

IN THE FLORIDA SUPREME COURT  
CASE NO. SC09-1817 and SC09-1818

MICCOSUKEE TRIBE OF INDIANS  
OF FLORIDA, NEW HOPE SUGAR  
COMPANY AND OKEELANTA  
CORPORATION,  
Appellants,

L.T. Case No.: 50-2008-CA-  
031975XMB

vs.

BOND VALIDATION PROCEEDING

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT,  
Appellee.

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**FLORIDA SCHOOL BOARDS ASSOCIATION, INC., AND  
FLORIDA ASSOCIATION OF DISTRICT SCHOOL  
SUPERINTENDENTS, INC., MOTION FOR  
LEAVE TO FILE AMICI CURIAE BRIEF**

The FLORIDA SCHOOL BOARDS ASSOCIATION, INC., and the FLORIDA ASSOCIATION OF DISTRICT SCHOOL SUPERINTENDENTS, INC. (together, "Movants") by and through undersigned counsel, hereby moves for leave to appear as amici curiae pursuant to Florida Rule of Appellate Procedure 9.370, in support of the South Florida Water Management District (the "District") in connection with this Court's review of the lower court validation judgment entered by the Honorable Donald W. Hafele in the Fifteenth Circuit Court for Palm Beach County, Florida, validating Certificates of Participation to finance the purchase of land owned by the United States Sugar Corporation for the purpose of Everglades restoration.

1. The FLORIDA SCHOOL BOARDS ASSOCIATION, INC. ("FSBA") is a statewide, nonprofit corporation representing school board members in Florida, and is dedicated to assisting school boards to shape and improve public education in Florida by impacting legislation and providing proactive leadership and training to school board members on matters of importance to public education. The FSBA has been the collective voice for Florida school boards since 1930. To further this mission, the FSBA's legal counsel serves as a representative for the FSBA's membership in lawsuits that have the potential to impact school boards and their school districts, which may include preparation and filing of amicus curiae briefs.

2. The FLORIDA ASSOCIATION OF DISTRICT SCHOOL SUPERINTENDENTS, INC. (herein referred to as "FADSS") is a statewide, non-profit organization exclusively dedicated to responding to the unique needs of Florida's 67 district school superintendents. The mission of FADSS is to assist and support superintendents to effectively and efficiently administer school districts. This includes the ability to adequately finance and construct school facilities within the confines of the constitutional class size amendment and an ever-changing student population.

3. The Movants and all school districts in Florida have a special interest in this case because of its potential impact on the existing and anticipated

certificates of participation or lease purchase obligations of school districts used to fund essential public school facilities in reliance on the decision in State v. School Board of Sarasota County, 561 So. 2d 549 (Fla. 1990). The certificates of participation or lease purchase obligations approved in School Board of Sarasota are affected by the same Florida constitutional articles that the Appellant seeks construction of in this appeal.

4. The Movants and their members are substantially affected by the decision in this case. Certificates of participation or lease purchase obligations are used by school districts as a means to finance the construction or major renovations of educational facilities. As representatives of Florida school districts, the Movants have serious concerns over the potential effect this Court's decision will have on the ability of school districts to finance necessary school facilities construction needed to comply with Florida constitutional and statutory mandates.<sup>1</sup>

5. School districts in Florida have issued certificates of participation and lease purchase obligations using the current structure for such obligations for the building of schools and the lease purchase of basic equipment for the past 18 years, since the Courts decision in School Board of Sarasota County. In fact, school

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<sup>1</sup>Examples of mandates that the school districts will be unable to fulfill include the constitutional class-size amendment at Article IX, section 1, Florida Constitution, and the growth management financial feasibility requirement for school concurrency found in section 163.3180, Florida Statutes.

districts are the primary issuer of certificates of participation and lease purchase obligations in the State of Florida and have collectively issued more than fourteen billion dollars worth of current outstanding certificates of participation or lease purchase obligations.

6. Therefore, this appeal implicates issues of extreme significance to the Movants and to the holders of outstanding COPs and lease purchase obligations. Before making its decision on this appeal, it is important that this Court have a full understanding of the impact its decision will have on school districts and local governments throughout the State of Florida and the reliance by schools and local governments on the constitutional analysis in School Board of Sarasota County and consistent Florida precedent.

7. The Movants propose to address two major issues. The first issue is the importance of certificates of participation and lease purchase obligations to school districts in the State of Florida and the consequences school districts will face if certificates of participation and lease purchase obligations are no longer a viable financing mechanism. The second issue the Movants will address is the necessity that this Court follows the doctrine of stare decisis in ruling on this appeal as reflected in the Florida constitutional construction applied in School Board of Sarasota County.

8. The proposed brief will assist in disposition of the case by demonstrating the importance of COPs and lease purchase obligations to school districts and local governments. By virtue of its experience and broad statewide representation, the Movants have perspective and information regarding these issues that will serve as a useful supplement to the interests represented by the parties and which will benefit the Court in its consideration of this appeal.

9. As to the first issue, the proposed brief will describe how school districts rely on the ability to issue certificates of participation and lease purchase obligations to carry out its functions and explain the constitutional framework in Article VII of the Florida Constitution relating to the issuance of certificates or lease purchase obligations and other debt to finance school construction. The brief will describe the limited ability of school districts to issue long-term debt to build school facilities. In the absence of certificates of participation, school boards are limited to general obligation bonds (which require voter approval) and revenue bonds pledging the limited amount of sales tax proceeds received by some school districts. The receipt of such sales tax proceeds also requires voter approval under authorizing law. To further illustrate the importance of certificates of participation and lease purchase obligations to school districts, the brief will describe the immediate consequences that followed the initial opinion in Strand v. Escambia County, 992 So. 2d 150 (Fla. 2008), which initially receded from State v. School

Board of Sarasota County, 561 So. 2d 549 (Fla. 1990). Shortly following the initial opinion in Strand, Standards & Poor's placed its ratings on COPs and lease-purchase obligations issued by Florida school districts on "CreditWatch," and Moody's Investors Service published an investor's alert. The initial opinion in Strand, effectively froze the ability of Florida school districts to issue debt until it was resolved by this Court's issuance of a revised opinion approximately three weeks later clarifying that the Strand opinion was not addressing the constitutionality of certificates of participation financing or the continued viability of State v. School Board of Sarasota County.

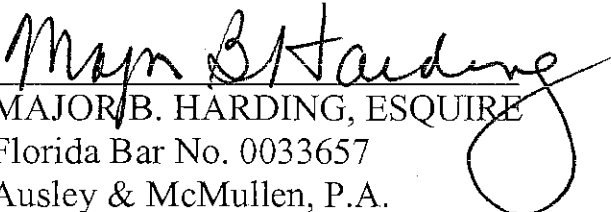
10. By permission of the Court, the Movants, through the undersigned counsel, had filed an Amicus Brief in Support of the Motion for Clarification directed to the initial Strand opinion resulting in the Court substituting a new opinion in Strand on September 18, 2008, removing from its scope any question on the constitutionality of lease purchase and certificates of participation financing. Despite the significant number of individual school districts that had filed motions to appear as amici curiae on Clarification, the Court authorized only the FSBA to represent the interests of school districts. As this case presents similar concerns and issues, and has the potential to similarly impact school district funding sources, the Movants believe that it is again necessary to ensure that the interests of Florida school districts are adequately represented before this Court.

11. Undersigned counsel has contacted counsel for all parties to obtain their consent to the filing of the proposed brief. Counsel for the District consents; counsel for the Miccosukee Tribe of Indians of Florida does not consent; and counsel for New Hope Sugar Company and Okeelanta Corporation does not consent.

**WHEREFORE**, the FLORIDA SCHOOL BOARDS ASSOCIATION, INC., and the FLORIDA ASSOCIATION OF DISTRICT SCHOOL SUPERINTENDENTS, INC., respectfully request that this Court grant it leave to appear and file a brief as amici curiae in support of Appellee South Florida Water Management District.

Respectfully submitted this 29 day of October, 2009.

Respectfully submitted,

  
MAJOR B. HARDING, ESQUIRE  
Florida Bar No. 0033657  
Ausley & McMullen, P.A.  
227 South Calhoun Street  
Tallahassee, Florida 32301  
Telephone: (850) 425-5341  
Facsimile: (850) 222-7560

ROBERT L. NABORS, ESQUIRE  
Florida Bar No. 097421  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
Telephone: (850) 224-4070  
Facsimile: (850) 224-4073

JOY CAUSSEAU FRANK, ESQ.  
Florida Bar No. 316245  
Florida Association of District School Superintendents  
208 South Monroe Street  
Tallahassee, Florida 32301  
Telephone: (850) 488-5099  
Facsimile (850) 921-5273

**CERTIFICATE OF SERVICE**

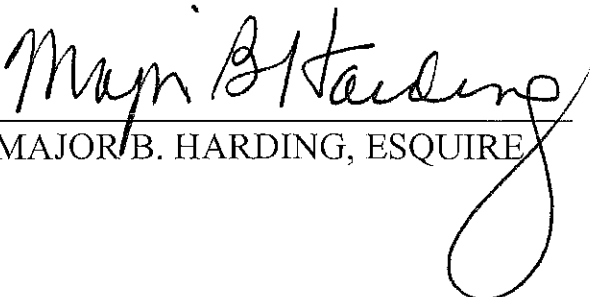
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this \_\_\_ day of October 2009, to:

Joseph P. Klock, Jr., Esq.  
Gabriel E. Nieto, Esq.  
J.D. Antorcha, Esq.  
Rasco Klock Reininger  
Perez Esquenazi Vigil & Nieto  
283 Catalonia Avenue, 2nd Floor  
Coral Gables, Florida 33134

Dexter W. Lehtinen, Esq.  
Claudio Riedi, Esq.  
Felippe Moncarz, Esq.  
Lehtinen Riedi Brooks Morcarz, P.A.  
7700 North Kendall Drive, Suite 303  
Miami, Florida 33156

Maureen Ackerman, Esq.  
**(for all of served State Attorneys)**  
State Attorney for 15th Judicial  
Circuit  
401 North Dixie Highway  
West Palm Beach, Florida 33401

Randall W. Hanna, Esq.  
Christine E. Lamia, Esq.  
Frederick J. Springer, Esq.  
Jason M. Breth, Esq.  
Bryant Miller Olive, P.A.  
101 North Monroe Street, Suite 900  
Tallahassee, Florida 32301

  
MAJOR B. HARDING, ESQUIRE