IN THE SUPREME COURT OF FLORIDA

CONSOLIDATED CASE NO. SC2024-0652

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

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

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SUMMARY OF THE ARGUMENT

Appellees' repetitive "forever conclusive" refrain is simply wrong. Judicial inquiry in bond validation proceedings is decidedly narrow. A trial court is authorized to consider only three things: whether (1) the public body has the authority to issue the bonds; (2) the purpose of the obligation is legal; and (3) the bond issuance complies with legal requirements. Any other matters are collateral, unauthorized, outside the trial court's subject matter jurisdiction, and void. Therefore, collateral matters in a bond validation proceeding cannot be "forever conclusive" under section 75.09, Florida Statutes. Moreover, section 75.17, Florida Statutes, expressly provides for post-judgment actions to challenge validated bonds, confirming the Legislature has not made bond validation judgments forever conclusive under all circumstances.

The matters concerning the Counties' constitutional home rule authority and powers adjudicated in FPFA's Bond Validation Judgment and elaborated upon in the Denial Order on appeal are collateral and void for the same reason the rulings in *State v. City of Miami*, 103 So. 2d 185, (Fla. 1958), which determined the scope of

Dade County's authority were unauthorized and void: the rulings are not directly related to the *power of the issuing entity* to issue bonds.

FPFA argues the Counties' authority to require interlocal agreements and regulate PACE programs to protect consumers goes directly to FPFA's power to issue and repay its bonds. But the fact that FPFA has been operating successfully since 2011, even with interlocal agreements and local regulations, demonstrates otherwise.

The Counties appropriately sought rule 1.540 post-judgment relief from the collateral matters improperly adjudicated in the Bond Validation Judgment. Contrary to the trial court's ruling in the Denial Order and Appellees' arguments here, section 75.09 does not foreclose rule 1.540 relief. Indeed, the statute cannot do so under the separation-of-powers clause in the Florida Constitution. Furthermore, rule 1.540 relief was available to the Counties even though they were not proper parties to FPFA's bond validation proceeding. This rule allows non-parties such equitable relief where, as here, their rights are directly and injuriously affected by the judgment, they have been denied due process, and the judgment was obtained by fraud or misrepresentation.

Because rule 1.540 relief from the void collateral matters adjudicated in the Bond Validation Judgment is authorized, this Court's jurisdiction in bond validation proceedings includes this appeal from an order denying rule 1.540 relief. Section 75.17, which expressly allows post-judgment actions directly challenging bond validity, and section 75.08, Florida Statutes, which, reasonably read, allows appeals to this Court by parties who seek relief under section 75.17 or, as the Counties did in this case, under rule 1.540 directed to bond validation proceedings and are "dissatisfied" with the final judgment or order. *See Mize v. Seminole County*, 229 So. 2d 841 (Fla. 1969).

This Court should reverse the Denial Order and deem the unauthorized collateral matters adjudicated in FPFA's Bond Validation Judgment void.

ARGUMENT

I. BECAUSE A TRIAL COURT LACKS AUTHORITY TO ADJUDICATE COLLATERAL MATTERS IN BOND VALIDATION PROCEEDINGS, THOSE MATTERS CANNOT BE "FOREVER CONCLUSIVE."

Although section 75.09, Florida Statutes, provides that a bond validation judgment "is forever conclusive as to all matters adjudicated against plaintiff and all parties affected thereby," that provision does not do what Appellees claim it does: it does *not* protect the Bond Validation Judgment from post-finality scrutiny and challenge as to *collateral matters* that were improperly introduced, considered, and adjudicated in the proceedings. This Court's decisions discussing the scope of judicial inquiry in bond validation proceedings demonstrate that "all matters adjudicated" means only those matters the circuit court has authority and jurisdiction to rule upon in such proceedings and does not include collateral issues not directly related to an entity's issuance authority.

"Judicial inquiry in bond validation proceedings is sharply limited," *Warner Cable Communications, Inc. v. City of Niceville*, 520 So. 2d 245, 246 (Fla. 1988). There are only three considerations in determining bond validity: whether (1) the public body has the

authority to issue the bonds; (2) the purpose of the obligation is legal; and (3) the bond issuance complies with the requirements of law. *See Keys Citizens For Responsible Govt., Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 944 (Fla. 2001). A circuit court's authority to adjudicate "all matters connected" with the validity of bonds in a chapter 75 proceeding, *see* § 75.01, Fla. Stat., encompasses only these three essential considerations and *does not extend to collateral issues or those issues not going directly to the power to issue the securities. See State v. City of Miami*, 103 So. 2d 185, 188 (Fla. 1958); *Donovan v. Okaloosa Cnty.*, 82 So. 3d 801, 808 (Fla. 2012); *Keys Citizens*, 795 So. 2d at 944; *Noble v. Martin Cnty. Health Facilities Auth.*, 682 So. 2d 1089, 1090 (Fla. 1996).

Furthermore, this Court has unambiguously stated "we do not believe that the principle announced in [*Lipford v. Harris*, 212 So. 2d 766, 768 (Fla. 1968)] applies to 'put at rest' collateral questions that were somehow brought into the proceedings but need not and should not have been brought in." *City of Gainesville v. State*, 366 So. 2d 1164, 1166 (Fla. 1979). The answer briefs ignore *City of Gainesville* because Appellees cannot square it with their desired reading of section 75.09, which would insulate their misuse of "sharply limited"

chapter 75 bond validation proceedings to obtain adjudications concerning the constitutional authority and powers of Florida's counties that are collateral to FPFA's authority to issue bonds. If a trial court may not properly adjudicate something, then that something cannot have "forever conclusive" effect.[1] Furthermore, because collateral issues are beyond the permissible scope of a bond validation proceeding, a rule 1.540 motion seeking relief from such issues does not jeopardize the otherwise valid bonds.

Appellees argue that under this Court's decision in *City of Miami* questions concerning the Counties' home rule authority to require interlocal agreements with FPFA and compliance with consumer protection regulations are "matters connected" with FPFA's authority to issue bonds, and, thus, were properly adjudicated in the Bond Validation Judgment. But their reading misses the mark.

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[1] Not only does the "forever conclusive" effect of section 75.09 not reach collateral matters improperly adjudicated in the Bond Validation Judgment, the Counties also are not "parties affected" by the only thing that *is* "forever conclusive" under section 75.09: the validity of FPFA's bonds. The Counties are not "property owners, taxpayers [or] citizens of" FPFA or its incorporators; they neither have nor claim "any right, title or interest in property to be affected by the issuance of [FPFA's] bonds, certificates or other obligations"; nor are they otherwise "affected" simply by the issuance of such bonds or the determination of their validity.

The two trial court determinations in *City of Miami* were that (1) the Dade County Home Rule Charter neither impaired the city's power to issue $2.5 million in water revenue bonds nor rendered the city unable to comply with the trust indenture, and (2) Dade County was not authorized by its Home Rule Charter to acquire any part of the city's waterworks system or take any action regarding operation of the system unless the county made arrangements to pay "all bonds issued and outstanding" under the trust indenture. 103 So. 2d at 186-87.

This Court held that the first determination was properly made in the bond validation proceeding because it went directly to the city's power to issue the bonds. *Id.* at 187. Importantly, the Court reasoned that until Dade County acted to exercise its authority to operate or acquire the waterworks system, the Charter did not impair the city's authority to issue bonds. *Id.* at 188. Thus, as to this determination, the trial court properly focused only on the *power of the issuing entity* and did not adjudicate the scope of Dade County's power.

By contrast, the second determination—that Dade County lacked the power and authority to acquire any part of the city's waterworks system or take any action regarding operation of the

system unless the county paid off outstanding bonds—was a "collateral matter[ ] wholly beyond the issues in the validation proceedings," and the attempt to bring Dade County before the court on the collateral matter "was without authority and void." *Id.* at 190.

No reasonable distinction can be drawn between the collateral ruling on the scope of Dade County's power and authority deemed void in *City of Miami* and the rulings in this case concerning the scope of the Counties' authority to approve and regulate PACE programs in their jurisdictions. They, too, are collateral to this bond validation proceeding and, thus, void.

Appellees' argument that FPFA's authority to issue and repay bonds depends upon being able to operate its programs unfettered statewide is flatly incorrect. FPFA always had authority under section 163.08 to issue and sell bonds to fund its PACE loan program, enter into financing agreements with property owners for approved energy efficiency and conservation improvements, and use non-ad valorem assessments against those properties to repay the loans and bonds. Indeed, FPFA has been doing so since its first bond validation in 2011. The 2012 amendment to section 163.08 simply enabled the entity, itself, to levy the assessments.

FPFA argues that if collateral matters were adjudicated in the Bond Validation Judgment, they can't be challenged as void but only voidable because the trial court lacked "procedural jurisdiction" over the matters, not subject matter jurisdiction. (FPFA AB at 31.)

"Procedural jurisdiction," also known as "continuing jurisdiction" or "case jurisdiction," refers to a court's power to act in a case within its subject matter jurisdiction depending on the case's procedural posture. *See 14302 Marina San Pablo Place Spe, LLC v. VCP-San Pablo, Ltd.*, 92 So. 3d 320, 321 (Fla. 1st DCA 2012) (Ray, J., concurring); *Sanchez v. Sanchez*, 285 So. 3d 969, 974 (Fla. 3d DCA 2019). On the other hand, "'[a] court has subject matter jurisdiction when it has the authority to hear and decide the case.'" *Brevard Cnty. v. Obloy*, 301 So. 3d 1114, 1117 (Fla. 5th DCA 2020) (quoting *In re Adoption of D.P.P.*, 158 So. 3d 633, 636 (Fla. 5th DCA 2014)).

Chapter 75 does not give circuit courts the *authority* to adjudicate collateral matters outside the narrow judicial inquiry in bond validation proceedings. No authority means no subject matter jurisdiction. *See Noble*, 682 So. 2d at 1090, 1091 (upholding circuit court's determination that matters raised by Noble were collateral issues outside its *subject matter jurisdiction*). No subject matter

jurisdiction renders the unauthorized rulings on collateral matters in the Bond Validation Judgment void, not just voidable. *See City of Miami*, 103 So. 2d at 190 (holding attempt to bring Dade County before the court on collateral matter concerning scope of county's authority "was without authority *and void*") (emphasis added). And because the collateral rulings are void, they cannot be "forever conclusive" under section 75.09.[2]

II. THE FLORIDA LEGISLATURE HAS NOT MADE BOND VALIDATION JUDGMENTS "FOREVER CONCLUSIVE" UNDER ALL CIRCUMSTANCES.

Further undercutting Appellees' "forever conclusive" argument, section 75.17, Florida Statutes, expressly authorizes actions by "taxpayer[s] or otherwise *to challenge the validity of any bonds … after*

[2] Even if this Court were to recede from prior precedent and conclude that deciding collateral matters in a bond validation proceeding constitutes judicial action taken without procedural jurisdiction as opposed to subject matter jurisdiction, the Counties' alternate argument that the Bond Validation Judgment was entered without notice and due process would nonetheless render it void and subject to attack pursuant to rule 1.540(b)(4). *See, e.g., Metropolitan Mortg. Co. of Miami v. Rose*, 353 So. 3d 1230, 1233 (Fla. 3d DCA 2022) (citing *Purdue v. R.J. Reynolds Tobacco Co.*, 259 So. 3d 918, 922 (Fla. 2d DCA 2018)). Moreover, a judgment that is merely voidable may still be attacked under rule 1.540 provided the motion is filed within one year of the challenged judgment, which was the case here. *See e.g., Lamoise Grp., LLC v. Edgewater South Bch. Condo. Ass'n, Inc.*, 278 So. 3d 796, 799 (Fla. 3d DCA 2019).

the bonds or certificates have been validated by courts of competent jurisdiction[.]" § 75.17, Fla. Stat. (emphasis added). Long ago, this Court in *Weinberger v. Board of Public Instruction of St. John's County*, 112 So. 253 (Fla. 1927), recognized that bond validity can be challenged after the judgment becomes final despite the "forever conclusive" statutory language. There, a taxpayer who failed to intervene in the bond validation proceedings sought to enjoin the county from issuing and selling validated special tax school district bonds, asserting the bond issue was void *ab initio* on constitutional grounds. *Id.* at 254. This Court held the taxpayer's suit was permissible, explaining that if a bond issue or the assessments supporting the bonds are void *ab initio*, the bond validation judgment is subject to post-judgment collateral challenge. *Id.* at 257-58. Section 75.17 articulates the Legislature's recognition of the principles discussed in *Weinberger*. Importantly, *Weinberger* supports this Court's later decisions invalidating *portions* of bond validations and excising collateral matters that were void *ab initio*. *See, e.g.*, *City of Miami*, 103 So. 2d at 190.

III. UNDER SEPARATION-OF-POWER PRINCIPLES, THE LEGISLATURE CANNOT CONSTITUTIONALLY FORECLOSE APPLICATION OF RULE 1.540 TO BOND VALIDATION JUDGMENTS.

Appellees argue that by enacting section 75.09, the Legislature has foreclosed the availability of post-judgment relief under rule 1.540 and that this statute "trumps" this Court's procedural rule. This argument ignores separation-of-power principles.

Article II, section 3, of the Florida Constitution, sets forth an express separation-of-powers mandate for our three branches of government. Further, article V, section 2(a), of the Florida Constitution, provides that "[t]he supreme court shall adopt rules for the practice and procedure in all courts" and these rules may be legislatively repealed only "by general law enacted by two-thirds vote of the membership of each house of the legislature."

Here, *State ex rel. Pittman v. Stanjeski*, 562 So. 2d 673 (Fla. 1990), is on point. Faced with determining whether (then existing) section 61.45(5)(d), Florida Statutes (1987), which *expressly* forbade courts from setting aside, altering, or modifying certain support orders, violated Florida's constitutional separation-of-powers mandate, this Court fulfilled its "responsibility to 'avoid declaring a

statute unconstitutional if such statute can be fairly construed in a constitutional manner,'" *id.* at 677 (citation omitted), and interpreted the statutory language to *not* prohibit the use of rule 1.540 to challenge such orders:

> To hold otherwise 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.

Id. at 679.

The Legislature has not repealed all or part of rule 1.540, and unless Appellees can demonstrate that section 75.09 complies with the constitutional requirement for legislative repeal of a court rule of procedure (which they can't), that statute cannot have the effect of foreclosing the availability of rule 1.540 post-judgment relief as to bond validation judgments.[3] The reasoning in *Pittman* defeats both Appellees' assertion and the trial court's ruling that section 75.09 precluded the Counties from seeking post-judgment relief from portions of the Bond Validation Judgment under rule 1.540.

[3] Counsel for FPFA acknowledged this during the hearing below. (App. 2482-83.)

IV. NON-PARTIES CAN SEEK RELIEF FROM JUDGMENTS UNDER RULE 1.540(B) IF THEIR RIGHTS ARE DIRECTLY AND INJURIOUSLY AFFECTED, AND THEY HAVE BEEN DENIED DUE PROCESS OR THE JUDGMENT WAS OBTAINED BY FRAUD OR MISREPRESENTATION.

FPFA asserts that if, as contended, the Counties were not properly made parties to the bond validation proceedings, they could not move for relief under rule 1.540, which is available only to "a party or a party's legal representative." (FPFA AB at 25, n.7.) To the contrary, as Florida courts have held, there are circumstances in which non-parties *can* seek rule 1.540 relief. *See, e.g., Lamoise*, 278 So. 3d at 799 (holding non-party to motion for voluntary dismissal was entitled to challenge dismissal order as void via rule 1.540(b)(4) motion where non-party was not served motion for dismissal or dismissal order, had no notice its crossclaim was subject to dismissal, and was denied procedural due process); *Davis v. M & M Aircraft Acquisitions, Inc.*, 76 So. 3d 1066, 1067 (Fla. 4th DCA 2011) (noting a "stranger to the action has standing under the rule to move for vacation of the judgment when that judgment was obtained by fraud or collusion *and directly affected the rights of that person.*") (emphasis in original) (citation and internal quotation marks omitted); *Pearlman v. Pearlman*, 405 So. 2d 764, 766 (Fla. 3d DCA

1981) (holding "an unnamed party whose rights were directly and injuriously affected by a judgment fraudulently obtained may seek relief from that judgment either by motion [under rule 1.540(b)] or by independent collateral attack"); *cf. Stuart v. State*, 375 So. 3d 397, 398 (Fla. 2d DCA 2023) ("A nonparty who has not been given notice that monetary relief is sought against it may move under rule 1.540 to vacate a judgment granting such relief.").

These decisions establish that non-parties to the underlying litigation *can* seek equitable relief from judgment under rule 1.540(b) where the judgment has directly and injuriously affected their rights with no notice and opportunity to respond. *See Pearlman*, 405 So. 2d at 765-67 (explaining rule 1.540, like Federal Rule of Civil Procedure 60, incorporates common law equitable remedies available to unnamed parties seeking relief from judgments).

Here, FPFA exploited a constructive notice process *not* reasonably calculated to put the Counties on notice that their constitutional home rule authority would be abrogated and that their existing ordinances, resolutions, interlocal agreements, and consumer protection regulations would be invalidated as part of

FPFA's bond validation proceedings. *See State v. Rosario*, 303 So. 3d 555, 563 (Fla. 5th DCA 2020) (recognizing a government entity, when an interested party in a court proceeding, has same fundamental right to notice and an opportunity to be heard as other parties.) FPFA obtained these rulings by misrepresenting to the trial court in the bond validation proceedings that the 2012 amendments to section 163.08 gave FPFA home rule authority and "broad" home rule powers, (App. 292-93, 499, 546.); that FPFA is "authorized uniquely to act statewide both inside and outside of the members that created it," describing all this as "black letter law" (App. 292- 93.); that consent of a municipality or county is not required for FPFA to operate within such local government's jurisdiction (App. 550.); and that "after 2012, no general purpose local government by ordinance or otherwise is authorized to interfere with or regulate" FPFA at all (App. 556.).

The record amply demonstrates the Counties were denied procedural due process. Matters adjudicated in the Bond Validation Judgment abrogating their home rule authority were introduced into the proceedings through FPFA's misrepresentations to the court, and

the Counties' rights to due process were "directly and injuriously affected" as a result. Accordingly, the Counties were entitled to proceed under rule 1.540(b) for relief from the improperly adjudicated collateral matters in the Bond Validation Judgment.

V. BECAUSE SECTION 75.17 AND RULE 1.540 AUTHORIZE POST-JUDGMENT CHALLENGES TO BOND VALIDATION JUDGMENTS, THIS COURT HAS JURISDICTION OVER APPEALS OF FINAL JUDGMENTS OR ORDERS ARISING FROM SUCH ACTIONS.

FPFA argues this appeal of the trial court's Denial Order is "unauthorized" because rule 1.540 is "unauthorized" to challenge bond validation judgments. As explained above, section 75.09 cannot constitutionally foreclose use of rule 1.540 as an avenue for post-judgment relief from a bond validation judgment.

Under *Mize v. Seminole County*, 229 So. 2d 841 (Fla. 1969), this Court's jurisdiction in bond validation proceedings includes appeals from an order denying rule 1.540 motions for relief from bond validation judgments. "There is no question concerning the jurisdiction of this Court in the bond validation proceedings … nor is there any question of our jurisdiction in [the appeals from the post-

judgment orders], *which arise out of the validation proceedings*." *Id.* at 843 (emphasis added).

FPFA discounts this language, but *Mize* comports with section 75.08, Florida Statutes, which provides: "Any party to the action whether plaintiff, defendant, intervenor *or otherwise*, dissatisfied with the final judgment, may appeal to the Supreme Court within the time and in the manner prescribed by the Florida Rules of Appellate Procedure." (Emphasis added.) Bearing in mind that chapter 75 *expressly* provides for actions challenging the validity of bonds *after* the bonds have been validated, *see* § 75.17, Fla. Stat., and rule 1.540 is available to challenge collateral matters post-judgment, the catch-all "or otherwise" language in section 75.08 can and should be read to contemplate and authorize appeals to this Court by parties who sought relief under section 75.17 or rule 1.540 (such as the movants below) directed to bond validation proceedings and are "dissatisfied" with the final judgment or order.

Such a reading of section 75.08 is particularly justified here because the Denial Order fully addresses the merits of the Counties' rule 1.540(b) motion, elucidating and elaborating on the prior Bond Validation Judgment, which the Counties did not have the

opportunity to appeal. Indeed, the trial court discusses at length why matters adjudicated in the Bond Validation Judgment derogating the Counties' constitutional powers and authority were not collateral to FPFA's authority to issue bonds, and interpreting decisions from this Court about the proper scope of bond validation proceedings. Under section 75.08 and *Mize*, this Court has jurisdiction over the Counties' appeal of the Denial Order.

Further, the fact that only certain portions of the Bond Validation Judgment are collateral (and therefore, void), without undermining its other provisions, does not (as FPFA seems to suggest) preclude this Court from providing relief. This Court when reviewing bond validation judgments frequently is called upon to, and does, in fact, excise only defective portions of the judgment, leaving the remainder of the judgment intact. *See, e.g., Thomas v. Clean Energy Coastal Corridor*, 176 So. 3d 249, 253 (Fla. 2015) (approving reading of the bond documents in manner that precluded availability of foreclosure as judicial remedy and remanding to trial court to implement corrections to financing documents); *Reynolds v. Leon Cnty. Energy Improvement Dist.*, 176 So. 3d 254, 254 (Fla. 2015) (same); *City of Miami*, 103 So. 2d at 190 (directing trial court to delete

portions of judgment containing rulings on collateral matters improperly adjudicated but otherwise affirming validity of the bonds).

Appellees urge this Court not to disturb the Bond Validation Judgment because doing so would jeopardize FortiFi's investment in the bonds. FortiFi posits that absent a decision by this Court in Appellees' favor, "it is highly likely that Appellant tax collectors will refuse to collect annual 2024 tax year assessments" for property improvements it financed. (FortiFi AB at 36, n. 9.) That is quite a prediction, but not an appropriate reason to ask this Court to do what it cannot do: deem valid collateral matters in the Bond Validation Judgment that are void *ab initio*.

During the bond validation proceedings, FPFA misrepresented to the trial court (and, apparently, to FortiFi) that it had authority to operate its program and levy assessments throughout the state without first having to obtain interlocal agreements with the Counties and municipalities in which it would operate. And FPFA continued at its peril to sell bonds and lend money to property owners, despite having been put on notice early on by counties and tax collectors across the state that the latter challenged the legal effect of the collateral issues erroneously decided in the Bond Validation

Judgment. If FortiFi's investment is now in jeopardy, its remedy is against FPFA.

CONCLUSION

This Court should reverse the Denial Order on appeal and deem those portions of the Bond Validation Judgment that unlawfully adjudicated collateral matters void for lack of subject matter jurisdiction, personal jurisdiction, and due process.

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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 via eService through the Florida Courts E-Filing Portal this 22nd day of August 2024.

/s/ Simone Marstiller
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY this brief complies with the type size and style requirements of Florida Rule of Appellate Procedure 9.045(b) and has been prepared in Bookman Old Style 14-point font. This brief complies with the word limitations set forth in Florida Rule of Appellate Procedure 9.210(a)(2)(B). This brief contains 3,937 words, excluding the parts of the brief exempt by Rules 9.045(e) and 9.210(a)(2)(E).

/s/ Simone Marstiller
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