

IN THE SUPREME COURT OF FLORIDA
CASE NO. SC06-1894

DR. GREGORY L. STRAND,

Appellant,

v.

L.T. Case No. 2006-CA-881

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

Appellee.

**APPELLEE'S RESPONSE TO MOTION TO STRIKE
FILED BY APPELLANT, DR. GREGORY L. STRAND**

By its undersigned attorneys, Appellee, Escambia County (the "County"), hereby responds to Appellant's Motion to Strike as follows:

1. Appellant seeks to strike pages A-28 through A-51 of the County's Appendix to Motion for Rehearing and Clarification of Appellee, Escambia County, Florida (the "Appendix"), all references to and all reliance on those pages.

2. The County included empirical market impact data, press releases from Standard & Poor's and Fitch Ratings and a newspaper article in pages A-28 through A-51 of its Appendix to illustrate the broad-ranging

impact and great public importance of the Court's opinion in *Strand v. Escambia County* (the "Opinion"), so that the Court would grant rehearing and clarification.

3. The County did not provide the data and other material to influence the Court's decision upon rehearing. Accordingly, the cases on which Appellant relies are inapposite.

4. By contrast to the County's purpose for including matters outside the record in its Appendix, in *North Brevard Hospital District v. Florida Public Employees Relations Commission*, 392 So. 2d 556 (Fla. 1st DCA 1980), on which Appellant relies, the purpose of the extra record submission was to influence the court's decision upon rehearing. The movant sought to show that the status and public perception of a labor union had been diminished by the court's decision. *See id.* at 566 ("It is alleged that, since our decision, and as a result thereof, the status of Laborers International Union of North America, Local No. 666, AFL-CIO, as bargaining agent for other public employees, has been called into question.").

5. The County cited to Appendix pages A-28 through A-51 in order to support its contention that the Court overlooked the legal impact of the Opinion, *e.g.*, impairment of bondholders' contracts and the impact of that impairment on financial markets. The County respectfully submitted

that the language in the Opinion, which specifically exempted existing, validated bonds, called into the question the legality of billions of dollars in issued, but not validated, bonds.

6. *Stare decisis*, bond impairment and the overall impact of applying the Opinion retroactively were squarely before the Court on appeal and either expressly or implicitly referenced in the Opinion. The County respectfully argued that the Court misunderstood the affect of the Opinion on *stare decisis* and overlooked the impairment of contractual rights and affect of retroactive application. Using pages A-28 through A-51 of the Appendix to illustrate these points was proper in this context. *See Philip J. Padovano, Florida Appellate Practice* § 19.2 (2007) (explaining that the general purpose of rule 9.330 is “to enable the court to address matters that were overlooked or misunderstood”). Therefore, the Court should deny Appellant’s motion to strike.

7. If the Court decides that pages A-28 through A-51 of the County’s Appendix raise an issue not previously before the Court on appeal, the Court has the discretion to deny the motion and consider the issue. For example, in *Perez v. State*, 717 So. 2d 605 (Fla. 3d DCA 1998), the court noted:

In the past, this Court has been reluctant to consider new arguments made on rehearing that were not raised in the main appeal. This general practice has prompted us to decline to hear such belated arguments in some cases. . . . Nevertheless, ***such a general practice does not deter us from considering such an argument where recent developments in the law or the justice of the cause persuade us to do so.***

Id. at 606 (emphasis added).

8. Here, as in *Perez*, the justice of the cause militates toward considering the affect of the Opinion. Accordingly, the County urges the Court to deny Appellant's motion to strike.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
has been furnished by U.S. mail and facsimile this 27th day of September,
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CERTIFICATION

The undersigned does hereby certify that she used 14 point Times New Roman type in this Response to Motion to Strike Filed by Appellant Dr. Gregory L. Strand, and it complies with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

By: _____
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