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.

REPLY BRIEF OF APPELLANTS PALM BEACH COUNTY, FLORIDA, ANNE GANNON, IN HER OFFICIAL CAPACITY AS PALM BEACH COUNTY TAX COLLECTOR, POLK COUNTY, FLORIDA, JOE TEDDER, IN HIS OFFICIAL CAPACITY AS POLK COUNTY TAX COLLECTOR, AND NOELLE BRANNING, IN HER OFFICIAL CAPACITY AS LEE COUNTY TAX COLLECTOR

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

In urging affirmance, Appellees invite a sea-change in Florida's bond validation law. Although framed primarily as a question of statutory interpretation, the statutory text and decades of precedent foreclose Appellees' arguments. Appellees ask the Court to both: (1) impermissibly read one section of chapter 75 in a vacuum – divorced from the complete statutory text and purpose; and (2) overrule, either expressly or *sub silentio*, most of the Court's bond validation precedent. Further, the precedent that Appellees challenge includes fundamental, bedrock decisions like *State v. City of Miami*, 103 So. 2d 185 (Fla. 1958) and its progeny – precedent that this Court has consistently affirmed for nearly 70 years.

Appellees fail to meaningfully address the primary issues in this appeal, including the trial court's lack of jurisdiction, and the lack of due process concerning the collateral matters in the underlying Final Judgment. Instead, Appellees offer a contrived interpretation of section 75.09 to suggest the Final Judgment is eternally binding and entirely immune to challenge, regardless how far it strayed from the statutorily-limited scope of chapter 75 proceedings, and even if it violated fundamental principles of due process. According to

Appellees, because these were chapter 75 proceedings, this would remain true even if the trial court lacked jurisdiction to render judgment in the first place.

Appellees' position is foreclosed by this Court's precedent and contrary to fundamental principles of American jurisprudence. It is axiomatic that, when a person's rights are adjudicated, they are entitled to notice and an opportunity to be heard. Such protections are particularly important here, where the Final Judgment invades the home rule authority of Florida's sixty-seven counties.

ARGUMENT

I. Section 75.09 Does Not Preempt Rule 1.540.

Appellees principally argue that section 75.09 controls this appeal, claiming that bond validation judgments, if not timely appealed, become "forever conclusive" and eternally immune to challenge, including via Rule 1.540 of the Florida Rules of Civil Procedure ("Rule(s)"). Appellees' argument is incorrect and, if accepted, would render section 75.09 constitutionally infirm.

A. Appellees' Argument Ignores this Court's Precedent.

This Court has expressly rejected Appellees' argument that section 75.09 renders *anything* decided within a bond validation final

judgment "forever conclusive" and immune from attack. In *Gainesville v. State*, 366 So. 2d 1164 (Fla. 1979), a party argued that section 75.09 foreclosed subsequent litigation concerning collateral matters included in a bond validation judgment, relying on *Lipford v. Harris*, 212 So.2d 766, 768 (Fla. 1968). This Court flatly rejected the argument, declining to "believe that the principle announced in the *Lipford* case applies to 'put at rest' collateral questions that were somehow brought into the proceedings but need not and should not have been brought in," and permitting the City to litigate the propriety of the collateral matters. *Gainesville*, 366 So. 2d at 1166.

This Court also expressly approved the use of Rule 1.540 to attack void portions of a final bond validation judgment in *Mize v. Seminole County*, 229 So. 2d 841 (Fla. 1969). While Appellees claim a "careful reading" of *Mize* suggests the opinion is inapposite because it involved consolidated appeals, Appellees' reading of *Mize* is, at best, "carefully selective." In *Mize*, this Court held there was "no question" it had jurisdiction to hear the appeal from a Rule 1.540 order—a fact that Appellees fail to note. *Mize*, 229 So. 2d at 843. Specifically, the *Mize* opinion identified one of the three consolidated appeals – case number 38,200 – as arising from the denial of a post-validation Rule

1.540 motion. In addressing its jurisdiction, the Court concluded "[t]here is no question concerning the jurisdiction of this Court in the bond validation proceedings in No. 38,014, *nor is there any question of our jurisdiction in No. 38,200* . . . ." *Id.* (emphasis added). Therefore, irrespective of consolidation, the Court expressly found it had jurisdiction to consider an appeal from a post-judgment order denying a Rule 1.540(b) motion seeking relief from a final bond validation judgment—precisely as here. *Id.* The *Mize* holding also rebuts FPFA's argument that the Court lacks direct appellate jurisdiction from orders on Rule 1.540 motions, and that appeals can only be from the original final judgment, not from related post-judgment orders.

B. Appellees' Reading of Section 75.09 Would Render the Statute Unconstitutional.

Appellees' construction of section 75.09 is untenable for another fundamental reason: their interpretation would render section 75.09 unconstitutional. Under Appellees' reading, *no* determinations within a bond validation judgment could ever be raised once the appeal period expired – even portions of the judgment void for lack of jurisdiction or due process, and even if the result

violated Florida's constitutional separation of powers requirement. *See* Initial Brief ("IB") at 23-24.

This Court consistently recognizes its "duty 'to adopt a reasonable interpretation of a statute which removes it farthest from constitutional infirmity.'" *E.g.*, *License Acquisitions, LLC v. Debary Real Estate Holdings, LLC*, 155 So. 3d 1137, 1146 (Fla. 2014)(quotations omitted); *State ex rel. Pittman v. Stanjeski*, 562 So. 2d 673, 673 (Fla. 1990) ("We agree that the statute as interpreted by the district courts would be unconstitutional. We find, however, that the statute may be reasonably interpreted in a manner which … eliminat[es] the lower courts' bases for holding the statute unconstitutional.").

Pittman is particularly instructive. There, the Court considered a provision of Florida's child support laws that provided "[t]he court does not have the power to set aside, alter, or modify such order or any portion thereof[.]" *Id.* at 679. As here, a party alleged such statutory language barred Rule 1.540 challenges, and foreclosed parties from raising any defenses once the statute's application had been invoked. *Id.* at 676. The Second and Fourth District determined that this interpretation violated constitutional separation of powers,

access to courts, and due process requirements. *Id.* The Supreme Court agreed, but identified an alternative reading permitting defenses and Rule 1.540 motions, thereby avoiding constitutional infirmity. In doing so, the Court noted that reading the statute to foreclose the application of Rule 1.540:

> would mean that the legislature intended to prohibit the court from correcting its own judgments that were entered on the basis of fraud, clerical mistake, or the other narrow grounds enumerated in rule 1.540. ***We find that such a construction would be totally unreasonable***. Courts have generally had the inherent authority to correct a judgment on most of the grounds set forth in rule 1.540.

Id. at 679 (emphasis added); *see also Walker v. Bentley*, 678 So. 2d 1265, 1267 (Fla. 1996) (legislative enactments abrogating the court's inherent powers directly affect a separate and distinct function of the judicial branch, and thereby violate separation of powers). The same analysis applies here.

The indefensible corollary of Appellees' reading of section 75.09 is that, far beyond core bond validation issues, a validation judgment could determine matters *wholly collateral* to chapter 75—e.g., a non-party's liability for $100,000,000—yet section 75.09 would nevertheless bar challenges to such ruling because the non-party (who lacked notice and an opportunity to participate) did not directly

appeal. Of course, such framework would be unconstitutional and violative of both access to courts and fundamental due process.

Appellees' other argument is that chapter 75's "forever conclusive" language confers a "substantive right" such that the separation of powers doctrine precludes Rule 1.540 challenge. This argument fails for several reasons. First, Appellee's reading of section 75.09 to preempt Rule 1.540 would necessarily violate separation of powers – as discussed above, and as this Court has held. *See Pittman*, 562 So. 2d at 679. Indeed, prescribing the "effect of [a] final judgment" does not create substantive rights – it merely explains the process or method by which courts are to enforce existing judgments. This is the definition of a rule of practice or procedure. *See Massey v. David*, 979 So. 2d 931, 937 (Fla. 2008). As such, reading section 75.09 to impliedly displace Rule 1.540 would unconstitutionally invade the Court's exclusive rulemaking authority. *Id.* at 937 ("where this Court has promulgated rules that relate to practice and procedure, and a statute provides a contrary practice or procedure, the statute is unconstitutional to the extent of the conflict … where a statute has some substantive aspects, but the procedural requirements of the statute conflict with or interfere with the

procedural mechanisms of the court system, those requirements are unconstitutional."). This is particularly true given that Rule 1.540 codifies the existing, inherent powers of the courts. *See, e.g., Allen v. Butterworth*, 756 So. 2d 52, 61-62 (Fla. 2000) (holding that Legislature lacked authority to impose time limitations on habeas corpus).

Second, even if section 75.09 created substantive rights, it does not directly conflict with Rule 1.540 or purport to preempt or repeal the Rules. Instead, Appellees concoct an implied conflict, despite both section 75.09 (and the related section 75.08) expressly recognizing that the Rules apply. *See* § 75.08 (providing for appeals "within the time and in the manner prescribed by the Florida Rules of Appellate Procedure"); § 75.09 (addressing whether the "appeal is taken within the time prescribed").[1]

Finally, Appellees' cases do not support their argument that section 75.09 trumps Rule 1.540. Indeed, *State v. Florida Development Commission*, 143 So. 2d 676 (Fla. 1962) does not even address separation of powers concerns—it merely notes that, while

[1] The Rules also expressly apply in bond validation proceedings. *See* Rule 1.010.

the subject statute and appellate rules could arguably conflict, any conflict was immaterial because the appellate issues were properly before the court. In *Hines v. State*, 931 So. 2d 148 (Fla. 1st DCA 2006), the court considered a statute and a criminal procedure rule which created substantive rights to dismissal of criminal charges after differing time periods. The *Hines* court properly observed that, in that instance, the statute governed because the rule improperly purported to create substantive dismissal rights differing from the statute. Nonetheless, *Hines* also recognized that "a statute which attempts to regulate practice and procedure is unconstitutional under the separation of powers provision … and it violates the supreme court's rulemaking authority under article V, section 2(a)[.]" *Id.* at 150. Appellees' other cases similarly involved procedural rules that improperly attempted to create substantive rights. *See In re Amendments to Fla. R. Civ. P.*, 682 So. 2d 105, 105-06 (Fla. 1996) (Rule 1.442 purported to address substantive right to attorney's fees, conflicting with section 768.70, Fla. Stat); *Lundstrom v. Lyon*, 86 So. 2d 771, 772 (Fla. 1956) (former Rule 1.2 purported to determine substantive statutes of limitation rights, conflicting with section 95.01, Fla. Stat.).

This case presents the opposite circumstances. Rule 1.540 does not purport to create any substantive rights, nor does it conflict with section 75.09, which to the contrary expressly calls for application of the Rules.

C. Appellees' Expansive Interpretation of Section 75.09 and the Amendment of Section 163.08(2)(a) Are Incorrect.

Appellees' expansive reading of section 75.09 as barring challenges to collateral matters decided in the Final Judgment is also incorrect. Section 75.09 was not intended to forever bar challenges to a final bond validation judgment, but instead, as stated in *Gainesville*, only to preclude challenges to matters properly decided within the limited scope of chapter 75 proceedings, i.e., the core issue of the validity of bond issuance.

Here, Appellants do not challenge the trial court's core decision validating the bonds, rather, Appellants challenge only the collateral matters the trial court erroneously decided while validating the bonds—a challenge which this Court recognizes as appropriate. *See, e.g.*, *City of Miami*, 103 So. 2d at 190; *Gainesville*, 366 So. 2d at 1066. Even *Donovan v. Okaloosa County*, 82 So. 3d 801 (Fla. 2012), cited by FortiFi, recognizes this distinction—validation proceedings do not

forever put *all* matters, including collateral ones, in "repose." *Id.* at 808 ("[i]t was never intended that [chapter 75 proceedings] would be used [to] decid[e] collateral issues or other issues not going directly to the power to issue the securities and the validity of the proceedings with relation thereto.") (citation omitted).[2]

Moreover, section 75.17 – which must be read in *pari materia* with section 75.09 – illustrates that section 75.09 does not prohibit all post-validation challenges. Rather, section 75.17 expressly contemplates that post-validation challenges may occur.

Similarly, Appellees' suggested interpretation of the 2012 amendment of section 163.08(2)(a) as evidencing a legislative mandate to "change[] everything for FPFA", FPFA Brief at 4, and

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[2] Appellees' cases are inapposite, as two involved challenges to the bond validation judgment in its entirety. *See Steen v. Bd. of Pub. Instruction,* 85 So. 684, 684 (1920); *Hall v. Orlando Utilities Comm'n*, 432 So. 2d 1318, 1319 (Fla. 1983). FPFA's third case, *Reynolds v. Leon County Energy Improvement District*, 176 So. 3d 254, 256 (Fla. 2015), is also inapposite because it addresses whether a non-party to a bond validation proceeding could appeal a final judgment, and holds only that such non-party is unable to do so. In contrast, Appellants herein do not appeal the final judgment, but instead moved under Rule 1.540 as deemed appropriate in *Mize*, 229 So. 2d at 842. And FPFA's assertion that non-parties may not seek relief under Rule 1.540 is simply wrong. *See, e.g., Davis v. M & M Aircraft Acquisitions, Inc.*, 76 So. 3d 1066, 1067 (Fla. 4th DCA 2011); *Pearlman v. Pearlman*, 405 So. 2d 764, 766 (Fla. 3d DCA 1981).

intent for separate legal entities to operate statewide irrespective of home rule authority restrictions, greatly exaggerates the statute's scope, and is belied by the statutory text and the Legislature's intent in enacting the amendment. As noted in Appellants' Initial Brief at 7-8, 39-40, the purpose of the 2012 amendment (which was a single provision in a bill primarily relating to the Department of Agriculture and Consumer Services) was merely to permit separate legal entities to impose assessments in their own name. *Id.* The amendment was not a sea-change and did not authorize separate legal entities to exercise powers that their constituent governments lacked, nor operate statewide without regard for home rule authority of non-member local governments. Instead, the statute makes clear that its provisions are "additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority". Section 163.08(16) (2023).[3]

[3] The Legislature amended section 163.08 in 2024 to further clarify that separate entities cannot operate outside their members' boundaries unless they enter into an interlocal agreement with the host local government. *See* House of Representatives Staff Analysis for CS/CS/CS/HB 927 at pp. 6, 18 (Feb. 21, 2024) (available at: https://flsenate.gov/Session/Bill/2024/927/Analyses/h0927c.SAC.PDF) (stating the bill "Clarified that a PACE program can only operate within the jurisdiction of the authorizing local

II. Appellees' Other Arguments Also Fail.

Relying almost entirely on their section 75.09 "forever conclusive" argument, Appellees give only cursory opposition to the critical issues in this appeal, and this opposition fails.

A. Appellants' Rule 1.540 Motion Was Timely.

Rule 1.540 provides several grounds to challenge a final judgment. Subpart (4) identifies voidness of the judgment as one ground. As explained in detail in Appellants' Initial Brief, Florida law unquestionably does not impose a time limit for seeking to vacate a void judgment. *See* IB at 25-26. Appellants cite no case to rebut the legion of cases establishing this fact, and further, Appellants even admitted in the trial court that a void judgment can be challenged at any time. (A.1656).

As to Appellants' Motion based on subparts (1) (surprise) and (3) (fraud, misrepresentation, or other misconduct), the trial court's

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government(s).") (HB 927 was the companion bill to SB 770 and was passed by the House as CS/CS/SB 770, as amended). This portion of the amendment merely clarified existing law and repudiated the erroneous interpretation FPFA sought in the courts. While this amendment clarifies the law going forward, reversal here is still necessary to correct the trial court's erroneous rulings regarding: (a) the permissibility of Rule 1.540 motions following bond validation final judgment; and (b) collateral matters purporting to limit Appellants' home rule authority.

determination that the Motion was not filed in a reasonable time was clearly erroneous and not supported by the evidence. The record is uncontroverted that Appellants reasonably sought to resolve the issues raised in their Motion before filing, including informing FPFA promptly after learning of the bond proceeding that Appellants disagreed that the Final Judgment (decided without notice to Appellants and an opportunity to be heard) gave FPFA the right to act without an interlocal agreement and contrary to local ordinances. (A.1745-1765). Appellants reasonably anticipated that FPFA would then comply with their ordinances and home rule authority, and the fact that FPFA failed to comply should not be held against Appellants, especially because once they learned of FPFA's non-compliance, Appellants promptly took legal action in multiple local courts before collectively filing the Rule 1.540 Motions to efficiently end FPFA's overreaching misconduct.[4]

[4] The trial court's determination that Appellees continued to act in reliance on the Final Judgment is also contrary to the record evidence. Both FPFA and Fortifi's witnesses admitted that they *risked* continuing to operate under the Final Judgment while knowing that Appellants disputed the Final Judgment. (A.2297-2298, 2397-2398; 2404-2406).

B. The Trial Court's Final Judgment Wrongly Adjudicated Collateral Matters.

Appellees' argument that the trial court did not adjudicate collateral matters is based on language in section 75.01 that the "[c]ircuit courts have jurisdiction to determine the validation of bonds and certificates of indebtedness and all matters connected therewith." Appellees argue that "all matters connected therewith" should include anything related to FPFA's plans for the bonds. FPFA also suggests that subject matter jurisdiction in a chapter 75 proceeding is determined as to the case as a whole, regardless of the matters decided therein, arguing that once the court obtains subject matter jurisdiction over one matter, it has subject matter jurisdiction over any and every matter. FPFA Brief at 31-32. Appellees are flat wrong.

Indeed, whether termed "subject matter jurisdiction," "procedural jurisdiction," merely "jurisdiction," or something else, the simple fact remains that Appellees' expansive interpretation of a court's authority under section 75.01 is wholly at odds with this Court's numerous decisions holding that chapter 75 proceedings may only adjudicate the core issues necessary to validate the bonds

and may not include collateral matters. *See City of Miami*, 103 So. 2d at 190 (decisions on collateral matters and attempt to bind nonparties were "without authority and void"); *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252 (Fla. 1980) (trial court lacked "jurisdiction" to decide collateral matter of validity of airline leases); *Donovan*, 82 So. 3d at 808 (determination on collateral matters "exceed[ed] the court's scope of review"). *See* IB at 31-44. Perhaps for this reason, neither Appellee attempts to rebut such holdings. Rather, Appellees merely assert that *City of Miami* supports the trial court's decision. It does not.

Appellees contend that, because *City of Miami* approved portions of the trial court's ruling regarding provisions of Dade County's charter pertaining to the waterworks to be funded by the bonds, the trial court's determination here regarding Appellants' home rule authority was similarly proper. FortiFi Brief at 43-45; FPFA Brief at 38-39. Not so. In *City of Miami*, the circumstances were very different. There, the issue was whether Dade County's Home Rule Charter prohibited the City from issuing bonds, which the Court stated "goes directly to the question of the power to issue the bonds." 103 So. 2d at 187. The Court also noted that Dade County was a

party to the proceeding and had an opportunity to be heard. *Id.* at 186. Upon those facts, the Court properly concluded that the trial court's determination was core to the validity of bond issuance. And to make this distinction clear, the Court recognized that other determinations by the trial court that *were not* necessary to validate bonds – whether Dade County could later acquire the waterworks system and whether the system was tax exempt – were collateral matters that should be excised.

In contrast, the Appellant counties here were not before the trial court as parties with an opportunity to be heard. Nor were the Appellant counties' ordinances identified, much less considered, with regard to whether FPFA could validly issue the bonds. The collateral matters do not relate to whether FPFA can validly issue bonds, which Appellants do not challenge, nor are they necessary for FPFA to issue its bonds: FPFA has been successfully issuing bonds for the same purpose since 2011 without these rulings on collateral matters. *See* IB at 20, 38. Rather, such matters relate only to where and under what home rule restrictions FPFA may attempt to offer its financing outside of FPFA's members' jurisdictions.

C. The Collateral Matters in the Final Judgment are Void Because Appellants Were Not Parties and Had No Opportunity to Be Heard.

In response to Appellants' argument that collateral portions of the final judgment are void because the trial court lacked personal and subject matter jurisdiction to decide such matters, and that Appellants were denied an opportunity to be heard, Appellees argue only that they complied with chapter 75's statutory notice and service requirements, and thus, Appellants' disagreement is with the Legislature's statutory framework. Simply stated, Appellees argue that because they complied with chapter 75's service and notice requirements, there can be no jurisdiction or due process issues. Again, Appellees are wrong for several reasons.

First, Appellants do not challenge the Legislature's policy underlying chapter 75. Such policy is sound so long as the trial court properly limits its decision to the core bond validation determinations, as the Legislature intended, and does not decide collateral matters for which additional parties, notice and due process would be required. *See* IB at 47, n.8.

Second, Appellees do not and cannot argue that Appellants were not and could not be parties to the bond validation proceeding,

received no actual notice, and had no opportunity to participate and be heard. Appellees also do not and cannot dispute the impact of the collateral portions of the final judgment purporting to restrict Appellants' home rule authority. Finally, Appellees do not and cannot dispute that the consequence of these two facts – the rendering of a judgment adversely impacting the rights of a non-party given no notice or opportunity to be heard – is antithetical to fundamental American jurisprudence and due process, and unenforceable. *See State v. Smith,* 547 So. 2d 131, 134 (Fla. 1989). And contrary to Appellees' remarkable suggestion, these notions of American jurisprudence and due process apply equally to governmental entities in litigation. *See State v Rosario*, 303 So. 3d 555, 563 (Fla. 5th DCA 2020).[5]

The need to strike the collateral matters is even more appropriate given the unrebutted evidence of fraud or misconduct involving FPFA and its counsel's deliberate efforts to keep Appellants uninformed, knowing that Palm Beach and other Appellants would

[5] On these undisputed facts, Appellants are also entitled to relief on the basis of surprise under Rule 1.540(b)(1). *See Paulino v. Hardister*, 306 So. 2d 125, 129-30 (Fla. 2d DCA 1974).

be "shocked" to learn of the collateral matters purportedly decided in the Final Judgment. This evidence was in addition to FPFA counsel's misleading representations to the trial court and opposing counsel of the "black letter" nature of the Final Judgment tendered to the court for entry. IB at 51-62. The uncontroverted record also established that Appellants would have sought to participate in the validation proceedings to oppose the collateral matters but for FPFA's wrongful concealment of the proceedings. *Id.* at 59-62.

CONCLUSION

For the foregoing reasons, and those stated in Appellants' Initial Brief, Appellants respectfully request that this Court reverse and hold that the portions of the Final Judgment identified in footnote 7 of the Initial Brief are void and of no effect.

Respectfully submitted this 22nd day of August, 2024,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all counsel of record eService through the Court's E-Filing Portal on this 22nd day of August, 2024:

/s/ John A. Tucker

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 3,920 words, calculated pursuant to Florida Rule of Appellate Procedure 9.045(e).

/s/ John A. Tucker