ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-1698

JEFFREY E. LEWIS, et al.,

Appellants,

v.

LEON COUNTY, et al.,

Appellees

ANSWER BRIEF OF APPELLEE COUNTY OF VOLUSIA

On Appeal From the District Court of Appeal,
First District of Florida

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RESPONSE TO STATEMENT OF THE CASE AND FACTS

The County of Volusia was the sole plaintiff in one of the two consolidated actions in the circuit court. Volusia consistently has maintained that section 19, chapter 2007-62, Laws of Florida, violates the plain wording of article V, section 14(c), not merely the revision commission statement of intent. The First District concurred. It concluded that section 19 "stands inconsistent with the Constitution's language and the framer's intent." Lewis v. Leon County, 15 So. 3d 777, 781 (Fla. 1st DCA 2009).

Volusia also consistently has asserted that article V, section 14(c), Florida Constitution, is the exclusive constitutional authorization for legislative imposition of a judicial system funding requirement upon the county. The First District did not address this exclusivity. It found that section 19, chapter 2007-62, Laws of Florida, also violates the provisions of both article V, section 14(c) and article VII, section 18(a), Florida Constitution.

STANDARD OF REVIEW

Volusia concurs that review is de novo.

SUMMARY OF ARGUMENT

Article V, section 14, Florida Constitution, exclusively controls judicial system funding. Its plain wording says that counties are not responsible for funding court-appointed counsel. There is no exception for public agency court-

appointed counsel. The legislature may not define regional conflict counsel as public defenders in order to free itself from its funding obligation.

ARGUMENT

SECTION 19, CHAPTER 2007-62, LAWS OF FLORIDA, VIOLATES ARTICLE V, SECTION 14, FLORIDA CONSTITUTION.

After article V adoption in 1972, funding of the judicial branch largely was borne by local government. City of Fort Lauderdale v. Crowder, 983 So. 2d 37, 39 (Fla. 4th DCA 2008). Counties paid the expense of court-appointed counsel, even in civil cases.[1] The 1998 constitutional revision commission proposed Revision 7

[1] See, e.g., Makemson v. Martin County, 491 So. 2d 1109 (Fla. 1986) (awarding fees to court-appointed counsel in death penalty case; declaring statute imposing fee limit to be unconstitutional); In the Interest of D.B. and D.S, 385 So. 2d 83, 92-93(1980) (finding that county required by statute to compensate counsel when appointment is constitutionally required; holding that counsel must be appointed for parents in juvenile dependency case when permanent loss of custody is threatened or criminal charges may arise); Brevard County v. Moxley, 526 So. 2d 1023(Fla. 5th DCA 1988)(finding that county statutorily responsible for non-capital postconviction fees and costs of conflict counsel). But cf., Orange County v. Williams, 702 So. 2d 1245(Fla.1997)(capital collateral representative statutorily responsible for costs of volunteer counsel in capital postconviction proceeding); Hoffman v. Haddock, 695 So. 2d 682 (Fla. 1997)(capital collateral representative statutorily responsible for costs in capital postconviction proceeding).

to alter that circumstance.[2] The new plan for judicial system funding placed the burden on the state and greatly reduced the county share. Crowder, supra at 39.

The voters adopted article V, section 14, Florida Constitution, which provides:

> (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) 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 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. (emphasis supplied.)

[2] Revision 7 consisted of an amendment to article V, section 14, Funding and the addition of article XII, section 25, Schedule to Article V amendment.

The Statement of Intent, Article V, Section 14, of the 1998 Constitutional Revision Commission, 26 Fla. Stat. Ann. (Supp) 68-71 explains the change brought about by the revision. The commission declared that "it is the intent of the proposers that the state be primarily responsible for funding the state court system, and public defenders' offices, and wholly responsible for funding court-appointed counsel and related costs necessary to ensure the protection of due process rights." Id. at 69 (emphasis supplied). It stated that "[a]s used in section 14, court-appointed counsel means counsel appointed in criminal and civil proceedings," Id. at 70. Cf. State v. Public Defender, Eleventh Judicial Circuit, 12 So. 3d 798, 801 (Fla. 3d DCA 2009)("The counties' obligation to fund replacement counsel has…shifted to the State of Florida[,]" since adoption of article V, section 14.).

The 2003 legislature implemented article V revision.[3] Chapter 2003-402, section 153, Laws of Florida, repealed statutes under which counties bore responsibility for appointed counsel fees and costs in criminal and civil cases. Section 12 adopted section 27.40, Florida Statutes, to provide for a registry of private counsel to represent persons in a criminal or civil proceeding entitled to

[3] Article XII, § 25, Florida Constitution, provided that the amendment to article V, §14 would be fully effectuated by July 1, 2004. Before chapter 2003-402, Laws of Florida, became fully effective, the legislature enacted chapter 2004-265, Laws of Florida, to make certain corrections and changes and to increase some fees.

court-appointed counsel under the Federal or State Constitution or as authorized by general law when the public defender is unable to provide representation due to a conflict of interest or is not authorized to provide representation.

The 2007 legislature sought understandably to reduce the cost of court-appointed counsel but impermissibly to transfer a portion of that expense to counties. Chapter 2007-62, section 4, Laws of Florida, created section 27.511, Florida Statutes, to establish the office of criminal conflict and civil regional counsel. Section 1 amended section 27.40, Florida Statutes, to substitute appointment of regional conflict counsel for private registry counsel, and to limit appointment of private counsel to when regional conflict counsel is unable to provide representation due to conflict of interest. Section 19 amended section 29.008, Florida Statutes, county-funding of court-related functions, to include regional counsel within the term "public defenders' offices." By this means, the legislature mandated that counties pay expenses for court-appointed counsel which the constitution requires that they pay only for public defenders.

Crist v. Florida Association of Criminal Defense Lawyers, Inc., 978 So. 2d 134, 139-40 (Fla. 2008), summarizes controlling principles of construction:

> When reviewing constitutional provisions, this Court follows principles parallel to those of statutory interpretation. First and foremost, this Court must examine the actual language used in the Constitution. If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.

> Additionally, this Court endeavors to construe a constitutional provision consistent with the intent of the framers and the voters. This is because:
>
> > The fundamental object to be sought in construing a constitutional provision is to *ascertain the intent of the framers* and the provision must be construed or interpreted in such manner as to *fulfill the intent of the people,* never to defeat it. Such a provision must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied.
> > (internal citations and quotation marks omitted).

City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1, 5 (Fla. 1972) provides further guidance:

> An elementary rule of construction is that if possible, effect should be given to every part and every word of the Constitution and, unless there some reason to the contrary, no portion of the fundamental law should be treated as superfluous or meaningless or inoperative. Thus a construction of the Constitution which renders superfluous or meaningless any of the provisions of the Constitution should not be adopted by this Court. (citation omitted).

The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission, 823 So. 2d 185, 190 (Fla. 1st DCA 2002), adds this observation:

> The words [of the constitution] should be given reasonable meaning according to the subject matter

> and in the framework of modern societal usage and grammatical structure. This court must use common sense in construing the true intent of the provision. The intention can be ascertained by determining the evil sought to be prevented or remedied in initiating enactment of the constitutional provision.
> (internal citations and quotation marks omitted).

Appellants argue that the legislature has unrestrained power to determine "public defenders' offices" for funding purposes since the constitution does not define that term. This Court, in Crist v. Florida Association of Criminal Defense Lawyers, Inc. supra, upheld the regional counsel system against a challenge that it violated article V, section 18, providing for public defenders. The Court stated that its constitutional inquiry depended on what the regional counsel do, not on how they might be characterized for funding purposes. Id. at 145. It concluded:

> [t]here appears to be no significant legal difference between the current OCCCRC system and the prior system of appointing private counsel in conflict cases...OCCCRC and private registry counsel...responsibilities are identical[,] to represent indigent defendants in criminal cases when the public defender has a conflict. Id. at 146.

The Court's functional analysis applies here. The duties specified for regional counsel[4] identify their character as that of court appointed counsel and impose

[4] §27.511(5)(6), Fla. Stat. (2009) (conflict responsibility in criminal cases and primary responsibility for civil cases where constitutional entitlement to counsel or as authorized by general law).

upon the state a constitutional funding responsibility. The state cannot shift its obligation to counties by a definition contrary to essence.

Appellants concede functional identity but seek to evade the problem of legislative nomenclature. They assert that the constitution neither anticipates public agency court-appointed counsel nor prohibits a legislative mandate for county funding. They contend the constitution forbids only a requirement that counties fund expenses of private court-appointed counsel.[5] This argument implicitly adds words to the constitution;[6] ignores the history of judicial system funding;[7] rejects the intended remedial effect of constitutional revision;[8] obscures

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[5] The First District found this argument to be unavailing to appellants. It reasoned that "[b]oth 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. Fla. Stat. Ann., Const. Art. V, §14 (West 2009)." Lewis v. Leon County, 15 So. 3d at 788.

[6] Article V, § 14, Fla. Const., according to appellants, effectively would read:

> (a) Funding for… public defenders' offices and [private] court-appointed counsel, except as provided in subsection (c) shall be provided from state revenues appropriated by general law.
> …
> (c) No county…shall be required to provide any funding for…[private] court-appointed counsel…Counties shall be required to fund the cost…for public defenders' offices, [public agency court –appointed counsel][;]

[7] The position that prior to Revision 7, the state compensated all court-appointed private attorneys overstates the state role. [Appellants' Brief, p. 11.]

the constitutional difference between public defenders and other court-appointed counsel;[9] and denies article V, section 14 a common sense construction.[10] All public defenders are appointed by the court,[11] but not all court-appointed counsel are public defenders.[12] The constitutional obligation to pay certain public defender expenses is the exclusive exception to the rule that counties are not

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Section 27.711, Florida Statutes (1998 Supp.) pertains to appointment of private counsel in postconviction collateral proceedings, an expense statutorily borne by the state. See Orange County v. Williams, supra. Counties bore constitutionally required expenses when not otherwise provided by statute.

[8] Statement of Intent, Article V, Section 14, of the 1998 Constitutional Revision Commission, supra.

[9] The assertion that the 1998 constitutional revision commission never could have contemplated public agency court-appointed counsel is confounded by the practice since 1985 of state employment of full-time assistant capital collateral counsel representatives. Chapter 27, part IV, Florida Statutes (2009), initially enacted by chapter 85-332, Laws of Florida. Rule 3.851(b)(1), Fla. R. Crim. P.("Supreme Court… shall…appoint[] the appropriate office of the Capital Collateral Regional Counsel").

[10] The contention that court-appointed counsel means only private counsel leads to an incongruous result. If the constitution were so, the legislature would have no need to classify regional conflict counsel as public defenders for funding purposes. It could require counties to pay salaries of public agency court-appointed counsel, not only specified expenses.

[11] §27.40, Fla. Stat. (2009) ("The court shall appoint a public defender to represent indigent persons as authorized in 27.51.").

[12] Cf. Deen v. Wilson, 1 So. 3d 1179 (Fla. 5th DCA 2009)(regional conflict counsel duties do not include post-conviction proceedings).

required to fund attorneys appointed by the court. The constitution provides no additional exception for other public agency court-appointed counsel.[13]

Article VII, section 18, regulating legislative funding mandates to counties, does not govern judicial system funding. The voters adopted article VII, section 18, in 1990. Under its provisions, the legislature may require that counties spend funds on a law which it determines to fulfill an important state interest and passes by two-thirds of the membership of each house. The judicial system is an important state interest, as the 1998 constitutional revision commission undoubtedly recognized. If article VII, section 18 were to apply to judicial system funding, the only limitation upon a legislative mandate to counties would have been a voting requirement. The 1998 amendment therefore made article V, section 14 the exclusive authorization for legislative imposition judicial system funding requirements upon counties.[14] The legislature understood that article V,

[13] Cf. Bush v. Holmes, 919 So. 2d 392, 406-08 (Fla. 2006)(finding article IX, section 1(a), Florida Constitution, to be mandate for children's education and a restriction on the execution of that mandate).

[14] Art. V, §14(a), Fla. Const. ("Funding for...public defenders' offices and court-appointed counsel, except as otherwise provided by subsection (c), shall be provided from state revenues appropriated by general law."); Art. V, §14(c) ("No county..., except as provided in this subsection, shall be required to provide any funding....")(emphasis supplied).

section 14 controlled[15] when it defined regional counsel as public defenders. It textually recognized the appropriate constitutional authority,[16] but substantively violated its limitation.

CONCLUSION

Chapter 2007-62, section 19, Laws of Florida, is clearly contrary to article V, section 14, Florida Constitution. The decision of the First District Court of Appeal should be affirmed.

Respectfully submitted,
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[15] Even if the language of article V, section 14, were not so clear, principles of construction dictate the conclusion that it governs funding of the judicial system. Murray v. Mariner Health, 994 So. 2d 1051, 1061 (Fla. 2008)(specific statutory provision controls general), Deen v. Wilson, 1 So. 3d at 1182 (more specific statute controls). See also generally, 2B Sutherland Statutory Construction §51:5 (7th ed.). If the constitution is harmonized in this manner, both article V, section 14, and article VII, section 18, are given total effect, as they should. City of Tampa v. Birdsong Motors, Inc., supra.

[16] §29.008(1), Fla. Stat. (2008)("Counties are required by section 14, Article V of the State Constitution....").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 22nd day of October, 2009, by U.S. Mail and electronic transmission to:

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