

IN THE SUPREME COURT OF FLORIDA

DR. GREGORY L. STRAND,

Appellant,

v.

CASE NO. SC06-1894
L.T. Case No. 2006-CA-881

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

Appellee.

**APPELLANT DR. GREGORY L. STRAND'S
RESPONSE TO JOINT MOTION TO APPEAR AS AMICI
CURIAE ON MOTION FOR REHEARING OR CLARIFICATION**

Appellant DR. GREGORY L. STRAND (“Dr. Strand”), by and through his undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.300(a), hereby files this Response to the “Joint Motion to Appear as Amici Curiae on Motion for Rehearing or Clarification,” filed on September 17, 2007, by the Florida School Board Association, Inc., the Florida Association of District School Superintendents, Inc., and the School Districts of Duval, Hillsborough and Orange Counties (collectively, the “Florida School Board Association”), and, states as follows:

I.

INTRODUCTION

1. On September 15, 2006, Dr. Strand appealed a Final Judgment entered by the First Judicial Circuit Court validating bonds to be issued by Appellee Escambia County, Florida (“Escambia County”), in an amount not to exceed \$135,000,000.00, and funded through the utilization of tax increment financing.

2. On May 10, 2007, the Court heard Oral Argument in this case.

3. On September 6, 2007, the Court issued its Opinion in the instant case, thereby reversing the Circuit Court’s Final Judgment and invalidating the proposed bond issuance. In so doing, the Court receded from its prior decisions in *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980), and *State v. School Board of Sarasota County*, 561 So. 2d 549 (Fla. 1990), stating, in part, that the Court can no longer support the “legal fiction” underlying such decisions, which has “allowed localities to indirectly pledge ad valorem taxation for the repayment of long-term bonds without the consent of the electorate,” as required by Article VII, Section 12 of the Florida Constitution. *Strand v. Escambia County*, No. SC06-1894, slip op. at 25 (Fla. Sept. 6, 2007).

4. On September 17, 2007, the Florida School Board Association filed its Joint Motion to Appear as Amici Curiae on Motion for Rehearing or Clarification.

5. The Court should deny the Florida School Board Association's *post-opinion* Joint Motion to Appear as Amici Curiae on Motion for Rehearing or Clarification because:

- A. Florida Rule of Appellate Procedure 9.370, which governs the appearance of amicus curiae, does not authorize an amicus curiae to appear for the first time for purposes of moving for rehearing and/or clarification; and
- B. The issues sought to be raised by the Florida School Board Association have been fully and adequately presented by Escambia County and the Florida Association of Counties in their Motions for Rehearing and Clarification.

II.

ARGUMENT

A. **Florida Rule Of Appellate Procedure 9.370 Does Not Authorize The Post-Opinion Appearance Of Amicus Curiae For Purposes Of Moving For Rehearing And/Or Clarification**

6. Florida Rule of Appellate Procedure 9.370, which governs the appearance of amicus curiae, was amended in 2006 to clarify the time frame in which amicus briefs are to be served. As amended, Rule 9.370 provides:

- (a) **When Permitted.** An amicus curiae may file a *brief* only by leave of court. A motion for leave to file must state the movant's interest, the particular issue

to be addressed, how the movant can assist the court in the disposition of the case, and whether all parties consent to the filing of the **brief**.

* * * *

(c) **Time for Service.** **An amicus curiae must serve its brief no later than 5 days after the first brief, petition, or response** of the party being supported is served. An amicus curiae that does not support either party must serve its brief no later than 5 days after the initial brief or petition is served. A court may grant leave for later service, specifying the time within which an opposing party may respond. The service of an amicus curiae brief does not alter or extend the briefing deadlines for the parties. An amicus curiae may not file a reply brief.

(Emphasis supplied).

7. As reflected above, Rule 9.370 does not contemplate the *post-opinion* appearance of amicus curiae for the purpose of filing a motion requesting rehearing and/or clarification. Indeed, by its plain language, Rule 9.370 states that “[a]n amicus curiae must serve its brief no later than 5 days after the **first brief, petition, or response**.” *Id.* (emphasis supplied). Nothing in the plain language of Rule 9.370 permits a non-party to appear *post-opinion* as amicus curiae for the purpose of moving for rehearing and/or clarification. To hold otherwise would permit an interested party to simply “monitor” a case and avoid incurring the time and costs

associated with participating in the case-in-chief, and then, *after-the-fact*, move to appear as amicus curiae if the Court's ultimate ruling is not to the party's liking.¹

8. In addition, allowing a non-party to appear *post-opinion* as amicus curiae is inequitable to the parties to the case, such as Dr. Strand in this matter. Permitting the Florida School Board Association to file a *post-opinion* amicus curiae motion seeking rehearing or clarification unfairly imposes additional costs upon Dr. Strand in having to respond to the same.²

9. Accordingly, the Court should deny the Florida School Board Association's *post-opinion* Joint Motion to Appear as Amici Curiae on Motion for Rehearing or Clarification. *See, e.g., Devon-Aire Villas Homeowners Ass'n, No. 4, Inc. v. Americable Assocs., Ltd.*, 490 So. 2d 60, 67-68 (Fla. 3d DCA 1985) (referring to post-opinion motions to appear as amicus curiae as "untimely efforts to appear in this case"); *City of Temple Terrace v. Hillsborough Ass'n for Retarded Citizens, Inc.*, 322 So. 2d 571, 580 (Fla. 2d DCA 1975) (stating that post-opinion

¹ It should be noted that the instant case was specifically listed by the Florida Association of Counties on its "Litigation Watch" page on its website. Thus, interested parties were well aware of the instant proceeding since the time Dr. Strand filed his appeal.

² It should be noted that, in addition to the Florida School Board Association, twenty-eight (28) other entities have filed five (5) separate *post-opinion* requests for leave to serve amicus briefs seeking rehearing and clarification in this case. Significantly, Florida Rule of Appellate Procedure 9.330(c) provides a shortened time frame in which Dr. Strand can respond to such *post-opinion* amicus briefs seeking rehearing and clarification, if ultimately permitted by the Court, thereby further prejudicing Dr. Strand given the sheer volume of *post-opinion* requests.

motions for leave to appear as amicus curiae filed by a state agency and the Florida Attorney General “come too late and are hereby denied”).

B. The Issues Sought To Be Raised By The Florida School Board Association Have Been Fully And Adequately Presented By Appellee Escambia County And Amicus Curiae Florida Association Of Counties In Their Motions For Rehearing And Clarification

10. Even assuming the Florida School Board Association’s *post-opinion* Joint Motion to Appear as Amici Curiae on Motion for Rehearing or Clarification is appropriate under Florida Rule of Appellate Procedure 9.370, which it is not, the Court should deny such *post-opinion* Joint Motion.

11. In its *post-opinion* Joint Motion to Appear as Amici Curiae on Motion for Rehearing or Clarification, the Florida School Board Association states that the “Joint Motion for Clarification, or in the Alternative, for a Rehearing” its seeks to file in this case is “limited to the explicit receding by the Court of its decision in *School Board of Sarasota County*.” (Joint Motion at ¶ 5).

12. It is well settled that “amicus briefs should not be used to simply give one side more exposure.” *Ciba-Geigy Ltd. v. Fish Peddler, Inc.*, 683 So. 2d 522, 523 (Fla. 4th DCA 1996). Moreover, Florida courts have denied requests to file an amicus brief when the amicus brief will do no more than simply present the same argument as contained in a party’s brief. *See id.*

13. In the instant case, the “issues” sought to be addressed by the Florida School Board Association have been fully and adequately presented by Escambia County and the Florida Association of Counties in their Motions for Rehearing and Clarification filed with the Court on September 17, 2007. Indeed, the Florida Association of Counties in its Motion for Rehearing and Clarification expressly asks this Court to clarify its September 6 Opinion as it relates to *School Board of Sarasota County*. (See Motion at 14-17). Thus, the Florida School Board Association’s *post-opinion* participation in this case would be duplicative and would not involve the presentation of *additional* information that would in any way aid the Court in the disposition of this case.

14. Accordingly, the Court should deny the Florida School Board Association’s *post-opinion* Joint Motion to Appear as Amici Curiae on Motion for Rehearing or Clarification.

III.

CONCLUSION

15. In sum, for the reasons set forth above, the Court should deny the Florida School Board Association's *post-opinion* Joint Motion to Appear as Amici Curiae on Motion for Rehearing or Clarification filed on September 17, 2007.

RESPECTFULLY SUBMITTED this ____ day of September 2007.

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