# Supreme Court of Florida

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No. SC06-1894

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**DR. GREGORY L. STRAND,**
Appellant,

vs.

**ESCAMBIA COUNTY, FLORIDA, etc., et al.,**
Appellees.

[September 6, 2007]

BELL, J.

We have before us an appeal from a circuit court's final judgment validating tax-increment-financed bonds proposed for issuance by Escambia County ("County").[1] We reverse that judgment. Receding from prior decisions, we conclude that the County is without authority to issue these bonds without first obtaining approval by referendum as required by article VII, section 12 of the Florida Constitution.

## I. THE CONTEXT

### A. Factual and Procedural Background

1. We have jurisdiction. See art. V, § 3(b)(2), Fla. Const.

On May 4, 2006, the County adopted Ordinance 2006-38. This ordinance establishes the Southwest Escambia Improvement District in the southwest portion of Escambia County running to the peninsula known as Perdido Key. This ordinance also establishes the Southwest Escambia Improvement Trust Fund and authorizes the use of tax increment financing in order to fund the trust. In conjunction with the adoption of the ordinance, the County adopted Resolution R2006-96, authorizing the County to issue bonds not exceeding $135,000,000 for the Southwest Escambia Improvement District. The stated purpose of these bonds is to finance a four-lane road-widening project in the Southwest Escambia Improvement District in order to improve economic development within that area and alleviate traffic congestion. The bonds reach maturity no later than the thirty-fifth year after revenues are first deposited into the trust fund.

This ordinance defines its tax increment financing scheme as follows:

> "Tax Increment Funds" means the moneys on deposit in the Southwest Escambia Improvement Trust Fund created pursuant hereto.
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> "Tax Increment Revenues" means an amount equal to those certain incremental amounts of ad valorem property taxes of the County for the properties within the Southwest Escambia Improvement District so designated and described in, and deposited in the Southwest Escambia Improvement Trust Fund in accordance with, Section 4 hereof.
>
> "Tax Increment" shall mean the amount equal to the lesser of (a) the amount by which (i) the tax revenues that would have been generated at the millage rate in effect for the current Fiscal Year at the current Assessed Valuation exceeds (ii) the tax revenues that would have been generated at the millage rate in effect for the current Fiscal

> Year at the Base Assessed Valuation and (b) an amount equal to the sum of (i) 110% of the debt service of any outstanding indebtedness secured by the Tax Increment Revenues coming due in such Fiscal Year and (ii) an amount sufficient to restore any deficiencies in payment of debt service for such indebtedness for prior periods and to fund any planned expenditures described in Section 4(6) hereof.

Escambia County, Fla., Ordinance 2006-38 § 2 (May 4, 2006). The ordinance provides that "[t]he County shall, by February 1 of each year, appropriate to such fund . . . an amount equal to the Tax Increment . . . accruing to the County." Ordinance 2006-38 § 4(2).

The ordinance and the resolution further provide that the funds derived from the "Tax Increment Revenues," as defined above, will be the primary source of revenues pledged as debt service on the bonds. See Escambia County, Fla., Resolution R2006-96 art. III, § 302 (May 4, 2006); Ordinance 2006-38 § 3(1)(b). "Pledged Funds" are defined as follows:

> "Pledged Funds" shall mean, collectively, (i) the Trust Fund Revenues; (ii) the Supplemental Revenues . . . in the Supplemental Revenue Account under the provisions of the this [sic] Resolution, and (iii) except for moneys, securities and instruments in the Rebate Account, all moneys, securities and instruments held in the Funds and Accounts established by this Resolution.

Resolution R2006-96 art. I, § 101. "Trust Fund Revenues" are "the moneys (other than Supplemental Revenues) on deposit in the Southwest Escambia Improvement Trust Fund pursuant to the provisions of the Ordinance." Id. "Supplemental Revenues" are "the Non-Ad Valorem Revenues of the Issuer, to the extent

budgeted, appropriated and deposited in the Supplemental Revenue Account pursuant to the Covenant." Id.

Section 304(m)(1) of the "Covenant" provides that the County will only budget and appropriate from legally available non-ad valorem sources if the "Trust Fund Revenues" are insufficient to service the bond debt in each fiscal year in which interest or principal is due and owing. Id. art. III, § 304(m)(1). Section 304(m)(1) further disclaims any covenant to maintain any programs or services which generate non-ad valorem taxes.

Additionally, section 301 of the resolution declares that the bonds are neither a debt nor a pledge of the full faith and credit of the issuer, that the bonds are payable solely from the pledged funds, and that no bondholder "shall ever have the right to compel the exercise of the ad valorem taxing power of the [i]ssuer." See also Resolution R2006-96 art. I, § 103(i); Ordinance 2006-38, §§ 3(2), 4(4) & (5). Section 302 then explains that the lien created by the bonds shall not attach until the revenues are deposited in the Southwest Escambia County Trust Fund. See also Ordinance 2006-38 § 4(4). Furthermore, section 103(h) states that "[t]he estimated Pledged Funds will be sufficient to pay all principal of and interest on the [bonds]." However, section 305 of the resolution authorizes repayment from any other legal funds in addition to the "Pledged Funds," "[s]ubject to the provisions of the State Constitution."

On May 16, 2006, the County filed a "Complaint for Validation" in the First Judicial Circuit Court seeking validation of the bond issuance. The state attorney promptly filed his answer, and Dr. Gregory Strand intervened pursuant to section 75.07, Florida Statutes (2006).

On August 18, 2006, the circuit court entered the final judgment validating the bond issuance. The circuit court concluded that the County had the authority to issue the subject bonds without first obtaining the approval by referendum mandated by article VII, section 12. With regard to the tax increment financing scheme, the circuit court made the following finding:

> The [County] is duly authorized by the Tax Increment Ordinance [2006-38] in accordance with the Constitution and laws of the State of Florida to make the required payments and deposits to the Trust Fund from all available revenues of the [County] including ad valorem property tax receipts, and to do and accomplish all actions authorized and contemplated by the Tax Increment Ordinance.

(Emphasis added.) The intervenor, Dr. Strand, appeals that final judgment.

**B. The Constitution, Tax Increment Financing, and Our Standard of Review**

Before addressing the substantive issues, it is helpful to set forth the text of the constitutional provision at issue, to provide a concise description of tax increment financing, and to state our standard of review. Article VII, section 12 of the Florida Constitution is the provision at issue. It dictates that:

> Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable

> from ad valorem taxation and maturing more than twelve months after issuance only:
>
> (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or
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> (b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

(Emphasis added.)

Tax increment financing is concisely described as follows:

> [Tax increment financing] utilizes the incremental increase in ad valorem tax revenue within a designated geographic area to finance redevelopment projects within that area. As property values in an area rise above an established aggregate valuation (often described as the "frozen" tax base), tax increment is generated by applying the millage rate to that increase in value and depositing in a trust fund an amount equal to such increased tax revenue. This trust fund is the source for repayment of indebtedness. In some states the deposit is made by the tax collector directly to the trust fund. In Florida, however, ad valorem taxes are collected by the tax collector in each county, remitted to the local governments, and then appropriations of the tax increment are made by "taxing authorities." Those appropriations may be made from any source available to the local government, but they must be in an amount equal to the ad valorem tax revenue increase in the redevelopment area.

David E. Cardwell & Harold R. Bucholtz, Tax-Exempt Redevelopment Financing in Florida, 20 Stetson L. Rev. 667, 668-69 (1991) (footnotes omitted).

As to our standard of review, we review the "trial court's findings of fact for substantial competent evidence and its conclusions of law de novo." City of Gainesville v. State, 863 So. 2d 138, 143 (Fla. 2003) (citing City of Boca Raton v.

State, 595 So. 2d 25, 31 (Fla. 1992); Panama City Beach Cmty. Redev. Agency v. State, 831 So. 2d 662, 665 (Fla. 2002)).

## II. ANALYSIS

Dr. Strand argues that the County's tax increment financing scheme is an indirect pledge of ad valorem taxation without a referendum in violation of article VII, section 12 of the Florida Constitution.[2] In support, Dr. Strand relies upon this Court's decision in County of Volusia v. State, 417 So. 2d 968, 972 (Fla. 1982). The County counters that tax increment financing is a constitutional method of servicing debt on bonds without a referendum. In support, the County relies upon State v. Miami Beach Redevelopment Agency, 392 So. 2d 875 (Fla. 1980). See also Penn v. Fla. Def. Fin. & Accounting Serv. Ctr. Auth., 623 So. 2d 459 (Fla. 1993) (holding in part that a tax increment financing scheme was indistinguishable from the one in Miami Beach and that it did not run afoul of the referendum requirement). In Miami Beach, this Court held that tax-increment-financed bonds were not subject to the referendum requirement of article VII, section 12. The premise underlying Miami Beach, and as clarified in State v. School Board of Sarasota County, 561 So. 2d 549 (Fla. 1990), was that the "payable from ad

2. Dr. Strand raises two other issues in this appeal: (1) whether the trial court abused its discretion in denying his motion for continuance; and (2) whether the trial court's final judgment is supported by competent, substantial evidence. Because we hold that the County is without legal authority to issue the bonds without a referendum, we need not reach the merits of the other two issues.

valorem taxation" language in article VII, section 12 refers only to the pledge of ad valorem taxing power, not to the pledge of ad valorem tax revenues.

Upon considering the tax increment financing scheme in this case, we deem it necessary to reassess this premise underlying Miami Beach and School Board of Sarasota County. As explained below, our reassessment makes it necessary to recede from this premise. We now hold that 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.

We begin our explanation of this result by describing our decisions in Miami Beach and School Board of Sarasota County. We then state our concern regarding the premise underlying Miami Beach and School Board of Sarasota County. Having explained our concern, we detail our reassessment of the premise. We do so in three steps. First, to provide context, we explore the history of Florida's constitutional restrictions on local borrowing. Second, we analyze the plain language of article VII, section 12 as well as two failed amendments to article VII. Third, having determined that the premise is invalid, we explain why receding

from Miami Beach and School Board of Sarasota County comports with this Court's jurisprudence that the doctrine of stare decisis bends "to correct legally erroneous decisions." Allstate Indemnity Co. v. Ruiz, 899 So. 2d 1121, 1131 (Fla. 2005).

**A. Miami Beach and School Board of Sarasota County**

In Miami Beach, we held that it was permissible for a local government, without approval by referendum, to pledge tax increment revenues as a source of debt service on bonds for capital projects if the taxing power was not pledged and the lien on the funds did not attach until they were deposited into a trust account. No explanation was given as to how this conclusion comported with the plain language of article VII, section 12. Moreover, no historical support was provided to show how the purpose of the referendum requirement was unaffected by such financing. Instead, this Court simply stated the following:

> [T]here is nothing in the constitution to prevent a county or city from using ad valorem tax revenues where they are required to compute and set aside a prescribed amount, when available, for a discreet [sic] purpose. The purpose of the constitutional limitation is unaffected by the legal commitment; the taxing power of the governmental units is unimpaired. What is critical to the constitutionality of the bonds is that, after the sale of bonds, a bondholder would have no right, if the redevelopment trust fund were insufficient to meet the bond obligations and the available resources of the county or city were insufficient to allow for the promised contributions, to compel by judicial action the levy of ad valorem taxation. Under the statute authorizing this bond financing the governing bodies are not obliged nor can they be compelled to levy any ad valorem taxes in any year. The only obligation is to appropriate a sum equal to any tax increment

> generated in a particular year from the ordinary, general levy of ad valorem taxes otherwise made in the city and county that year. Issuance of these bonds without approval of the voters of Dade County and the City of Miami Beach, consequently, does not transgress article VII, section 12.

392 So. 2d at 898-99.[3]

The holding in Miami Beach led to the holding in School Board of Sarasota County. In School Board of Sarasota County, we expressly held that the phrase "payable from ad valorem taxation" refers only to the pledge of taxing power, not to the pledge or use of ad valorem tax revenues. 561 So. 2d at 552. Thus, we held that the school board was authorized to pledge its ad valorem tax revenues as one of several sources of debt service. Id.

**B. The Concern**

Escambia County's tax increment financing scheme is certainly consistent with the premise and ultimate holdings of Miami Beach and School Board of Sarasota County. However, a comparison of Escambia County's scheme with the

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3. In reaching this conclusion in Miami Beach, the only authority cited was this Court's prior decision in Tucker v. Underdown, 356 So. 2d 251 (Fla. 1978). In Tucker, which was not a bond validation case, this Court found that an ad valorem tax levy for solid waste disposal purposes did not violate the covenants of an earlier bond issuance. Tucker, 356 So. 2d at 254. However, the challenge to the ad valorem tax levy, as well as this Court's analysis, was based solely upon the language of the covenants of the bond issuance and the authorizing resolution, not article VII, section 12. Id. at 253-54. Furthermore, Tucker specifically noted that when the Brevard County bonds were originally validated in 1972, the trial court "determined that no referendum was required because the issue pledged no ad valorem tax revenues." Id. at 253 n.9.

schemes involved in Miami Beach and School Board of Sarasota County raises serious concerns regarding the validity of the premise that the phrase "payable from ad valorem taxation" refers only to a pledge of taxing power, not to a pledge of ad valorem tax revenues.

Miami Beach involved the financing of a systematic plan for the redevelopment of a blighted area that was authorized by the relevant localities after public hearings as required by the Community Redevelopment Act. 392 So. 2d at 882. The localities in Miami Beach not only pledged tax increment revenues to service the bond debt but also pledged sales, lease, and use fee revenues from the newly redeveloped properties. 392 So. 2d at 898. Similarly, School Board of Sarasota County involved the creative leasing of new educational facilities, where the localities identified four revenue sources for lease payments, namely monies from an educational finance program, monies from an education capital outlay trust fund, monies from the local infrastructure sales tax, and revenues from ad valorem taxation. 561 So. 2d at 551 n.3.

In contrast, Escambia County plans to issue bonds to finance the widening of a road, a typical county capital project. And, unlike Miami Beach and School Board of Sarasota County, the only primary funding to service the bonds is ad

valorem tax revenues.[4] The County would only appropriate revenues from secondary, non-ad valorem sources if the tax increment revenues are insufficient to service the bond debt. In effect, the County wants to pledge revenue from ad valorem taxation for thirty-five years as the primary source of funding a road improvement project without the consent of the electorate. We are concerned that allowing this would abrogate the referendum requirement of article VII, section 12 for long-term debt and render meaningless the phrase "payable from ad valorem taxation." It also appears that such a result would violate the purpose of this constitutional restraint on the power of local governments to incur long-term debt.

Additionally, as Dr. Strand argues, the County's financing scheme seems inconsistent with the fundamental principle enunciated in County of Volusia. In County of Volusia, we determined that Volusia County's "pledge of all the legally available, unencumbered revenues of the county other than ad valorem taxation, along with a covenant to do all things necessary to continue receiving the revenues,

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4. During the evidentiary hearing before the trial court, Escambia County's witnesses acknowledged that the tax increment from the designated district would be the primary source of repayment. And one of Escambia County's witnesses specifically described how ad valorem tax revenues would be employed as follows:

> What happens is they take the value of all the properties within the district at any given point in time, and as the values increase over time, 95 percent of the value of the growth portion only of the countywide revenues base they use the countywide millage rate against the growth portion and those funds are set aside for the increment.

as security for the bonds, will have the effect of requiring increased ad valorem taxation so that a referendum is required." 417 So. 2d at 969. We then held that such a pledge violated the principle that what a county cannot do directly, it cannot do indirectly. Specifically, we stated:

> That which may not be done directly may not be done indirectly. See, e.g., State v. Halifax Hospital District, 159 So. 2d 231 (Fla. 1963). While the county has not directly pledged ad valorem taxes to the payment of the bonds, its pledge of all other available revenues, together with its promise to do all things necessary to continue to receive the various revenues, will inevitably lead to higher ad valorem taxes during the life of the bonds, which amounts to the same thing. We find in this case that the pledge of all available revenues, together with a promise to maintain the programs entitling the county to receive the various revenues, will have a substantial impact on the future exercise of ad valorem taxing power and brings this case within the rule of Halifax Hospital District. The taxpayers of Volusia County must have an opportunity to vote on the bond issue.

Id. at 972 (emphasis added).

Unlike Volusia County's pledge of all of its non-ad valorem revenues, Escambia County is attempting to pledge the increase in ad valorem tax revenues generated from a designated area. However, Escambia County's plan gives rise to the same concerns we had over budgetary flexibility in County of Volusia. Moreover, the tax increment financing plan in this case seems to violate the fundamental principle applied in County of Volusia. In other words, we are concerned that Escambia County is attempting to do indirectly "that which cannot be done directly." Id. at 971. Without the consent of the electorate, the County is

attempting to indirectly pledge ad valorem taxation for the repayment of long-term bonds used to finance a capital project. It is doing so by taking advantage of the tax increment financing scheme we initially approved in Miami Beach, a financing scheme uniquely developed to assist the redevelopment of blighted urban areas.

In light of the above concerns, we find it necessary to reassess the premise in Miami Beach and School Board of Sarasota County that the "payable from ad valorem taxation" language in article VII, section 12 refers only to the pledge of ad valorem taxing power, not to the pledge of ad valorem tax revenues. The first step in this reassessment is to understand the history of Florida's constitutional restrictions on local borrowing.

**C. Reassessing the Pledging of Taxing Powers Only Premise**

1. The History of Constitutional Restrictions on Local Borrowing

While the Florida Constitution of 1885 restricted the ability of the Legislature to authorize state bonds,[5] prior to 1930 there was no express constitutional restriction on local borrowing. Rather, the power of a local government to borrow was restricted primarily by the rule that local bodies had no

5. Specifically, article IX, section 6 of the Florida Constitution of 1885 provided the following:

> The legislature shall have power to provide for issuing State bonds only for the purpose of repelling invasion or suppressing insurrection, or for the purpose of redeeming or refunding bonds already issued, at a lower rate of interest.

power except those delegated to it by the Legislature. Amos v. Matthews, 126 So. 308, 320 (Fla. 1930) ("It is fundamentally true that all local powers must have their origin in a grant by the state which is the fountain and source of authority."). Consequently, in early local borrowing cases, this Court was typically concerned with whether the Legislature had the power to authorize local governments to borrow. See Joseph W. Little, The Historical Development of Constitutional Restraints on the Power of Florida Governmental Bodies to Borrow Money, 20 Stetson L. Rev. 647, 661 (1991).

In 1930, the Florida Constitution was amended and the following provision expressly requiring a referendum for local bonds was added to article IX, section 6:

> [T]he Counties, Districts or Municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such Counties, Districts, or Municipalities shall participate . . . .

This Court explained the societal conditions that led to the adoption of this amendment as follows:

> Many of us lived through the times immediately prior to the adoption of the amended Section 6 of Article IX of the State Constitution, and are thoroughly familiar with the conditions and the history of the times which resulted in a demand on the part of the people for this amendment.
>
> Hundreds of millions of dollars in bonds had been issued by municipalities and counties throughout the state. These bonds were issued pursuant to hundreds of special acts of the Legislature. These acts were passed by the Legislature as local bills and without the approval of anyone except the delegation in the Legislature from the

> county affected. Under these various acts, ad valorem taxes were levied and the future credit of the governmental unit pledged without the approving voice of the freeholders or the people who had to pay the taxes. Most of these bonds were issued during the period known as the "Boom Days." The "Boom" burst—a depression was on and the people and the freeholders found themselves saddled with debts impossible for them to pay. Millions of these bonds sold for less than 20% of par and some of them for less than 10% of par. Defaults multiplied throughout the state. The effect was as could be expected. The people awakened to the fact not only that an intolerable burden had been placed upon them far beyond their ability to pay, but also that the very welfare of the State was threatened, because of the weakened credit structure. Indeed, such was the impact that even the Congress of the United States took cognizance of the financial condition of Florida municipalities and amended the Federal Bankruptcy Act, 11 U.S.C.A. § 1 et seq., so as to bring bankrupt municipalities within its terms. Many Florida cities and towns took advantage of this amended act.
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> It was during such times and under these conditions that the Legislature of 1929, in response to the demands of the people, adopted the proposal to amend Section 6 of Article IX of the Constitution. In the ensuing general election the proposed amendment was adopted.

State v. Fla. State Improvement Comm'n, 60 So. 2d 747, 751 (Fla. 1952). [6] Thus, the purpose of the 1930 amendment was to impose a restriction on local borrowing

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6. During the proceedings of the Florida Constitution Revision Commission in 1966, commission member and former Florida Supreme Court Justice Harold L. Sebring further explained the boom and bust difficulties that existed at the local level before the adoption of the 1930 referendum requirement:

> [B]ecause of the fact that Section 6, Article IX, was not in the constitution at the time, the counties, the municipalities, the various tax districts of the state had been free to bond themselves, until at the time of the depression, overnight when this quote $10,000 an acre land reverted back to $5 an acre, the outstanding bond debt of this

and a restraint on "the spendthrift tendencies of political subdivisions to load the future with obligations to pay for things the present desires, but cannot justly pay for as they go." Leon County v. State, 165 So. 666, 669 (Fla. 1936).

Despite this acknowledged purpose of the amendment, this Court held that the 1930 referendum requirement did not apply to certain forms of local obligations, which were not, in fact, bonds. Posey v. Wakulla County, 3 So. 2d 799 (Fla. 1941); State ex rel. Houston v. Hillsborough County, 183 So. 157 (Fla. 1938); Tapers v. Pichard, 169 So. 39 (Fla. 1936). This Court explained its distinction between bonds and other obligations as follows:

> As a general rule, we have said that if proposed certificates are secured by a pledge of ad valorem taxes, they are "bonds" and must be approved by the freeholders as required by Section 6, Article IX of the Florida Constitution, but if they are secured by excise taxes, special assessments or charges against the facility constructed with the net proceeds thereof, they are certificates that do not have to be approved by the freeholders.

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> state was greater than the assessed valuation of the property of the state.
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> And then it was with all of these outstanding bonds, particularly those for road and bridge purposes, that bondholders began to ask for their payment in respect to past due obligations, and there was nothing with which to pay, because the only resource of a political subdivision, in the last analysis, is its taxing power, and the taxing power was not there to pay off bonds that had been issued under an assessed valuation that, by the crash, was demonstrated to be perhaps 1,000 per cent over and above its assessed valuation.

Convention of the Florida Constitution Revision Commission, Transcript of Proceedings 353 (Dec. 5, 1966).

Klein v. City of New Smyrna Beach, 152 So. 2d 466, 467 (Fla. 1963). Cf. Leon County, 165 So. at 667 ("Any contractual device for the present funding of tax revenues . . . to be raised or made available for reimbursement in future years, contrived to be issued as an enforceable legal security to the obligee . . . is . . . a 'bond.'. . ."). This distinction and the consequent limitation on the referendum mandate was addressed two decades later in the constitutional revision process.

When the Florida Constitution was revised substantially in 1968, the referendum requirement was modified to its current form in article VII, section 12. The 1968 revision added the terms "certificates of indebtedness," "any form of tax anticipation certificates," and "payable from ad valorem taxation" to the referendum requirement of 1930. The "certificates of indebtedness" and "any form of tax anticipation certificates" language was seen by some as a rejection of this Court's previous distinctions between bonds and other local obligations. See Miami Beach, 392 So. 2d at 895-98; Richard A. Harrison, Comment, The Community Redevelopment Act: A Historical Perspective with Commentary on the 1984 Amendments, 14 Stetson L. Rev. 623, 639 (1985). However, this Court interpreted the new "payable from ad valorem taxation" language as "a ratification of prior judicial interpretation . . . that local revenue sources other than ad valorem taxation may be pledged without referendum." Miami Beach, 392 So. 2d at 898.

Overall, the purpose of the 1968 provision was to provide local governments with the flexibility to meet their expanding capital needs, while at the same time placing a democratic restraint on this flexibility as it relates specifically to ad valorem taxation. Although "[l]ocal government indebtedness in Florida [had] increased sharply from $539,000,000 in 1950 to . . . an estimated $2,500,000,000 in 1968," approximately a third of the outstanding indebtedness in 1968 was financed by sources other than ad valorem taxation. Manning J. Dauer, et al., Should Florida Adopt the Proposed 1968 Constitution? An Analysis 32 (Public Administration Clearing House, Univ. of Fla. (1968). And based upon the new "payable from ad valorem taxation" language, it appears that ad valorem taxation was the primary concern at the time.

With this historical context in mind, we address the second step in our reassessment of the premise in Miami Beach and School Board of Sarasota County by analyzing the language of article VII, section 12 and by reviewing two failed amendments that would have expressly authorized tax increment financing.

2. The Language of Article VII, Section 12 and the Failed Amendments

(a) Plain Meaning of Article VII, Section 12

The language of article VII, section 12 is plain and unambiguous. As stated previously, article VII, section 12 of the Florida Constitution provides as follows:

> Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates

> of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:
>
> (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or
>
> (b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

(Emphasis added.) Thus, article VII, section 12 plainly authorizes localities to issue long-term bonds "payable from ad valorem taxation" for the purpose of financing capital improvements only when "approved by vote of the electors." In other words, a referendum is required whenever bonds financing capital improvements (1) are payable from ad valorem taxation; and (2) mature more than twelve months after issuance. Specific to the issue here, because the payment is from ad valorem taxation in either case, a referendum is required not only when localities pledge ad valorem taxing power, but also when localities pledge ad valorem tax revenues.

The plain meaning of the phrase "payable from ad valorem taxation" clearly encompasses more than a pledge of the ad valorem taxing power. Indeed, taxation is a general—not a technical—term. The term encompasses anything generally related to the collecting of tax revenues. According to Websters's Dictionary, "taxation" refers to "the action of taxing" as well as "an amount assessed or obtained by taxation." Webster's Third New International Dictionary of the

English Language Unabridged 2345 (1966).[7] Consequently, "ad valorem taxation" refers to both the action of imposing ad valorem taxes as well as the amount of ad valorem revenues obtained. Thus, under the plain meaning of article VII, section 12, a locality is required to obtain approval by referendum whenever ad valorem tax revenues or ad valorem taxing power are pledged as a payment source for the described indebtedness.

(b) The Failed Amendments

Interestingly, since 1968, the people of Florida have twice rejected amendments that would have constitutionally authorized the use of tax increment financing without a referendum, at least for the redevelopment of blighted areas. In 1976, the Legislature proposed an amendment adding a provision to article VII that would have permitted the issuance of "revenue bonds secured solely by a pledge of and payable from ad valorem tax revenues [from a designated district] . . . to finance and refinance community redevelopment projects" when provided by general law approved by two-thirds of each house of the Legislature. Fla. CS for HJR 3982 (1976) (proposed art. VII, § 16, Fla. Const.). On November 2, 1976, Floridians rejected the Legislature's proposed amendment. See Official Certificate

7. As this Court recognized in Board of Public Instruction v. Union School Furnishing Co., 129 So. 824, 826 (Fla. 1930) (quoting In re Advisory Op. to Gov., 114 So. 850, 855 (Fla. 1927)), when considering the language of article IX, section 6 of the constitution of 1885, "[t]he spirit as well as the letter of this section should be preserved and given full force and effect. Its purpose should not be defeated or frittered away by any narrow or technical construction."

of the State Elections Canvassing Commission (Nov. 10, 1976) (available at Fla. State Archives ser. 1258, vol. 121). Following the defeat of this proposal, the Legislature amended the Community Redevelopment Act of 1969 to authorize the use of tax increment financing without a referendum. § 163.387, Fla. Stat. (1977). However, because doubt remained regarding whether tax increment financing was constitutional without a referendum, another revision authorizing pledges of tax increments was placed on the ballot, this time by the Constitutional Revision Commission. Harrison, supra, at 630. [8] And, in the general election of November

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8. The Commission's proposal to amend article VII provided, in part, as follows:

> Section 17. Redevelopment of Slum or Blighted Areas. Redevelopment of slum or blighted areas is a public purpose. Pursuant to general law passed by two-thirds vote of the membership of each house, a county, municipality, or authority created pursuant to general or special law may designate an area as a slum or blighted area and, with respect to such area, may: . . .
>
> (d) Allocate tax increments to finance or refinance the redevelopment of such area and issue, without approval by vote of the electors, revenue bonds payable from the increment in taxes or revenues derived from redevelopment projects to finance or refinance such redevelopment. A tax increment shall consist of that portion of the ad valorem tax revenues, for any or all taxing authorities, collected each year from property located in a designated slum or blighted area, which exceeds the tax revenues that would have been collected at the current year's millage had such property been assessed at its value shown on the assessment roll in the year immediately prior to the year in which the area was designated as a slum or blighted area.

7, 1978, the people of Florida rejected the commission's proposal. See Official Certificate of the Elections Canvassing Commission (Nov. 14, 1978) (available at Fla. State Archives, ser. 1258, vol. 127).

If the people of Florida had wanted to constitutionally allow the pledging of tax increments without a referendum, they had two distinct opportunities to do so. Instead, Floridians rejected both proposals. Obviously, the history of these failed amendments supports the plain meaning of article VII, section 12.

Given the plain, unambiguous meaning of article VII, section 12, a meaning supported by its history and purpose, we find no support for the premise that the "payable from ad valorem taxation" language added in 1968 refers solely to the pledge of ad valorem taxing power. We now address the doctrine of stare decisis, the third and final step in our reassessment of the premise in Miami Beach and School Board of Sarasota County.

3. Stare Decisis

"This Court adheres to the doctrine of stare decisis," State v. J.P., 907 So. 2d 1101, 1108 (Fla. 2005), as the doctrine is important in "provid[ing] stability to the law and to the society governed by that law." State v. Gray, 654 So. 2d 552, 554 (Fla. 1995). However, "[s]tare decisis bends where . . . there has been an error in legal analysis." State v. J.P., 907 So. 2d at 1109 (citing Gray, 654 So. 2d at 554).

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Fla. Const. Rev. Comm'n, Revision No. 7 (1978) (proposed art. VII, § 17, Fla. Const.) (emphasis added).

"Perpetuating an error in legal thinking under the guise of stare decisis serves no one well and only undermines the integrity and credibility of the Court." Smith v. Dep't of Ins., 507 So. 2d 1080, 1096 (Fla. 1987) (Ehrlich, J., concurring in part, dissenting in part). Furthermore, the rationale for stare decisis may be "at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions." Agostini v. Felton, 521 U.S. 203, 235 (1997). As we stated in Allstate Indemnity Company,

> [t]his Court has departed from precedent to correct legally erroneous decisions, see Gray, 654 So. 2d at 554, when such departure is "necessary to vindicate other principles of law or to remedy continued injustice," Haag, 591 So. 2d at 618, and when an established rule of law has proven unacceptable or unworkable in practice. See Brown v. State, 719 So. 2d 882, 890 (Fla. 1998) (Wells, J., dissenting).

899 So. 2d at 1131. We find ourselves addressing such a situation in this case.

As we have explained, Escambia County's tax increment financing scheme caused us to reassess the premise in Miami Beach and School Board of Sarasota County that made a distinction between pledging ad valorem taxing power and pledging ad valorem tax revenues. This reassessment has established that this premise 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.

Moreover, the premise in Miami Beach and School Board of Sarasota violates the fundamental principle we enunciated in County of Volusia. As discussed earlier, in County of Volusia, this Court held "[t]hat which may not be done directly may not be done indirectly." 417 So. 2d at 972. In effect, the premise in Miami Beach and School Board of Sarasota County has allowed localities to do indirectly what article VII, section 12 intends to prohibit. It has allowed localities to indirectly pledge ad valorem taxation for the repayment of long-term bonds without the consent of the electorate.

Given these facts, we can no longer support the legal fiction required to validate the County's pledge of ad valorem revenues as the primary, and potentially only, source of debt service without a referendum as required by the plain language and purpose of article VII, section 12. For these reasons, we believe that receding from Miami Beach and School Board of Sarasota County comports with this Court's jurisprudence regarding the doctrine of stare decisis.

## III. CONCLUSION

As stated earlier, we now hold that the phrase "payable from ad valorem taxation," as used in article VII, section 12, refers not only to the pledge of a local body's taxing authority but also to the pledge of ad valorem tax revenues. And,

because tax increment financing pledges funds derived from ad valorem tax revenues, bonds that rely upon such financing are bonds "payable from ad valorem taxation." Consequently, when ad valorem tax revenues are so pledged, "the Constitution requires that the people who are to pay the bill should be given an opportunity to approve the debt before it is incurred." State v. Halifax Hospital Dist., 159 So. 2d 231, 235 (Fla. 1963) (considering the 1930 referendum requirement). Thus, in order to pledge tax increments for the repayment of such bonds, approval of the electorate by referendum must be obtained.

To be clear, we are not holding that tax increment financing is unconstitutional. Rather, we are holding that bonds payable through tax increment financing are subject to the referendum requirement of article VII, section 12. Also, our decision in this case does not affect bonds that were validated prior to this opinion becoming final. See Miami Beach, 392 So. 2d at 895; County Comm'rs v. King, 13 Fla. 451 (1869). As this Court has stated, "after validation, the courts will protect even the purchasers of unconstitutional bonds." Miami Beach, 392 So. 2d at 895 (citing Giles J. Patterson, Legal Aspects of Florida Municipal Bond Financing, 6 U. Fla. L. Rev. 287, 289 (1953)).

Accordingly, we reverse the trial court's final judgment in this case and hold that Escambia County does not have authority to issue the subject bonds without a

referendum. In so doing, we recede from Miami Beach and School Board of Sarasota County to the extent they are inconsistent with our decision in this case.

It is so ordered.

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, and CANTERO, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

An Appeal from the Circuit Court in and for Escambia County - Bond Validations

Michael G. Allen - Judge - Case No. 2006-CA-881

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