IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC09-1698
DCA CASE NO. 1D09-188

JEFFREY LEWIS, et al.,

Appellants,

vs.

LEON COUNTY, et al.,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA

ANSWER BRIEF OF APPELLEES, COUNTIES AND FAC

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PRELIMINARY STATEMENT

Jeffrey E. Lewis, Jackson S. Flyte, Joseph P. George, Jr., Philip J. Massa, and Jeffrey D. Deen, Criminal Conflict and Civil Regional Counsel; Jeff Atwater, in his official capacity as President of the Senate; and Larry Cretul, in his official capacity as Speaker of the House of Representatives, will be referred to collectively as "Appellants."

Leon County, Florida; Alachua County, Florida; Manatee County, Florida; Bay County, Florida; Broward County, Florida; Charlotte County, Florida; Collier County, Florida; Flagler County, Florida; Gilchrist County, Florida; Hernando County, Florida; Hillsborough County, Florida; Lake County, Florida; Levy County, Florida; Marion County, Florida; Monroe County, Florida; Nassau County, Florida; Okeechobee County, Florida; Osceola County, Florida; Palm Beach County, Florida; Pasco County, Florida; Polk County, Florida; St. Johns County, Florida; St. Lucie County, Florida; Sarasota County, Florida; and Seminole County, Florida; and the Florida Association of Counties, Inc. (individually, "FAC"), will be referred to collectively as "Appellees."

Volusia County, also an Appellee, is represented by other counsel, and will be referenced individually as "Volusia County" for purposes of this Answer Brief.

Reference to materials in the record will be designated as "R." followed by the appropriate volume and page number.

Reference to the Transcript of the December 12, 2008, hearing on Motions for Summary Judgment will be designated as "Tr." followed by the appropriate page number. The transcript is found in the supplemental record on appeal.

STATEMENT OF THE CASE AND FACTS

Appellees acknowledge the Statement of the Case and Facts filed by Appellants within the Initial Brief. However, as that Statement is unduly argumentative, Appellees submit their own Statement of the Case and Facts as permitted by Florida Rule of Appellate Procedure 9.210(c).

The subject matter of this lawsuit concerns the constitutionality of section 19 of Chapter 2007-62, Laws of Florida, which amended section 29.008, Florida Statutes, in an attempt to require the Counties to pay for certain costs of the newly formed Offices of Criminal Conflict and Civil Regional Counsel.[1] Appellees, twenty-five Florida Counties and the Florida Association of Counties, Inc., filed their Complaint for Declaratory and Supplemental Relief against Appellants, challenging the constitutionality of this section under Article V, sections 14 and 18, and Article VII, section 18(a) of the Florida Constitution (R. Vol. 1 at 9-72). Volusia County separately filed its Complaint, seeking a declaration that section 19, Chapter 2007-62, Laws of Florida, is unconstitutional under Article V, section 14 of the Florida Constitution. (R. Vol. 1 at 1-8).

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[1] These costs relate to communication services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and the security of facilities.

Appellants, defendants below, filed motions to dismiss, alleging various grounds. (R. Vol. 1 at 85-109). After the cases were consolidated, a hearing was held, and these motions were, in substance, denied (R. Vol. 1 at 154-56).[2] Subsequently, Appellants chose not to answer the complaints or to raise any affirmative defenses. Instead the parties filed cross motions for summary judgment (R. Vol. 1 at 159-161; Vol. 1-2 at 180-270; Vol. 2 at 290-302).

A hearing was held on December 12, 2008 (Tr. at 1). After hearing arguments from the parties, the Court entered its written Final Summary Judgment on December 18, 2008, in favor of Appellees and Volusia County, and against Appellants, on all grounds argued by Appellees (R. Vol. 2 at 329-46). The Court made the following detailed rulings:

> 1. To the extent it shifts the funding requirements for Criminal Conflict and Civil Regional Counsel from the State to the Counties, Section 19 of Chapter 2007-62, Laws of Florida, is declared to be unconstitutional and not binding upon the Counties because it violates the express provisions of Article V, Section 14, Florida Constitution, requiring that court-appointed counsel be wholly funded by the State;[3]
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> 2. To the extent it shifts the funding requirements for Criminal Conflict and Civil Regional

[2] The motion, as directed to Volusia County's having improperly named Governor Crist and Attorney General McCollum as parties, was granted. (R. Vol. 1 at 155).

[3] A portion of this language was omitted from the Final Summary Judgment, and was later corrected by written order on December 29, 2008 (R. Vol. 2 at 347-48).

> Counsel from the State to the Counties, Section 19 of Chapter 2007-62, Laws of Florida, is further declared to be unconstitutional and not binding upon the Counties because it impermissibly attempts to change, by statute, the definition of "public defender" expressly provided in Article V, Section 18, Florida Constitution;
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> 3. To the extent it shifts the funding requirements for Criminal Conflict and Civil Regional Counsel from the State to the Counties, Section 19 of Chapter 2007-62, Laws of Florida, is additionally declared to be unconstitutional and not binding upon the Counties because the Florida Legislature failed to comply with the express provisions of Article VII, Section 18(a), Florida Constitution, requiring that before a local government may be bound by any general law requiring the expenditure of local funds, the Legislature must determine that the law fulfills an important state interest;
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> 4. In accordance with Section 33 of Chapter 2007-62, Laws of Florida, the provisions of Section 19 held unconstitutional by this order are hereby severed from the remainder of the Chapter Law;

(R. Vol. 2 at 344-45).

Appellants appealed this decision to the First District Court of Appeal. On July 17, 2009, the First District issued its written opinion, affirming the final judgment of the trial court in all respects. The Court ruled that the trial court correctly held that Section 19 of Chapter 2007-62, Laws of Florida, violates both Article V, Section 14, and Article VII, Section 18, of the Florida Constitution. Appellants thereafter filed a Motion for Clarification, which was denied on August 18, 2009. Appellants filed their Notice of Appeal on September 14, 2009, from which this appeal proceeds.

SUMMARY OF THE ARGUMENT

Section 19 of Chapter 2007-62, Laws of Florida, unconstitutionally attempts to shift funding responsibility from the State to the Counties for certain costs of court-appointed counsel, whose purpose is to represent indigents in certain categories of civil cases and in criminal matters where the public defenders' offices are found to have conflicts of interest. Article V, section 14 of the Florida Constitution imposes funding responsibility for these court-appointed counsel wholly upon the State, and not the Counties, but does impose limited funding obligations on the Counties for the public defenders' offices. The Legislature enacted Chapter 2007-62, creating the Offices of Criminal Conflict and Civil Regional Counsel ("Conflict Counsel"), and in an attempt to bypass the constitutionally mandated funding requirements for the court-appointed counsel, impermissibly modified the definition of public defender for purposes of section 14 to include these new Conflict Counsel. This statutory amendment violates the clear funding limitations of section 14.

It is undisputed that the County has no responsibility for the funding of court-appointed counsel under section 14. The new Conflict Counsel, to a large extent, replaced court-appointed counsel. There is no significant legal difference between the court-appointed counsel and the newly created Offices of Criminal Conflict and Civil Regional Counsel, and section 14 of Article V continues to

apply as a limitation on the source of funding. Additionally, "public defender," as that term is used in section 14, is constitutionally defined by section 18 of Article V, Florida Constitution, and clearly does not include the Conflict Counsel. The Legislature is not permitted to modify or enlarge this constitutionally defined term, whether for funding purposes or otherwise. Accordingly, section 19 of Chapter 2007-62 is unconstitutional, as it violates sections 14 and 18 of Article V.

Secondly, section 19 of Chapter 2007-62 was adopted by the Legislature in violation of Article VII, section 18(a), Florida Constitution, which provides that before the Legislature can pass a general law requiring counties to expend local funds, it must make a determination that the law fulfills an important state interest. Although Chapter 2007-62 contains general statements of intent as to the creation of the Offices of Criminal Conflict and Civil Regional Counsel, there is no indication that a determination was ever made, either explicit or implicit, that the creation of those offices and requirement that they be funded by the Counties fulfills an important state interest. There is, in fact, no indication that the Legislature even considered the issue. The constitutional requirement of a legislative determination of important state interest prior to enactment of a funding mandate directed to local governments is designed to avoid such an oversight. Accordingly, section 19, Chapter 2007-62 is unconstitutional and not binding on the Counties, as the Legislature failed to comply with the provisions of Article VII,

section 18(a), Florida Constitution. The decision of the First District should be affirmed in all respects.

STANDARD OF REVIEW

Appellees agree that the issues presented in this appeal are questions of law subject to de novo review. Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc., 978 So. 2d 134, 139 (Fla. 2008); Fla. Dep't of Revenue v. City of Gainesville, 918 So. 2d 250, 256 (Fla. 2005); Zingale v. Powell, 885 So. 2d 277, 280 (Fla. 2004).

ARGUMENT

I. SECTION 19, CHAPTER 2007-62, LAWS OF FLORIDA, IS UNCONSTITUTIONAL BECAUSE IT IMPERMISSIBLY SHIFTS THE FUNDING RESPONSIBILITY FOR CERTAIN COSTS OF COURT-APPOINTED COUNSEL FROM THE STATE TO THE COUNTIES, IN VIOLATION OF ARTICLE V, SECTIONS 14 AND 18, FLORIDA CONSTITUTION

This case presents a question regarding the construction of Article V, section 14, Florida Constitution, as it relates to the State's responsibility to provide funding for the Offices of Criminal Conflict and Civil Regional Counsel, which were created by Chapter 2007-62, Laws of Florida. Section 19 of Chapter 2007-62, Laws of Florida, purports to amend section 29.008, Florida Statutes, to shift some of this funding responsibility from the State and require the Counties to pay for costs associated with the Conflict Counsel.[4] Because this amendment to section 29.008 is in clear conflict with the dictates of Article V, sections 14 and 18, Florida Constitution, the First District correctly affirmed the trial court's ruling that the amendment is unconstitutional.

Article V, section 14 of the Florida Constitution was adopted as part of Revision 7 during the term of the 1998 Constitution Revision Commission. It was

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[4] See note 1, supra, for a listing of those costs.

intended to, and in fact did, shift the majority of the burden of funding the court system from the Counties to the State.[5] It reads, in pertinent part:

> (a) . . . . Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.
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> * * *
>
> (c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communication services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

Art. V, § 14, Fla. Const. (emphasis added).

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[5] Prior to 1998, the Counties bore a large portion of the costs of court-appointed counsel. See generally City of Fort Lauderdale v. Crowder, 983 So. 2d 37 (Fla. 4th DCA 2008); Edward G. Labrador and John J. Copelan, Jr., Broken Promises: The Failure to Adequately Fund a Uniform State Court System, Vol. LXXI, No. 4, Fla. B. J., p. 30 (April 1997).

Under these provisions, the State of Florida is responsible for funding the state courts system, the state attorneys' offices, the public defenders' offices and court-appointed counsel, except for those costs identified in subsection (c). Pursuant to subsection (c), the Counties are responsible only for funding such specifically identified costs for "trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions." Clerks of the circuit courts, state attorneys, and public defenders are all specifically created and defined within Article V of the Florida Constitution. See Art. V, §§ 16-18, Fla. Const.

Noticeably absent from this exception is court-appointed counsel. Under Article V, section 14, the State of Florida is wholly responsible for any cost of the state courts system and related entities not specifically listed in the subsection (c) exception, including all costs associated with the provision of court-appointed conflict counsel.

The court-appointed counsel provided representation to indigent criminal defendants in cases where the duly elected public defender was deemed to have a conflict of interest. The court-appointed counsel were never considered part of the public defenders' office, as they were not included within the definition of "public defender" contained in Article V, section 18, Florida Constitution, which reads:

> In each judicial circuit a public defender shall be elected for a term of four years, who shall perform duties prescribed by general law. A public defender shall be an elector of the state and reside in the territorial jurisdiction of the circuit and shall be and have been a member of the Bar of Florida for the preceding five years. Public defenders shall appoint such assistant public defenders as may be authorized by law.

In May 2007, the Legislature enacted Chapter 2007-62, Laws of Florida, to create the Offices of Criminal Conflict and Civil Regional Counsel in each of the five appellate districts in Florida. This system effectively replaced the former private court-appointed counsel as the primary source for representation of indigent defendants in cases where the public defender has a conflict of interest. See Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc., 978 So. 2d 134, 138 (Fla. 2008). Section 19 of the Act purports to amend section 29.008, Florida Statutes, by defining the term "public defenders' offices" to include the Offices of Criminal Conflict and Civil Regional Counsel, for purposes of funding under Article V, section 14.[6] Essentially, under this provision, Counties would have to

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[6] Section 29.008, Florida Statutes currently reads:

> (1) Counties are required by s. 14, Art. V of the State Constitution to fund the cost of communications services, existing radio systems, existing multiagency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders' offices, state attorneys' offices, guardian ad

pay the constitutionally defined costs to house both the offices of public defenders and the offices of the Conflict Counsel. Since the enactment of Chapter 2007-62, the duly appointed Conflict Counsel have demanded that the Counties pay these costs (R. Vol. 1 at 183-185).

However, the clear language and intent of Article V, sections 14 and 18 does not allow the Legislature to shift its funding responsibility to the Counties in this manner. In construing constitutional provisions, first and foremost, the Court must examine the actual language used in the constitution. Crist, 978 So. 2d at 140. "If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written." Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n, 489 So. 2d 1118, 1119 (Fla. 1986). Furthermore, the Court "endeavors to construe a constitutional provision consistent with the intent of the framers and the voters." Zingale v. Powell, 885 So. 2d 277, 282 (Fla. 2004) (quoting Caribbean

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> litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions. For purposes of this section, the term "circuit and county courts" includes the offices and staffing of the guardian ad litem programs, and the term "public defenders' offices" includes the offices of criminal conflict and civil regional counsel. The county designated under s. 35.05(1) as the headquarters for each appellate district shall fund these costs for the appellate division of the public defenders' office in that county.

(Emphasis added).

Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n, 838 So. 2d 492, 501 (Fla. 2003)).

Additionally, where a constitutional provision expressly provides for the manner of doing a thing, "it impliedly forbids its being done in a substantially different manner." Bush v. Holmes, 919 So. 2d 392, 407 (Fla. 2006) (quoting Weinberger v. Bd. of Pub. Instruction, 93 Fla. 470, 112 So. 253, 256 (Fla. 1927) (applying the principle of "expressio unius est exclusio alterius")). In the instant case, Article V, section 14(c), Florida Constitution, expressly provides that the Counties shall not be obligated to provide any funding to, among other entities, court-appointed counsel, "except as provided in this subsection." (Emphasis added). Nothing in the remainder of the subsection would subject the Counties to the payment of any part of the funding for court-appointed counsel. The Legislature has, therefore, clearly run afoul of this constitutional provision by attempting to require the Counties to fund the offices of the Conflict Counsel through the provisions of section 19 of Chapter 2007-62, Laws of Florida.

Furthermore, the Statement of Intent of the Constitution Revision Commission regarding Article V, section 14 of the Florida Constitution, clearly provides that the State is to be wholly responsible for funding court-appointed counsel and related costs necessary to ensure the protection of due process rights. That Statement of Intent, prepared by the 1998 Constitution Revision Commission

members[7] responsible for drafting the funding provisions of Article V, states, in no uncertain terms:

> Section 14(a) requires the state to fund the state courts system, state attorneys' offices, public defenders' offices and court-appointed counsel, except as provided in subsection (c). It is the intent of the proposers that the state be **primarily responsible** for funding the state courts system, state attorneys' offices and public defenders' officers, and **wholly responsible** for funding court-appointed counsel and related costs necessary to ensure the protection of due process rights.

Statement of Intent Regarding Article V, section 14 (emphasis added) (R. Vol. 1 at 191).[8] It is clear from this Statement of Intent that the framers of Article V, section 14, Florida Constitution, intended that the State of Florida, and not the Counties, be wholly and solely responsible for funding court-appointed counsel.

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[7] This Statement of Intent was authored by proposers Alan C. Sundberg, former Chief Justice of the Florida Supreme Court, and Jon L. Mills, former Speaker of the House (R. Vol. 1 at 190-95).

[8] Courts of this state have considered such comments to be especially important in interpreting the text of a constitutional provision. See City of Fort Lauderdale v. Crowder, 983 So. 2d 37, 39 n.2 (Fla. 4th DCA 2008) (interpreting Article V, Section 14, Florida Constitution, and providing: "In interpreting constitutional provisions, as distinguished from statutes, we consider the object or purpose to be accomplished by the provision, the prior state of the law, including the origin of the provision, as well as contemporaneous and practical considerations. Comments by the Constitution Revision Commission, as the author of the provision, as to the meaning of text are especially important." (emphasis added)).

While the Legislature has created the Offices of Criminal Conflict and Civil Regional Counsel to replace court-appointed counsel as the primary means of providing representation to criminal defendants when the public defender has a conflict, the funding provisions contained in Article V, section 14 have not changed. This constitutional provision has, since 1998, required the State to wholly fund court-appointed counsel. See State v. Public Defender, 11th Jud. Cir., 12 So. 3d 798 (Fla. 3d DCA 2009) (stating "[u]nder the former law, counties were required to fund the private attorneys, who were appointed by courts to replace assistant public defenders. . . .[t]he counties' obligation to fund replacement counsel has since shifted to the State of Florida."). As determined by the Florida Supreme Court "there appears to be no significant legal difference between the current OCCCRC system and the prior system of appointing private counsel in conflict cases." Crist, 978 So. 2d at 146. In other words, the "court-appointed counsel" referred to in Article V, section 14(c), Florida Constitution, are now, in all practical respects, the Conflict Counsel established in Chapter 2007-62, Laws of Florida.

Appellants argue for reversal here, as they did before the appellate court below, on the basis that Article V, section 14 did not contemplate the creation of the Conflict Counsel system. As the First District concluded in rejecting Appellants' contention, "this argument does not avail its crafters. Both the plain

language of Revision 7 and the framers' expression of intent demonstrate that the state will be 'wholly responsible for funding court-appointed counsel and related costs necessary to ensure the protection of due process rights.'" Lewis v. Leon County, Case No. 1D09-188 (Fla. 1st DCA July 17, 2009). Although it is within the Legislature's power to create the Conflict Counsel system to handle cases in which the public defender has a conflict, the Legislature cannot shift the constitutional duty of the State to be responsible to fund court-appointed conflict counsel by simply establishing a new entity to perform the same function. The newly established offices of Conflict Counsel have merely stepped into the shoes of the court-appointed counsel as they existed under the former system.

Although Appellants argue that the newly created Conflict Counsel are public instead of private counsel, the constitution does not provide for such a public/private dichotomy for purposes of funding. Nor does the language of Article V, section 14, Florida Constitution, provide any indication that such a distinction was intended. The role remains the same; the Conflict Counsel are, in fact, "court-appointed counsel," and it is of no constitutional significance for purposes of funding whether a public or a private label is attached.[9]

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[9] This public/private distinction is not persuasive for an additional reason. The state attorney, public defender, and clerk of court, are not simply "public" officers, but rather, are constitutional officers. Neither the Conflict Counsel, nor the former system of court-appointed counsel, fall into this category. In any event, as the

Significantly, section 19 of Chapter 2007-62, Laws of Florida, also impermissibly attempts to enlarge the constitutional definition of "public defender" contained in Article V, section 18, by including the Conflict Counsel within this definition in an apparent attempt to bypass the funding limitations of Article V, section 14. Appellants in this case respond by arguing that the statute only amends the meaning of public defender for purposes of funding under Article V, section 14, and does not enlarge the definition provided by section 18. However, "in construing multiple constitutional provisions addressing a similar subject, the provisions 'must be read in pari materia, to ensure a consistent and logical meaning that gives effect to each provision.'" Caribbean Conservation Corp., Inc. v. Fla. Fish & Wildlife Conservation Comm'n, 838 So. 2d 492, 501 (Fla. 2003). "Public defender" as it is used in Article V, section 14 must be understood as it is defined in section 18 of that very same constitutional article. Otherwise, this definition would be meaningless and serve no purpose.

Appellants' argument assumes that there can be two definitions of public defender, one from a "functional standpoint" and one from a "structure and funding standpoint" (Initial Brief at 14), though only one definition exists in the Florida Constitution. It is clear that the Legislature cannot rewrite a constitutional

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Conflict Counsel step into the shoes of the private court-appointed counsel, the clear language of Article V, section 14 mandates that the State, and not the Counties, provide all costs associated with the provision of these Conflict Counsel.

definition by statute, and it should not be allowed to circumvent the constitutional limitations in this instance by attempting to enlarge the definition of public defender to include the Offices of Criminal Conflict and Civil Regional Counsel. Ostendorf v. Turner, 426 So. 2d 539, 544 (Fla. 1982) (quoting Sparkman v. State, 58 So. 2d 431, 432 (Fla. 1952) for the proposition that "[e]xpress or implied provisions of the Constitution cannot be altered, contracted or enlarged by legislative enactments."). To do so would render the constitutional limitation of section 14 a nullity.

Though the Florida Supreme Court, in Crist, did not consider the constitutionality of the funding provision in section 19 of Chapter 2007-62, Laws of Florida, it did specifically find that the Conflict Counsel are not public defenders and do not perform the constitutional duties of public defenders. 978 So. 2d at 145. It would defy logic to suggest that, though the Conflict Counsel cannot be considered public defenders for the purposes of Article V, section 18, they may be treated as such for purposes of Article V, section 14(c).

Article V, section 14(c) provides for County funding for certain defined costs for only "trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions." In attempting to expand the definition of "public defender" to include the Conflict Counsel, the obvious inference is that the Legislature recognized that

Conflict Counsel had to fall under one of the specifically enumerated categories in the section 14(c) exemption in order to shift funding responsibility for those offices from the State to the Counties. There is simply no other reason for the Legislature's attempt to include the Conflict Counsel within this definition.

Confusingly, Appellants now argue that the limitations contained within Article V, section 14 do not apply to these offices and do not prohibit the State from requiring such funding. However, if this were so, there would have been no reason for the Legislature to try to define the Conflict Counsel as public defenders for purposes of Article V, section 14. Certainly the Legislature recognized the proper application of Article V, section 14 to these Conflict Counsel. Section 14, in plain terms, applies to funding for the court-appointed Conflict Counsel and precludes the State from passing on any of its funding responsibilities to the Counties in this manner. In fact, as the First District noted, Appellants conceded below that Conflict Counsel are "court appointed counsel." Lewis v. Leon County, Case No. 1D09-188 (Fla. 1st DCA July 17, 2009).

Based upon the express funding limitations of Article V, section 14 of the Florida Constitution, interpreted together with Article V, section 18, there can be no other conclusion but that section 19 of Chapter 2007-62, Laws of Florida, is facially unconstitutional. Accordingly, the decision of the First District should be affirmed on this issue.

II. THE ENACTMENT OF SECTION 19, CHAPTER 2007-62, LAWS OF FLORIDA, VIOLATED THE PROVISIONS OF ARTICLE VII, SECTION 18(a) OF THE FLORIDA CONSTITUTION

In addition to violating sections 14 and 18 of Article V, Florida Constitution, section 19 of Chapter 2007-62 also violates the requirements of Article VII, section 18, Florida Constitution. Section 18 is entitled "Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue." It provides, in pertinent part, as follows:

> (a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available to such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such an expenditure by a simple majority vote of the governing body of the county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Art. VII, § 18(a), Fla. Const. (emphasis added).

As previously noted, in construing a constitutional provision, the Court must first examine the actual language used, Crist, 978 So. 2d at 140; enforce it as written, so long as "that language is clear, unambiguous, and addresses the matter in issue," Fla. Soc'y Of Ophthalmology, 489 So. 2d at 1119; and "construe [it] consistent with the intent of the framers and the voters." Zingale, 885 So. 2d at 282. Additionally, "[i]t is a fundamental rule of construction of our constitution that a construction of the constitution which renders superfluous, meaningless or inoperative any of its provisions should not be adopted by the courts . . . . Construction of the constitution is favored which gives effect to every clause and every part thereof." Broward County v. City of Fort Lauderdale, 480 So. 2d 631 (Fla. 1985).

Section 18 was initially passed and adopted in 1990 to curtail the Legislature's increasing penchant for enacting legislation placing regulatory mandates upon local governments without providing the funding to cover the cost of those mandates. See Nancy Perkins Spyke, Florida's Constitutional Mandate Restrictions, 18 Nova L. Rev. 1403, 1404-07 (1994) (citing to Final Staff Analysis & Economic Impact Statement, Florida House of Representatives, Committee on Community Affairs, CS/CS/CS/CS HJR's 139, 140 (June 2, 1989)). Under section 18(a), a two-prong test must be met before local governments can be required to

comply with a general law requiring its expenditure of funds. First, the Legislature, itself - - and not staff - - must formally determine that the bill serves an important state interest. Then, one of the five alternative exceptions set forth in subsection (a) must also be met. See generally Spyke, supra at 1411, 1418. The parties' arguments below concerned the first requirement - - that the Legislature determine the bill serves an important state interest.[10,11]

Section 18 clearly requires that if a general law seeks to impose a mandate upon a county or a city that would entail the expenditure of local funds, the Legislature must first determine that the legislation containing such a funding mandate fulfills an important state interest. This constitutional requirement highlights the importance of legislative restraint on the enactment of funding mandates, by requiring the Legislature to make this determination.

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[10] With respect to the legislation at issue here, Appellees presumed, in the trial court below, that, as to the second part of the two-prong test to be met, the Legislature relied upon the provision within Article VII, section 18(a) stating that "the law requiring such expenditures [must be] approved by two-thirds of the membership in each house of the legislature," since CS/SB 1088, the bill which became Chapter 2007-62, passed unanimously in both houses of the Legislature. Appellees did not then, and do not now, dispute that this part of the test was met.

[11] Appellants also argued, below, at the trial court level, that under Article VII, section 18(d), the legislation at issue had an "insignificant fiscal impact," thereby exempting it from the requirements of section 18(a), altogether. The trial court rejected this argument (R. Vol. 2 at 342-43), and Appellants have not raised it as an issue in this appeal, or before the First District.

In order to comply with this provision, there must be some indication that the Legislature actually made the determination that the legislation fulfills an important state interest. Otherwise, the constitutional directive would serve no purpose, and it would essentially be read out of the constitution altogether. However, Appellants would have this Court render meaningless the requirement of section 18(a), as they argue that the Legislature need not declare that the law fulfills an important state interest, but that it is enough that an important state interest can be gleaned, after-the-fact, from a general statement of intent written into the legislation. Respectfully, Appellants' argument that the cited statements of intent fulfill the determination of an important state interest requirement is attenuated, at best.

Appellees are not, after all, challenging the ability of the Legislature to modify the manner in which court-appointed conflict counsel are provided; rather, Appellees are only challenging the Legislature's attempt to require local governments to expend local funds in violation of the Florida Constitution.

Furthermore, Appellees do not dispute that the Legislature has some discretion with regard to determining that a statute fulfills an important state interest; however, a close reading of the portions of the chapter law to which Appellants have referred the Court simply cannot be read so broadly. It is, after all, a far cry from finding that the creation of the offices of Conflict Counsel is

"necessary" and represents the "best steps toward enhancing the publicly funded provision of legal representation . . . in a fiscally responsible and effective manner," to making the determination that the law creating those offices and requiring that they be funded by the Counties "fulfills an important state interest." Ch. 2007-62, § 31(1) - (2). The statement of intent does not demonstrate any attempt to comply with the constitutional restraint imposed on the Legislature by Article VII, section 18(a). Compare Ch. 2007-62, §§ 4, 31(1) - (2), Laws of Florida, with Ch. 2004-263, § 2, Laws of Florida (where the Legislature utilized the procedures recommended by the House and Senate leadership in 1991, shortly after passage of the amendment, by inserting a separate provision in the bill stating unequivocally: "The Legislature determines and declares that this act fulfills an important state interest.").

Appellants suggest a legislative determination that a local government funding mandate law fulfills an important state interest can be evidenced by something other than a formal declaration and that the constitution does not compel the Legislature to follow any particular procedure. However, in this instance, the evidence reflects that the Legislature was never made aware of the need for such a determination, and thus made no attempt at all to comply with this constitutional requirement.

Appellants' argument ignores the entire purpose of the required determination of important state interest, which was to give the Legislature pause in its consideration of adopting unfunded mandates. Clearly, the plain language and the purpose of this requirement were disregarded in this case.

After the passage of Article VII, section 18, a uniform system was developed within the Legislature to address mandate proposals. Spyke, supra at 1417. Staff analyses, "the uniform legislative history document in Florida, now devote an entire section to municipal and county mandate restrictions . . . . Staff first identifies whether the bill under analysis will require the expenditure of funds by local governments, and then addresses whether any exemptions or exceptions apply." Id. at 1419.

Tellingly, a review of the Staff Analysis for CS/SB 1088 reflects that, at no time, did staff even consider this bill to raise unfunded mandate issues. The section of the analysis under which potential "Municipality/County Mandates Restrictions" are to be discussed reports that the bill has "None." See Professional Staff Analysis and Economic Impact Statement, Florida Senate, Criminal and Civil Justice Appropriations Committee, CS/SB 1088 (March 28, 2007), section IV (A) (R. Vol. 1 at 197-200).[12] By failing to alert legislators that there were unfunded

[12] Cf. id. section V(C) (where, under the "Economic Impact and Fiscal Note" section of the Staff Analysis, it is recognized that the Counties will be required to

mandate issues even involved, it is obvious that the need to make the constitutionally required determination never came to their attention, and the determination was therefore simply not made. As the First District concluded, the Legislature simply did not consider the unfunded mandate issue, and therefore, the Legislature violated Article VII, section 18(a).

Because the Florida Legislature failed to make the constitutionally required determination that its legislation creating the Offices of Criminal Conflict and Civil Regional Counsel and requiring that the Counties fund them fulfills an important state interest, the Court should affirm the First District's ruling that section 19, Chapter 2007-62 violates the provisions of Article VII, section 18(a) of the Florida Constitution, and is not binding upon the Counties.

CONCLUSION

Section 19 of Chapter 2007-62, Laws of Florida, is unconstitutional as facially violative of Article V, sections 14 and 18, Florida Constitution; and because the Florida Legislature failed to comply with the requirements of Article VII, section 18(a), Florida Constitution. As such, Appellees respectfully request that this Court affirm the decision of the First District in all respects.

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expend some unknown amount of money but, again, there is a failure to recognize such expenditure is an unfunded mandate requiring that the Legislature determine that the legislation fulfills an important state interest).

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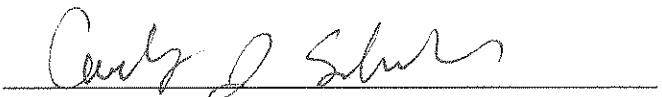
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery to Louis F. Hubener, Chief Deputy Solicitor General, Scott D. Makar, Solicitor General, Office of the Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050; and by U.S. Mail to Daniel D. Eckert, County Attorney, 123 West Indiana Avenue, DeLand, Florida 32720-5950, this 22nd day of October, 2009.



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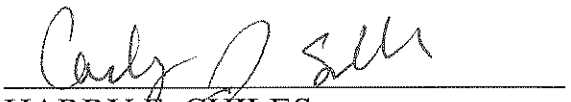
CERTIFICATE OF FONT SIZE COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief of Appellees, Counties and FAC, complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).



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