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IN THE SUPREME COURT OF FLORIDA

Consolidated Case No.: SC2024-0652

On Appeal from the Second Judicial Circuit, Leon County, Florida
Lower Tribunal No.:372022CA001562

Case No. SC2024-0652

STATE ATTORNEYS FOR THE SECOND, SEVENTH AND NINTH JUDICIAL CIRCUITS,
Appellants,
v.

FLORIDA PACE FUNDING AGENCY, et al.,
Appellees.

Case No. SC2024-0656

ALACHUA COUNTY TAX COLLECTOR, et al.,
Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,
Appellees.

Case No. SC2024-0664

PALM BEACH COUNTY, FLORIDA, et al.,
Appellants,

v.

FLORIDA PACE FUNDING AGENCY, et al.,
Appellees.

Case No. SC2024-0681

ALACHUA COUNTY, FLORIDA, et al.,
Appellants,

v.
FLORIDA PACE FUNDING AGENCY, et al.
Appellees.

FLORIDA PACE FUNDING AGENCY'S ANSWER BRIEF

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INTRODUCTION

In eight briefs, appellants and their amici urge this Court to hold that Florida Rule of Civil Procedure 1.540(b) allows them to reopen and seek relief from the 2022 final judgment that validated the statewide issuance of $5 billion in assessment-backed revenue bonds by appellee Florida PACE Funding Agency (FPFA)—more than $150 million of which have already been issued and sold in the market. This Court should hold that *no court* can reopen the bond validation judgment and dismiss this appeal. As the trial court rightly ruled, Florida law precludes using rule 1.540(b) to mount a post-finality attack on a "forever conclusive" bond validation judgment that "shall never be called in question in any court by any person or party." § 75.09, Fla. Stat. But even if a procedural rule could be read to write an escape-from-finality exception into Florida's substantive bond validation law, which it cannot, because the trial court rightly denied the rule 1.540(b) motions, this Court should affirm.

STATEMENT OF THE CASE AND FACTS

Appellants challenge the denials of their rule 1.540(b) motions seeking relief from FPFA's $5 billion bond validation final judgment. To understand why rule 1.540(b) cannot be used as appellants claim requires viewing the facts through the lens of the controlling statutory and constitutional framework—something appellants fail to do in their briefs. That framework consists of section 163.01(7), Florida Statutes (2022); chapter 75, Florida Statutes (2022); section 163.08, Florida Statutes (2022); and article V, section 3(b)(2) of the Florida Constitution.[1]

(1) Section 163.01(7) provides for FPFA's creation and authorizes it to issue bonds under chapter 75 to fund certain improvements to real property authorized by section 163.08.

The parties stipulated below that, as authorized by section 163.01(7), the City of Kissimmee and Flagler County created FPFA as a "separate legal entity to administer a program pursuant to section 163.08 . . . under which local governments can [issue bonds

1. As explained below, section 163.08 was substantially amended in 2024. Before then, as relevant to this case, the statute was last substantively amended in 2012. The 2022 version of the Florida Statutes applies to this case.

under chapter 75 to] fund certain improvements for residential and commercial energy conservation and efficiency through the levy of non-ad valorem assessments." (A. 1743).

Section 163.08 provides local governments with "[s]upplemental authority" to further "the compelling state interest in enabling property owners to voluntarily finance [qualifying] improvements with local government assistance." § 163.08(1)(b). Because these improvements further the state's energy goals and are secured by assessments on real property, *see* § 163.08(1)-(3), the programs that finance them are commonly called "PACE" programs, which stands for "property assessed clean energy." (A. 17 n.2). Section 163.08(4) establishes how all PACE assessments must be collected: "assessments shall be collected pursuant to s. 197.3632," which is known as the uniform method of collection, and under which tax collectors collect non-ad valorem assessments on the tax bill.

Before the Legislature enacted section 163.08, counties and municipalities already had home-rule authority to establish PACE programs. So, by its terms, section 163.08 "is additional and supplemental to [that] home rule authority and not in derogation of

such authority or a limitation upon such authority." § 163.08(16). In contrast, legislative entities like FPFA only have the power and authority conferred to them by general law.

(2) Section 163.08 expands FPFA's authority statewide and authorizes it to operate independent of local general-purpose governments.

In the past, including when FPFA first validated bonds in 2011, general law was more limited as to FPFA's authority, so that whenever FPFA operated outside the boundaries of the entities that created it, it did so by agreement with or consent of the other local government. *See* A. 18, 1744. But, in 2012, the Florida Legislature amended section 163.08 to include a "separate legal entity" like FPFA within the definition of "local government." *See* § 163.08(2)(a), Fla. Stat. (2012) (" 'Local government' means a county, a municipality, a dependent special district defined in s. 189.012, *or a separate legal entity created pursuant to s. 163.01(7).*") (emphasis added).

This legislative expansion of how a "local government" is defined for purposes of financing qualifying improvements under section 163.08 changed everything for FPFA. With it came the statutory authority to operate *statewide*:

> Notwithstanding any other provisions of this section, *any separate legal entity created under this section . . . may* acquire, own, construct, improve, operate, and manage public facilities, *or finance facilities on behalf of any person*, *relating to a governmental function or purpose, including, but not limited to,* wastewater facilities, water or alternative water supply facilities, and water reuse facilities, *which may serve populations within or outside of the members of the entity*. . . .

§ 163.01(7)(g)(1). Read together with section 163.08, FPFA could now issue assessment-backed bonds under chapter 75 to finance qualifying PACE improvements "affixed to a building or facility," § 163.08(10), throughout Florida to help further the State's "compelling state interest" in real property improvements designed to promote energy conservation and efficiency, renewable energy, and wind resistance. *See* § 163.08(1)-(2).

(3) FPFA complies with the controlling statutes and secures a "relatively straightforward" final judgment that becomes "forever conclusive" when no appeal is timely taken.

Acting on its statewide authority, in 2022, FPFA sought to validate $5 billion in assessment-backed revenue bonds. *See* A. 39-79. Section 163.01(7)(e)(4) controlled where FPFA filed its bond validation complaint, how it published constructive notice, and whom it personally served:

> The complaint . . . shall be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 shall be published in Leon County and in each county . . . in which a member of the entity is located, and the complaint and order of the circuit court shall be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county or municipality . . . in which a member of the entity is located.

§ 163.01(7)(e)(4), Fla. Stat.; *see also* A. 1744-45.[2]

Without dispute, FPFA complied with these requirements. *See* A. 1744-45. The State Attorney for the Second Judicial Circuit (as the designated state representative), plus the State Attorneys for the Seventh and Ninth Judicial Circuits (representing the counties where FPFA is located), appeared and pleaded in the case. *See* A. 37. An Assistant State Attorney for the Second Judicial Circuit admittedly "reviewed [FPFA's] Complaint and appeared at the Final Hearing," A. 37, "was provided a copy of the proposed-Final Judgment" before the final hearing, A. 20, "did not object to its entry," A. 35, and even said it "appeared 'fairly straightforward,' " A.

2. In places, the joint stipulation of facts, *see* A. 1744, and the trial court's order, *see* A. 19, inadvertently refer to section 163.01(7)(e)(4) as section 163.08(7)(e)(4). *See also* A. 19 (correctly referencing the provision).

34-35. The trial court rendered the final judgment on October 6, 2022. (A. 80-126).

No one timely filed the direct appeal to this Court that is authorized by general law. *See* § 75.08 (authorizing "[a]ny party to the action . . . dissatisfied with the final judgment" to appeal it to the Florida Supreme Court "within the time and in the manner prescribed by the Florida Rules of Appellate Procedure," which is 30 days, *see* Fla. R. App. P. 9.110(b)); *see also* art. V, § 3(b)(2), Fla. Const. ("The supreme court: . . . [w]hen provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds . . . .").

Because "no appeal [was] taken within the time prescribed," the final judgment became "*forever conclusive*." § 75.09, Fla. Stat. (emphasis added). That phrase, which describes the "[e]ffect of [the] final judgment," has special statutory significance; it means that "the validity of [the] bonds . . . or of any . . . assessments or revenues pledged for the payment thereof, or of the proceedings authorizing the issuance thereof, including any remedies provided for their collection, *shall never be called in question in any court by any person or party*." *Id.* (emphasis added).

(4) After FPFA relies on the conclusiveness of its final judgment to issue $150 million in bonds, the appellants attempt to use rule 1.540(b) to attack the final judgment, the trial court denies their motions, and they appeal.

Relying on the forever conclusiveness of the final judgment, FPFA began operating in some local government jurisdictions in reliance on the final judgment, (A. 1745)—issuing $150 million in bonds through a financing partnership with the intervenor and co-appellee, FortiFi Financial, Inc., (A. 1744-45, 2173). In doing so, FPFA communicated directly with several of the appellants, who took issue with the final judgment, primarily relating to FPFA's independent statewide authority to operate in their jurisdictions and to tax collectors' duties to collect FPFA's assessments using the uniform method.

Some of FPFA's communications with appellants occurred in December and January 2023. (A. 20-21, 25). As early as April 2023, several appellants filed suit to enjoin FPFA from operating in their jurisdictions. *See* Palm Beach County IB at 28-29. Because tax collectors were refusing to collect FPFA's assessments under the uniform method, *see* A. 14, FPFA filed petitions for writs of mandamus, *see* A. 1745. By April 2023, all appellants "as a matter

of fact" had "*actual* notice" of the final judgment FPFA obtained after indisputably following the statutory notice and service requirements. (A. 19-21).

Even so, appellants waited until October 4 and 5, 2023, dates that were 363 and 364 days, respectively, after rendition of the final judgment to file two motions seeking relief from that judgment under rule 1.540(b). In their motions, the appellants collectively relied on three of rule 1.540(b)'s grounds. *See* A. 127-490 (first motion); 1045-47 (request to join first motion); 1048-1572 (second motion).

First, some of the appellants claimed "surprise" under (b)(1) based on an email by FPFA's former counsel. *See* A. 1080-81; Palm Beach County IB at 49-50. In the email, counsel explained that "[t]he content of the 2022 Final Judgment is not new at all" and in support referenced a disclosure about FPFA's statewide authority that it began providing in 2017, which counsel wrote "will come in handy over the next several months when folks *act all shocked* about what the general law says." (A. 2610-11) (emphasis added).

Appellants' second claim of "fraud, misrepresentation, or other misconduct" under (b)(3) was based on FPFA's former counsel's

statements during the bond validation proceedings that the statutes FPFA relied on to claim statewide authority were "black-letter law" (when appellants claim that phrase is reserved for caselaw). Citing the same ground, appellants also took issue with FPFA's former counsel's engaging in varying degrees with their representatives without telling them directly that its bond validation complaint was pending. *See* A. 159-62 (first motion); 1077-80 (second motion).[3]

For their third and last claim, that "the judgment . . . is void" under (b)(4), the appellants contended that the trial court improperly decided collateral matters, which made the final judgment void for lack of subject matter jurisdiction. *See* A. 152-58 (first motion); 1071-77 (second motion). They further claimed not to have been parties and thus not bound by the final judgment for lack of personal jurisdiction, *see* A. 157-58 (first motion); 1072 (second motion), and argued that it would violate their right to due process if they were bound by the final judgment without having

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3. One of FPFA's current attorneys has the same last name as, but is not related to, the former FPFA attorney who appellants claim surprised them and committed fraud, misrepresentation, or misconduct. None of appellants' rule 1.540(b) arguments pertain to any of the attorneys representing FPFA in this appeal.

been provided actual notice of the bond validation proceeding. *See* A. 155-56 (first motion); 1072 (second motion). To further these arguments, appellants raised issues like their home-rule authority, their jurisdiction, and their roles and discretion as constitutional officers. *See, e.g.*, A. 154-55 (first motion); 1074 (second motion).

The trial court held a full-day evidentiary hearing. *See* A. 2189-2579 (transcript). The appellants repeatedly claimed that they were not challenging the bond validation itself, only what they called "collateral matters" improperly decided in the final judgment. *See, e.g.*, A. 2223. But when the trial court asked them for a specific list of exactly what findings they wanted stricken—which were not clearly identified in their motions—appellants could not immediately say, but during an exchange with the court identified several paragraphs, which ultimately resulted in the court's taking a break. *See* A. 2229-38. After the break, appellants said they had "missed" a paragraph. *See* A. 2238-39. All of the paragraphs appellants identified at the hearing concerned either FPFA's independent authority to operate statewide or the tax collectors' duty to collect FPFA's assessments using the uniform method. *See* A. 26-33 (addressing the challenged paragraphs).

Thereafter, the trial court denied appellants' motions in two orders. The first order expounded on an oral ruling from the bench. *See* 2525-26. In it, the trial court denied as procedurally barred the motions by the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits, who had actually appeared and pleaded before entry of the final judgment but failed to timely appeal. (A. 36-38). In the second order, the trial court denied the motions as to the remainder of the appellants for four independent reasons:

> First, Movants cannot use Rule 1.540 to circumvent the clear language of the Legislature declaring bonds 'forever conclusive' once the time for appeal has passed. Second, the Motions are untimely. Third, the Motions fail as a matter of law because the Court was within its jurisdiction to determine the powers of [FPFA] and the collection mechanism for the revenue bonds it was validating. Fourth, the Movants were not deprived of due process in these proceedings.

(A. 21); *see also* A. 22-35) (analyzing each reason).

Appellants then filed four separate notices of appeal, purportedly invoking the Court's jurisdiction under article V, section 3(b)(2). The Court consolidated the appeals and authorized appellants to file a joint appendix. Each of the four groups of appellants filed its own initial brief, and the Court also authorized the filing of four amicus briefs in support of appellants' briefs.

(5) While this appeal is pending, the Florida Legislature changes the law to curtail FPFA's *future* authority to what the appellants claim FPFA's authority *was* in 2022.

While this appeal was pending, chapter 2024-273, Laws of Florida, became effective on July 1, 2024. This new law is a wholesale rewrite of section 163.08 that enacts many of the arguments about the FPFA's authority that the appellants have raised during these proceedings and also adds numerous other sections to Florida law. The new law will apply *prospectively* to require, among many other things, separate legal entities to obtain—from each local government—authorization to operate a program for financing qualifying improvements within each local government's territorial boundaries.

SUMMARY OF THE ARGUMENT

Because Florida law precludes using rule 1.540(b) to attack a bond validation final judgment that by operation of substantive law is "forever conclusive," this consolidated appeal is unauthorized—as were the proceedings below—and this case should be dismissed. Bond validation proceedings are purely statutory, and the controlling text says that judgments validating bonds are "forever conclusive" and "shall never be called in question in any court by

any person or party” once they become final—as the judgment in this case has been since November 2022. Moreover, the Florida Constitution commits to this Court’s mandatory jurisdiction direct “appeals from final judgments entered in proceedings for the validation of bonds,” but only when the appeal is “provided by *general* law.” Art. V, § 3(b)(2), Fla. Const. (emphasis added). General law provides for one appeal that *must* be taken to this Court within 30 days of “*the* final judgment” validating the bonds. § 75.08, Fla. Stat. (emphasis added); *see also* Fla. R. App. P. 9.110(b). Because *this* appeal is not *that* appeal, and the rule 1.540(b) proceeding or any appeal therefrom is unauthorized before *any* court—including the trial court and this Court or any district court of appeal—the Court should dismiss. At the very least, the Court should affirm the trial court’s denials on the ground that rule 1.540(b) cannot be used to attack the “forever conclusive” final judgment.

Alternatively, even if a general procedural rule could properly be read to trump specific constitutional and statutory text governing bond validation proceedings, the Court should still affirm the trial court’s orders denying the rule 1.540(b) motions. The

motions were untimely, rely on procedural buzzwords instead of substantive claims for relief, and are in any event meritless.

STANDARD OF REVIEW

This appeal turns on the interpretation of constitutional and statutory provisions and procedural rules, which are reviewed *de novo*. *See Boyle v. Samotin*, 337 So. 3d 313, 317 (Fla. 2022) (statutory and procedural rules); *Florida Hosp. v. Waterman, Inc. v. Buster*, 984 So. 2d 478, 485 (Fla. 2008) (constitutional and statutory interpretation). If this Court reaches the trial court's denials of the rule 1.540(b) motions, it reviews for abuse of discretion. *See Acosta v. Deutsche Bank Nat'l Trust Co.*, 88 So. 3d 415, 417 (Fla. 4th DCA 2012). The trial court's factual findings supporting the denial of rule 1.540 are reviewed for competent, substantial evidence, while its legal conclusions are reviewed *de novo*. *See State Farm Mut. Auto. Ins. Co. v. Statsick*, 231 So. 3d 528, 532-33 (Fla. 2d DCA 2017).

ARGUMENT

Although the appellants and their amici press scores of issues, this Court should dismiss or affirm the denials at issue in this consolidated appeal for one reason: Rule 1.540(b) cannot be used to

attack a bond validation final judgment after it becomes "forever conclusive." Alternatively, even if rule 1.540(b) could apply to a bond validation final judgment that has become "forever conclusive," because the trial court correctly ruled that the appellants are not entitled to relief from the final judgment validating FPFA's bonds, this Court should affirm the denial of their rule 1.540(b) motions.

I. Because Florida Rule of Civil Procedure 1.540(b) cannot be used to attack a "forever conclusive" bond validation final judgment, the Court should dismiss this appeal.

Bond validation proceedings are "purely statutory," which means that the "power of the courts with reference thereto must be found within the statute itself." *City of Oldsmar v. State*, 790 So. 2d 1042, 1047 (Fla. 2001) (quoting *State v. City of Miami*, 103 So. 2d 185, 188 (Fla. 1958)). In crafting Florida's bond validation law, chapter 75, Florida Statutes, the Florida Legislature established an adversarial process with the State (through its statutorily-designated state attorney) as the constant representative adversary of the prospective bond issuer and codified finality as the statutory centerpiece to "ensure the marketability of the proposed bonds." *Id.* at 1048.

A. Once final, a bond validation judgment is "forever conclusive" and "shall never be called in question in any court or by any person or party."

Under chapter 75's framework, if a timely appeal of a final judgment validating bonds is not filed, both the judgment and the proceedings become "forever conclusive" and "shall never be called in question in any court by any person or party":

> **75.09. Effect of final judgment.**—If the judgment validates such bonds, certificates or other obligations, which may include the validation of the county, municipality, taxing district, political district, subdivision, agency, instrumentality or other public body itself and any taxes, assessments or revenues affected, and no appeal is taken within the time prescribed, or if taken and the judgment is affirmed, such judgment is *forever conclusive* as to all matters adjudicated against plaintiff and all parties affected thereby, including all property owners, taxpayers and citizens of the plaintiff, and all others having or claiming any right, title or interest in property to be affected by the issuance of said bonds, certificates or other obligations, or to be affected in any way thereby, and the validity of said bonds, certificates or other obligations or of any taxes, assessments or revenues pledged for the payment thereof, or of the proceedings authorizing the issuance thereof, including any remedies provided for their collection, *shall never be called in question in any court by any person or party.*

§ 75.09, Fla. Stat. (emphasis added).

A fair reading of section 75.09 forecloses using rule 1.540(b) to attack a bond validation judgment that has become "forever

conclusive." *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946-47 (Fla. 2020) (explaining that this Court follows the "supremacy-of-text principle" in interpreting statutes and thus "recogniz[ing] that the goal of interpretation is to arrive at a 'fair reading' of the text by "determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued") (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33, 56 (2012)).

To signal its intent to protect bond validation judgments from post-finality challenges, the Legislature could not have chosen clearer words. After all, "forever" means "[f]or everlasting time; eternally." *The American Heritage Dictionary of the English Language* (5th ed. 2022).[4] "Conclusive" means "[s]erving to put an end to doubt, question, or uncertainty." *Id.* "Never" means "[n]ot

4. This dictionary is available at: https://www.ahdictionary.com (last visited July 15, 2024).

ever; on no occasion; at no time." *Id.* "Any" means "[o]ne or some; no matter which."[5]

The same statutory conclusiveness that prohibited appellants' post-finality attack in the trial court likewise prohibits this appeal. Additional, controlling text underscores this. Article V, section 3(b)(2) of the Florida Constitution commits appeals from final judgments in bond validation proceedings to this Court's mandatory direct appellate jurisdiction—but only "[w]hen provided by general law." General law providing for appellate review in bond validation proceedings authorizes only a direct appeal to this Court of "*the* final judgment" within 30 days of its rendition. § 75.08, Fla. Stat. (emphasis added); *see also* Fla. R. App. P. 9.110(b). And that statutory language must be read in the context of section 75.09's "forever conclusive" mandate.

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5. Obviously, "any person or party" includes all of the appellants and amici (who, in some cases, also overlap with the appellants). The breadth of the group of parties bound by a bond validation judgment encompasses corporations, non-profit organizations, and governments as well as natural persons. *See, e.g.*, *Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 48 So. 3d 811 (Fla. 2010) (including, among the parties, natural persons, a corporation, several non-profit organizations, and a federally recognized tribal government).

Because no one timely appealed the final judgment validating FPFA's bonds, this Court lacks jurisdiction. *See Mallett v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) ("The Florida Supreme Court is 'a court of limited jurisdiction, *Baker v. State*, 878 So. 2d 1236, 1245 (Fla. 2004), with authority to hear only those matters specified in Florida's Constitution. *See* art. V, § 3(b), Fla. Const."); *see also State ex rel. v. Special Tax Dist. No. 2, Martin Cnty.*, 197 So. 119, 119 (Fla. 1940) (dismissing bond validation appeal for lack of jurisdiction where notice of appeal was untimely).[6]

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6. Section 75.17, Florida Statutes, titled "[c]ommencement of an action after validation; affidavit of good faith," does not negate the conclusive effect of a *final* bond validation judgment that has become *forever conclusive* within the meaning of section 75.09. Likewise, it does not alter the direct *appeal* to this Court provided by section 75.08 and article V, section 3(b)(2). The section uses none of these terms. Although there does not appear to be any case interpreting section 75.17, the fairest reading of it in context with the rest of chapter 75 is as establishing an additional hurdle if any attempt is made to challenge a bond validation outside of "the validation action." Here, none of the appellants have attempted to claim section 75.17 applies—nor could they because they attempted to reopen the bond validation action using rule 1.540(b) rather than contending that section 75.17 authorizes them to press a separate action supported by an affidavit of good faith explaining why their "objection[s] [were] not made as part of the validation action."

B. The Court should uphold the conclusiveness of the final judgment by dismissing this unauthorized appeal.

Contextually, chapter 75 and article V, section 3(b)(2) preclude appellants from using rule 1.540(b) to attack either the final judgment validating FPFA's bonds or the proceedings underlying that judgment. Yet, appellants urge this Court to rely on its constitutional authority to adopt rules for court practice and procedure, *see* art. V, § 2(a), Fla. Const., and its bond validation precedent to hold otherwise. The Court should not do so.

In the purely statutory context of bond validation proceedings, the Florida Constitution's strict separation of powers provision precludes reading a general procedural court rule to erase express substantive law on the conclusive effect of a final judgment. *See* art. II, § 3, Fla. Const.; *see also generally Allen v. Butterworth*, 756 So. 2d 52, 60 (Fla. 2000) (distinguishing matters of substance reserved to the Legislature from procedural matters reserved to the Court). This Court's precedent shows that it has indeed deferred to the bond validation statutes over its own procedural rules. For example, this Court has previously refused to apply a procedural joinder rule that was incompatible with "the unique statutory

design for disposition of [bond validation] proceedings with greater speed than other litigation." *State v. Fla. Dev. Comm'n*, 143 So. 2d 676, 679 (Fla. 1962).

Applying separation of powers principles to bond validation proceedings, rule 1.540(b) cannot be used to provide a second bite at judicial review of the final judgment. Article V, section 3(b)(2) expressly limits judicial review of bond validation proceedings to the process set forth in "general law." General law, *i.e.*, chapter 75, does not authorize anything other than a direct appeal filed within 30 days. *See* § 75.08; *see also* Fla. R. App. P. 9.110(b). To the extent the appellants argue that applying general law to dispose of this case somehow interferes with the Court's plenary rulemaking authority, the constitution cannot be unconstitutional. As to rule 1.540(b) specifically, this Court's bond validation precedent does not authorize using the rule to mount post-finality attacks on judgments that have become forever conclusive.

To argue otherwise, appellants primarily rely on *Mize v. Seminole County*, 229 So. 2d 841 (Fla. 1969). But that is not what *Mize* holds. *Mize* did involve an appeal from the denial of a rule 1.540(b) motion that sought relief from a judgment validating

bonds. *See id.* at 842. But a careful reading of *Mize* shows that this Court consolidated the rule 1.540(b) appeal *with the direct appeal* from the judgment that validated the bonds. *See id.* Because the validation judgment was pending on direct appeal, it had not yet become "forever conclusive" under section 75.09.

By contrast, the judgment validating FPFA's bonds became forever conclusive in November 2022 after *no direct appeal* was timely taken. Because *Mize* did not address whether rule 1.540(b) is properly used to challenge a bond validation judgment that has already become "forever conclusive," *Mize* is inapplicable and thus cannot be dispositive here.

Although no past decision seems to be on all fours with this case, this Court has consistently read section 75.09's text to have teeth. For example, over one hundred years ago, in *Steen v. Board of Public Instruction of Palm Beach County*, 85 So. 684, 685 (Fla. 1920), this Court held that a circuit court was "without authority" to vacate its own decree validating bonds that had not been timely appealed and thus had become forever conclusive.

Several decades later, in *Hall v. Orlando Utilities Commission*, 432 So. 2d 1318, 1319 (Fla. 1983), this Court dismissed for lack of

standing an appeal that attempted to challenge a circuit court's denial of a motion to set aside a bond validation judgment that was filed four months after rendition of the judgment. Although the *Hall* court did not explain the basis for the motion, it emphasized that because the time for appealing the final judgment had "long since expired," using the motion "to challenge the judgment in such a circuitous fashion flies in the face of section 75.09." In so holding, the Court locked in on the statutory text, which "evinces obvious legislative intent that judgments validating bonds are forever conclusive as to all matters adjudicated against all parties affected thereby if no appeal is taken within the time prescribed."

More recently, in *Reynolds v. Leon County Energy Improvement District*, 176 So. 3d 254, 256 (Fla. 2015), this Court relied on the text of chapter 75 to hold that only "those who appear and plead in the circuit court proceedings" *before* the final judgment is entered "may avail themselves of the right of appeal recognized in section 75.08." Thus, an individual who did not appear during the trial court proceedings but sought to bring an otherwise timely direct appeal of the final judgment was prohibited from doing so. Although, unlike this case, *Reynolds* did not involve a post-finality

attack on a final judgment, *Reynolds* underscores this Court's commitment to hewing closely to chapter 75's text.[7]

Applying chapter 75's text here, this Court should hold that rule 1.540(b) cannot be used to challenge FPFA's "forever conclusive" bond validation final judgment and dismiss this appeal. But even if this Court does not view dismissal as the correct result, it should affirm the trial court's denials on the ground that rule 1.540(b) cannot be used to reopen a "forever conclusive" bond validation proceeding. *Compare Reynolds*, 176 So. 3d at 256 (affirming where appellant lacked standing to challenge bond validation), *with id.* at 256 (Canady, J., dissenting) (arguing

7. *Reynolds* also begs this question: If the failure to appear and plead in the trial court precluded Reynolds from prosecuting an appeal that otherwise would have been timely, how can the appellants use rule 1.540(b) to effectively accomplish what Reynolds could not? Many of the appellants might say that the answer is because, unlike Reynolds, they were never parties to the underlying bond validation proceeding. But if that is their answer, then the text of rule 1.540(b)—which only applies to "a party or a party's legal representative"—is just as much of a problem for them as the text of chapter 75. Although FPFA's position is that all the appellants were parties, many of them have staked out the opposite position, while simultaneously seeking to travel under the party-limited provisions of rule 1.540(b).

dismissal was the correct result). Either disposition would enforce the "forever conclusive" effect of the bond validation final judgment.

II. Alternatively, because appellants are not entitled to relief from the final judgment, this Court should affirm the denials of their rule 1.540(b) motions.

Florida's bond validation law precludes appellants' post-finality attacks on the judgment validating FPFA's bonds. But even if this Court disagrees, it should nevertheless affirm for any of three alternative reasons: (1) the rule 1.540(b) motions were not filed within a reasonable time; (2) the motions improperly rest on complaints about judicial error that should have been appealed and policy concerns properly put to the Legislature; and (3) appellants' complaints are, in any event, meritless.

A. The motions were not filed within a reasonable time.

Rule 1.540(b) provides a party to a final judgment with limited bases for seeking relief from that judgment after it becomes final. As relevant here, the rule provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons:
>
> (1) . . . surprise . . .

. . .

> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (4) that the judgment, decree, or order is void . . . .

Fla. R. Civ. P. 1.540(b)(1), (3)-(4).

Regardless of the ground, *all* rule 1.540(b) motions are subject to the same diligence requirement: "The motion *shall be filed within a reasonable time*, and for reasons (1) . . . and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken." Fla. R. Civ. P. 1.540(b) (emphasis added).

Determining diligence under the rule is "left to the discretion of the trial court." *Purdue v. R.J. Reynolds Tobacco Co.*, 259 So. 3d 918, 922 (Fla. 2d DCA 2018); *see also Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980) ("If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion."). That an alleged "void" judgment generally can be attacked at any time does not mean that a party can hold the alleged "void" judgment in its back pocket and pull it out when it is procedurally convenient. The same logic applies to a (b)(1) or (b)(3)

motion filed on the eve of the one-year mark after which the rule's text will deem the motion too late. At some point, sitting on rule 1.540(b) arguments stops being "reasonable"—and deciding that point is within the trial court's discretion.

On the record in this case, the trial court was within its discretion to find that appellants motions were not brought within a reasonable time. The final judgment was rendered on October 6, 2022. Even putting aside that all the appellants had either actual or constructive notice of the bond validation proceedings *before* the final judgment was rendered—and some of the appellants even appeared and pleaded—every appellant had "*actual* notice [of the final judgment] by, at the latest, April 2023." (A. 21). Yet, the appellants did not file their rule 1.540(b) motions until October 4 and 5, 2023—dates that fell months *after* some of them had already filed separate lawsuits against FPFA to press many of the same legal arguments at the core of their rule 1.540(b) motions. *See, e.g.*, Palm Beach County IB at 28-29. And appellants waited this long despite *stipulating* to the *fact* that both FPFA and FortiFi had been operating "in reliance on the Final Judgment" after its issuance. (A. 1744-45).

Accordingly, even if rule 1.540(b) properly can be used to attack a "forever conclusive" bond validation final judgment, which it cannot, this Court should affirm the trial court's denial of appellants' motions as untimely.

B. Procedural buzzwords aside, the substance of the motions impermissibly rests on complaints about the trial court's construction of the controlling statutes and policy concerns properly put to the Legislature.

Even if the motions were authorized and timely, which they were not, rule 1.540(b) is not "a substitute for appellate review of judicial error." *Curbelo v. Ullman*, 571 So. 2d 443, 444 (Fla. 1990) (quotation omitted). Rather, to prove entitlement to relief under the (b)(1), (3), and (4) grounds that appellants alleged required them to advance proof of surprise, fraud, misrepresentation, misconduct, or voidness that would have made a difference to the outcome. *See Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*, 20 So. 3d 952, 958 (Fla. 4th DCA 2009) (explaining that a rule 1.540(b) motion must demonstrate "prejudice" flowing from one of its grounds that affected the outcome of the case).

Although appellants' motions track these procedural buzzwords, in substance, rather than proving up real reasons to

reopen a final judgment, they impermissibly request a do-over and attempt to set up a direct appeal to this Court. But how they can get here now is unclear, particularly given the trial court's factual finding that "[n]o evidence was presented . . . that, if [appellants] had actual notice of the bond validation proceeding or the Final Judgment's issuance, they would have participated, intervened, or otherwise sought to appeal the Final Judgment." (A. 21).

Moreover, as to all the alleged grounds, the trial court rightly determined that the appellants did not make the necessary showing. Regarding alleged surprise under (b)(1), the record shows that, in 2017, FPFA informed at least one of the appellants that it had authority to act statewide, independent of county approval. *See* A. 2610-2782. Regarding alleged fraud, misrepresentation, or other misconduct by FPFA's former counsel under (b)(3), the trial court ruled from the bench that the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits—who actually appeared and pleaded before the final judgment—"failed to show any fraud upon the Court or them." (A. 2525-26).

Appellants' voidness attacks under (b)(4) fare no better. Although appellants cloak those attacks as constitutional claims, at

their core, they boil down to one of two things: (1) disagreements with the trial court's reading of the controlling statutes or (2) disagreements with Legislature's policy choices, including FPFA's statewide authority and the notice, service, and party-representation provisions applicable to bond validation proceedings. As to the first, rule 1.540(b) does not permit reopening a final judgment to revisit "judicial error" that should have been appealed. *Curbelo*, 571 So. 2d at 445. And, as for the second, courts are "without constitutional authority to second-guess the legislature's policy choices." *Buechel v. Shim*, 340 So. 3d 507, 511 (Fla. 5th DCA 2021).

Moreover, that a bond validation final judgment arguably includes findings on "collateral" issues does not mean that the court lacked subject matter jurisdiction so that the final judgment *itself* is void (as it must be to implicate rule 1.540(b)(4)'s text). Subject matter jurisdiction is not conferred on a finding-by-finding basis, but rather with respect to power over the case. *Cf. Brevard Cnty. v. Obloy*, 301 So. 3d 1114, 1117 (Fla. 5th DCA 2020) (distinguishing "subject matter jurisdiction," which means "the authority to hear and decide *the case*," from "procedural

jurisdiction," which means "the power of the court over a particular case that is within its subject matter jurisdiction") (quotations omitted) (emphasis added).

Both below and in their briefs to this Court, appellants concede that the trial court properly validated FPFA's bonds. That concession is necessarily a concession that the trial court had subject matter jurisdiction over the bond validation proceeding and, thus, the authority to enter the final judgment. If appellants wanted to challenge any of the specific findings contained in the final judgment, then they had to appear and present their objections to those findings *to the trial court* before the final judgment was entered to properly get them before this Court. Indeed, in bond validation cases, the centerpiece of most timely and authorized *direct* appeals is the argument that the trial court improperly decided collateral matters in validating the bonds. *See, e.g.*, *Keys Citizens for Responsible Gov't Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940, 946 (Fla. 2001).

The trial court rightly looked past the buzzwords and refused to read rule 1.540(b) as covering any of appellants' claims.

C. Even if properly raised, appellants' arguments are meritless.

At the very least, the trial court rightly refused to reopen and strike portions of the final judgment validating FPFA's bonds because appellants' arguments are meritless. Contrary to their obligation to preserve their arguments, throughout these proceedings, nailing down the specific findings that the appellants say should be stricken was like trying to hit a moving target. *See* A. 26 n.5. Broadly put, appellants (and their amici) take issue with all findings about FPFA's statewide authority to independently operate and assess real property and the tax collectors' duties to collect FPFA's assessments using the uniform method of collection.

In support of their arguments, appellants improperly rely on a staff analysis, as well as a slew of inapposite cases. But statutory text decides this case. *Cf. Kidwell Grp., LLC v. Olympus Ins. Co.*, 346 So. 3d 658, 661 n.4 (Fla. 5th DCA 2022) (explaining that using a staff analysis to interpret statutory text is contrary to the supremacy of-text principle, which relies on "the text itself") (quoting *Ham*, 308 So. 3d at 946). As the trial court rightly concluded, under a fair reading of the bond validation statutes and

the statutes that govern separate legal entities like FPFA, the challenged findings were properly included as matters connected with the validation of FPFA's bonds.

Specifically, section 75.01, Florida Statutes, which controls jurisdiction in bond validation proceedings, vests the circuit courts with "jurisdiction to determine the validation of bonds . . . and all matters connected therewith." Section 75.02, Florida Statutes, provides that the plaintiff (here, FPFA) "may determine its authority to incur bonded debt . . . and the legality of all proceedings in connection therewith." *See Keys Citizens*, 795 So. 2d at 947 (explaining that a local government's authority and power to act goes to the validity of its bonds).[8]

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8. *Keys Citizens* repeats the oft-cited three-prong list of the "scope of this Court's inquiry in bond validation hearings": "(1) determining whether the public body has the authority to issue the bonds; (2) determining whether the purpose of the obligation is legal; and (3) ensuring that the bond issuance complies with the requirements of law." 795 So. 2d at 944. But *Keys Citizens* also does something that other decisions do not: it views these points through the lens of chapter 75's statutory text and thus provides a helpful framework for deciding whether an issue is "connected with" the validation of bonds. Under that framework, an issue is collateral only if it involves either (1) "interested parties" who are not parties to the bond validation action or (2) issues not "tied to the financing agreement on which the bonds will be secured" or not subsumed within "the trial court's inquiry into whether the public

Section 75.09 establishes that assessments and the "remedies provided for their collection" are matters connected with the validation of bonds. Specifically, it provides that the judgment validating bonds "may include the validation of the [governmental entity] itself and any . . . assessments or revenues affected," so that once final, the judgment becomes "forever conclusive," and the "validity of [the] bonds, . . . assessments . . . or of the proceedings authorizing the issuance thereof, including any remedies provided for their collection, shall never be called in question in any court by any person or party." *See Donovan v. Okaloosa Cnty.*, 82 So. 3d 801, 806 (Fla. 2012) (holding circuit court had jurisdiction to validate the assessments that would partially fund the bonds being validated).

Measured against statutory text, the challenged findings are "matters connected" with the validation of FPFA's bonds and thus were properly included in the final judgment. All the challenged

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body has the authority to issue the bonds." 795 So. 2d at 946-47. In this case, because all the appellants were represented by the statutorily-designated state attorneys and because the challenged findings were tied to the financing agreement or directed at FPFA's authority, *Keys Citizens* underscores that the final judgment does not decide collateral matters.

findings connect to FPFA's ***authority*** to independently operate statewide—as a separate legal entity of government under sections 163.01(7)(g) and 163.08, Florida Statutes—by issuing bonds backed by non-ad valorem assessments on real property and to the ***remedy*** for collecting those assessments under the uniform method of collection. Moreover, the findings tie to "the legality of the financing agreement" securing FPFA's bonds, which is itself "[s]ubsumed within the inquiry as to whether the public body has the authority to issue the subject bond." *Keys*, 795 So. 2d at 946 (quoting *State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1994)).

In addition to arguing that the final judgment improperly decided collateral matters, appellants quarrel with the final judgment for other reasons—claiming lack of personal jurisdiction, due-process violations, violation of county home-rule authority, and usurpation of the constitutional roles of counties, tax collectors, and state attorneys. But these arguments, too, defy statutory text.

No matter how vehemently the appellants (or their amici) oppose FPFA, or the general law establishing FPFA's authority to independently operate and assess property statewide, or the general law requiring collection of FPFA's assessments using the uniform

method, or the Florida Legislature's policy choices on service, notice, and government party-representation in statewide bond validations, the Florida Statutes say what they say. And, in this case, as the trial court found, there is zero dispute that FPFA satisfied all the statutory requirements applicable to its statewide bond validation.

Applying those requirements here deprived no appellant of due process (even assuming appellants as governmental entities have a right to due process) because they were all represented by the statutorily-designated state attorneys, who actually appeared and pleaded in the bond validation proceeding. The Legislature has absolute say over the State's representative adversary, as "[l]ocal governments, including counties and municipalities, are creatures of the State without any independent sovereignty," and "article VIII expressly grants the Legislature plenary authority over the state's local governments." *Fried v. State*, 355 So. 3d 899, 907 (Fla. 2023).

Likewise, recognizing the tax collectors' ministerial duty to collect assessments using the uniform method simply applies the mandatory text of section 163.08(4) and upholds the long-recognized point that tax collectors have no authority to refuse to

collect non-ad valorem assessments even if they believe them to be improper or invalid. *See Escambia Cnty. v. Bell*, 717 So. 2d 85, 88 (Fla. 1st DCA 1998); *see also* A. 1865-73 (Florida Department of Revenue guidance "confirming that . . . under the *Bell* case and Section 197.3632(2)," the tax collector has a ministerial duty to place [FPFA's] assessment on the tax notice once statutory requirements are satisfied" and "does not have discretion or authority to refrain from performing the ministerial duties specified by the statute"). Similarly, recognizing FPFA's textual independent statewide authority does not prevent the counties from using their home-rule authority to administer their own PACE programs, which is consistent with section 163.08(16)'s non-derogation language.

For the very reason that the statutory text is dispositive as to all appellants' arguments, this Court should measure the final judgment against that text rather than cherry-picked snippets from past decisions. Two holdings from one of appellants' lead cases—*City of Miami*, 103 So. 2d 185—illustrate the importance of viewing the facts of each case through the lens of statutory text.

City of Miami, unlike this case, did not involve a statewide bond validation. So, although it is unsurprising that in that case

this Court rejected "the attempt to bring . . . various municipalities outside of the City of Miami before the Court," it would be nonsensical to apply that holding here—where the State Attorney for the Second Judicial Circuit is the legislatively-designated representative for the entire State. 103 So. 2d at 190. Yet, another of *City of Miami*'s holdings is analogous. In *City of Miami*, this Court recognized that whether Dade County's home-rule authority "impair[ed] the power and right of the City" to issue its bonds or "render[ed] the City . . . unable to comply with any or all of the provisions of the Trust Indenture" that "secur[ed]" those bonds *was* "properly raised for consideration"—i.e., not collateral to the bond validation proceeding. *Id.* at 187. The final judgment here decides very similar matters with respect to FPFA's authority under general law to operate statewide—independent of any local government's home-rule authority. And that makes sense because, as *City of Miami* suggests, under a fair reading of chapter 75's text those are matters "connected" with the validation of bonds.

But, if the statutory text leaves any doubt, which it should not, the Florida Legislature substantially rewrote section 163.08 in response to the recent controversy in this case. *See* ch. 2024-273,

Laws of Fla. Although at least one district court of appeal has read this Court's supremacy-of-the-text precedent to mean that "consulting subsequent legislative amendments in response to recent controversies is no longer a viable basis for construing the meaning of a statute," *State v. Crose*, 378 So. 3d 1217, 1235 (Fla. 2d DCA 2024), FPFA is not asking this Court to look beyond the text to decide this case. Instead, FPFA is simply asking this Court to note that the text used in the legislative rewrite is worlds apart from the statutory text applicable here, which cannot fairly be read as subjecting FPFA to local government control.

* * *

Appellants' multifarious arguments boil down to a single overarching request: that this Court engage in the very "evil" that bond validation, as a concept, was meant to forestall. At its outset, bond validation was an attempt to curb the Reconstruction-era excesses of power and rapidly shifting political tides, which lead to the repudiation by subsequent political leaders of obligations to repay debts incurred by their predecessors. Fraser Brown, *Municipal Bonds: A Statement of the Principles of Law and Custom Governing the Issue of American Municipal Bonds with Illustrations*

from the Statutes of Various States 145-49 (1st ed. 1922). A validation decree forever concludes the matter *prior* to the debt's issuance such that no one can later claim a reason not to repay the debt; any "defenses to collection are set at rest in the beginning." *State v. Fla. St. Turnpike Auth.*, 80 So. 2d 337, 342 (Fla. 1955).

Yet, appellants seek to have this Court repudiate a bond validation *now* based on the current political leadership's disagreement with the policy choices made by the Legislature—and validated by the circuit court—*previously*. The practical result of this political wind-shift would be to deprive FortiFi, an investor who relied on that same bond validation to lend $150 million for FPFA's public purposes, of repayment of that debt; that same ability to challenge bond validations after finality would undermine, potentially catastrophically, the finality of *all* bond validations statewide. This flies in the face of the historical purpose of bond validation, the plain language of the bond validation statutes, this Court's precedent, and basic concepts of fairness and good governance.

Accordingly, if the Court somehow reaches the merits of the underlying bond validation final judgment, it should leave it intact and affirm the trial court's denials of the rule 1.540(b) motions.

CONCLUSION

Because Florida law prohibits using rule 1.540(b) to attack bond validation final judgments that, by operation of substantive law, have become "forever conclusive," this Court should not reach any of appellants' arguments and instead should dismiss this appeal. Alternatively, because the trial court rightly denied appellants' rule 1.540(b) motions, this Court should affirm.

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Respectfully submitted,

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I certify that a true and correct copy of the foregoing was served on the following counsel of record listed on the Florida Courts E-Filing Portal via said portal this 23rd day of July 2024:

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.210(a)(2)(B) because it was prepared using Bookman Old Style 14-point font and because the word count from the word-processing system used to prepare this document, excluding exempt parts of the brief, is 8,399 words.

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