

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

DR. GREGORY L. STRAND, Appellant,

v.

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

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

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**APPELLEE'S MOTION TO STRIKE APPELLANT'S  
REPLIES TO THE BRIEFS OF THE AMICI CURIAE**

By its undersigned attorneys and pursuant to Florida Rules of Appellate Procedure 9.300 and 9.370, Appellee, Escambia County (the "County"), hereby files its Motion to Strike Appellant's Replies to the Briefs of the Amici Curiae, stating:

1. On September 17, 2007, several parties filed motions to be recognized as amici curiae in this matter. These motions included, among others, the Attorney General's Motion for Leave to File an Amicus Curiae Brief in Support of Clarification ("Attorney General's Motion"),<sup>1</sup> the Florida

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<sup>1</sup> The Court later granted this motion and recognized the Attorney General as an amicus curiae.

Association of Counties’ Motion for Rehearing and Clarification,<sup>2</sup> the Joint Motion to Appear as Amici Curiae on Motion for Rehearing or Clarification (“Joint Motion”),<sup>3</sup> and the Florida League of Cities, Inc., et al.’s Motion for Leave to File Amici Curiae Brief (“League of Cities Motion”)<sup>4</sup> (collectively, the “Amici Motions”).

2. On September 17, 2007, the Attorney General also filed the Amicus Curiae Brief of Attorney General Bill McCollum in Support of Clarification (“Attorney General’s Brief”).

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<sup>2</sup> The Court later granted this motion and recognized the Florida Association of Counties as an amicus curiae.

<sup>3</sup> The Florida School Board Association, Inc., the Florida Association of District School Superintendents, Inc., and the School Districts of Duval, Hillsborough and Orange Counties filed the Joint Motion. The Court later granted the Joint Motion as to the Florida School Board Association, Inc. and recognized it as an amicus curiae, but denied the Joint Motion as to the other parties.

<sup>4</sup> The League of Cities Motion was filed on behalf of the Florida League of Cities, Inc., the Florida Redevelopment Association, Inc., six cities, five community redevelopment agencies, and the South Florida Water Management District. The Court later granted the League of Cities Motion as to the Florida League of Cities, Inc. and the Florida Redevelopment Association, Inc, but denied it as to the other parties.

3. As was permitted by Florida Rule of Appellate Procedure 9.300(a),<sup>5</sup> on September 19, 2007, Appellant filed responses to the above-referenced Motions, arguing against recognizing any of the movants as an amicus curiae.

4. On September 20, 2007, the Court issued an Order, granting the Amici Motions in part and denying them in part (“Amici Order”). *See* footnotes 1-4. The Amici Order instructed the Florida League of Cities and the Florida Redevelopment Association to file their brief by 12:00 noon on September 24, 2007. The Amici Order did not authorize Appellant to respond to this brief.

5. On September 21, 2007, without leave of Court, Appellant filed a reply to the Attorney General’s Brief.

6. On September 24, 2007, the Florida League of Cities, Inc. and the Florida Redevelopment Association, Inc. filed their brief (“League/FRA Brief”) in accord with the Amici Order.

7. On September 24, 2007, the Florida School Board Association, Inc. filed a motion for leave to file a brief in support of the Joint Motion and an Amicus Curiae Brief and Appendix of Florida School Boards

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<sup>5</sup> Fla. R. App. P. 9.300(a) provides, in part “A party may serve **one** response to a motion within 10 days of service of the motion.” (emphasis added).

Association, Inc. in Support of Its Motion for Clarification or Rehearing (“School Board Brief”).

8. On September 25, 2007, the Court issued an Order (“School Board Order”), granting the Florida School Board Association leave to file the School Board Brief. The Order did not authorize Appellant to respond to the School Board Brief, nor did it specify a time within which the Appellant could respond to the School Board Brief.

9. On September 27, 2007, Appellant filed a reply to the School Board Brief.

10. On September 28, 2007, the Court issued a revised Opinion in this matter (“Revised Opinion”).

11. After having responded once to each of the Amici’s Motions, Appellant filed a reply to the League/FRA Brief, which included detailed discussion and analysis of the Revised Opinion, without leave of Court, on October 1, 2007.

12. Appellant’s reply to the League/FRA Brief is particularly prejudicial, inasmuch as it analyzes the Revised Opinion. The amici curiae have no opportunity to reply to the Appellant’s answer brief and submit written argument regarding the Revised Opinion to the Court. Fla. R. App.

P. 9.370(c) (“an amicus curiae may not file a reply brief.”). Worse still, the County does not have such an opportunity.

13. After Appellant responded to the Amici Motions, “no further responses [were] permitted . . . without an order of the [C]ourt entered on the [C]ourt’s own motion or the motion of a party.” Committee Notes, 1977 Amendment, Fla. R. App. P. 9.300. Appellant did not seek leave to respond to the Amici Briefs, nor did it specify in the Amici Order that Appellant could respond to the Amici Briefs. *See also* Fla. R. App. P. 9.370(c) (“A court may grant leave for later service [of an amicus brief], **specifying the time within which an opposing party may respond**”) (emphasis added).

14. Because Appellant failed to seek leave to file answers to the Attorney General’s Brief,<sup>6</sup> the School Board Brief and the League/FRA Brief and the Court did not instruct Appellant to reply, Appellant’s reply briefs violate Florida Rules of Appellate Procedure 9.300 and 9.370.

WHEREFORE, Appellee, Escambia County, Florida, hereby requests the Court to strike from the record the Appellant’s replies and/or amended

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<sup>6</sup> The County acknowledges that the Court granted Appellant’s motion for leave to file an amended reply to the Attorney General’s Brief. However, given that the Appellant never requested, and the Court never granted, Appellant the right to reply to the Attorney General’s Brief in the first instance, the County respectfully submits that the Court granted the Appellant’s motion to file an amended reply to the Attorney General’s brief in error.

reply to the briefs filed by the (i) Attorney General, (ii) the Florida School Board Association, Inc. and (iii) the Florida League of Cities, Inc. and the Florida Redevelopment Association, Inc.

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 \_\_\_\_ day of October, 2007  
to the persons listed below.

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### **CERTIFICATION**

The undersigned does hereby certify that she used 14 point Times New Roman type in this Motion to Strike Appellant's Replies to Amicus Briefs, and it complies with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

By: \_\_\_\_\_  
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