



## NOTICE TO MEMBERS of LEGAL ACTION, November 2019

### **What:**

FSBA was asked to join the Florida Association of Counties and Florida League of Cities, Inc. in filing an Amici Curiae (friend of the court) in support of petitioner, The School District of Escambia County, Florida in their appeal of the School District of Escambia County vs. Santa Rosa Dunes Owners Association, Inc.

### **Why is this case important? How does it have statewide impact?**

In *The School District of Escambia County v. Santa Rosa Dunes Owners*, No. 1D18-91, the 1st DCA determined that the public official standing doctrine is not limited to prohibiting constitutional officers from challenging statutes that require the officer to perform a ministerial duty. The court expanded the doctrine to apply to officers who are somehow affected by the challenged statute. **By so broadly interpreting the doctrine, as the concurring opinion notes, the court has effectively prohibited all constitutional officers from challenging most, if not every, general law.** As you can see from the organization filing Amici Curiae (below), this broader interpretation is of great concern to all Constitutional Officers who strongly believe it is an erroneous interpretation and that the Florida Supreme Court will recognize this.

### **What is the potential effect on school districts if the 1st DCA Ruling stands?**

The ruling by the 1<sup>st</sup> DCA, for the first time, BROADLY defines the public official standing doctrine which would, if left standing, potentially eliminate any school board in the state or any other governmental body to which the public official standing doctrine applies from seeking judicial relief in challenging statutes found within general law. In essence, if left as is, the 1<sup>st</sup> DCA ruling will effectively prohibit a school board from challenging most any general law.

### **Who else is interested in this case? Who else might be considering an Amici Curiae?**

The Florida Association of Counties (FAC) and the Florida League of Cities, Inc. (League) have already noticed the court of their intent to file a brief amici curiae in support of the Petitioner. Other interested organizations who have filed a Notice of Intent to File Amicus Brief are: Florida Association for Constitutional Officers and The Property Appraisers' Association of Florida. Others are waiting for FSBA's position.

### **What costs are associated with such a filing?**

To participate by adopting the School District of Escambia County's Brief and arguments contained therein without researching and advancing additional grounds to reverse the Trial Court the estimate is between \$5000 and \$7,000.

To file a completely independent Brief and research new impacts on every district the costs could exceed \$40,000.

We are considering adopting a brief with the expectation of spending no more than \$7,000.



## Definitions

### **Amici Curiae**

Latin for "friend of the court." Plural is "amici curiae." Frequently, a person or group who is not a party to an action, but has a strong interest in the matter, will petition the court for permission to submit a brief in the action with the intent of influencing the court's decision. Such briefs are called "amicus briefs."

### **Public Official Standing Doctrine**

Historically, the public official standing doctrine has prohibited constitutional officers from challenging laws under which they had a ministerial duty to perform. For example, the tax collector cannot challenge a tax that the tax collector is duty bound to collect by law.

The public official standing doctrine, first explained in *State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers*, 94 So. 681 (Fla. 1922), provides that "a public official may not defend his nonperformance of a statutory duty by challenging the constitutionality of the statute." *Crossings At Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So.2d 793, 794-803 (Fla. 2008).

The doctrine, grounded in the separation of powers, recognizes that public officials are obligated to obey the legislature's duly enacted statute until the judiciary passes on its constitutionality. *Id.* at 683.

For that reason, a public official's "[d]isagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion." *Dep't of Revenue v. Markham*, 396 So. 2d 1120, 1121(Fla. 1981).