SC24-652

In the Supreme Court of Florida

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

v.

FLORIDA PACE FUNDING, AGENCY, ETC.,
Appellees

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

BRIEF OF APPELLEE FORTIFI FINANCIAL, INC.

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STATEMENT OF THE ISSUES

1. Whether the circuit court correctly concluded that a "forever conclusive" bond-validation judgment under Section 75.09, Florida Statutes, is not subject to challenge by post-judgment motion under Florida Rule of Civil Procedure 1.540.

2. Whether, even if a bond-validation judgment may be challenged by motion under Florida Rule of Civil Procedure 1.540 after the time for an appeal has expired, the circuit court correctly determined that it had jurisdiction to enter a bond-validation judgment adjudicating the validity of non-ad valorem assessments for the repayment of the PACE bonds and the remedies for those assessments' collection under Chapter 75, Florida Statutes.

3. Whether the circuit court abused its discretion in alternatively concluding that Appellants' motions under Florida Rule of Civil Procedure 1.540 were untimely.

INTRODUCTION

The Florida PACE Funding Agency ("FPFA") is a local government under Section 163.08, Florida Statutes, that is duly organized under the provisions of the Florida Interlocal Act. It is also an issuer of property assessed clean energy ("PACE") bonds. PACE is a phrase

commonly used to refer to the program that the Florida Legislature established in 2010 to authorize the financing of certain qualifying real property improvements through the execution of financing agreements and the related levy of voluntary non-ad valorem assessments. *See generally* § 163.08, Fla. Stat. FPFA's PACE program has enabled thousands of Floridians to hurricane-harden and make energy-efficiency improvements to their homes and other buildings. *See* Aymeric Bellon et al., *Picking Up the PACE: Loans for Residential Climate-Proofing* (2024), https://ssrn.com/abstract=4800611.

FortiFi Financial, Inc. ("FortiFi") is a program administrator for the FPFA's PACE program, and, in that capacity, privately finances PACE assessments. In October 2022, FPFA filed a complaint in the Circuit Court for the Second Judicial Circuit, seeking a judgment validating the issuance of $5 billion of bonds that would fund qualifying PACE improvements.

In full compliance with all applicable notice requirements, FPFA served the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits with actual notice of the validation action. None objected. The circuit court held a hearing on FPFA's complaint, re-

viewed a proposed order submitted by the parties—which an Assistant State Attorney for the Second Judicial Circuit testified he reviewed—and the Court entered a judgment validating the PACE bonds (the "Validation Judgment").

In the Validation Judgment, the circuit court determined that FPFA would be permitted to issue PACE bonds throughout the state and impose non-ad valorem assessments for the repayment of those bonds. It also concluded that tax collectors throughout Florida have a ministerial duty to collect such assessments. No party appealed the Validation Judgment, and the clerk of court accordingly entered a notice of no appeal.

That should have ended the matter. Section 75.09, Florida Statutes, titled "Effect of final judgment," provides that when "no appeal [of a bond-validation judgment] is taken within the time prescribed," the "judgment is *forever conclusive as to all matters adjudicated against*" anyone "to be affected in any way thereby," and "*the validity of … any taxes, assessments*, or revenues *pledged for the payment* [of the validated bonds], or of … *any remedies provided for their collection, shall never be called in question in any court by any*

person or party." § 75.09, Fla. Stat. (emphases added). This provision—which has existed in various forms for over a century—is critical to attracting investment to Florida, because it provides investors with confidence that the bonds are valid and will be repaid.

Given that longstanding practice, FortiFi financed thousands of home improvement projects in Florida in reliance on the Validation Judgment. But certain elected county tax collectors had other ideas. Defying both the circuit court (which had entered the Validation Judgment without objection) and the Florida Legislature (whose plainly worded enactments describe the Validation Judgment as forever conclusive), those tax collectors refused to place recorded FPFA assessments on the November 1, 2023 property tax rolls, jeopardizing the repayment of FPFA's valid PACE bonds.

Ultimately, nearly a year after the entry of the Validation Judgment, and after FortiFi had financed $150 million of home improvements[1] for Floridians, Appellants moved under Florida Rule of Civil

[1] Accounting for developments after the record for this appeal was frozen, FortiFi has funded $210 million in home improvements in reliance on the Validation Judgment.

Procedure 1.540 to strike portions of the Validation Judgment. Appellants' motions presented a variety of flawed arguments for why the circuit court should strike portions of its "forever conclusive" judgment. Nearly all of those arguments boiled down to the same premise: that the circuit court's adjudication of the validity of the assessment and the tax collectors' duty to collect them were "collateral matters" outside of the circuit court's jurisdiction under Chapter 75, Florida Statutes. Then, as now, each of these arguments ignored Section 75.09's plain import; indeed, even in this appeal, most Appellants *do not even mention* Section 75.09. *See* Palm Beach Cnty. Br. (nowhere referencing Section 75.09); Tax Collectors' Br. (nowhere referencing Section 75.09); State Attys' Br. (nowhere discussing Section 75.09); Alachua Cnty. Br. 47-50 (quoting Section 75.09 but declining to explain why its plain terms do not govern the Validation Judgment).

The circuit court denied Appellants' motions in their entireties. The circuit court concluded that Section 75.09 precludes Rule 1.540 motions challenging a bond-validation judgment once the time for an appeal has expired. *See* § 75.09, Fla. Stat. (judgment is "forever con-

clusive" once "no appeal is taken within the time prescribed"). It further determined that it had jurisdiction in the validation action to adjudicate the validity of FPFA's non-ad valorem assessments to repay the bonds, *see id.* (judgment deciding the "validity … of any taxes, assessments or revenues pledged for the payment of" bonds "shall never be called in question"), and to determine that tax collectors have a ministerial duty to collect those assessments, *see id.* (judgment deciding the "validity of … any remedies provided for [an assessment's] collection … shall never be called in question"). And finally, the circuit court alternatively concluded that Appellants' challenges were untimely under Rule 1.540.

The circuit court's well-reasoned decision should be affirmed. *First*, Chapter 75's plain text, statutory context, bedrock interpretive principles, and this Court's precedents all point decisively to the conclusion that a Rule 1.540 motion cannot be used to circumvent the finality of a bond-validation judgment. Indeed, this Court's prior decisions confirm that a contrary reading would not only be wrong, but would also violate the Florida Constitution's separation of powers. *Second,* even if Rule 1.540 motions were an appropriate vehicle for

Appellants' belated challenge, the circuit court had jurisdiction to adjudicate the contested portions of the Validation Judgment under a straightforward application of Chapter 75, and that conclusion also fully resolves Appellants' derivative due process and personal jurisdiction challenges. *Third*, and finally, Appellants' Rule 1.540 motions were untimely—and prejudicially so—even assuming they were otherwise permitted.

Chapter 75's promise of a definite end to bond-validation disputes is crucial to the functioning of Florida bond markets, which depend on the certainty and stability that enforced finality provides. That is why, for more than a century, the Florida Legislature has protected those markets with its long-settled and long-followed command that bond-validation judgments are "forever conclusive" upon the expiration of the right to appeal. This Court should once again implement that plain command of finality and affirm.

STATEMENT OF THE CASE

A. The Florida Legislature Amends The Supplemental Act, Confirming That FPFA Is A Local Government Under Section 163.08

In 2010, the Florida Legislature enacted Section 163.08, Florida Statutes, the Supplemental Authority for Improvements to Real

Property Act (the "Supplemental Act").[2] The Legislature passed the Supplemental Act to promote energy conservation and mitigate the effects of hurricanes on property owners by providing a mechanism for property owners to obtain favorable financing options for improvement projects. § 163.08(1)(a)–(c), Fla. Stat. The Supplemental Act provides access to capital by ensuring that the PACE program administrator and home improvement contractor are secured in their financing. *See generally*, § 163.08, Fla. Stat. It does so by allowing the issuer of bonds—such as FPFA—to collect the payments owed via the property owner's tax bill. *Id.* This feature of the Supplemental Act provides financing priority over other property debt and makes it collectable through a tax lien on the taxed property. *Id.* The Supplemental Act has enabled many Florida homeowners to finance critical improvements and obtain or maintain affordable property insurance. Since its inception, the Act has allowed tens of thousands of property owners in Florida to improve their homes with access to financing. *See* PACENation, *PACE Market*

[2] The Florida Legislature amended Section 163.08, Florida Statutes, with an effective date of July 1, 2024. References in this brief to Section 163.08 are to the version in effect from July 1, 2014 to June 30, 2024, unless otherwise noted.

Data (Mar. 31, 2023), https://www.pacenation.org/pace-market-data/. In total, since inception, Florida property owners have financed more than $2 billion in improvements through PACE. *Id.*

Before 2012, the Supplemental Act permitted only counties, municipalities, or dependent special districts to levy PACE assessments. *See* § 163.08(2)(a), Fla. Stat. (2011). That changed in 2012, when the Legislature amended the statute's definition of "local government" to include "a separate legal entity created pursuant to s. 163.01(7)." § 163.08(2)(a), Fla. Stat. The amendment placed entities like FPFA on the same playing field as other municipalities, permitting it to operate statewide and levy non-ad valorem PACE assessments to fund qualifying improvements. A.17–A.18. The purpose of the Legislature's change was self-evident: to expand access to PACE funding. *See* § 163.08(1)(c), Fla. Stat. When a local government like FPFA levies a non-ad valorem PACE assessment, Florida general law permits collection of those assessments under the "uniform method of collection,"[3] which requires the tax collectors to

[3] The "uniform method of collection" is the phrase commonly used to refer to the statutory scheme codified at section 197.3632, Florida Statutes. It provides the steps that a local governmental entity like

include those assessments on the property tax bills. § 197.3632, Fla. Stat.; *see also* A.1859, A.1864 (Department of Revenue directives clarifying that tax collectors have a "ministerial" duty to collect assessments under the statutory scheme and have no authority to modify the statute).

To implement its PACE programs, FPFA contracts with PACE program administrators—such as FortiFi—to privately finance the assessments. Since 2019, FortiFi has financed PACE assessments levied by FPFA. A.2383. The home-improvement projects FortiFi finances are limited to those identified as "qualifying improvements" in the Florida PACE statute, which improvements include energy conservation and efficiency improvements, renewable-energy improvements, and wind-resistance improvements. § 163.08(10), Fla. Stat.; A.2383.

When property owners elect to finance an improvement through PACE, FPFA records a notice of assessment with the respective county and thereafter submits a certified tax roll to the tax collector containing the assessments to be collected under Section 163.08.

FPFA must take to have non-ad valorem assessments levied, collected, and enforced by a county tax collector.

Under Florida law, the tax collector must add the PACE assessment to the property owner's tax bill as a non-ad valorem assessment through the uniform method of collection. FortiFi then packages a series of assessments into securitized bond offerings, which are sold to third-party investors to fund future loans. The payments for those bonds are tied to the interest and principal payments from debt service on the underlying property assessments, which under the PACE program are assessed and paid through property owners' annual property tax bills.

Also critical to the PACE financing offered by FortiFi is the high priority that Florida law assigns to PACE assessment payments levied on the property as non-ad valorem assessments. Such assessments are given the same priority as traditional property taxes, meaning that the government may sell a tax certificate on the property if the owner fails to pay her property taxes, including any PACE assessments. *See* § 163.08(2)(b)(4), (2)(b)(8), Fla. Stat. This system affords FortiFi the security it needs to provide private financing at rates attractive to homeowners.

B. FPFA Files A Complaint Seeking To Validate $5 Billion In Bonds To Continue Financing Improvements For Florida Property Owners

On September 1, 2022, FPFA initiated a bond-validation proceeding in the Circuit Court of the Second Judicial Circuit in and for Leon County, seeking a judgment validating the issuance of $5 billion of revenue bonds. A.1776. The circuit court then ordered the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits, and the taxpayers, property owners, and citizens of Florida, to show cause as to why the bonds should not be validated. A.19.

After filing suit, FPFA satisfied every applicable statutory notice requirement. *Id.*; *see* § 163.08(7)(e)(4), Fla. Stat. First, FPFA published the required notice in a newspaper of general circulation in Leon County by publishing the notice in the *Tallahassee Democrat*, which serves Gadsden, Jefferson, Leon, and Wakulla Counties. A. 1776. Second, FPFA published the notice in newspapers of general publication in both Flagler and Osceola Counties—where FPFA's two members, the City of Kissimmee and Flagler County, are located—by publishing the notice in the *Orlando Sentinel* (which serves Orange and Osceola Counties) and the *Daytona Beach-News Journal* (which serves Flagler and Volusia Counties). A.19; *see* § 163.08(7)(e)(4), Fla.

Stat. (requiring publication of notice "in each county … in which a member of the entity is located"). The notice specified that the court would consider whether to validate issuance of $5 billion of FPFA's bonds, and that the issuance, if approved, could affect "taxpayers, property owners, and citizens of the State of Florida, … including non-residents owning property or subject to taxation within the State." A.1833; *see* §§ 75.05, 75.06, Fla. Stat. Third, FPFA served the complaint and the circuit court's order to show cause on the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits. A.19–A.20, A.37. Counsel for those State Attorneys appeared and participated in the proceedings. A.37; *see* A.2209–10.

C. The Trial Court Enters The Validation Judgment Without Objection

Once FPFA had served all legally required notices, the circuit court set a hearing for October 6, 2022, and ordered the State Attorneys for the Second, Seventh, and Ninth Judicial Circuits to appear. A.20. After the hearing, the circuit court entered its Validation Judgment the same day. *Id.*

In the Validation Judgment, the circuit court explained that FPFA was entitled to a "determin[ation]" concerning "the validity of

the Bonds, the pledge of revenues for the payment thereof, the validity of the non-ad valorem assessments which shall comprise all or a substantial part of the revenues pledged, the proceedings relating to the issuance thereof and all matters connected therewith." A.81. Accordingly, the circuit court determined that FPFA "is not prohibited from enacting, implementing and operating a non-ad valorem assessment program to finance qualifying improvements under the Supplemental Act by any provision of any agreement between any local government and a public or private power or energy provider," reasoning that "any provision of such agreements are rendered unenforceable if used to limit or prohibit any local government from exercising its general law authority to operate a program under the Supplemental Act." A.116; *see also* A.121–A.122. The circuit court also concluded that "[a]ny duties of a property appraiser or tax collector with regard to collection of non-ad valorem assessments … are wholly ministerial and the property appraiser and tax collector are without any discretion with regard to the collection

of non-ad valorem assessments" if the issuer "elects to use the uniform method." A.103.

Counsel for the State Attorneys of the Second, Seventh, and Ninth Judicial Circuits appeared at the validation hearing but did not object to the entry of the Validation Judgment. *Id.*; *see* A.2209–10 (circuit court explaining that the State Attorneys "proceeded and failed to appeal"). Accordingly, the circuit court entered the Validation Judgment the same day as the hearing, authorizing FPFA to issue the revenue bonds. *Id.* On November 10, 2022, the circuit court clerk entered a certificate of no appeal. *Id.* After entry, FPFA began recording the Validation Judgment and providing notice to the counties of its intent to operate pursuant to the Validation Judgment. A.2085–86.

D. FortiFi And FPFA Made Over $150 Million in Loans to Florida Homeowners, Specifically Relying On The Validation Judgment For Over A Year

Since the Validation Judgment's entry, FortiFi has relied heavily on the Florida Legislature's command that an unappealed bond-validation judgment is "forever conclusive" as to all matters within the scope of Section 75.09, Florida Statutes. A.1745; A.2391–92. In that time, FortiFi has financed more than $150 million in qualifying

improvements for thousands of Florida residents under FortiFi's bond indenture agreement with FPFA. None of that would have occurred without the Validation Judgment, which specifically allows FPFA to operate and fund PACE assessments statewide and directs tax collectors to collect the annual assessment payments from Florida homeowners who received the benefits of the PACE funding. A.1774.

By January 2023, FPFA had provided actual notice of the Validation Judgment to every jurisdiction in which it was then operating or intended to operate. A.2085–86. Despite the clear language of the Validation Judgment, local tax collectors refused to place the FPFA's submitted non-ad valorem assessments on the property tax rolls. *See, e.g.*, A.1760 (in November 2023, Palm Beach tax collector excluded from tax bills 800 FPFA assessments for projects financed by FortiFi); A.1762 (letter sent from Polk County tax collector to FPFA in September 2023 stating the office was "not authorized to collect assessments for [the 2023] year or any future years").

E. Appellants Move For Relief From The Validation Judgment Under Rule 1.540 Nearly A Year After Its Entry

In early October 2023, one year after entry of the Validation Judgment, Appellants sought relief from the Validation Judgment under Florida Rule of Civil Procedure 1.540. A.1778. Appellants principally argued that the circuit court lacked jurisdiction to enter parts of the Validation Judgment—namely, its findings that FPFA could operate statewide and levy non-ad valorem assessments that county tax collectors would then have a ministerial duty to collect. Appellants also contended that the Validation Judgment was the product of fraud. FortiFi, having provided the financing for the bonds in reliance on the finality of the Validation Judgment, intervened in the action, and the circuit court held a full-day evidentiary hearing on the motions in February 2024. Despite having filed their motions and sought affirmative relief from the circuit court, Appellants insisted throughout the proceedings below that the circuit court lacked jurisdiction to compel them to comply with the Validation

Judgment—even if the circuit court denied their challenges. *See, e.g.*, A.128.

The hearing shed further light on the Validation Judgment's correctness. FortiFi's CEO, Christopher Nard, testified that the "bonds will not be secured as intended" without the assessments permitted by the Validation Judgment, A.32, and that "it would be nonsensical to try to market one of these bonds without the collection method tied to it. . . ." A.2393. And an Assistant State Attorney for the Second Judicial Circuit testified both that he read the Validation Judgment and that it "seemed to be fairly straightforward." A.2375–77.

After the evidentiary hearing, the circuit court entered its order denying Appellants' motions for relief from the Validation Judgment in their entireties. The circuit court concluded that Rule 1.540 could not be used to circumvent a "forever conclusive" validation judgment, that the Validation Judgment was not void, that Appellants' motions were untimely, and that Appellants had not been defrauded. A.13–A.38. The circuit court separately determined that the State Attorneys had forfeited any objection to the Validation Judgment because they did not object to or appeal its entry. A.36–A.38.

Appellants appealed the denial of their Rule 1.540 motions directly to this Court.

SUMMARY OF THE ARGUMENT

I. In enacting Section 75.09, Florida Statutes, the Florida Legislature foreclosed challenges to bond-validation judgments by way of Florida Rule of Procedure 1.540 once the time for an appeal has expired. A Rule 1.540 motion following the expiration of appellate rights is plainly incompatible with Section 75.09's directive that a bond-validation judgment becomes "forever conclusive" after "no appeal is taken within the time prescribed." Even if Section 75.09's text left any doubt, its neighboring provisions (*e.g.*, Section 75.17, Florida Statutes) and standard interpretive principles (*e.g.*, the general-specific canon) would resolve it. A contrary reading would violate the Florida Constitution's separation of powers by elevating a procedural rule over the substantive right to repose conferred by Section 75.09 and would mark an unprecedented use of Rule 1.540.

II. The circuit court did not adjudicate any collateral matters and its Validation Judgment is not void. Once again, Chapter 75's text confirms the point. Section 75.01, Florida Statutes, defines the jurisdiction of the circuit court in validation actions as "jurisdiction

to determine the validation of bonds … and all matters connected therewith." § 75.01, Fla. Stat. The phrase "all matters connected therewith" must be interpreted in tandem with Section 75.01's surrounding provisions, including Sections 75.02 and 75.09, Florida Statutes. Those provisions inform the scope of a validation proceeding, and each substantiates the circuit court's conclusions that it had jurisdiction to determine the validity of FPFA's statewide operation, the issuance of non-ad valorem assessments, and the post-levy collection proceedings associated with them. Because Appellants' due process and personal jurisdiction challenges depend on the erroneous premise that the circuit court adjudicated collateral issues, they too lack merit. Additionally, Appellants, as state actors, are not entitled to the Due Process Clause's protection; only FortiFi is.[4]

[4] FortiFi adopts FPFA's arguments defending the circuit court's well-reasoned determination that Appellants' Rule 1.540 motions were untimely if otherwise permitted at all. Appellants' delay in filing their Rule 1.540 motions was unjustifiable and caused extreme prejudice to FortiFi as it continued to rely in good faith on the Validation Judgment by extending over $150 million in PACE financing to Florida homeowners with the reasonable expectation that Florida counties and tax collectors would comply with the Validation Judgment.

LEGAL STANDARDS

This Court reviews the trial court's conclusions of law de novo. *State v. City of Port Orange*, 650 So. 2d 1, 2 (Fla. 1994). But "[t]he findings of a trial court are presumptively correct and must stand unless clearly erroneous." *Chiles v. State Emps. Att'ys Guild*, 734 So. 2d 1030, 1034 (Fla. 1999).

ARGUMENT

II. THE FLORIDA LEGISLATURE HAS FORECLOSED RULE 1.540 AS A MEANS OF CHALLENGING "FOREVER CONCLUSIVE" BOND-VALIDATION JUDGMENTS ENTERED UNDER SECTION 75.09

The circuit court's conclusion that Section 75.09, Florida Statutes, precludes Appellants' Rule 1.540 motions flows directly from the statutory text and long-settled interpretive principles. It should be affirmed.

A. Section 75.09 Forecloses The Use Of A Rule 1.540 Motion To Challenge A Bond-Validation Judgment

1. This case "begin[s]"—and ends—"with the statute's text." *1944 Beach Boulevard, LLC v. Live Oak Banking Co.*, 346 So. 3d 587, 591 (Fla. 2022). Section 75.09, Florida Statutes, provides in pertinent part:

> If the judgment validates … bonds, …, and no appeal is taken within the time prescribed, …, ***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. (emphases added).

There is no disputing that Section 75.09's plain terms apply here. This appeal arises from the circuit court's denial of a series of Rule 1.540 motions challenging "the validity" of parts of a bond-validation judgment from which "no appeal [was] taken." *Id.* Each such motion was filed well after "the time prescribed" for appeal had expired. *Id.* By the time of those motions, therefore, the Validation Judgment had become "forever conclusive as to all matters adjudicated against … all others … to be affected in any way thereby," and "the validity … of the proceedings authorizing the issuance" of the bonds—*i.e.*, the validation action that preceded the validation judgment—could no longer be "called in question in any court by any person or party." *Id.*

Nor is there any question that Section 75.09's plain text covers the challenged portions of the Validation Judgment. Consider, first, the Validation Judgment's finding that FPFA enjoys the authority to impose statewide non-ad valorem assessments to repay the bonds. That determination adjudicated the "validity of … any taxes, assessments or revenues pledged for the payment [of the bonds]." § 75.09, Fla. Stat.

Likewise, the Validation Judgment states that county tax collectors have a ministerial duty to collect the non-ad valorem taxes that the FPFA imposes. That determination adjudicated "the validity of … the remedies provided for [the bonds'] collection." § 75.09, Fla. Stat.; *see* Remedy, *Black's Law Dictionary* (12th ed. 2024) ("The means of enforcing a right or preventing or redressing a wrong"); *Thomas v. Clean Energy Coastal Corridor*, 176 So. 3d 249, 253 (Fla. 2015) (holding that a bond-validation judgment properly adjudicated "the appropriate legal *remedy* … of collecting [non-ad valorem] assessments pursuant to the uniform method"). Accordingly, those parts of the Validation Judgment—like the other parts—became "forever conclusive" once no "appeal [was] taken within the time prescribed." § 75.09, Fla. Stat.

Notably, none of Appellants seriously contends that the challenged portions of the Validation Judgment fall outside the ambit of Section 75.09's text. Instead, most of Appellants ignore Section 75.09 entirely. *See* Palm Beach Cnty. Br. (nowhere referencing Section 75.09); Tax Collectors' Br. (nowhere referencing Section 75.09); State Attys' Br. (nowhere discussing Section 75.09); Alachua Cnty. Br. 47-50 (quoting Section 75.09 but declining to explain why its plain terms do not apply to the Validation Judgment). That telling omission underscores what the statute's text makes clear: by the time Appellants filed their Rule 1.540 motions, the Validation Judgment had already become "forever conclusive" and could not "be called in question." § 75.09, Fla. Stat.

Indeed, any straightforward reading of Section 75.09 forecloses Appellants' contentions. By challenging the Validation Judgment in Rule 1.540 motions a year after its entry, Appellants inherently seek to "call [the Validation Judgment] in question" and thus treat it as something less than "conclusive." A conclusive judgment is "[a]uthoritative" or "decisive." Conclusive, *Black's Law Dictionary* (12th ed. 2024). And if a judgment is "[a]uthoritative" or "decisive" once no "appeal is taken within the time prescribed," as Section

75.09 provides, it follows that such a judgment may not "be called in question" by way of a motion filed *after* such "time prescribed." § 75.09, Fla. Stat.; *see also Donovan v. Okaloosa Cnty.*, 82 So. 3d 801, 808 (Fla. 2012) ("[T]he function of a validation proceeding is … to put in repose any question of law or fact affecting the validity of the bonds[, and matters] going directly to the power to issue the securities and the validity of the proceedings in relation thereto." (citations and internal quotation marks omitted)). Put simply, the Florida Legislature eliminated Rule 1.540 motions as a means of challenging bond-validation judgments once the time for an appeal has run. And the Legislature's plain direction controls. *See Marrero v. State*, 71 So. 3d 881, 886–87 (Fla. 2011) ("The plain and ordinary meaning of the words of a statute must control.").

This Court's decisions confirm the point. For more than a century, this Court has recognized that parties may not disturb a "forever conclusive" validation judgment with a motion filed after the time for appeal has expired. The Court considered precisely that question in *Steen v. Board of Public Instruction of Palm Beach County*, 85 So. 684 (Fla. 1920), an appeal from a circuit court's vacatur of a bond-validation judgment. The circuit court in *Steen* had entered a

judgment validating the issuance of bonds. *Id.* at 685. After the time for an appeal had passed, a taxpayer filed "a motion to vac[a]te the decree of confirmation … upon the grounds that the decree[] was absolutely null and void." *Id.* The circuit court agreed and granted the motion.

This Court reversed. Pointing to a then-existing statute declaring bond-validation judgments "forever conclusive" when "no appeal is taken within the time prescribed," this Court explained that the circuit court "was without authority to set aside its decree" after "[n]o appeal was taken." *Id.* This case is no different than *Steen*, whose holding and reasoning this Court has repeatedly reaffirmed. *See, e.g.*, *Hall v. Orlando Utils. Comm'n*, 432 So. 2d 1318, 1319 (Fla. 1983) (holding that appellant lacked standing to file motion to set aside a bond-validation judgment after the time for an appeal had lapsed because "allow[ing] him to challenge the judgment in such a circuitous fashion flies in the face of section 75.09"); *Wright v. City of Anna Maria*, 34 So. 2d 737, 738–40 (Fla. 1948) (holding that a challenge to a bond-validation judgment after no appeal was taken "was forever foreclosed"). It should do so again here.

The Legislature's choice to provide a definite end date to bond-validation suits promotes longstanding state policies. As this Court has repeatedly explained, Chapter 75 facilitates investment in Florida by allowing "a governmental entity [to] ensure the marketability of the proposed bonds … by thereafter foreclosing an attack on their validity." *City of Oldsmar v. State*, 790 So. 2d 1042, 1049 (Fla. 2001). The validity of assessments that will be used to repay bonds, and the remedies for those assessments' collection, are indispensable to the bonds' marketability and to the Legislature's goal of attracting investment in Florida. Without a conclusive determination of these matters, issuers like FPFA and financing providers like FortiFi could not "put in repose" the "question[s] of law or fact" necessary for a functional bond issuance. *Donovan*, 82 So. 3d at 808 (citation and internal quotation marks omitted).

For these reasons, and as the circuit court correctly observed, "no court in this state has ever invalidated a previously validated bond [judgment] by way of Rule 1.540."[5] A.22. The circuit court's

[5] The cases on which Appellants rely most heavily all considered direct appeals from validation judgments, *see, e.g.*, *Donovan*, 82 So. 3d at 805, or in one case a direct appeal from amendments to a

observation confirms the extraordinary nature of Appellants' request, which would both rewrite Chapter 75 and contradict decades of settled practice in Florida courts. There is no basis, in text or in history, for that unprecedented result.

2. Even setting aside Section 75.09's plain meaning, applying textbook interpretive principles dictates the same outcome. Two such principles are highly instructive here.

First, Section 75.09 covers a specific topic—the finality of bond-validation judgments—and for that reason must prevail over the generally applicable procedural Rule 1.540. "[I]t is a commonplace of statutory construction that the specific governs the general." *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 305 (2017). Section 75.09 and Rule 1.540 conflict in two relevant ways. First, Section 75.09 makes judgments within its narrow scope "forever conclusive," § 75.09, Fla. Stat., while Rule 1.540 generally allows courts to "relieve a party … from a final judgment," Fla. R. Civ. P. 1.540(b). Second, Section 75.09 limits challenges to a bond-validation judgment to "the time prescribed" for taking an appeal—or 30 days, *see* Fla. R. App. P.

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validation judgment, *see, e.g.*, *State v. City of Miami*, 103 So. 2d 185, 186 (Fla. 1958).

9.110(b)—while Rule 1.540, by contrast, makes the deadline for seeking relief from a judgment either (1) "1 year after the judgment" (at the latest, and in the court's discretion), or (2) even later, depending on the claim. Fla. R. Civ. P. 1.540. Given these conflicts, only one of Section 75.09 and Rule 1.540 can apply, and the general-specific canon selects the more specific provision, Section 75.09, as the winner. *See NLRB*, 580 U.S. at 305; A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012) ("If there is a conflict between a general provision and a specific provision, the specific provision prevails.").

Second, Section 75.09 must be read "in harmony with its neighboring provisions" in Chapter 75. *Alachua Cnty. v. Watson*, 333 So. 3d 162, 171 (Fla. 2022). Those provisions include Section 75.17, which expressly contemplates a separate "action" for belated challenges to bond-validation judgments and, accordingly, requires persons bringing such challenges to "file an affidavit of good faith stating that the action is not filed for delay and setting forth with particularity why the objection was not made as part of the validation action." § 75.17, Fla. Stat.

The Legislature's enactment of Section 75.17 is consistent with its emphasis on the need for finality in bond-validation actions. Because Section 75.09 renders unappealed bond-validation judgments "forever conclusive" once the time for an appeal has run, *id.* § 75.09, the bond-validation action terminates at that time. Section 75.17, in turn, creates an exclusive procedural outlet for untimely collateral attacks on bond-validation judgments, *see Moonlit Waters Apts., Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996) ("Under the [*expresio unius*] principle of statutory construction, … the mention of one thing implies the exclusion of another."), albeit without specifying the grounds on which to base a successful collateral challenge.[6]

This legislative scheme deters unmeritorious, belated challenges to bond-validation judgments by requiring much more from would-be challengers than is required of Rule 1.540 movants.

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[6] This Court has never spelled out what a party must show to succeed in a Section 75.17 challenge to an otherwise "conclusive" bond-validation judgment (assuming such a challenge could ever succeed). *Cf. Wright*, 34 So. 2d at 738–40 (holding that suit challenging bond-validation judgment long after time for appeal had run "was forever foreclosed" by Section 75.09). And there is no need to do so in this case, because Appellants did not proceed under Section 75.17.

Unlike Rule 1.540 movants, plaintiffs who file suit under Section 75.17 must (1) subject themselves, as plaintiffs, to the jurisdiction of the trial court; (2) file a separate action (and thus pay a filing fee); (3) "file an affidavit of good faith stating that the action is not filed for delay and setting forth with particularity why the objection was not made as part of the validation action," § 75.17, Fla. Stat.; (4) subject themselves to pleading rules, including the possibility of sanctions for unsupported claims, *see id.* § 57.105; (5) comply with party-discovery obligations; and (6) bear the burden of proving the allegations in their pleadings.

Appellants' conduct in the circuit court illustrates the distinction between these procedural avenues. In filing their Rule 1.540 motions, Appellants claimed not to be subject to the personal jurisdiction of the circuit court. A.128. With this heads-I-win-tails-you-lose tactic, Appellants attempted to ensure that they would obtain all the relief they sought if they were successful, but that they would not be obligated to place FPFA's assessments on the tax rolls if they were unsuccessful. That gamesmanship contradicted both the plain meaning of Chapter 75 and Rule 1.540(b) (which permits

only "parties" or their representatives to file post-judgment motions) and caused further delay.

Consistent with this legislative design, Section 75.17 provides the only possible procedural route to collaterally challenge a bond-validation judgment, and parties may not circumvent that design via Rule 1.540. Indeed, "no court in this state has ever invalidated a previously validated bond [judgment] by way of Rule 1.540," A.22, and Section 75.17 illustrates exactly why that is so.

None of Appellants mention Section 75.17 in their briefing. That is unsurprising, because none of Appellants complied with Section 75.17. Each of them filed Rule 1.540 motions long after the Validation Judgment became conclusive, and even then, failed to "file an affidavit … stating that the [motion] is not filed for delay" or "set[] forth with particularity why the[ir] objection[s] w[ere] not made as part of the validation action." § 75.17, Fla. Stat.[7] Chapter 75, and Section 75.17 specifically, forecloses the route Appellants have taken to attack the Validation Judgment.

[7] Indeed, Appellants' motions included a footnote disclaiming the circuit court's jurisdiction over them. *See* A.128.

For these reasons, the circuit court's denial of Appellants' motions should be affirmed.

B. Appellants' Proposed Interpretation Of Rule 1.540 Violates The Florida Constitution's Separation of Powers

Appellants' misreading of Rule 1.540 would also be unconstitutional. Under the Florida Constitution's separation of powers and this Court's precedent, the Legislature's long-respected prerogative to protect the integrity of the Florida bond market by making bond-validation judgments forever conclusive is a substantive power that cannot be overridden by a procedural rule.

This Court has long made clear that when the subject of the conflict between a rule of procedure and a statute is substantive and the statute confers a substantive right, "a conflicting procedural rule is invalid as a violation of separation of powers under article II, section 3 of the Florida Constitution because a rule of procedure cannot enact substantive law." *Hines v. State*, 931 So. 2d 148, 150 (Fla. 1st DCA 2006); *see also In re Amendments to Fla. Rules of Civil Procedure*, 682 So. 2d 105, 105-06 (Fla. 1996) (rejecting a proposed amendment allowing trial courts to determine a qualifying party's entitlement to attorney's fees under offer-of-judgment statutes

because out of "respect [for] the legislative prerogative to enact substantive law"). Substantive law is "that which defines, creates, or regulates rights—'those existing for their own sake and constituting the normal legal order of society, i.e., the rights of life, liberty, property, and reputation.'" *DeLisle v. Crane Co.*, 258 So. 3d 1219, 1224 (Fla. 2018) (quoting *In re Fla. Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972) (Adkins, J., concurring)). In contrast, procedural law "is the form, manner, or means by which substantive law is implemented." *Id.*

Applying that principle, this Court has explained that a quintessential example of substantive legislative authority is the power to create "statutory periods of limitation." *Lundstrom v. Lyon*, 86 So. 2d 771, 772 (Fla. 1956). Indeed, "[i]f [a rule of civil procedure] were given the effect of abrogating [a statute of limitations], it would have the effect of altering statutory periods of limitation by court rule contrary to" the Florida Constitution's separation of powers. *Id; see also Lane v. State*, 337 So. 2d 976, 977 (Fla. 1976) ("[T]he application of a Statute of Limitations is a substantive matter.").

These longstanding separation-of-powers principles foreclose Appellants' reading of Section 75.09. Like any other statute of

limitation or repose, Section 75.09 mandates a final end to a category of disputes to avoid infinite litigation. This Court has previously explained as much, noting that the Legislature enacted Chapter 75 "*to put in repose* any question of law or fact affecting the validity of the bonds[, and matters] … going directly to the power to issue the securities and the validity of the proceedings in relation thereto." *Donovan*, 82 So. 3d at 808 (emphasis added) (citations and internal quotation marks omitted)). And if the Florida Legislature acts well within its substantive policymaking domain when it enacts statutes of limitations, it also did so when it mandated repose from endless attacks on bond-validation judgments in Section 75.09.

The takeaway is inescapable. The Florida Constitution mandates that substantive law prevail over conflicting procedural rules. Section 75.09 is straightforwardly substantive under this Court's prior decisions, and Rule 1.540, as applied here, is a conflicting procedural rule. The Florida Constitution thus compels the conclusion that Section 75.09 be given effect over Rule 1.540.[8]

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[8] The Court's precedents on this subject demonstrate why Appellants' reliance on cases involving legislative attempts to regulate court procedure is erroneous. *See, e.g.*, Palm Beach Cnty. Br. 22–24.

FortiFi's own experience is a case study on why the Florida Legislature elected to exercise its constitutional authority to prioritize the finality of bond-validation judgments. Taking long-settled Florida law at its word, FortiFi made a significant investment in Florida and financed more than $150 million in qualified PACE improvements for Florida homeowners in full compliance with and in reliance on the terms of the Validation Judgment and Section 163.08, only for Appellants to wait a year after the Validation Judgment's entry to seek relief. At approximately the same time, Appellant tax collectors defied the Validation Judgment and refused to collect $17 million in annual 2023 tax year assessment payments financed in reliance on the Validation Judgment.[9] Even after the circuit court denied their motions and definitively held that the Validation Judgment required them to collect the assessment payments at issue, the Appellant tax collectors refused, and continue to refuse, to amend the property tax bills to collect the assessments the property owners voluntarily contracted to be collected. The result is that PACE bond markets

[9] Without an expeditious ruling from the Court, it is highly likely that Appellant tax collectors will refuse to collect annual 2024 tax year assessments payments for over $44 million of assessments that FortiFi has financed in reliance on the Validation Judgment.

have reacted negatively, property owners are unable to obtain financing for improvements necessary to obtain or retain property insurance, and home-improvement contractors have placed liens on properties of homeowners unable to obtain alternative financing.

The chaos wrought by Appellants' attacks on the Validation Judgment illustrates exactly why the Legislature sought to provide a definite and "forever conclusive" end to bond-validation disputes. Sanctioning Appellants' delay would further undermine the material conditions of FortiFi's significant investment in Florida and would portend grave consequences for Florida bond investors, who depend vitally on the certainty provided by validation judgments.[10] Without such certainty, bond ratings will decline as the risk to bond investors increases, the cost of capital for homeowners and municipal projects will increase, and institutional investors will look elsewhere.

In short, Section 75.09 confers a substantive right of repose. The circuit court was therefore correct in holding that no one may "use Rule 1.540 to circumvent the clear language of the Legislature

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[10] This Court's expedited review in bond-validation proceedings further underscores the need for finality in this context. *See Thomas*, 176 So. 3d at 252.

declaring bonds 'forever conclusive' once the time for appeal has passed." A.21.

III. THE VALIDATION JUDGMENT IS NOT VOID

Even assuming that Rule 1.540 is an appropriate vehicle to attack a bond-validation judgment, the circuit court's denial of Appellants' motions should be affirmed. In its Validation Judgment, the circuit court determined both (1) that FPFA is authorized to impose statewide non-ad valorem assessments to fund repayment of the bonds and (2) that county tax collectors have a ministerial duty to collect those assessments. The circuit court had jurisdiction to make both determinations, and its Validation Judgment is therefore conclusive in its entirety.

A. The Circuit Court Had Jurisdiction To Enter The Validation Judgment

1. Determining the circuit court's jurisdiction must again "begin with the statute's text." *1944 Beach Boulevard*, 346 So. 3d at 591. In Florida, "[c]ircuit courts have jurisdiction to determine the validation of bonds … and all matters connected therewith." § 75.01, Fla. Stat. The phrase "all matters connected therewith," *id.*, "is a broad one … and the words thus express a broad purpose," *Ham v.*

Portfolio Recovery Assocs., LLC, 308 So. 3d 942, 949 (Fla. 2020) (alteration adopted) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992)). Accordingly, that phrase's meaning must be "determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)).

Part of the statute's "broader context," *id.*, is its "neighboring provisions," *Alachua Cnty.*, 333 So. 3d at 171. One such provision, Section 75.02, is instructive, in that it describes who may be a plaintiff in a bond-validation action and defines the scope of a validation proceeding. The statute permits a local government to "determine its authority to incur bonded debt … and the legality of all proceedings in connection therewith, *including assessment of taxes levied or to be levied … and proceedings or other remedies for their collection*." § 75.02, Fla. Stat. (emphasis added).

Another familiar statute—Section 75.09—similarly informs the inquiry. That statute defines the scope and effect of a judgment validating bonds. It provides that upon the exhaustion of appellate rights, a bond-validation judgment "is forever conclusive as to all

matters adjudicated against … all others … to be affected in any way thereby," and that the "*validity of said bonds … or of any taxes, assessments or revenues pledged for the payment thereof*," and "*any remedies provided for their collection, shall never be called in question in any court by any person or party*." *Id.* § 75.09 (emphases added).

These provisions unquestionably inform the meaning of Section 75.01's phrase "all matters connected therewith." *Id.* § 75.01. As even the Attorney General notes, Section 75.02 "defines … the scope of bond validation proceedings."[11] Att'y Gen. Br. 17. If that scope includes—as Section 75.02 states—determining "the legality of … assessment of taxes levied or to be levied, … or other remedies for their collection," then a circuit court has jurisdiction to determine

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[11] Although the Attorney General correctly recognizes that the meaning of Section 75.01 must be defined by reference to "other provisions," Att'y Gen. Br. 16 (citation omitted), she forgets that Section 75.09 is one such "other provision[]," and neglects to cite or address that statute ***even once*** in her brief. *See generally id.* Similarly, the Attorney General never mentions that both Sections 75.02 and 75.09 permit adjudication of the "remedies for ***the[] collection***" of taxes and assessments that fund validated bonds. §§ 75.02, 75.09, Fla. Stat.; *see generally* Att'y Gen. Br. She thus provides no sound basis for her assertion that Section 75.03—which does not contain the word "collection"—limits the circuit court's jurisdiction to pre-validation proceedings, to the exclusion of post-validation collection proceedings. *See id.* 18.

"the legality" of an issuer's proposed "assessment of taxes levied or to be levied." § 75.02, Fla. Stat. And if—as Section 75.09 states—a circuit court's adjudication of "the validity of … any taxes, assessments or revenues pledged for the payment of bonds" and of "the remedies provided for their collection" can become "forever conclusive," it follows that a circuit court must have jurisdiction to make such determinations. *Id.* § 75.09.

That commonsense logic resolves this case. The two issues Appellants assert are "collateral" fall well within the authority contemplated by Chapter 75. *First*, the circuit court had jurisdiction to conclude that FPFA has authority to impose non-ad valorem assessments to repay the bonds, because it had jurisdiction to adjudicate "the legality of … assessment of taxes levied or to be levied," *id.* § 75.02, as well as "the validity of … any taxes, assessments or revenues pledged for the payment [of bonds]," *id.* § 75.09. As the court below observed, that determination "was plainly and appropriately 'part of the Court's inquiry into whether the [FPFA] has the authority to issue the bonds.'" A.30 (alteration adopted; other alteration added) (quoting *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940,

944 (Fla. 2001)). *Second*, the circuit court had jurisdiction to conclude that county tax collectors have a ministerial duty to collect those assessments, because it had jurisdiction to determine "the validity of … any taxes, assessments or revenues pledged for the payment of bonds" and of "any remedies provided for their collection." § 75.09, Fla. Stat.; *see also id.* § 75.02; *Thomas*, 176 So. 3d at 253.

Even if there were doubt about Chapter 75's straightforward application here, the circuit court's unchallenged factual findings and the record would resolve them. FortiFi's CEO, Christopher Nard, testified that absent collection of the assessments, the "bonds will not be secured as intended," A.32, and that "it would be nonsensical to try to market one of these bonds without the collection method tied to it. . . ." A.2393. Even an Assistant State Attorney for the Second Judicial Circuit—who received actual notice of and actually participated in the bond-validation action—testified that the Validation Judgment "seemed to be fairly straightforward." A.2375–77. Thus, the record, statutory text, and established interpretive principles all unmistakably point in the same direction: that the circuit court had, and properly exercised, its jurisdiction to enter the Validation Judgment.

2. Appellants' arguments that the circuit court lacked jurisdiction to reach the conclusions expressly contemplated by Chapter 75 fall roughly into two categories: (1) attempts to litigate afresh the merits of the circuit court's now-conclusive Validation Judgment, *see, e.g.*, Tax Collectors' Br. 19-23, and (2) arguments that this Court's precedents require it to ignore Chapter 75's express text here. The first set of complaints is beside the point. *See* §§ 75.01, 75.09, Fla. Stat. And the second is unpersuasive.

Appellants rest their jurisdictional objections primarily on an erroneous reading of *State v. City of Miami*, 103 So. 2d 185 (Fla. 1958). There, the City of Miami sought to validate revenue bonds to fund the operation of its waterworks program. *Id.* at 186. In the judgment validating the bonds, the circuit court determined that (i) Dade County's home rule authority over the waterworks system in the City of Miami did not impair the City's power to issue bonds; (ii) Dade County was not authorized or permitted to acquire the City's waterworks "or take any action affecting the operation thereof"; and (iii) the property of the waterworks system was exempt from taxation. *Id.* at 186–87. On appeal, this Court held that the first question—whether Dade County's home rule authority interfered with the City's

authority to issue bonds "was properly raised for consideration," because "it goes directly to the question of the power to issue the bonds and the proceedings taken in connection therewith." *Id.* at 187. That holding—which Appellants largely ignore—is directly relevant here. By affirming the circuit court's adjudication of the County's claim of home rule authority, this Court declared that the circuit court had jurisdiction to determine the right to act under a bond-validation judgment despite another local government's contrary claim.

Although the Court in *City of Miami* determined that the second and third issues were collateral to the judgment, those conclusions bear little resemblance to the challenged portions of the Validation Judgment here. Those issues—whether Dade County had the power to acquire the waterworks system and whether the waterworks system would be exempt from taxation—did not fall within the scope of Chapter 75's text.[12] Neither issue pertained to "the validity of … any taxes, assessments or revenues pledged for the payment [of

[12] The wording of an earlier version of Section 75.09 in effect at the time of *City of Miami* was nearly identical to the current version. *See* § 75.09, Fla. Stat. (1957), https://library.law.fsu.edu/Digital-Collections/FLStatutes/docs/1957/1957TVIC75.pdf.

bonds]" (as the circuit court's conclusion that FPFA may impose a non-ad valorem assessment here does), or to "the validity of … remedies provided for their collection" (as the circuit court's conclusion that tax collectors have a duty to collect the tax here does). § 75.09, Fla. Stat. In other words, while the trial court's adjudication of certain matters in *City of Miami* could not be squared with the text of Chapter 75, exactly the opposite is true here.

Appellants commit the same error in their reliance on other decisions from this Court. Unlike the circuit court's conclusions here pertaining to the "validity of … any taxes, assessments or revenues pledged for payment [of bonds]" and the "remedies provided for their collection," *id.*, the Court's prior decisions have held that issues *not* plainly covered by Chapter 75's language are collateral. *See, e.g.*, *DeSha v. City of Waldo*, 444 So. 2d 16, 17 (Fla. 1984) (adding provision to judgment requiring city to pass water and sewer connection ordinance in the future was not required and would have been collateral); *McCoy Rests., Inc. v. City of Orlando*, 392 So. 2d 252, 253–54 (Fla. 1980) (resolving the validity of airport lease agreements was collateral); *Taylor v. Lee Cnty.*, 498 So. 2d 424, 425 (Fla. 1986) (determining whether toll can be placed on bridge was collateral).

Nothing about those decisions requires the atextual outcome that Appellants urge.

B. Appellants' Due Process And Personal Jurisdiction Challenges Fail

1. Several Appellants challenge the same portions of the Validation Judgment for the same reason—that the challenged portions adjudicated collateral issues—but this time restyle their challenge as a due process objection. That repackaged argument fails for familiar reasons.

As an initial matter, Appellants' due process challenge lacks any statutory foundation. The circuit court found—and no party disputes—that FPFA satisfied all statutory notice requirements enacted by the Legislature. A.19. By and large, the notice statutes applicable here do not require *actual* notice; as this Court has observed, "the Legislature has authorized *constructive* notice of property owners or other interested parties in bond validation proceedings." *Keys Citizens*, 795 So. 2d at 949 (emphasis added); *see also id.* ("Nor do the pertinent bond validation statutes require the specificity of the published notice urged by [Appellants]."); §§ 163.01(7)(e)(4), 75.05, 75.06, Fla. Stat.

There is also no doubt about the constitutionality of the constructive-notice system that FPFA fully complied with. That system has unique pedigree: it has existed in various forms since 1911, *see Thompson v. Town of Frostproof*, 103 So. 118, 118 (Fla. 1925), and this Court has repeatedly held that it satisfies due process, *see, e.g.*, *Keys Citizens*, 795 So. 2d at 949 (rejecting argument that bond issuer "should have given *actual* notice" that a specific issue "would be considered during the bond validation proceeding" and observing that "constructive notice by publication is appropriate in bond validation proceedings"); *Penn v. Fla. Def. Fin. & Acct. Serv. Ctr. Auth.*, 623 So. 2d 459, 462 (Fla. 1993) (rejecting constitutional challenge to Chapter 163, Florida Statutes, and due process challenge to constructive-notice statute in bond-validation action). The Court's decisions in this area are well-reasoned. After all, due process requires only that "notice [be] reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present

their objections," *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)—not that they *actually* be notified.[13]

Given that backdrop, Appellants frame their due process challenge in exceedingly narrow terms. Unable to take issue with FPFA's full compliance with applicable notice statutes and the settled law holding such statutory notice constitutional, what remains of Appellants' due process argument is their assertion that additional notice was required because—and *only* because—the circuit court (allegedly) adjudicated collateral issues. *See, e.g.*, Alachua Cnty. Br. 22-24, 42-45 (arguing that the circuit court lacked personal jurisdiction over counties "as to the collateral matters" and that the "collateral matters … are … void … for lack of due process"); Palm Beach Cnty. Br. 20, 47 n.8 (arguing that the circuit court lacked "personal jurisdiction to adjudicate collateral matters" and that due

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[13] For this reason, it is especially puzzling that some Appellants assert that they were entitled to *actual* notice. *See* Palm Beach Cnty. Br. 48 (arguing that due process is not satisfied because Appellants "did not *in fact* receive notice" and "statutory notice d[id] not *actually inform* the affected party" (emphases added)). As *Mullane* and this Court's own cases hold, notice need only be "reasonably calculated" to inform affected parties. 339 U.S. at 314. Even the cases on which Appellants most heavily rely, *see* Palm Beach Br. 48, reinforce that due process may be satisfied when a party "did not receive actual notice." *Vosilla v. Rosado*, 944 So. 2d 289, 296 (Fla. 2006).

process objection "only arises here because FPFA improperly injected collateral matters"). If that argument sounds familiar, it is. Labels aside, Appellants' due process challenge collapses into the circular contention that Appellants should prevail on their second argument (due process) because they should also prevail on their first (subject-matter jurisdiction). But for reasons already explained, Appellants' jurisdictional objections fail, pp. 38–46, *supra*, which means their due process arguments fail, too.

That is not the only insurmountable hurdle facing Appellants' due process challenge. Appellants, in their capacities as state actors, "are not … 'person[s]' entitled to protection under the due process clause of the federal or state constitution." *Dep't of Cmty. Affairs v. Holmes Cnty.*, 668 So. 2d 1096, 1102 (Fla. 1st DCA 1996); *accord, e.g.*, *City of E. St. Louis v. Cir. Ct. for Twentieth Judicial Cir.*, 986 F.2d 1142, 1144 (7th Cir. 1993) ("Municipalities … are not 'persons' within the meaning of the Due Process Clause."). As this Court has explained, the State's "powers with respect to municipalities is absolutely unlimited except as restrained by the state or federal constitutions," *State ex rel. Green v. City of Pensacola*, 126 So. 2d 566, 570 (Fla. 1961), and "[i]t is an established principle of

constitutional law that those constitutional restraints imposed by the Federal Constitution against state action do not apply against the state in favor of its own municipality, in so far as … due process of law under the Fourteenth Amendment [is] concerned," *Shelby v. City of Pensacola*, 151 So. 53, 55 (Fla. 1933). There is no reason to treat the Florida Constitution's materially identical Due Process Clause differently than its federal counterpart, as the First DCA has recognized. *See Dep't of Cmty. Affairs*, 668 So. 2d at 1102; *compare* Art. I, § 9, Fla. Const. *with* U.S. Const. amend. XIV, § 1.

Put simply, the Due Process Clause protects private parties like FortiFi from the State, not the State from itself. And the circuit court was both well-equipped and "free to decide for [itself] all questions of the construction of state constitutions and statutes" with multiple State Attorneys participating, *State v. Barquet*, 262 So. 2d 431, 436 (Fla. 1972) (citation omitted); it was not required—constitutionally, statutorily, or as a matter of common sense—to solicit the views of every county and tax collector in Florida before deciding an issue of Florida law, as circuit courts regularly do in entering bond-validation judgments.

Nothing crystallizes this fact more than the State Attorneys' brief. The State Attorneys received actual notice of the bond-validation action and participated in the action without objection, ultimately electing not to appeal the Validation Judgment. A.37; *see* A.2209–10 (circuit court explaining that the State Attorneys were parties to the validation action and failed to appeal). Now, however, the State Attorneys contend that the Validation Judgment should be stricken because it violated the due process rights of *other* Appellants, and that they, as actual participants in the bond-validation action, were not adequate representatives of those other Appellants. State Attys.' Br. 7. But the very fact that the State Attorneys now make this argument proves that is false. Having failed to preserve any conceivable objection that they might raise in their *own* right, the State Attorneys now assert due process objections *on behalf of the very third parties* that they contend they were *not* permitted to represent below. *Id.* 20. If the State Attorneys may assert the rights of third parties in this appeal, then they were perfectly adequate representatives of those same parties in the circuit

court.[14] *See* § 75.05(1), Fla. Stat. (stating that "the state through its state attorney or attorneys" may appear).

Contrary to Appellants' contentions, any due process concerns tilt decisively in *FortiFi's* direction. The Florida Legislature has declared that a bond-validation judgment resolving "the validity of … any taxes, assessments or revenues pledged for the payment" of bonds or of "any remedies provided for their collection" is "forever conclusive" and "shall never be called in question in any court by any

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[14] Despite having forfeited any objections they might have by failing to raise them in the bond-validation action, the State Attorneys challenge the circuit court's determination that "[t]he State Attorney is deemed to represent the entire state by operation of law when the proceeds of the bonds to be issued will be expended statewide." A.37. Even if that argument were preserved, it would not affect the judgment, because whether the State Attorney is a proper representative of other state actors matters only if the circuit court decided collateral issues—which it did not. The State Attorneys' objection is also wrong on the merits: they themselves assert the rights of other parties in this appeal, *see* p. 51, *supra*; they *do* represent the State (including, often, outside of their respective counties), *see, e.g.*, *Austin v. State ex rel Christian*, 310 So. 2d 289, 292 (Fla. 1975); *Dade Cnty. v. Strauss*, 246 So. 2d 137, 140 (Fla. 3d DCA 1971); and due process does not protect state actors at all, *see* p. 49–50, *supra*, let alone require the Legislature to balkanize the State's litigation counsel according to county lines. Moreover, to the extent that the State Attorneys claim that the circuit court misinterpreted *statutory* law when it concluded that the State Attorney for the Second Judicial Circuit represents the state, that asserted error is not of *constitutional* significance and thus is not a basis for voiding a forever conclusive validation judgment.

person or party." § 75.09, Fla. Stat. FortiFi took the Legislature at its word. It relied on the Validation Judgment—and the plainly worded statutes authorizing it—in good faith. Through its contractual relationship with FPFA, FortiFi financed thousands of hurricane-hardening and wind-mitigation projects to help Floridians protect their homes and obtain or maintain homeowners' insurance, and pooled FPFA bonds as asset-backed securities for sale to third-party investors. If, after all that, the state-actor Appellants were permitted to pull the rug from under FortiFi by striking a judgment that the Legislature's plain words deem "forever conclusive," it is FortiFi who would suffer a due process violation at the hands of the State. *See Sessions v. Dimaya*, 584 U.S. 148, 183 (2018) (Gorsuch, J., concurring) ("Fair notice of the law's demands … is the first essential of due process." (citation and internal quotation marks omitted)); Note, *Textualism as Fair Notice*, 123 Harv. L. Rev. 542, 557 (2009) ("Textualism as fair notice emphasizes the importance of interpreting laws as their subjects would fairly have expected them to apply.").

2. Appellants also seek to strike the same portions of the Validation Judgment on the ground that the circuit court lacked

personal jurisdiction over them. Again, their argument rests entirely on the incorrect premise that the circuit court adjudicated collateral issues. *See* Alachua Cnty. Br. 22–24, 37, 42 (asserting lack of "personal jurisdiction over the counties as to the collateral matters"); Palm Beach Cnty. Br. 20 (arguing that the circuit court "lacked … personal jurisdiction to adjudicate collateral matters"). It therefore fails for that reason alone.

Several Appellants insist that Florida law did not allow them to become parties to the case. But that only matters if the Validation Judgment included collateral issues—which, as explained, it did not. Regardless, the participation of the State Attorneys sufficed, and Florida law expressly permits any party "to be affected" "by the issuance of bonds and certificates," § 75.05(1), Fla. Stat., or "[a]ny … person interested," *id.* § 75.07, to participate in a bond-validation action.

Finally, in their continuing quest to defend the rights of parties they claim not to represent, the State Attorneys suggest that the counties and tax collectors could not have become parties to the bond-validation action without "actual notice." State Attys.' Br. 3. But Section 75.05(1) expressly makes the State a party to the action

upon the State Attorneys' being served with notice, and Section 75.06 expressly provides that persons who do *not* receive actual notice may become parties to the action. *See* §§ 75.05(1), 75.06, Fla. Stat. Indeed, the State Attorneys fail to recognize that their argument, if followed to its logical end, would end the constructive-notice system enacted by the Legislature.

CONCLUSION

This Court should affirm.

July 23, 2024

Respectfully submitted,

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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 10,664 words.

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