County Tax Collectors have a duty to avoid even the appearance of undue influence with local governments that levy and impose assessments. The uniform method of collection is designed to protect homeowners from the forced sale and liquidation of their

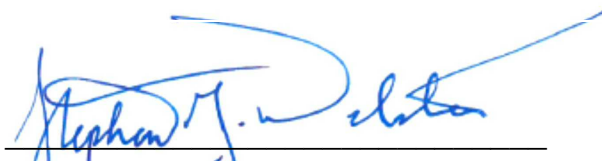
properties, and due process must be ensured before Appellant County Tax Collectors dispossess Florida citizens of their homes.

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 7th day of June, 2024.



TIMOTHY R. QUALLS, ESQ.
Florida Bar Number 15658
Young Qualls, P.A.
216 South Monroe Street
Tallahassee, Florida 32301
Telephone: (850) 222-7206
Email: tqualls@yvlaw.net;
stalevich@yvlaw.net



STEPHEN G. WEBSTER, ESQ.
Florida Bar Number 14054
Webster + Baptiste, PLLC
1785 Thomasville Road
Tallahassee, FL 32303-5707
Tel: (850) 597-7142
Email:
sw@websterandbaptiste.com;
jw@websterandbaptiste.com

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).



TIMOTHY R. QUALLS, ESQ.
Florida Bar Number 15658