

IN THE SUPREME COURT
STATE OF FLORIDA

CASE No. SC06-1894

DR. GREGORY L. STRAND,

Petitioner,

v.

ESCAMBIA COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Respondent.

**AMICUS BRIEF
OF THE SCHOOL BOARDS OF BROWARD, LAKE, LEE, OSCEOLA,
PALM BEACH, POLK AND ST. LUCIE COUNTIES
IN SUPPORT OF
RESPONDENT'S MOTION FOR REHEARING**

ON REVIEW FROM A DECISION OF THE
FIRST JUDICIAL CIRCUIT IN AND FOR ESCAMBIA COUNTY, FLORIDA

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IDENTITY AND INTERESTS OF AMICI¹

Each of the *amici* School Boards (“the School Boards”) is a constitutional body created by Article IX, Section 4(a) of the Florida Constitution, with the authority to levy ad valorem taxes within its school district (*see* Art. VII, § 9(a) and Art. IX, § 4(b), Fla. Const.) and to incur obligations for capital expenditures in the district. *See* Art. VII, § 12, Fla. Const., and §§ 1001.42(9)(b)(5) and 1013.15(2), Fla. Stat. (2006). The School Boards’ interest in this case is compelled by the Court’s September 6 decision to recede from *State v. School Board of Sarasota County*, 561 So. 2d 549 (Fla. 1990) (“*Sarasota County*”).

In reliance on the *Sarasota County* decision, billions of dollars of lease obligations have been issued on behalf of Florida school boards without voter approval. As explained in section III.B below, those obligations are principally in the form of certificates of participation, commonly called “COPs,” which are securities representing undivided interests in lease payments made by school boards to finance the cost of building schools.

The Court’s wholly unexpected September 6 decision has raised serious questions concerning the continued validity of lease obligations such as certificates of participation, and the effect of the Court’s decision on the borrowing power of school boards, on the status of school construction projects, on the market for

¹ The School Board of Miami-Dade County, which has the largest dollar volume of outstanding school district debt obligations in the state, is scheduled to consider approval for joinder in this *amicus curiae* brief at a meeting to be held on September 19, 2007.

school district certificates of participation, on the federal income tax consequences to holders who have purchased such certificates of participation, on the registration requirements for certificates of participation under federal securities laws, and on the market value and credit rating of certificates of participation.

To put these concerns in perspective, the Court should know that the aggregate par value of outstanding certificates of participation issued by Florida school districts, as of September 1, 2007, stands at approximately \$13 *billion* dollars. A listing of outstanding COPs for Florida school boards compiled by Citigroup is attached as Appendix 1. So far in calendar 2007, the Palm Beach County School Board alone has issued \$491 million of certificates of participation and, according to the School Board's Office of the Treasury, had plans to approve another \$165 million on September 26 with a proposed sale of the certificates to follow in October for nine capital projects. That sale has been put on hold as a result of the Court's September 6 decision in this case.

The interest of the School Boards in this case is confined to the Court's discussion and ruling with respect to the *Sarasota County* decision. The School Boards take no position with respect to the merits of the dispute between Dr. Strand and Escambia County, but they do question the Court's decision to overturn, without briefing, argument, or an opportunity for party or *amici* participation, two precedents which have been the pillar of school and governmental developmental activities: the *Sarasota County* decision, and *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980) ("*Miami Beach*").

SUMMARY OF ARGUMENT

The Court's decision to recede from its *Sarasota County* decision was an unforeseen occurrence that has broad and drastic statewide consequences. That case, and the issues in that case, were not briefed or argued by the parties. The Court does not ordinarily address issues which are not before the Court, and the School Boards respectfully suggest that it was improvident for the Court to have done so in this case.

The Court's discussion and holding with respect to the *Sarasota County* decision was not essential to any issue before the Court in this case. The Court's *Sarasota County* decision did not involve tax increment financing, a pledge of ad valorem tax revenues (as the Court's opinion mistakenly states), or obligations which mature more than twelve months after the date of issuance. The obligations at issue in that case did not fall within the referendum requirement of Article VII, Section 12 of the Florida Constitution, and the Court specifically so held.

Certificates of participation in school board lease agreements are issued on behalf of Florida's school boards to meet their constitutional and statutory responsibilities to provide capital projects for the schools within their districts. Certificates of participation are qualitatively different from tax increment financing bonds which draw on ad valorem tax revenues from local governmental authorities which possess general public responsibilities, such as was the case with respect to Escambia County's proposed bond issue in this case and the bonds at issue in the *Miami Beach* case.

The Court should reconsider its decision insofar as it addresses the *Sarasota County* decision, and remove from its decision any consideration or treatment of school board lease revenue bonds and certificates of participation for capital projects. Additionally, it would be prudent, and not unprecedented, for the Court to issue an immediate order suspending the operation of its September 6 decision pending a final determination on the merits of the County's motion for rehearing and *amici's* request for a revised opinion as regards the *Sarasota County* decision. Such an order could provide restorative comfort to school boards which have just adopted final budgets for the fiscal year ended June 30, 2008, and their 5-Year Educational Facilities Plans as required by law. It would also assuage the concerns of the underwriters, rating agencies, broker-dealers, auction agents, insurers, banks, municipal analysts, investment agreement providers, swap counterparties, and others involved in the municipal bond markets (collectively "Investment Professionals"), and investors.

At the very least if the Court declines to withdraw its decision to recede from the *Sarasota County* decision, the Court should clarify its decision to indicate that it has only a prospective effect, in order to dispel concerns with respect to non-validated lease obligations and certificates of participation issued by or on behalf of school boards.

ARGUMENT

This case came before the Court on appeal from a final judgment validating tax increment bonds proposed to be issued by Escambia County for widening a

four-lane road running to Perdido Key. Slip Opinion at 1, 2. The County's bonds were challenged as constituting an indirect pledge of ad valorem taxes without the referendum required by Article VII, Section 12 of the Florida Constitution, in violation of the Court's decision in *County of Volusia v. State*, 417 So. 2d 968 (Fla. 1982) ("*Volusia County*"). *Id.* at 7.

Escambia County's support for its proposed financing was grounded principally on the Court's *Miami Beach* decision. *Id.* The underlying premises for that decision, and its validity as precedent, were neither questioned nor addressed by either party in their briefs. Yet the Court receded from that decision (*id.* at 27), and in so doing also receded from the *Sarasota County* decision "to the extent . . . inconsistent with our decision in this case" (*id.*) despite the fact that the *Sarasota County* case did not involve tax increment bonds, did not involve a pledge of ad valorem tax revenues, did not involve obligations which mature in more than twelve months, was not at issue in this case, and was not even *mentioned* in any brief filed by either party.

The School Boards, and every other school board in Florida, were blindsided by the Court's September 6 decision insofar as it receded from the *Sarasota County* decision. So, too, were Investment Professionals throughout the country, and the myriad of institutional and individual investors who have purchased and own tax-free debt obligations issued by or on behalf of Florida's school boards. The Court's decision resulted in immediate adverse effects on the market for school board certificates of participation, and on planned capital improvement projects for public schools. The Court's decision threatens to require

modifications to the annual budgets which the School Boards just adopted for fiscal 2007-08, and to cause the suspension or cancellation of existing and planned contracts for the construction of schools.

The School Boards respectfully suggest that the Court's decision with respect to the proposed bond financing of Escambia County, and its decision to recede from the *Miami Beach* decision, did not require any consideration of the *Sarasota County* decision, and should not have implicated the financings there approved. Specifically, the School Boards request that the Court reconsider its discussion and ruling with respect to the *Sarasota County* decision, and clarify its *Strand* decision to leave the *Sarasota County* decision intact. An immediate declaration that the September 6 decision is suspended pending consideration of rehearing motions would go a long way toward restoring order to the municipal bond markets, allowing more deliberative planning by the School Boards in their annual budgeting and capital planning processes, and according recognition to the continued validity of the billions of dollars of outstanding Florida school board certificates of participation.

Should the Court decline to withdraw its decision to recede from the *Sarasota County* decision, which the School Boards sincerely hope will not be the case, they respectfully request that the Court at least hold that its decision in this case is prospective in effect insofar as it affects school board certificates of participation. Any such determination should make clear that the Court's decision in *Strand* will not apply to school board certificates of participation issued without voter approval prior to the date on which the Court's decision becomes final.

The School Boards begin their analysis with an explanation of the Court’s September 6 decision, its importation of the *Sarasota County* case into the Court’s opinion, and an explanation of the *Sarasota County* decision itself. The concerns which prompted the School Boards’ *amici* participation in this appeal are then explained by a brief discussion of the constitutional status of school boards in Florida, the laws which authorize and govern the financing of capital improvements for Florida schools, the nature of the transactions by which those financings are accomplished, and the wide-ranging impact of those transactions.

The School Boards believe they will establish to the Court’s satisfaction that the certificates of participation by which school boards fund capital projects, in discharge of their constitutional and statutory responsibilities for the state’s public schools, are substantively different from the use of ad valorem tax revenues for tax increment financing by general purpose local governments. They believe they will also establish that the *Sarasota County* decision was expressly grounded on three features of the lease obligations which insulate them from the referendum requirement of Article VII, Section 12 – the absence of any “pledge” of ad valorem taxation, the fact they did not mature in more than twelve months, and the single-purpose nature of school boards – so that receding from that decision in this case would be inappropriate.

I. Discussion of the Court’s decision on the merits in the *Strand* case.

Dr. Strand challenged Escambia County’s proposed tax increment financing for road construction as an indirect pledge of ad valorem taxes without voter

approval. Slip Opinion at 7. Escambia County supported its proposed financing in reliance on the Court’s decision in the *Miami Beach* decision. *Id.*

Dr. Strand did not suggest in his briefs that the Court should recede from the *Miami Beach* decision. He argued only that Escambia County’s proposed tax increment financing scheme was distinguishable from the financing scheme in that case because it was not based on the Community Redevelopment Act (Petitioner’s initial brief at 21-22), and because the County did not comply with the requirements of that Act. *Id.* at 24-25. Nonetheless, based on the Court’s understanding of the plain meaning of Article VII, Section 12, and a concern for the right of voters to approve long-term debt using ad valorem tax revenues before being incurred, the Court rejected Escambia County’s proposed use of ad valorem tax revenue for a tax increment financing of road construction as an indirect attempt to do what the Constitution forbids directly.

Going beyond a reversal of the judgment validating Escambia County’s bonds, the Court revisited the issue of tax increment financing without a referendum and the approval of such financings in its *Miami Beach* decision. Finding it necessary “to vindicate other principles of law or to remedy continued injustice” (Slip Opinion at 24, quoting *Allstate Indemnity Co. v. Ruiz*, 899 So. 2d 1121, 1131 (Fla. 2005)), the Court held that it could no longer support the “legal fiction” of the *Miami Beach* decision and receded from it. *Id.* at 25.

II. Discussion of the Court’s importation of the *Sarasota County* decision into its *Strand* opinion.

The *Sarasota County* decision did not involve tax increment financing. Nor

did it involve a general purpose unit of government with ad valorem taxing authority. Unsurprisingly, neither party in this case addressed the subject matter of the *Sarasota County* decision: the use of ad valorem taxes raised by school districts for their sole, constitutionally and statutorily authorized purpose of financing capital projects for the state's public schools. In fact, neither Dr. Strand nor Escambia County even *cited* the *Sarasota County* decision in briefs. The *Sarasota County* decision is mentioned only in an *amicus curiae* brief filed by the Florida Association of Counties, and solely for a reference to the dissenting opinion of Justice McDonald. *Amicus* brief at 17-18.

The *Sarasota County* decision was imported into the Court's decision by an innocuous observation, arguably unnecessary, that the premise of the *Miami Beach* decision with respect to Article VII, Section 12 was "clarified" in the *Sarasota County* decision. Slip Opinion at 7-8. With no substantive consideration or analysis of the *Sarasota County* decision, it was then swept into the Court's disagreement with the *Miami Beach* decision on the basis that the latter decision "led to the holding" in the *Sarasota County* decision, with the mistaken observation that the bonds at issue in that case were issued with a "pledge" of ad valorem tax revenues. *Id.* at 10. (In fact, it was an entirely different decision -- *State v. Brevard County*, 539 So. 2d 461 (Fla. 1989) ("*Brevard County*") -- which led to the Court's decision in *Sarasota County*. 561 So. 2d at 552.)

These analyses by the Court led it to hold that Escambia County's increment financing scheme was "consistent" with the premise and holding of both the *Miami Beach* and *Sarasota County* decisions (Slip Opinion at 7-8), and prompted the

Court to reassess what it believed to be the premise of those cases. *Id.* at 14. The Court then concluded that it would expressly depart from the doctrine of *stare decisis* and recede from the *Sarasota County* decision along with its retreat from *Miami Beach*. *Id.* at 23-25.

The Court did mitigate the effect of its decision by noting that tax increment financing is not *per se* unconstitutional, and that its decision does not affect bonds which had been validated prior to the opinion becoming final. *Id.* at 26. The Court, however, did not address the legal effect of its decision on outstanding bonds or certificates of participation which had *not* been validated since the Court's decision in *Sarasota County*.

III. Analysis of the lease financing of school capital projects by Florida's school boards.

A. The constitutional and statutory authorizations for school boards to levy ad valorem taxes.

Article IX, Section 4(a) of the Florida Constitution provides that each county of the state shall constitute a school district, and that each district shall have a voter-elected school board. Article VII, Section 9(a) gives school districts the authority to levy ad valorem taxes not in excess of 10 mills. Article IX, Section 4(b) authorizes school boards to determine the rate of school district taxes. Article VII, Section 12 authorizes the school districts to issue bonds and certificates of indebtedness payable from ad valorem taxes for capital projects, subject to a referendum requirement for obligations which mature more than twelve months after issuance. In section 1011.71(2), Fla. Stat. (2006), the Florida

Legislature has given school boards the authority to levy up to 2 mills against their 10 mill cap for capital improvements and equipment. This taxing authorization is geared to the specific purpose for which school boards are created – funding of the state’s public school system.

This single-purpose authority is wholly unlike the taxing authority which the Constitution gives to counties and other general purpose units of government. The legislature’s commitment of ad valorem tax revenues for school capital projects, and the use of lease financing to facilitate the construction of schools, cannot lead to an increase in ad valorem taxes in the school districts for *other* governmental services due to a shortage of ad valorem tax revenues. That was the concern of the Court in its *Strand* opinion. But school boards have no “other” purpose.

B. The mechanisms by which capital improvements for schools are financed in Florida.

The Florida Legislature’s authorization for tax-exempt lease financings by school boards is found in sections 1001.42(9)(b)(5) and 1013.15(2)(a), Fla. Stat. (2006). Since the *Sarasota County* decision in 1990, lease financings using certificates of participation have been the predominant form of fund-raising for capital projects undertaken by the school boards. These are complex transactions, but readily explainable in broad terms.

School boards own public lands. A school board leases its land as a school site to a non-profit educational corporation (usually under a master lease involving multiple school board properties), and the non-profit corporation leases the property back to the school board for the construction of schools. To finance

schools on that land, the non-profit corporation causes a trustee to issue certificates of participation in the lease which are sold to the public. The proceeds of sale are used to build the school.

The certificates give holders an undivided proportionate interest in the school board's lease payments, a portion of which is considered interest and is tax-exempt. The source of those payments in the *Sarasota County* case, which is typical, was comprised of funds received from the State of Florida, from voter-approved local government tax levies such as a sales surtax, and from the school boards' levy of up to 2 mills of ad valorem taxes on district properties.² Typically, certificates of participation are insured by AAA-rated insurers who insure payment of the interest and principal of the certificates against non-appropriation or default.³

Each lease is no more than a one-year obligation which terminates on June 30 of each year, the last day of each school board's fiscal year. Each is subject to renewal if the school board takes affirmative action to renew its term for another year in its annual budget and appropriations process. Failing annual renewal (known as an "event of non-appropriation"), the lease terminates and the school board no longer has a right to occupy the school facility until the end of the initial ground lease term. Instead, the holder of the ground lease, acting at the

² See, *Sarasota County*, 561 So. 2d at 551 n.3.

³ For example, the principal and interest payments on a recent issue of \$90+ million of School Board of Miami-Dade County certificates of participation were insured by Financial Guaranty Insurance Company. The cover sheet of the prospectus for that issue is attached as Appendix 2.

direction of the bond insurer who must continue to pay the certificate holders, will try to re-let the property for the remaining term of the ground lease. Investors, whose principal and interest payments are being paid by the insurer, have no right to compel the levy of an ad valorem tax.

The fact that each lease obligation terminates at the end of each fiscal year gives the school boards “freedom to decide anew each year . . . whether to appropriate funds for the lease payments,” and removes them from the referendum requirement of the Constitution. *Sarasota County*, 561 So. 2d at 552, citing to *Brevard County*. To date, there has been no event of non-appropriation or default under any Florida school board lease financing.

C. The factual foundation of the *Sarasota County* case.

The *Sarasota County* case was a consolidated proceeding which involved tax-exempt bonds issued on behalf of the School Boards of Orange and Sarasota Counties, and tax-exempt certificates of participation issued on behalf of the School Board of Collier County. *Sarasota County*, 561 So. 2d at 550 n.1. The case did not involve a county or other general purpose unit of government with taxing authority, tax increment financing, or a “pledge” of ad valorem tax revenues. The case did not involve any obligation of a school board whose maturity exceeded twelve months. 561 So. 2d at 552.

As noted, the bonds and certificates of participation in that case were funded by payments received from the state, a voter-approved local government sales surtax, and ad valorem tax revenues received by the school boards pursuant to their

authority to levy up to 2 mills for capital projects. The nature of the tax-exempt, lease revenue bonds at issue in the *Sarasota County* case was set out in the Statement of the Case and Facts which appeared in the answer brief filed by the Sarasota County School Board, and for the Court's convenience a copy of the Statement is attached to this brief as Appendix 3. The complete brief in *Sarasota County* is available at <https://www.law.fsu.edu/library/flsupct/74979/74979.html>.

A succinct explanation of why the debt obligations in the *Sarasota County* case did not meet the "more than twelve months" requirement for a referendum in Article VII, Section 12, is set out in three pages of the Argument section of that brief attached as Appendix 4. The gravamen of the School Board's argument in that case was based on the Court's holding in the *Brevard County* case that, "in adopting its budget on an *annual* basis," the county "preserves its right to decide to terminate the lease without further obligation." 539 So. 2d at 463 (emphasis added).

The *Brevard County* case on which the Court relied in *Sarasota County* was issued one year before the *Sarasota County* decision, and over seven years *after* the Court's decision in *Volusia County*. In *Brevard County*, the Court specifically held that the bond issues there were "easily distinguished" from those in the *Volusia County* case because they left the county with "full budgetary flexibility." 539 So. 2d at 463, 464. The School Boards respectfully suggest that the Court should not have relied on *Volusia County* to recede from the *Sarasota County* decision.

The materials from the *Sarasota County* case, and the opinion in that case,

show that the school board lease obligations in that case had maturities of less than twelve months, and were payable from ad valorem tax revenues which were not pledged. Those two features of the school board obligations, coupled with the Court's reliance on *Brevard County*, were what led to the Court's decision in the *Sarasota County*. Those factors serve to distinguish school board certificates of participation from bonds issued by the general purpose governmental units such as those in the *Volusia County* case, and in this case.

IV. The wide-ranging effects of the Court's opinion in *Strand*.

The Court's decision to recede from the *Sarasota County* decision has called into question the settled expectations of school boards which have relied on lease financing mechanisms to fund capital projects, the Investment Professionals involved in those financing transactions, and investors. Given the absence of briefing with respect to the *Sarasota County* decision, the Court could not be expected to have known that its decision with respect to the validation of Escambia County's tax increment financing for road-widening would produce such broad, adverse legal and financial consequences for the marketing of school lease financings, or cause disruption in the school boards' annual budgeting, appropriation, and capital planning processes.

Yet the Court's September 6 decision to recede from the *Sarasota County* decision *did* have a range of immediate effects. Florida's school board lease obligations have traditionally been rated as AAA (insured) by the national credit rating agencies. Upon learning of the Court's decision, Standard & Poor's Ratings

Services placed all Florida school board certificates of participation on “credit watch” (Appendix 5) and Fitch advised that it was monitoring the situation. Appendix 6.

The Court’s September 6 opinion created general uncertainty with respect to its possible retroactive effect on certificates which had not been validated, and with respect to the marketability of future issues of certificates of participation. This, in turn, created problems for school boards in their just-completed annual budgeting and appropriation processes for fiscal year 2007-08 and for 5-Year Capital Plans. Due to the concerns of the Investment Professionals, school financing obligations approved by the boards and scheduled to go to market were put on hold.⁴ As a matter of prudence, some of the school boards are now considering suspending and/or cancelling contracts for capital projects in progress, and those to be undertaken in the current fiscal year which are to be funded from certificates of participation.

Among Investment Professionals, market participants, and school boards, uncertainty as to the meaning and scope of the Court’s decision prompted discussions regarding the on-going validity and tax-exempt status of school board lease obligations, and their exemption from the registration requirements of the

⁴ *Amicus* Palm Beach County School Board shelved the issuance of certificates of participation scheduled to be approved on September 26, and scheduled for sale in October, based on the Investment Professionals’ concerns with the effects of the Court’s *Strand* decision.

federal securities laws. The secondary markets for trading Florida school board certificates have been thrown into disarray.

V. Relief requested by the School Boards with respect to the Court's September 6 *Strand* decision.

A. Immediate relief from the effect of the Court's opinion.

For the reasons stated, the School Boards respectfully request that the Court reconsider its decision to recede from the *Sarasota County* decision. The School Boards understand that the Court's consideration of this request, and other requests for reconsideration, cannot be resolved overnight.

As shown, however, the unexpected legal effects and consequences of the Court's decision to recede from the *Sarasota County* decision are having an immediate impact on every aspect of school board governance and operation, and the markets for school board bonds. Accordingly, the School Boards respectfully request that the Court issue an immediate order suspending the operation of the *Strand* opinion until the Court has concluded with finality its consideration of the County's motion for rehearing, and has acted on the motions of *amici* for reconsideration of the Court's inclusion of the *Sarasota County* decision in its *Strand* decision. There is ample precedent for such an order when exigent governmental or public interests come in conflict with the time needed by the Court for full deliberation. *See, e.g.*, the Court's order on November 17, 2000, in the consolidated cases involving the presidential election in that year, as reflected on the Court's docket for Cases No. SC00-2346, SC00-2348, and SC00-2349.

Under the circumstances, an order declaring the suspension of the operation of the Court's September 6 decision pending a final determination in this case is appropriate.

B. Complete relief from the Court's decision.

The School Boards have shown that the premises of the *Miami Beach* decision which the Court found to violate the principle of the *Volusia County* decision (Slip Opinion at 25) are substantively different from the premises for the Court's *Sarasota County* decision. Procedurally, the School Boards are obliged to point out that the Court does not ordinarily consider or address issues which have not been raised by the parties at trial or in an appeal. *E.g.*, *Continental Mortgage Investors v. Sailboat Key, Inc.*, 395 So. 2d 507, 513-14 (Fla. 1981) ("Since we were not briefed on Massachusetts law, and the parties did not present detailed arguments at either the trial or initial appellate level, we are unable to resolve this issue."). That was the situation here, where the parties were not accorded the opportunity to brief or argue the applicability of the *Sarasota County* decision to this case.

Nor were the parties (or anyone on behalf of the school boards) given a chance to address the *stare decisis* issue of whether the *Sarasota County* decision was "legally erroneous" and in need of being overturned in order "to remedy continued injustice," or a rule of law "proven unacceptable or unworkable in practice." Slip Opinion at 24, quoting "*Allstate Indemnity*, 899 So. 2d at 1131. Had the opportunity been afforded, the parties and/or School Boards would have

shown that the *Sarasota County* decision (and indeed, the *Miami Beach* decision) need *not* have been overturned to remedy an injustice, and that the rule of law announced in those decisions had *not* proved to be either unacceptable or unworkable in practice.

Accordingly, the Court is requested to clarify its decision in this case by removing its consideration of the *Sarasota County* case, and withdrawing its decision to recede from that case.

C. Alternative relief from the Court’s decision.

The Court observed that bonds which have been validated are protected from effects of the decision. That provides little comfort to those with an interest in certificates of participation issued on behalf of school boards without judicial validation of the underlying lease obligations or certificates of participation.

Should the Court for any reason decline to withdraw its decision to recede from the *Sarasota County* decision, which the School Boards sincerely hope will not be the case, the Court should at least state with clarity in a revised opinion that the decision in this case is prospective in operation, and without any effect on obligations or certificates of participation issued prior to the decision becoming final. This, too, is consistent with Court precedent. *See, e.g., Smith v. Brantley*, 400 So. 2d 443, 453 (Fla. 1981) (England, J., concurring in part and dissenting in part) (noting that the Court is “constitutionally permitted . . . to determine whether any newly announced rule of law should be applied retroactively, or on a prospective basis only”); *State v. White*, 194 So. 2d 601, 604 (Fla. 1967) (declining

to give the Court's holding retroactive application to the party affected by the Court's decision); *Ciravolo v. The Florida Bar*, 361 So. 2d 121, 124 (Fla. 1978) (declining to apply a law change to action taken "on a justifiable interpretation" of prior Court precedent).

CONCLUSION

The Court is respectfully requested to reconsider its decision to recede from the *Sarasota County* decision, and to suspend the operation of its *Strand* opinion pending a final determination in the case. Failing withdrawal of that portion of the *Strand* decision, the Court is requested to clarify that its opinion is not retroactive in effect or operation.

Respectfully submitted,

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I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.
