

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'S MOTION FOR REHEARING**

Appellant DR. GREGORY L. STRAND (“Dr. Strand”), by and through his undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.330(c), hereby files this Motion for Rehearing, and, as grounds therefor, states as follows:

**I.**

**INTRODUCTION**

On September 6, 2007, this Court issued a *unanimous* decision receding from *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980). In so doing, this Court held that the reasoning underlying *Miami Beach* was a “legal fiction,” which has “allowed localities to indirectly pledge ad valorem taxation for the repayment of long-term bonds without the consent of the electorate,” in direct violation of the plain language of Article VII, Section 12 of the Florida

Constitution. *See Strand v. Escambia County*, No. SC06-1894, rev. slip op. at 22 (Fla. Sept. 28, 2007). Accordingly, the Court *unanimously* voted to reverse the Circuit Court’s Final Judgment validating the \$135,000,000 bond issuance approved by Escambia County and challenged by Dr. Strand.

On September 18, 2008, this Court, by a 4-to-2 vote on rehearing, withdrew its prior *unanimous* September 6 Opinion. Relying upon the doctrine of *stare decisis*, the Court concluded that receding from *Miami Beach* would cause “serious disruption” for local governments that have relied upon *Miami Beach* for planning public works. *See Strand v. Escambia County*, No. SC06-1894, slip op. at 18 (Fla. Sept. 18, 2008) (on rehearing). Accordingly, the Court affirmed the Circuit Court’s Final Judgment validating the contested bonds.

Dr. Strand respectfully submits that the Court should grant rehearing in this matter and revise its September 18 Opinion because:

- A. The Court’s *stare decisis* analysis misapprehends and overstates the potential economic impact of receding from the flawed legal premise underlying *Miami Beach*, elevating economic development over the citizens’ right to vote on long-term indebtedness guaranteed by the Florida Constitution. To the extent the Court is concerned with prior reliance on *Miami Beach*, the Court could frame its decision to be prospective only, thereby protecting those who may have relied upon *Miami Beach* while also upholding the express rights granted to Florida’s citizens by the Florida Constitution; and
- B. Even if the Court ultimately decides to adhere to the “legal fiction” underlying *Miami Beach*, the Court’s decision to uphold the validity of the bonds proposed by Escambia County overlooks the fact that the Florida Legislature has made clear that a local government’s “home

rule” power does not extend to utilizing tax increment financing outside of the confines of the Community Redevelopment Act, Chapter 163, Part III, *Florida Statutes*, absent a specific statutory exception thereto.

Accordingly, Dr. Strand requests that the Court rehear this matter as a matter of great public and constitutional importance. *See Dade Fed. Sav. & Loan Ass’n v. Smith*, 403 So. 2d 995, 999 (Fla. 1st DCA 1981) (holding second motion for rehearing is permissible where on first motion for rehearing court changes entire basis for its opinion, as in the instant case).<sup>1</sup>

---

<sup>1</sup> As an initial matter, it bears emphasizing that throughout this proceeding, as well as in this Court’s September 18 Opinion, it has been suggested that the life of the bonds at issue is only thirty-five (35) years. However, Section 4 of Ordinance 2006-38 plainly states that Escambia County is legally obligated to continue funding the bonds until they are paid in full:

(2) The County shall, by February 1 of each year, appropriate to such fund for so long as any indebtedness pledging Tax Increment Revenues to the payment thereof is outstanding (but not to exceed 35 years) an amount equal to the Tax Increment as defined and determined in subsection (1) accruing to the County.

(3) Notwithstanding the provisions of subsection (2), **the obligation of the County to fund the Southwest Escambia Improvement Trust Fund annually shall continue until all Bonds . . . and indebtedness . . . and interest thereon, of the County incurred as a result of the Infrastructure Improvements have been paid.**

(App. to Initial Brief, Ex. 3 at § 4) (emphasis supplied). Thus, Escambia County’s taxpayers are financially “on the hook” regardless of how long it takes to pay off the bonds at issue – 35, 50, or even 100 years.

## II.

### **THE COURT’S STARE DECISIS ANALYSIS UNNECESSARILY ELEVATES ECONOMIC DEVELOPMENT OVER THE CITIZENS’ RIGHT TO VOTE GUARANTEED BY THE FLORIDA CONSTITUTION**

As noted above, in its September 6 Opinion, this Court *unanimously* voted to recede from *Miami Beach*. In so doing, this Court stated that it could no longer support the premise underlying *Miami Beach*, *i.e.*, that the phrase “payable from ad valorem taxation” in Article VII, Section 12 of the Florida Constitution refers “only to the pledge of ad valorem taxing power, not to the pledge of ad valorem taxing revenues.” *Strand v. Escambia County*, No. SC06-1894, rev. slip op. at 13 (Fla. Sept. 28, 2007).

Referring to such premise as a “legal fiction” for which it could find “no support,” the Court in its September 6 Opinion receded from *Miami Beach* and held:

The phrase “payable from ad valorem taxation” in article VII, section 12 refers not only to a pledge of the taxing power itself but also to a pledge of ad valorem tax revenues. And, because tax increment financing pledges funds obtained from ad valorem tax revenues, bonds that rely upon such financing schemes are bonds “payable from ad valorem taxation.” Consequently, approval of such bonds by referendum, as mandated by article VII, section 12, must be obtained.

*Id.* at 8. In reaching the above conclusion, a *unanimous* Court explained that the premise underlying *Miami Beach* is

without any support in the plain meaning and purpose of article VII, section 12. In fact, the premise vitiates the primary interest the provision was meant to protect, the right of the taxpayers to approve long-term debt before it is incurred.

*Id.* at 22 (emphasis supplied).

Notwithstanding the above, on September 18, 2008, a split panel of this Court granted the Motions for Rehearing filed by Escambia County and various *post-opinion* Amici Curiae, and issued a revised Opinion withdrawing the Court's *unanimous* September 6 Opinion. *Strand v. Escambia County*, No. SC06-1894, slip op. (Fla. Sept. 18, 2008) (on rehearing). Stating that tax increment financing and the underpinnings of *Miami Beach* have become "inextricably interwoven into the financial fabric of our state," the Court, relying upon the doctrine of *stare decisis*, held that receding from *Miami Beach* would cause "serious disruption to governmental authorities" that have relied upon *Miami Beach* for planning public works. *Id.* at 18.

Implicit by virtue of the Court's *stare decisis* analysis in its September 18 Opinion is recognition that the premise underlying *Miami Beach* is flawed. Indeed, nothing in the Court's September 18 Opinion alters the fact that the premise underlying *Miami Beach* was and continues to be a "legal fiction," which is "without any support in the plain meaning and purpose of article VII, section 12." *Strand v. Escambia County*, No. SC06-1894, rev. slip op. at 22 (Fla. Sept. 28,

2007).<sup>2</sup> Nonetheless, the Court decided to adhere to the flawed premise in its September 18 Opinion based upon the doctrine of *stare decisis*.<sup>3</sup>

---

<sup>2</sup> See also Patricia M. Lee, *Bond Financing and the Referendum Requirement: Harmless Creative Financing or Assault on the Constitution?*, 20 Stetson L. Rev. 989, 1000, 1005-06 (1991) (stating the Court’s ruling in *Miami Beach* diluted the “payable from ad valorem taxation” language, which “was an effort by the people of Florida to halt the retreat from the enforcement of the referendum requirement”); Joseph W. Little, *The Historical Development of Constitutional Restraints on the Power of Florida Governmental Bodies to Borrow Money*, 20 Stetson L. Rev. 647, 665 (1991) (noting the Court’s ruling in *Miami Beach* “dissolved the 1968 constitutional requirement of a vote by the electorate when bonds are to be paid from ad valorem taxation”).

<sup>3</sup> As an aside, the fact that a flawed legal premise may have become “interwoven” into the fabric of this State does ***not*** support the perpetuation of such legal error in the name of *stare decisis*. As aptly noted in *VLX Properties, Inc. v. Southern States Utilities, Inc.*, 792 So. 2d 504 (Fla. 5th DCA 2001):

Precedent (*stare decisis*), and law of the case for that matter, is like tradition in that it provides a valuable connection to the past. It assists in providing consistency and predictability, both valuable qualities in law. ***But neither precedent (nor law of the case) should be used to institutionalize or justify error.*** We are no more perfect as judges than we are as individuals. We make mistakes. Neither the public nor the Bar expect us to always be right; they do expect us, however, to always be forthcoming. ***If it appears that we have made a mistake, we should not hesitate to correct it*** and, if it is still within our power to do so, we should mitigate any damage we have caused. ***Neither this court nor the law is served by our adhering to a previous position which we now believe to be wrong.***

*Id.* at 509 (emphasis supplied).

Dr. Strand respectfully submits that the Court's *stare decisis* analysis misapprehends and overstates the potential economic impact of receding from the flawed legal premise underlying *Miami Beach*. In so doing, the Court has unnecessarily elevated economic development over the citizens' right to vote on long-term indebtedness guaranteed by Article VII, Section 12 of the Florida Constitution. *Cf. City of Miami Beach v. Lachman*, 71 So. 2d 148, 150 (Fla. 1953) (reiterating that this Court's duty "to maintain the constitution as the fundamental law of the state is imperative and unceasing"); *cf. also Reform Party of Florida v. Black*, 885 So. 2d 303, 311 (Fla. 2004) ("Other rights, even the most basic, are illusory if the right to vote is undermined.").

To the extent the Court is concerned with prior reliance by local governments on *Miami Beach* and any potential "disruption" caused by receding from the "legal fiction" therein, the Court could frame its ruling in this case to be **prospective only**. In framing its ruling to be prospective only, the Court could "grandfather" all previously approved projects, as well as all projects in the development approval process at the time of the Court's September 6 Opinion. By doing so, the Court would protect those who reasonably relied upon *Miami Beach*, and avoid any potential disruption from the Court's decision to recede from *Miami Beach*. More importantly, however, the Court would be protecting the express rights granted to Florida's citizens by the plain language of Article VII, Section 12

of the Florida Constitution. *See Dade County Classroom Teachers Ass'n, Inc. v. Legislature*, 269 So. 2d 684, 686 (Fla. 1972) (“Where people in a constitution . . . vote themselves a governmental benefit or privilege, they the people in whom the power of government is finally reposed, have the right to have their constitutional rights enforced.” (emphasis supplied)); *see also Coastal Florida Police Benevolent Ass'n, Inc. v. Williams*, 838 So. 2d 543, 549 (Fla. 2003) (receding from twenty-five (25) year old case, holding “constitutional provisions should not be construed so as to defeat their underlying objectives”).

In sum, “the maxim for a Supreme Court . . . is not ‘stare decisis,’ but ‘fiat justitia.’ Let this decision be right, whether other decisions were right or not.” *Blackwell v. State*, 86 So. 224, 237-38 (Fla. 1920) (Browne, C.J., dissenting). Accordingly, for the reasons discussed above, the Court should grant this Motion for Rehearing and reinstate its prior *unanimous* decision receding from *Miami Beach* and upholding the plain language of Article VII, Section 12 of the Florida Constitution. In so doing, the Court should frame its decision to be prospective only in order to protect those who have reasonably relied upon *Miami Beach* and to avoid any potential disruption caused by the Court’s decision to recede from the “legal fiction” therein.

### III.

#### **THE COURT OVERLOOKED LEGISLATIVE HISTORY WHICH ESTABLISHES THAT THE USE OF TAX INCREMENT FINANCING HAS BEEN PREEMPTED BY THE FLORIDA LEGISLATURE**

Even assuming the premise underlying *Miami Beach* is not a “legal fiction” which vitiates the plain language of Article VII, Section 12 of the Florida Constitution, as this Court initially concluded, the bonds at issue in this case should have still been invalidated by this Court in its September 18 Opinion. Indeed, in upholding the validity of the contested bonds, the Court overlooked extensive legislative history, including statutory provisions enacted during the pendency of this case, which establish that a local government does not have “home rule” authority to issue bonds payable through tax increment financing. Accordingly, the Court should grant rehearing and revise its September 18 Opinion to invalidate the specific bonds at issue in this case.

#### **A. The Issue Of Legislative Preemption And Compliance With The Community Redevelopment Act Was *Not* Raised Before This Court In *Penn*, And, Thus, Such Decision Is Not Controlling**

In its September 18 Opinion, this Court for the first time addressed Dr. Strand’s argument that the bonds at issue were invalid because Escambia County failed to comply with the dictates of Chapter 163, Part III, *Florida Statutes*, known

as the “Community Redevelopment Act.”<sup>4</sup> In so doing, the Court summarily concluded that “this issue is controlled by our decision in *Penn*, in which we previously affirmed the Escambia County Circuit Court’s validation of bonds issued under a similar tax ordinance and resolution and issuance structure.” *See Strand v. Escambia County*, No. SC06-1894, slip op. at 12 (Fla. Sept. 18, 2008) (on rehearing).

It is axiomatic that “no decision is authority on any question not raised and considered, although it may be involved in the facts of the case.” *State v. Du Bose*, 128 So. 4, 6 (Fla. 1930) (emphasis supplied); *see also Twyman v. Roell*, 166 So. 215, 217 (Fla. 1936) (“To be of value as a precedent, the questions raised by the pleadings and adjudicated in the case cited as a precedent must be in point with those presented in the case at bar.”); *cf. State v. J.P.*, 907 So. 2d 1101, 1120 (Fla. 2004) (Wells, J., dissenting) (stating there was “no basis” for doctrine of stare decisis to control present decision where prior case contained “no analysis” of the issue).

It is indisputable that the issue of legislative preemption and the need of a local government to comply with the Community Redevelopment Act in order to

---

<sup>4</sup> The record establishes that both the Circuit Court and Escambia County relied upon the Community Redevelopment Act as legal authority for the issuance of the contested bonds. (App. to Initial Brief, Ex. 1 at ¶ 7; Ex. 11 at 2). It is undisputed, however, that Escambia County did not comply with the requirements of the Community Redevelopment Act in approving such bonds.

issue bonds payable through tax increment financing was **not** raised by the *pro se* appellant in *Penn v. Florida Defense Finance and Accounting Service Center Authority*, 623 So. 2d 459 (Fla. 1993), or otherwise decided by the Court. Indeed, a review of the briefs filed by the parties in *Penn* confirms that **the issue was not raised**.<sup>5</sup>

Given that the issue presented by Dr. Strand was **not** raised in *Penn*, the Court's decision therein cannot and does not control resolution of the specific issue in the instant case. To hold otherwise would be contrary to this Court's long-standing precedent over the last seventy-eight (78) years. *See Twyman*, 166 So. at 217; *Du Bose*, 128 So. at 6.<sup>6</sup> Dr. Strand respectfully submits that the Court

---

<sup>5</sup> In *Penn*, the *pro se* appellant alleged that the proposed financing mechanism violated Article VII, Section 12 of the Florida Constitution, and that Chapter 163, Part I, *Florida Statutes*, known as the "Florida Interlocal Cooperation Act of 1969," was unconstitutional. Dr. Strand has included copies of the briefs filed in *Penn* as Exhibits 1, 2, and 3 in his "Appendix to Motion for Rehearing," which he has filed simultaneously with this Motion. (*See App. to Motion for Rehearing*, Ex. 1 at 4-6; Ex. 2 at 14-18; Ex. 3 at 5-7).

<sup>6</sup> *See also, e.g., Speedway SuperAmerica, LLC v. Tropic Enters., Inc.*, 966 So. 2d 1, 3 (Fla. 2d DCA 2007) (stating prior decision was not controlling where "issue was not presented to the court, and it was not decided by the court"); *Benson v. Norwegian Cruise Line Ltd.*, 859 So. 2d 1213, 1217 (Fla. 3d DCA 2003) (same); 12A Fla. Jur. 2d *Courts and Judges* § 167 (2d ed. 2008) ("[T]he doctrine of stare decisis will not apply to any question not raised and considered in the former case, even if the question may have been involved in the facts.").

overlooked the above-stated facts and case law in relying upon *Penn* to summarily dispose of his argument in its September 18 Opinion.<sup>7</sup>

**B. Legislative History, Including Statutory Provisions Enacted During The Pendency Of This Proceeding, Establishes That A Local Government Does *Not* Have “Home Rule” Authority To Issue Bonds Payable Through Tax Increment Financing**

Although Florida counties generally enjoy broad powers pursuant to the 1968 revisions to the Florida Constitution and Chapter 125, *Florida Statutes*, it is well settled that counties may not act in a manner inconsistent with general or special law. *See, e.g.*, § 125.01(r), Fla. Stat. (2006) (relating to the issuance of bonds). In relying upon *Penn* to conclude that Escambia County has “home rule” authority to issue the contested bonds, Dr. Strand respectfully submits that the Court overlooked or misapprehended the legislative history discussed below pertaining to the implementation of tax increment financing in Florida. Indeed, such legislative history, including the Legislature’s enactment of additional statutory provisions relating to tax increment financing during the pendency of this case, dictates a contrary result.

---

<sup>7</sup> It should also be noted that the financing mechanism upheld in *Penn* is wholly distinguishable from the scheme proposed by Escambia County in the instant case. In *Penn*, the bonds at issue were “secured by lease payments” and “[a]ny shortfall . . . made whole by non-ad valorem revenues.” *Penn*, 623 So. 2d at 461. In the instant case, there are *no* lease payments and ad valorem tax revenues are the *primary* source of repayment for the contested bonds.

**1. The Florida Legislature’s Proposed Constitutional Amendment And Subsequent Amendment Of The Community Redevelopment Act To Specifically Authorize Tax Increment Financing**

In 1971, the Legislature amended Chapter 125, *Florida Statutes*, to broaden the powers of counties to govern themselves through “home rule.” *See* Ch. 71-14, § 1, Laws of Fla. Significantly, five (5) years after granting such “home rule” authority, the Legislature in 1976 proposed an amendment to the Florida Constitution to specifically authorize tax increment financing in Florida.<sup>8</sup> Upon the voter’s rejection of such amendment, in 1977, six (6) years after granting counties “home rule” authority, the Florida Legislature amended the Community Redevelopment Act to specifically authorize tax increment financing through the creation of Section 163.387, *Florida Statutes*. *See* Ch. 77-391, § 1, Laws of Fla.

The Florida Legislature’s proposed constitutional amendment in 1976 and subsequent amendment of the Community Redevelopment Act in 1977 to specifically authorize the use of tax increment financing establish that the “home rule” powers afforded by Chapter 125, *Florida Statutes*, do not authorize a county to utilize tax increment financing as prescribed in Section 163.387, *Florida Statutes*, without complying with the requirements of the Community Redevelopment Act. If such were not the case, there would have been absolutely

---

<sup>8</sup> *See* Committee Substitute for House Joint Resolution No. 3982 (June 10, 1976). The Constitutional Revision Commission proposed a similar amendment to the Florida Constitution in 1978.

no reason for the Florida Legislature to undertake such actions. The Court's September 18 Opinion, however, contains no analysis or discussion of such legislative history in addressing Dr. Strand's argument that the contested bonds are invalid based upon Escambia County's failure to comply with the Community Redevelopment Act.

**2. Recent Statutory Amendments Authorizing A Local Government To Use Tax Increment Financing Outside Of The Confines Of The Community Redevelopment Act**

Since amending the Community Redevelopment Act in 1977 to specifically authorize the use of tax increment financing, the Florida Legislature has adopted several statutory provisions to authorize the use of tax increment financing outside of the confines of the Community Redevelopment Act in limited circumstances. For example, in 1999 – twenty-eight (28) years after granting counties “home rule” authority and six (6) years after this Court's decision in *Penn* – the Florida Legislature enacted Section 163.2520, *Florida Statutes*, which authorizes a local government with an adopted urban infill plan to “employ tax increment financing under s. 163.387 for the purpose of financing the implementation of the plan.” (App. to Motion for Rehearing, Ex. 5).

Moreover, in 2007 – thirty-six (36) years after granting counties “home rule” authority and fourteen (14) years after this Court's decision in *Penn* – the Florida Legislature adopted two (2) more statutory provisions to authorize a local

government to use tax increment financing outside the confines of the Community Redevelopment Act. In particular, the Florida Legislature created Sections 163.3182 and 259.042, *Florida Statutes*. (App. to Motion for Rehearing, Ex. 4). Briefly stated, Section 163.3182, *Florida Statutes*, authorizes local governments to utilize tax increment financing to aid in the financing and construction of specific facilities to eliminate transportation concurrency backlog areas. (*See id.* at 15-18). Section 259.042, *Florida Statutes*, on the other hand, authorizes local governments to utilize tax increment financing to aid in the acquisition of conservation lands. (*See id.* at 13-14).

It is well settled that “preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject.” *Barragan v. City of Miami*, 545 So. 2d 252 (Fla. 1989). If a county’s or a municipality’s “home rule” power is so broad as to include the use of tax increment financing, as suggested in the Court’s September 18 Opinion, the Florida Legislature would have had *no* reason to enact additional statutory provisions to authorize the use of tax increment financing outside the confines of the Community Redevelopment Act – including the enactment of Sections 163.3182 and 259.042, *Florida Statutes*, *during the pendency of this case.*

Dr. Strand submits that the above statutory enactments establish a clear intent on the part of the Florida Legislature that local governments are *not*

authorized to utilize tax increment financing outside the confines of the Community Redevelopment Act, absent a specific statutory exception thereto. The Court's September 18 Opinion, however, contains no analysis or discussion of such legislative enactments in rejecting Dr. Strand's argument that the contested bonds are invalid based upon Escambia County's failure to comply with the Community Redevelopment Act. Proper consideration of such legislative enactments requires that the Court reach the opposite result and invalidate the contested bonds.

In sum, in rendering its September 18 Opinion, the Court overlooked or otherwise misapprehended the legislative history discussed above, which establishes that a local government does not have "home rule" authority to issue bonds payable through tax increment financing outside the confines of the Community Redevelopment Act, absent a specific statutory exception thereto. Indeed, the fact that the Florida Legislature enacted additional statutory provisions during the pendency of this case to specifically allow local governments to utilize tax increment financing outside the confines of the Community Redevelopment Act in certain circumstances further validates Dr. Strand's argument on appeal. Thus, even if *Miami Beach* remains good law, the bonds approved by Escambia County should nevertheless be invalidated.<sup>9</sup>

---

<sup>9</sup> Unlike *Miami Beach*, the instant case does not involve a

Accordingly, even if the Court chooses to adhere to *Miami Beach*, the Court should grant Dr. Strand's Motion for Rehearing and revise its September 18 Opinion to invalidate the contested bonds and expressly hold that a local government may not utilize tax increment financing outside the confines of the Community Redevelopment Act, absent a specific statutory exception thereto. In so doing, the Court should recede from *Penn* to the extent such decision can be read to hold otherwise.<sup>10</sup>

---

redevelopment plan and tax increment financing scheme adopted in accordance with the Community Redevelopment Act. Indeed, during Oral Argument on October 9, 2007, Escambia County's own attorney "conced[ed] Escambia County used the TIF financing scheme without keeping all of the safeguards that are set forth in Chapter 163 of the [Community] Redevelopment Act. I will concede that." (See Transcript of Oral Argument, available at <http://wfsu.org/gavel2gavel/transcript/06-1894b.html>).

<sup>10</sup> Public policy considerations also strongly weigh in favor of this Court revisiting its September 18 Opinion to clarify that a local government may only utilize tax increment financing in accordance with the Community Redevelopment Act or a specific statutory exception thereto. Indeed, absent such clarification, the statutory limitations and safeguards contained within the Community Redevelopment Act will effectively be rendered meaningless, since a local government could always rely upon its apparent "home rule" powers in cases where it cannot satisfy, or does not want to comply with, the requirements of the Community Redevelopment Act. Simply put, if left unchanged, the Court's September 18 Opinion will allow a local government to freely disregard the substantive requirements and limitations the Florida Legislature imposed upon tax increment financing in the Community Redevelopment Act, at the direct expense of Florida's taxpayers. Such a result is contrary to the legislative history discussed above and the Florida Legislature's plain intent in setting forth a specific statutory process in the Community Redevelopment Act, with certain statutory exceptions thereto, for a local government's use of tax increment financing.

**IV.**

**CONCLUSION**

For the reasons set forth above, the Court should grant this Motion for Rehearing and revise its September 18 Opinion to reverse the Circuit Court's Final Judgment validating the \$135,000,000 bond issuance at issue.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of September 2008.

---

DAVID A. THERIAQUE, ESQUIRE  
Florida Bar No. 832332  
S. BRENT SPAIN, ESQUIRE  
Florida Bar No. 320810  
TIMOTHY E. DENNIS, ESQUIRE  
Florida Bar. No. 575410  
THERIAQUE VORBECK & SPAIN  
433 North Magnolia Drive  
Tallahassee, Florida 32308  
Telephone: 850/224-7332  
Facsimile: 850/224-7662

KERRY ANNE SCHULTZ, ESQUIRE  
Florida Bar No. 563188  
BORDELON & SCHULTZ  
LAW FIRM, P.L.  
2721 Gulf Breeze Parkway  
Gulf Breeze, Florida 32563  
Telephone: 850/934-1000  
Facsimile: 850/934-1050

CO-COUNSEL FOR APPELLANT  
DR. GREGORY L. STRAND

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via telefacsimile and United States Mail to:

Patricia D. Lott, Esquire  
Miller, Canfield, Paddock & Stone, P.L.C.  
25 West Cedar Street, Suite 500  
Pensacola, Florida 32502  
Counsel for ESCAMBIA COUNTY, FLORIDA

Richard I. Lott, Esquire  
Lott & Associates, P.L.  
362 Gulf Breeze Parkway, Suite 288  
Gulf Breeze, Florida 32561  
Counsel for ESCAMBIA COUNTY, FLORIDA

Elaine Johnson-James, Esquire  
Richard J. Miller, Esquire  
Mark-David Adams, Esquire  
Christine Senne, Esquire  
Edwards Angell Palmer & Dodge, LLP  
One North Clematis Street, Suite 400  
West Palm Beach, Florida 33401  
Counsel for ESCAMBIA COUNTY, FLORIDA

on this \_\_\_\_\_ day of September 2008.

\_\_\_\_\_  
TIMOTHY E. DENNIS, ESQUIRE