IN THE SUPREME COURT OF FLORIDA

FLORIDA GOVERNOR CHARLIE CRIST; KEN PRUITT, AS PRESIDENT OF THE FLORIDA SENATE; KURT BROWNING, AS SECRETARY OF STATE; AND JEFFREY LEWIS, JACKSON FLYTE, JOSEPH GEORGE, JR., PHILIP MASSA, AND JEFFREY DEEN, AS CRIMINAL CONFLICT AND CIVL REGIONAL COUNSEL, **Case No. SC08-02**

Appellants,

vs.

FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, INC.,

Appellee.
_____/

ANSWER BRIEF OF APPELLEE

On Appeal from the Circuit Court of the Second Judicial Circuit, In and For Leon County, Florida

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STATEMENT OF THE CASE

On September 20, 2007, Appellee Florida Association of Criminal Defense Lawyers ("FACDL") filed a Petition for Writ of Quo Warranto in this Court asserting that Governor Charlie Crist's appointment of five Criminal Conflict and Civil Regional Counsel ("CCCRC"), Appellees Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Phillip Massa and Jeffrey Deen, were made in contravention to article V, section 18 of the Constitution. Thus, it sought the following relief: (1) to quash the appointments; (2) to enjoin Appellees Secretary of State Kurt Browning and Senate President Ken Pruitt from completing procedures necessary to confirm the appointments; (3) to enjoin the CCCRC from performing any of their official duties; and (4) to declare the statute providing for their appointment, Chapter 2007-62, Laws of Florida (May 24, 2007), unconstitutional. (Petition for Writ of Quo Warranto, No. SC07-1744 (Fla. Sept. 20, 2007)) (hereinafter "Petition") (attached hereto as Appendix A).

On October 18, 2007, this Court transferred the Petition to Leon County Circuit Court. (Order Transferring Petition for Writ of Quo Warranto to Leon County Circuit Court, No. SC07-1744 (Fla. Oct. 18, 2007) (*citing Harvard v. Singletary*, 733 So. 2d 1020 (Fla. 1999); *Vance v. Wellman*, 222 So. 2d 449 (Fla 2d DCA 1969)). On October 30, 2007, the circuit court ordered the

Appellants to show cause as to why the Petition should not be granted. (Writ of Quo Warranto, No. 2007-CA-2898 (Leon Cty. Oct. 30, 2007)) A hearing was held on December 19, 2007,[1] and on December 20, 2007, the circuit court granted the Petition. (Order Granting Petition for Writ of Quo Warranto, No. 2007-CA-2898 (Leon Cty. Dec. 20, 2007) (hereinafter "Order Granting Writ") (attached to Appellants' Brief as Appendix A). In doing so, it enjoined Respondents Lewis, Flyte, George, Massa and Deen from performing any duties required of them by Chapter 2007-62. *Id.* at 7.

Appellants filed a notice of appeal on December 20, 2007, triggering an automatic stay of the circuit court's order pending final outcome in the case, pursuant to Florida Rule of Appellate Procedure 9.310(b)(2) (2007).

On December 28, 2007, FACDL filed "Petitioner's Motion to Declare Automatic Stay Inapplicable or, Alternatively, to Dissolve Automatic Stay" and the circuit court set a hearing on the motion for January 9, 2008. Along with their Response in the circuit court, Appellants filed in the First District Court of Appeal an Emergency Motion to Require Stay of all Further Proceedings in the Trial Court, No. 1D07-6544 (Fla. 1st DCA Jan. 8, 2008). The motion was denied on January 9, 2008.

[1]The hearing was not recorded and its transcript is therefore not provided in the record on appeal.

On the same day, immediately following the presentation of evidence and argument in the circuit court on FACDL's motion to lift the stay, the court orally granted FACDL's motion in part. Specifically, it enjoined the CCCRC from taking new case appointments and from making any more expenditures than those necessary to defend those clients to whom they had already been appointed as counsel.[2] The court then left it to the parties to determine the specific details of the stay and held a follow-up telephonic hearing on January 11, 2008,[3] following which it entered a written order.

On January 15, 2008, Appellants filed in this Court "Appellants' Emergency Motion for (1) Review of circuit court Order Vacating Rule 9.310(B)(2) Stay of Order Under Appeal (Circuit Court Order Granting Petition for Writ of Quo Warranto), and (2) Reinstatement of That Stay," No. SC08-02 (Fla. Jan. 15, 2008) (hereinafter "Appellants' Emergency Motion to Reinstate Stay"). This Court then reversed the lower court's ruling reinstating the stay pending appeal. (Order, No. SC08-2

[2]The transcript from this hearing is attached as Appendix B to Appellants' Emergency Motion for (1) Review of Circuit Court Order Vacating Rule 9.310(B)(2) Stay of Order Under Appeal (Circuit Court Order Granting Petition for Writ of Quo Warranto), and (2) Reinstatement of That Stay, No. SC08-02 (Fla. Jan. 15, 2008) (hereinafter "Appellants' Emergency Motion to Reinstate Stay").

[3]The transcript from this hearing is attached as Appendix C to Appellants' Emergency Motion to Reinstate Stay.

(Fla. Jan. 17, 2008) Thus, the CCCRC are currently still acting in their official capacity pursuant to Chapter 2007-62.

On December 27, 2007, Appellants filed "Appellants' Suggestion for Certification of Appeal Requiring Immediate Resolution with the First District Court of Appeal," No. 1D07-6544 (Fla. 1st DCA Dec. 27, 2007). The court granted the suggestion, finding that the issues presented "are of great public importance or will have a great effect on the proper administration of justice throughout the state." No. 1D07-6544 (Jan. 8, 2008). This Court accepted jurisdiction on January 15, 2008, pursuant to Rules 9.030(2)(A)(v) and 9.125(g) of the Florida Rules of Appellate Procedure.

STATEMENT OF THE FACTS

On May 24, 2007, Governor Charlie Crist signed into law CS/SB 1088, Ch. 2007-62, Laws of Fla. (attached to Petition as Appendix B). The law provides for the establishment of five Offices of Criminal Conflict and Civil Regional Counsel ("OCCCRCs") for the purpose of representing the large majority of indigent clients in criminal cases previously handled by private counsel (referred to hereinafter as "criminal conflict cases"), as well as indigent clients in civil proceedings under section 393.12 and Chapters 39, 390, 392, 397, 415, 743, 744 and 984 of the Florida Statutes. *See* Ch. 2007-62, § 1, at 3 (*amending* §§ 27.40(1), (2)(a), Fla. Stat. (May 24, 2007)); *id.*,

§ 4, at 6-9 (*creating* § 27.511 (May 24, 2007)).

Chapter 2007-62 requires that the Governor appoint five CCCRC to direct the OCCCRCs, following receipt of recommendations for candidates by the Supreme Court Judicial Nominating Commission. *Id.*, § 4, at 6 (*creating* §§ 27.511(1), (3), Fla. Stat.). It further provides that the OCCCRC are to be located "within the geographical boundaries of each of the five district courts of appeal." *Id.*, §4, at 6 (*creating* § 27.511(1), Fla. Stat.).

The Florida Senate must then confirm the Governor's appointments for them to take effect. *Id.*, § 4, at 7 (*creating* § 27.511(3), Fla. Stat.), which has not yet been done.[4]

Finally, the Act amends two Florida statutes to define the OCCCRC as "Public Defender Offices." *See, e.g.*, *id.*, § 19, at 31-2 (*amending* § 29.008(1), Fla. Stat. (May 24, 2007) ("[T]he term 'public defender offices' includes the offices of criminal conflict and civil regional counsel.")); *id.*, § 16, at 29 (*amending* § 29.001(1), Fla. Stat. (May 24, 2007) ("For the purposes of implementing s. 14, Art. V of the State

[4]Pursuant to section 114.05(b) of the Florida Statutes, the Secretary of State, Respondent Kurt Browning, first must submit to the President of the Senate, Respondent Ken Pruitt, a certificate of appointment and completed biographical questionnaires from each of the five appointees. The Senate must then vote on the appointments by the conclusion of the next legislative session, or May 2008, in order to confirm the appointments. The appointments are, however, currently in place without any further action by the Senate until such vote.

Constitution, . . . the offices of public defenders and state attorneys are defined to include the enumerated elements of the 20 state attorneys' offices and the enumerated elements of the 20 public defenders' offices *and five offices of criminal conflict and civil regional counsel*.")(emphasis added)).

Article V, section 18, of the Florida Constitution provides,

> 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.

(Emphasis added.) FACDL's Petition argued that the plain language of Chapter 2007-62, and in particular its amendment of sections 29.008(1) and 29.001(1), make it clear that the Legislature both created, and *intended* to create, a second tier of public defender offices to provide counsel to indigent defendants in instances where the existing public defender offices do not. Accordingly, the office of the CCCRC, as a public defender, is subject to the requirements for selection established by article V, section 18. Because Chapter 2007-62 provides that the five CCCRC be *appointed* by the Governor and confirmed by the Senate, rather than elected, and that they

reside within the geographic boundaries of the District Courts of Appeal, rather than in each circuit, the law is in violation of section 18. (Petition at 7-8, 9, 11)

FACDL's Petition supported the aforementioned plain language analysis with a public policy argument also before this Court, asserting that the primary purpose behind the constitutional requirement that public defenders be elected is to provide conflict-free counsel to clients in adversarial proceedings against the state. That is, where, as provided by Chapter 2007-62, appointed counsel are simultaneously made reliant on the state for their continued employment, and charged with zealously defending their clients against that same state, an inherent conflict results. (Petition at 11-14) (*citing Brummer v. State*, 426 So. 2d 532, 533 (Fla. 1982) ("'His [the public defender's] principal responsibility is to serve the undivided interests of *his* client. Indeed, an indispensible element of the effective performance of his responsibilities is the ability to act independently of the Government and to oppose it in adversary litigation.'") (citation omitted)).

In granting the writ, the circuit court expressly declined to rule on the basis of public policy. (Order Granting Writ at 4 (Leon Cty. Dec. 20, 2007)). Rather, the court relied on the plain language of Chapter 2007-62, and specifically on the statute's amendment of section 29.008(1) of the Florida

Statutes, which the court stated

> reveals that the Legislature has attempted to create a hybrid state office that is a public defender for some purposes, such as funding; but is not a public defender for purposes of Article V, section 18. Accordingly, the court finds that Chapter 2007-62, Laws of Florida, amounts to an attempt to amend the Constitution by legislative fiat.

Id. at 5. It further concluded that

> because the Florida Constitution requires that public defenders be elected and reside in the territorial jurisdiction of his or her respective circuit, the court finds that the Governor acted outside his constitutional authority by appointing the regional conflict counsel respondents; and the Senate would exceed its constitutional authority by confirming those appointments.

Id. at 6. It therefore quashed the appointments, enjoined Appellants Ken Pruitt and Kurt Browning from completing the procedures required to confirm the appointments, and enjoined the five CCCRC from performing "any duties as Criminal Conflict and Civil Regional Counsel pursuant to Chapter 2007-62, Laws of Florida." *Id.* at 6-7.

STANDARD OF REVIEW

This Court reviews a lower court's decision declaring a statute unconstitutional *de novo*. *Fla. Dep't. of State, Division of Elections v. Martin*, 916 So. 2d 763 (Fla. 2005).

SUMMARY OF THE ARGUMENTS

Appellees argue herein that this Court should affirm the Leon County Circuit Court's Order Granting the Writ, in which the court found that Governor Crist exceeded his constitutional authority by appointing five CCCRC pursuant to section Chapter 2007-62. Sections 29.008(1) and 29.001(1) of the Florida Statutes, as amended by sections 16 and 19, respectively, of Chapter 2007-62, define the CCCCRC as public defender offices. Thus, the office of the CCCRC is subject to the limitations placed on public defenders by article V, section 18 of the Constitution—namely, those selected for that office must be elected and they must reside in each of the twenty judicial circuits. Sections 27.511(1) and (3) of the Florida Statutes, created by section 4 of Chapter 2007-62, provides that the five CCCRC are to be appointed and the CCCCRC are to be located in the geographic boundaries of each of the five district courts of appeal. The provision is therefore in direct contravention with the Florida Constitution. The CCCRC is an unconstitutionally created office, the CCCRC were unconstitutionally appointed and their appointments were properly quashed by the circuit court. In addition, Appellants Ken Pruitt and Kurt Browning were properly enjoined from performing the procedures necessary to confirm the appointments and the five CCCRC were properly enjoined from performing any of their official duties under

Chapter 2007-62.

Finally, because Chapter 2007-62 cannot be enforced if the CCCRC are enjoined from performing their duties, and because the Legislative intent of the statute would be wholly undermined by severing the unconstitutional provisions at issue from the remainder of the statute, the circuit court's implicit order declaring the entire statute unconstitutional should be affirmed.

ARGUMENTS

I. THE CCCRC ARE PUBLIC DEFENDERS AND ARE THEREFORE SUBJECT TO THE LIMITATIONS PROVIDED BY ARTICLE V, SECTION 18 OF THE FLORIDA CONSTITUTION.

The plain language of Chapter 2007-62 is unequivocal: With passage of the law, the Legislature created a second class of public defender offices to supplement the representation of indigent clients already provided by existing public defender offices. Specifically, Chapter 2007-62 amended section 29.008(1) of the Florida Statutes to read: "[T]he term 'public defender offices' includes the offices of criminal conflict and civil regional counsel." Ch. 2007-62, § 19, at 31. It also amended section 29.001(1) of the Florida Statutes to read: "The offices of public defenders and state attorneys are defined to include the enumerated elements of the 20 state attorneys' offices and the enumerated elements of the 20 public defenders' offices *and*

five offices of criminal conflict and civil regional counsel." *Id.*, § 16, at 29 (emphasis added).

Thus, although the Legislature did not name the OCCCRC "public defender offices," presumably to distinguish them from existing ones with different responsibilities, it explicitly defined them as such.[5] Insofar as the statute alters the

[5]As FACDL argued in its Petition, this likely was done so that the State could require the counties to provide funding for much of the infrastructure of the OCCCRC, as provided in article V, section 14(c) of the Florida Constitution, which 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.
>
> . . .
>
> (c) Counties shall be required to fund the cost of communications 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.

(Emphasis added.) Indeed, the legislation at issue here explicitly designates the OCCCRC as Public Defender Offices for purposes of implementing article V, section 14. Ch. 2007-62, §§ 16, 19, at 29, 31-2. This fact was asserted in FACDL's Petition merely to provide the likely reason behind the Legislature's decision to create the OCCCRCs as public defender offices and not some other entity for which it would have been precluded

constitutional requirements for selection of public defenders, then, it amounts to an attempt to amend the Constitution by legislative fiat, as found by the circuit court.

Contrary to the plain language of Chapter 2007-62, Appellants argue the CCCRC are not public defenders because the "legal character of the OCCCRCs depends on what they do, not on how they might be funded." (Appellants' Brief at 11) That is, despite the fact that the state has defined the offices as public defender offices so that it can bill the counties for their infrastructure pursuant to article V, section 14 of the Florida Constitution, Appellants contend the OCCCRC are not meant to be considered public defender offices in any other way because they have different responsibilities from the pre-existing public defender offices. (Appellants' Brief at 11)

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from seeking county funding.

Contrary to the circuit court's characterization of it, FACDL's reference to the funding provisions of Chapter 2007-62 was not meant to form the basis of a separate claim that these provisions are unconstitutional. *See* Order Granting Writ at 4 ("[T]his Court will not consider the constitutionality of the funding mechanism presented in this Legislation, which Petitioner asserts is violative of Article V, § 14 of the Florida Constitution."). Indeed, because the constitutionality of the funding provision forms the very factual basis for FACDL's Petition, challenging its validity would be self-defeating. If this Court reverses the circuit court and finds that the CCCRC are *not* public defenders, FACDL will leave it to the counties to challenge the constitutionality of the funding provision, as they are the likely entities with standing to do so.

("The OCCCRCs provide representation only when the public defenders cannot.").

Article V, section 18 of the Florida Constitution provides, however, that public defenders "shall perform duties prescribed by general law." Thus, the duties of a public defender are to be established by the Legislature and there is no reason the Legislature cannot create one public defender office with primary responsibility for criminal cases and another, given a different name, with primary responsibility for civil appointments and criminal conflict cases. Only the method of selection, location of public defenders and qualifications of the office are prescribed by the Constitution, not its duties. Indeed, Appellants themselves concede this point. (Appellants' Brief at 13, n.5) ("Article V, section 18 states that public defenders 'shall perform duties prescribed by general law.' Clearly, the Legislature may in its discretion assign civil cases to the OCCCRCs."). Thus, public defenders are essentially whatever the Legislature says they are. The only limitations on the Legislature are the ones at issue here—how the public defenders are to be selected and where they are to be located.[6]

Appellants provide no authority for its contention that the

[6]Article V, section 18 of the Florida Constitution places other limitations on the qualifications of public defenders, but those have not been altered by Chapter 2007-62, so are not at issue in this case.

Legislature can define an entity as a public defender for funding purposes under one provision of the constitution and then deny the relevance of having done so for purposes of bypassing a different constitutional provision. They make much of FACDL's reliance on *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), in its Petition. (Appellants' Brief at 7) (asserting that in its Petition, "FACDL relied principally on this Court's decision in *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006)[.]"). Appellants' attempts to distinguish *Bush*, however, are unavailing. *Bush*, along with the other cases cited by FACDL, *see* Petition at 8-11 (*citing Maloney v. Kirk*, 212 So. 2d 609 (Fla. 1968); *In re Investigation of a Circuit Judge*, 93 So. 2d 601, 606-08 (Fla. 1957); *Askew v. Thomas*, 293 So. 2d 40 (Fla. 1974); and *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002)), none of which Appellants distinguish in their brief, stand for the general proposition that where the Constitution has addressed and placed restrictions on a particular subject matter, the Legislature does not have the power to further delineate or alter those restrictions. (Petition at 8-10)

Specifically, this Court held in *Holmes* that if the Constitution requires that state money be used solely to provide education through a uniform system of "free public schools," statutory legislation allowing state money to be used in private

schools is in contravention with that overall constitutional limitation and must therefore be declared null and void. *Holmes*, 919 So. 2d 392. The import of *Holmes* for FACDL's purposes has nothing to do with whether the private school voucher program replaced or supplanted the existing public educational system,[7] but rather with the fact that because the Constitution placed explicit limits on the use of state funds for education, the Legislature could not alter those limitations by statute.

In the same way, then, where the Constitution provides that public defenders, however they are defined by the legislature and whatever their duties, must be elected and must reside in the circuits, a statute that requires that they serve only in the geographic locations of the five DCAs, and that they be appointed by the Governor and confirmed by the Senate, may not be upheld. This violates the simple tenet that legislative schemes that expand or limit the qualifications for public office, where such qualifications are expressly addressed in the Constitution, are impermissible. *Cook*, 823 So. 2d 86

[7]Appellant attempts to distinguish *Holmes* by arguing, "Requiring the counties to participate in funding the operation of the OCCCRCs in no way creates a substitute or alternative public defender system." (Appellants' Brief at 12); *see also id.* at 13 ("In contrast [to *Holmes*], article V, section 18 does not mandate that public defenders shall provide representation for all indigent criminal defendants regardless of conflicts of interest.").

(invalidating legislative attempt to modify election requirements of constitutional officers by imposing term limits because constitutional provision specifying which constitutional officers are subject to term limits preempted the field); *Thomas*, 293 So. 2d at 42 (striking down statutory residency requirement for state office and stating, "We have consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements."); *Maloney*, 212 So. 2d at 611 (Roberts, J., concurring) (in decision affirming lower court's ruling invalidating statute imposing requirements on constitutional officer beyond those set forth in Florida Constitution, Justice Roberts wrote that "when the Constitution has dealt with a subject in such manner as to clearly indicate that it was the intent of the authors that its coverage be complete, the legislature is, by implication, denied the power to take from or to add to the constitutional provisions."); *In re Investigation of a Circuit Judge*, 93 So. 2d at 606-08 (finding that where the Constitution creates an office, fixes its term, and provides under what conditions the officer may be removed before expiration of the term, neither the Legislature nor any other authority has the power to remove or suspend such officer in any

manner other than that provided in the Constitution).

Finally, Appellants assert that FACDL "has ignored the strong interest of the Legislature in controlling the cost to the state of appointing private counsel in all criminal conflict cases and civil cases in which persons are entitled to appointed counsel." (Appellants' Brief at 16) This argument fails for several reasons. Most importantly, regardless of the stated intentions of the Legislature in enacting legislation, the desire to save money can never trump the Constitutional invalidity of a statute. *Makemson v. Martin County*, 491 So. 2d 1109, 1112 (Fla. 1986) (invalidating statutory caps for court-appointed counsel as applied because although "it is ordinarily well within the legislature's province to appropriate funds for public purposes and resolve questions of compensation, . . . we find that the statutory maximum fees, as inflexibly imposed in cases involving unusual or extraordinary circumstances, interfere with the defendant's sixth amendment right 'to have the assistance of counsel for his defense.'") (citation omitted). If it could, the Legislature could do away with representation for indigent criminal defendants altogether, so long as it stated that its main purpose was to save state resources.

Additionally, the Legislature enunciated in Chapter 2007-62

that it sought *first* "to provide adequate representation to persons entitled to court-appointed counsel *under the Federal or State Constitution* or as authorized by general law." Ch. 2007-62, § 4, at 6 (*creating* 27.511(1), Fla. Stat.) (emphasis added). It is FACDL's contention that the Legislature has failed to meet this goal because the State Constitution requires that public defenders be elected not appointed and that there be one in every judicial circuit.

Even were financial concerns relevant, Appellants offered no evidence in the court below to substantiate its claim that this bill will indeed save the taxpayers any money. The Appellants' mere assertion that the Legislature "anticipates significant savings as a result of the enactment of chapter 2007-62" (Appellants' Brief at 16) is not competent evidence. Neither is their citation to a ten-year-old case in which Justice Overton noted instances of overbilling by private attorneys in criminal conflict cases at a time before the Justice Administrative Commission was responsible for monitoring and paying bills in conflict cases. (Appellants' Brief at 16) (*citing In re Public Defender's Certification of Conflict and Motion to Withdraw Due to Excessive Caseload*, 709 So. 2d 101, 105 (Fla. 1998) (Overton, J., concurring)). Indeed, the Executive Director of the Justice Administrative Commission,

Victoria Montanero, the Appellants' own witness at the circuit court hearing on FACDL's motion to lift the automatic stay in this case, testified regarding all of the safeguards employed by her agency to prevent overbilling by private counsel and that she considers herself a careful guardian of the State's limited resources. (Appellants' Emergency Motion to Reinstate Stay, Appendix B at T. 58-9). She also testified that private, court-appointed counsel are not permitted to bill the state or counties for overhead expenses. *Id.* at T. 55-6. Because the taxpayers *are* responsible for paying for office space and equipment costs required to house and run the OCCCRC, Ch. 2007-62, §§ 16, 19, at 29, 31-2, the evidence below suggests, if anything, that taxpayers could actually *save* money by eliminating the OCCCRC and restoring the private registry system.[8] Certainly Appellants have presented no evidence to the contrary.

[8]It should be noted that the Staff Analysis of Senate Bill 1088 cited by Appellants indicates that the Legislature anticipated that the bill would reduce *state* costs. Appellants make no attempt, nor does the Staff Analysis, to quantify the added costs of overhead to the *counties* resulting from the creation of the OCCCRC, costs that previously had been covered by private, court-appointed counsel. Thus, there is no conclusive evidence in the record at all to demonstrate that the bill will save taxpayer dollars *overall*, even if it protects *state* resources. Since the stated purpose of Chapter 2007-62 is to provide representation to indigent in a "fiscally responsible and effective manner," Ch. 2007-62, § 31(1), at 45; *see also id.*, §

In sum, the plain language of Chapter 2007-62 alters the Constitutional requirements for public defenders as they relate to the CCCRC. Governor Crist's appointments of the CCCRC therefore exceeded his constitutional authority and must be quashed.

II. THE ACT VIOLATES THE POLICY CONSIDERATIONS THAT GAVE RISE TO ARTICLE V, SECTION 18 OF THE FLORIDA CONSITUTION.

While FACDL asserts herein that the plain language of Chapter 2007-62 unequivocally establishes that the Legislature intended to create a second tier of public defender offices when it established the OCCCRC, should this Court disagree, it is appropriate for it to examine the primary public policy reason behind the constitutional requirement that public defenders be elected. *See Fla. Dep't. of Business and Professional Regulation v. Gulfstream Park Racing Assoc., Inc.,* 912 So. 2d 616, 618 (1st DCA 2005) (declaring section 550.615(6) of the Florida Statutes unconstitutional in part because it "does not promote any valid public policy."), *aff'd.*, 967 So. 2d 802 (Fla. 2007); *cf. Holmes*, 919 So. 2d at 407-08. As this Court stated in *State v. Brummer*, 426 So. 2d 532 (Fla. 1982), *cert. denied*, *Brummer v.*

4(1), at 6, the operative analysis is not whether the *state* will save money, but whether the bill will save both the state *and* the counties money. This was neither argued nor demonstrated by Appellants in the court below.

Florida, 464 U.S. 823 (1983), "an indispensable element of the effective performance of [the public defender's] responsibilities is the ability to act independently of the Government and to oppose it in adversary litigation." *Id* at 533. Article V, section 18 serves to prevent the inherent conflict that arises when an indigent person defending herself *against the state* is assigned counsel who was appointed *by state officials* and whose very livelihood is dependent on reappointment every four years by those same officials.

This conflict is avoided by the assignment of elected public defenders or court-appointed private attorneys to criminal conflict cases. *See* Petition at 13. Appellants make the counter-argument that if it were true that counsel for court-appointed clients either must be elected or court-appointed, the capital collateral regional counsel "would be unconstitutional as they are not elected or appointed." There is, however, no constitutionally protected right to court-appointed counsel in collateral proceedings. *See, e.g.*, *State v. Kilgore*, 2007 Fla. LEXIS 2201, at *8 (Fla. Nov. 21, 2007). Thus, the example is inapposite.

FACDL concedes that even pursuant to this policy argument, the Legislature certainly would have had the power to create an entity to represent indigent clients in certain of the *civil*

proceedings currently handled by the CCCRC without requiring that the CCCRC be elected in every circuit for such purpose, since there is no constitutional right to representation in many of these proceedings and they do not place appointed counsel in an adversarial role opposite the state.[9] To do so, however, the Legislature would have had to draft Chapter 2007-62 in such a way as to create one entity run by an appointed official to represent clients against the state in criminal conflict cases, for whom there exists a constitutional right to counsel, and one that would represent clients in many of the civil proceedings currently assigned to the OCCCRC. That is not, however, the statute that the Legislature drafted. The constitutionally guaranteed responsibilities of the CCCRC are not severable from those that are not constitutionally guaranteed. *See* Section III, *supra*. Thus, where public policy dictates that public defenders providing constitutionally mandated representation *against the state* be elected, as FACDL argues it does, such public policy informs and supports the plain language reading of Chapter 2007-62 discussed in Section I, *supra*.

[9]The exception would be in dependency proceedings in which the parent faces possible permanent termination of parental rights or where s/he may be charged with criminal child abuse. *See S.B. v. Dep't. of Children and Families*, 851 So. 2d 689, 692-93 (Fla. 2003).

III. CHAPTER 2007-62 AS WRITTEN CANNOT BE IMPLEMENTED IF THE UNCONSTITUTIONAL PROVISION IS EXCISED FROM THE STATUTE.

A. The Trial Court Properly Enjoined the CCCRC From Performing *Any* Duties Pursuant to Chapter 2007-62.

Appellants argue that if this Court declares the OCCCRC unconstitutional, it should sever the provisions pertaining to the criminal conflict duties of the CCCRC and leave in place provisions allowing for the appointment of the CCCRC to civil cases.[10] (Appellants' Brief at 18-9) This inquiry, however, would simply be inapplicable if this Court held that the CCCRC were unconstitutionally appointed. Because article V, section 18 provides that public defenders be elected in each judicial circuit, the Appellant CCCRCs are not entitled to hold office

[10]In their Statement of the Case and Facts, Appellants assert that FACDL's Petition for Writ of Quo Warranto "in no way challenged the legal authority of the OCCCRCs to provide [civil] representation." Appellants' Brief at 5; *see also* Appellants' Brief at 8 ("Notwithstanding the fact that the petition had *not* challenged the OCCCRCs' authority to provide representation in civil cases, the trial court enjoined the Regional Counsel from performing any of the duties of that office, criminal or civil."). As previously discussed, FACDL's petition sought "the reversal of the appointment of five Criminal Conflict and Civil Regional Counsel" and "a prohibition of Senate confirmation of the aforementioned individuals." (Petition at 2) The Petition also specifically sought to enjoin the five CCCRC from "performing *any* duties under the act[,]" not simply their criminal duties. (Petition at 5) (emphasis added). Finally, it sought to have Chapter 2007-62 declared unconstitutional. (Petition at 5) Thus, Appellants' contention is not supported by the record.

and would have to be enjoined from performing all of their official duties, as FACDL requested in its Petition and the trial court found. Thus, they could not accept appointments of any kind, even civil ones.

This Court's decision in *State v. Shevin*, 250 So. 2d 257 (Fla. 1971), is instructive. In *Shevin*, the Court reviewed a petition for quo warranto brought by the Florida Attorney General challenging the right of Respondent William Page to hold office in the South Broward Transit Authority District. Then-Governor Claude R. Kirk had appointed Page, but in doing so failed to comply with article IV, section 1(a) of the Constitution and section 113.051 of the Florida Statutes.[11] *Id.* at 257-58. The Court held that where Governor Kirk failed to complete the execution of Page's commission as required by law, and his successor Governor Reubin Askew then issued the commission to a different individual, Respondent Page was ousted "from the office he claims to hold and that all authority

[11]Article IV, section 1(a) of the Florida Constitution "vests the Governor with the 'supreme executive power' and requires him to 'commission all officers of the state and counties.'" *State v. Shevin*, 250 So. 2d 257, 258 (1971). Section 113.051 of the Florida Statutes (1969) provides, "'All grants and commissions shall be in the name and under the authority of the State of Florida, sealed with the great seal of the state, signed by the governor and countersigned by the secretary of state.'" *Id.* at 258.

claimed by him thereunder is from this day forward terminated. . . .” *Id*. at 259.

Similarly, here, the trial court found that the CCCRC Appellants were unconstitutionally appointed to public office. Regardless of the *reason* for the infirmity of their appointments, they simply cannot be permitted to perform any official duties. *See Peacock v. Wise*, 351 So. 2d 1134 (Fla. 1st DCA 1977) (ousting appellant clerk of circuit court from office where his election was declared unconstitutionally executed due to violation of section 101.67(3) of the Florida Statutes, which prohibited absentee ballots and their corresponding applications for absent elector’s ballot from being mailed in the same envelope to the supervisor of elections); *Smith v. Gill*, 166 So. 742 (Fla. 1936) (dismissing quo warranto petition brought by individual seeking right to office of special tax school district trustee where he had no legal claim to that office).

Thus, Appellants’ argument that Chapter 2007-62 is severable in such a way that it would allow the CCCRC to be appointed to civil cases is untenable. Had the Legislature created two separate offices, one responsible for handling criminal conflict cases and one responsible for handling civil cases, Appellants’ severability analysis would be applicable—that is, it would be appropriate to examine whether the CCCRC

could properly have been appointed by the Governor for the limited purpose of handling civil cases and, if so, whether the provisions providing for their appointment to those cases were severable from the rest of the statute. Chapter 2007-62 was not drafted in that manner, however. Indeed, the very title of the office, "Criminal Conflict and Civil Regional Counsel," precludes severability by type of case. The statute creates one entity to be run by one officer (in five districts) who is to be appointed by the Governor despite the fact that the Governor lacks the constitutional authority to make such appointment. There are simply no provisions, and Appellants have certainly pointed to none in their brief, that could be excised from the statute (without substantive alteration by this Court) to provide for the constitutional appointment of the Appellant CCCRC to civil cases.

B. Chapter 2007-62 Cannot Survive the *Cramp/Smith* Severability Test and Must Therefore Be Declared Null and Void.

Beyond the simple inquiry into whether or not the CCCRC can perform the civil duties prescribed by Chapter 2007-62, this Court could choose to examine whether, when the unconstitutional provision providing for appointment of the CCCRC is voided, any portion of the bill can remain operative pursuant to the severability test enunciated in *Cramp v. Board of Public*

Instruction of Orange County, 137 So. 2d 828 (Fla. 1962). *See also Smith v. Dep't of Insurance*, 507 So. 2d 1080 (Fla. 1987).

Before engaging in such an examination, however, FACDL notes that Appellants did not raise the issue of severability before the circuit court in its response to FACDL's Petition, at oral argument,[12] or in a motion for rehearing following the court's order. FACDL's Petition requested that the court declare Chapter 2007-62 unconstitutional, *in toto* (Petition at 5, ¶ B), and the circuit court's order implicitly did so in concluding that "Chapter 2007-62, Laws of Florida, amounts to an attempt to amend the Constitution by legislative fiat" (Order Granting Writ at 5), and by enjoining the CCCRC from performing any of their official duties (Order Granting Writ at 7). Despite this, Appellants failed to raise the issue of severability until its Response in Opposition to Petitioner's Motion to Declare Automatic Stay Inapplicable or, Alternatively, to Dissolve Automatic Stay, No. 2007-CA-2898, at 8 (Leon Cty. Jan. 7, 2008),

[12]Although the oral argument on the Petition was not transcribed, in proceedings pertaining to FACDL's motion to vacate the automatic stay following the circuit court's disposition granting FACDL's Petition, the court explicitly found that Appellants' severability argument was not raised in their oral argument on the Petition. (Appellants' Emergency Motion to Reinstate Stay, Appendix B at T. 145). This factual finding is not controverted by any evidence in the record and must therefore be accepted by this Court. *See Fla. Dep't. of State, Division of Elections v. Martin*, 916 So. 2d 763 (Fla. 2005).

when the proceedings on the merits of FACDL's Petition were already concluded. Thus, as suggested in *Richardson v. Richardson*, 766 So. 2d 1036, 1041 n.4 (Fla. 1999), the issue of severability is not properly before this Court.

Should the Court determine that review of Appellants' severability claim is appropriate, however, Chapter 2007-62 cannot survive the test enunciated in *Cramp*, *supra*, which is as follows:

> When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Cramp, 137 So. 2d at 830; see also *Smith*, 507 So. 2d at 1089.

As to factors (1) and (4), the appointment and geographic specifications in sections 27.511(1) and (3) could easily be excised from Chapter 2007-62 leaving a seemingly executable bill intact. However, twenty CCCRC would have to be elected and reside in the circuits pursuant to article V, section 18, which would render it impossible to read the remaining statute "complete in itself after the invalid provision[] w[as] stricken." *Richardson*, 766 So. 2d at 1041.

First, the statute hinges on the creation of an unconstitutionally defined office. Thus, it simply cannot be implemented if this Court declares that the Governor exceeded his authority in appointing the five CCCRC, they are enjoined from performing their public duties and twenty new ones must be elected in their place. This Court said as much in *State v. Dillon*, 14 So. 383 (Fla. 1893), in which it held that severability of unconstitutional provisions pertaining to procedures for an election is proper only where the outcome of the election would not have changed had the unconstitutional procedures been left out of the statute.

Here, of course, the appointments would be quashed and five people would need to be replaced by twenty, thereby decisively affecting the "outcome." Virtually every provision of Chapter 2007-62 relies on there being a lawfully selected CCCRC in office to implement it. First, sections 27.40(1) and 27.511(5) of the Florida Statutes, as amended by Chapter 2007-62, §§ 1, 4, respectively, provide that the OCCCRC[13] shall be appointed to

[13]The terms "Office of Criminal Conflict and Civil Regional Counsel" and "Criminal Conflict and Civil Regional Counsel" are used interchangeably throughout Chapter 2007-62. It is clear, however, that the offices themselves cannot perform their statutory duties without a CCCRC at their helm, as the CCCRC are responsible for hiring all assistant CCCRC, staff and personnel. *See* Ch. 2007-62, § 8, at 13, Laws of Fla. (*adding* § 27.53(4), Fla. Stat. ("The five criminal conflict and civil regional

represent indigent clients where pre-existing public defender offices cannot due to a conflict of interest or where authorized to do so elsewhere in the statute, *i.e.*, in criminal conflict cases. Ch. 2007-62, § 1, at 3, Laws of Fla.; *id.*, § 4, at 7; *see also id.*, § 6, at 10 (*amending* § 27.52(c)(2), Fla. Stat. ("If the public defender is unable to provide representation due to a conflict pursuant to s. 27.5303, the public defender shall move the court for withdrawal from representation and appointment of the office of criminal conflict and civil regional counsel.")). Section 4 provides that the OCCCRC shall have primary responsibility for representing the indigent in a number of civil proceedings enumerated by statute. *Id.*, § 4, at 8 (*creating* § 27.511(6)(a), Fla. Stat.). Together these statutes address the entire class of clients for which Chapter 2007-62 seeks to provide representation.

Chapter 2007-62 allows the regional counsel to withdraw from these stated responsibilities *only* where they have a conflict of interest, in which case private counsel are to be appointed. *See, e.g.*, *id.*, § 10, at 14-15 (*amending* § 27.5303(1)(b), Fla. Stat. (providing for appointment of private

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counsel may employ and establish, in the numbers authorized by the General Appropriations Act, assistant regional counsel and other staff and personal in each judicial district. . . .").

counsel to criminal conflict or enumerated civil proceedings only where the CCCRC file a motion to withdraw and move the court to appoint other counsel *due to a conflict of interest*)); *id.*, § 1, at 3 (*amending* § 27.40(2)(a), Fla. Stat. ("Private counsel shall be appointed to represent persons in those cases in which provision is made for court-appointed counsel but the office of criminal conflict and civil regional counsel is unable to provide representation *due to a conflict of interest*.") (emphasis added)); *id.*, § 10, at 16 (amending § 27.5303(2), Fla. Stat. ("The court shall appoint conflict counsel pursuant to s. 27.40, *first appointing the office of criminal conflict and civil regional counsel and, if the office is found to have a conflict, appointing private counsel*.") (emphasis added)); *id.*, § 20, at 37 (*amending* § 29.015(3), Fla. Stat. (providing steps to be taken "[i]n the event that there is a deficit in a statewide contracted due process services appropriation category provided for private court-appointed counsel necessary due to withdrawal of the public defender and criminal conflict and civil regional counsel due to *an ethical conflict*") (emphasis added)).

Thus, if the CCCRC are enjoined from performing their duties, they cannot be given primary responsibility for appointments in civil proceedings nor can they be appointed to

criminal conflict cases. Further, there would not remain a mechanism under the statute for appointing private counsel to cases from which the CCCRC withdrew because the statute only allows for appointment of private counsel where the CCCRC withdraws due to a conflict of interest, which would not be the reason for their withdrawal if they were simply ousted from office. Thus, even sections 11 and 18 of Chapter 2007-62, as well as all others pertaining to appointment of *private counsel*, cannot be severed, let alone those pertaining to appointment of the CCCRC to civil cases.

Second, Chapter 2007-62 specifically limits the number of criminal conflict and civil regional counsel to five. *See, e.g.*, Ch. 2007-61, § 8, at 13 (*creating* § 27.53(4), Fla. Stat. (referring to "*five* criminal conflict and civil regional counsel") (emphasis added)); *id.*, § 31, at 45 ("[T]he Legislature intends that the *five* criminal conflict and civil regional counsel be appointed as soon as practicable. . . ."). It further establishes funding of the statute by judicial district rather than by circuit. Ch. 2007-72, § 4, at 176-78, Laws of Fla. (May 24, 2007). Thus, the statute contains no mechanism for funding the *twenty* CCCRC that would be required by article V, section 18 if sections 27.511(1) and (3) were voided. For the foregoing reasons, factors (1) and (4) of the

Cramp/Smith test cannot be satisfied by severing of the unconstitutional portions of section 27.511.

Even if the Court finds severance possible under factors (1) and (4), an analysis of factors (2) and (3) of the *Cramp/Smith* test defeats any possibility of severability. In *Martin*, 916 So. 2d 763, this Court recently placed primary importance on the Legislature's intent when making determinations pertaining to severability, stating, "If the legislative intent of the statute cannot be fulfilled absent the unconstitutional provision, the statute as a whole must be declared invalid." *Id.* at 773 (*citing Smith*, 507 So. 2d at 1089). The Court in *Martin* reviewed the constitutionality of section 101.253(2) of the Florida Statutes, which gave the Department of State "absolute discretion to allow a candidate to withdraw after the forty-second day before an election" in violation of the separation of powers doctrine found in article II, section 3 of the Florida Constitution. *Id.* at 765. Without examining any of the other *Cramp/Smith* factors, this Court held that the offending provision, subsection 2, was not severable from the remainder of the statute because "[s]evering the statute in this manner [would be] completely inconsistent with the Legislature's intent. . . ." *Id.* at 773.

Similarly, in *In re Advisory Opinion to the Governor*, 63 So. 2d 321 (Fla. 1953), this Court examined section 2 of Chapter 26945, Laws of Fla. (1951), and declared it unconstitutional. The Act altered the method for appointment of the Florida Hotel and Restaurant Commissioner in a manner the Court found inconsistent with section 27 of article 3 of the Florida Constitution. The Court examined the severability of the provision from the entire Act and concluded it could not be done because "it is obvious the Legislature would not have adopted an Act providing for an office with no effective constitutional power preserved or retained to fill such office" and because the remaining portions of the Act were inconsistent with the "manifest purpose" of the Act. *Id.* at 326-27 ("We have repeatedly held that 'Where the unconstitutional portion of an act cannot be declared void without defeating the *manifest legislative purpose,* the entire statute must fail as unconstitutional and void.'") (emphasis in original) (*citing State ex rel. Buford v. Spencer*, 87 So. 634 (Fla. 1921); *State ex rel. Haley v. Stark*, 18 Fla. 255 (1881); *State ex rel. Landis v. Green*, 144 So. 681 (Fla. 1932); *Ramsey v. Martin*, 150 So. 256 (Fla. 1933)).

Finally, in *Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999), this Court examined the severability of an unconstitutional

provision placing term limits on the terms of U.S. Representatives and Senators in an amendment to article VI of the Florida Constitution. In examining factor (2) of the *Cramp/Smith* test, the Court characterized the inquiry as whether the constitutional portions of the amendment were "functionally independent" of the unconstitutional provision and whether the unconstitutional provision could be stricken "without disrupting the integrity of the remaining provisions." *Id.* at 1283.

Pursuant to the aforementioned legal standards, Chapter 2007-62 cannot survive if the unconstitutional portions of sections 27.511(1) and (3) are voided. The intent of the Legislature would be thwarted if the CCCRC are enjoined from performing their duties under the bill and elections of twenty CCCRC are required. It is certainly also the case that the Legislature would not have passed the bill under such circumstances.

Section 31(1) of Chapter 2007-62 states as follows:

> The Legislature finds that the creation of offices of criminal conflict and civil regional counsel and the other provisions of this act are necessary and best steps toward enhancing the publicly funded provision of legal representation and other due process services under constitutional and statutory principles in a fiscally responsible and effective manner.

It further states in section 31(2) that

> It is the intent of the Legislature to facilitate the orderly transition to the creation and operation of the offices of criminal conflict and civil regional counsel as provided in this act, in order to enhance and fiscally support the system of court-appointed representation for eligible individuals in criminal and civil proceedings. *To that end*, the Legislature intends that the five criminal conflict and civil regional counsel be appointed as soon as practicable after this act becomes law, to assume a term beginning July 1, 2007. . . . It is further the intent of the Legislature that the regional offices begin assuming representation of eligible individuals, as provided in this act, on October 1, 2007. . . . [I]t is also the intent of the Legislature that each regional office be fully operational *no later than January 1, 2008*.

(Emphasis added). *See also* Ch. 2007-62, § 4, at 6 (*creating* § 27.511(1) ("The [OCCCRC] shall commence fulfilling their constitutional and statutory purpose and duties on October 1, 2007.")). Finally, in creating section 27.511(1) of the Florida Statutes, section 4 of Chapter 2007-62 gives further insight into the purpose of the law:

> It is the intent of the Legislature to provide adequate representation to persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. It is the further intent of the legislature to provide adequate representation in a fiscally sound manner, while safeguarding constitutional principles. Therefore, an office of criminal conflict and civil regional counsel is created. . . . The office shall commence

> fulfilling their constitutional and statutory purpose and duties on October 1, 2007.

The very means for implementing the stated goals of providing adequate representation to the indigent in a fiscally responsible *and expedient* manner is the creation of the OCCCRC and the appointment, rather than the election, of the five CCCRC to run them. If elections were held for twenty CCCRC, the time limitations set by the Legislature could never have been met[14] and, presumably, the price tag on the statute would have increased significantly (although this is a fact that went undeveloped in the circuit court because Appellants did not argue severability in its response to the Petition). In short, Sections 27.511(1) and (3), as amended by section 4 of Chapter 2007-62, cannot be said to be "functionally independent" of the

[14]Indeed, Appellants provided testimony in the circuit court, and the court made the factual finding that even though the CCCRC were appointed only three months after Chapter 2007-62 went into effect, *see* *http://www.flgov.com/ release/9354* ("Governor Crist Appoints Five to the Office of Criminal Conflict and Civil Regional Counsel," Aug. 22, 2007), the offices were not fully operational as of January 1, 2008, as required by the statute. (Appellants' Emergency Motion to Lift Stay, Appendix B at T. 154 (circuit court making finding of fact that as of January 9, 2008, the OCCCRC in the First District was "barely operational, the Fifth District was "almost fully operational," and the others were "somewhere in the middle."); *see also id.* at T. 161-62). Thus, it seems clear that twenty elections would have made it impossible for the Legislature to meet its stated goal of having the offices fully, or even marginally operational by January 1, 2008.

rest of the statute. That is, their unconstitutional portions cannot be stricken "without disrupting the integrity of the remaining provisions." *Ray*, 742 So. 2d at 1283.

As Appellants point out, Chapter 2007-62 does contain a severability clause, but this clause is only persuasive. (Appellants' Brief at 22) (*citing St. Johns County v. Northeast Florida Builders Ass'n, Inc.*, 583 So. 2d 635, 640 (Fla.), *reh'g denied*, 585 So. 2d 926 (Fla. 1991)). It simply cannot be applied in this case because the overriding "manifest purpose" of Chapter 2007-62 was to provide for representation of certain indigent clients quickly and in a fiscally sound manner. Where those purposes would be wholly frustrated if the CCCRC are enjoined from performing their duties because the Governor exceeded his constitutional authority in appointing them, and no alternative mechanism exists to provide representation to clients that the statute seeks to protect, the entire law must be struck. Severance is impossible in this case and the express legislative intent makes it clear that the Legislature would not have passed this bill without the unconstitutional provisions.

FACDL therefore argues that this Court must nullify Chapter 2007-62 in its entirety, thereby voiding all statutes created therein and restoring all statutes amended therein to their preceding form. The effect would be to reinstate the private

registry system that was operable prior to May 24, 2007, when Chapter 2007-62 became law. *See In re Advisory Opinion to the Governor*, 63 So. 2d at 327 (rejecting severability of unconstitutional provision of Chapter 26945, Laws of Fla., declaring the entire Act unconstitutional, and stating that "the effect of such holding is to re-instate Chapter 509, F.S.A., which [Chapter 26945] attempted to repeal.").

CONCLUSION

The trial court's order granting FACDL's Petition for Writ of Quo Warranto was correctly decided and should be affirmed. Such holding would require that Appellant Governor Crist's appointments of the five Appellant CCCRC be quashed, the Secretary of State and Senate President be enjoined from performing the procedures required to confirm the appointments, the CCCRC be enjoined from performing any of their duties under Chapter 2007-62, and the statute itself be declared null and void.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by U.S. Mail and facsimile transmission this 4th day of February, 2008, to Louis F. Hubener, Chief Deputy Solicitor General, Office of the Attorney General, The Capitol – PL-01, Tallahassee, FL 32399-1050, (850) 410-2672 (fax).

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CERTIFICATE OF COMPLIANCE

I certify that this document was generated by computer using Word Perfect with Courier New 12-point font in compliance with Fla. R. App. P. 9.210(a)(2).

s/Sonya Rudenstine___
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