IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-1698

JEFFREY E. LEWIS, et al.,

Appellants,

v.

LEON COUNTY, et al.,

Appellees.

INITIAL BRIEF OF APPELLANTS

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

BILL MCCOLLUM
Attorney General
Scott D. Makar (FBN 709697)
Solicitor General
Louis F. Hubener (FBN 0140084)
Chief Deputy Solicitor General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
(850) 410-2672 (fax)
Counsel for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

FLORIDA CONSTITUTION

FLORIDA STATUTES

LAWS OF FLORIDA

OTHER AUTHORITIES

STATEMENT OF THE CASE AND FACTS

This is an appeal of a decision of the First District Court of Appeal affirming a final summary judgment holding that section 19 of chapter 2007-62, Laws of Florida, violates the Florida Constitution. R2: 329.[1]

A. Course of Proceedings in the Trial Court.

In two actions consolidated in the trial court, twenty-six Florida counties and the Florida Association of Counties challenged the constitutionality of chapter 2007-62, Laws of Florida (the "act"), alleging it violates article V, section 14 and article VII, section 18(a), of the Florida Constitution. R1: 73; R1: 116; R1: 152. The act establishes five Offices of Criminal Conflict and Civil Regional Counsel ("Regional Conflict Counsel") which are located within the geographic boundaries of each of the five district courts of appeal. The purpose of the act is to provide representation for indigent persons both in specified civil cases and in cases in which the public defender has a conflict of interest. See Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc., 978 So. 2d 134, 137-138 & n. 2 (Fla. 2008). The Regional Conflict Counsel thus replace private counsel who were previously

[1] Appellants are Jeffrey E. Lewis, Jackson S. Flyte, Joseph P. George, Jr., Philip J. Massa, and Jeffrey D. Deen, in their official capacities as Criminal Conflict and Civil Regional Counsel; Jeffrey H. Atwater, President of the Florida Senate; and Larry Cretul, Speaker of the Florida House of Representatives; and the State of Florida.

appointed from a registry list because of the public defender's conflict. Id. at 138 (citing §27.511(5), Fla. Stat.). Private counsel are still appointed when the Regional Conflict Counsel have a conflict of interest. Id. (citing § 27.40(2), Fla. Stat.).

The Counties challenged the act's requirement that they pay for certain capital and overhead costs of the Regional Conflict Counsels' offices, alleging that these newly-created public offices are "court-appointed counsel" within the intendment of article V, section 14. That section was proposed by the Constitution Revision Commission as Revision 7 and approved by the electorate in 1998. Subsections (a) and (c) provide:

> **Section 14. Funding. –**
>
> (a) All justices and judges shall be compensated only by state salaries fixed by general law. 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. 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). Section 19 of chapter 2007-62 amends section 29.008, Florida Statutes, and defines the term "public defenders' office" to include the offices of criminal conflict and civil regional counsel for purposes of funding.

In support of their argument, the Counties relied on a Statement of Intent of the 1998 Constitution Revision Commission ("CRC"), which provided in part that:

> Section 14(a) requires the state to fund the state courts systems, 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.

R1: 190. Section 14, however, did not define the term "court-appointed counsel."

The Counties further asserted that the enactment of chapter 2007-62, Laws of Florida, violated article VII, section 18(a) of the Florida Constitution. That

section is entitled "Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue." Section 18(a) provides:

> (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 fulfils an important state interest and unless: . . . the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature . . . .

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

The Counties argued that under section 18(a) the legislature must "formally determine" that a bill serves an important state interest. They did not contend that chapter 2007-62 does not fulfill an important state interest, but asserted only that at the time of the enactment of chapter 2007-62, legislative staff did not consider the bill to raise unfunded mandate issues and the legislature did not "formally determine" that the bill served an important state interest. R1: 172-177. The Counties pointed to one other chapter law, chapter 2004-263, section 2, Laws of Florida, which included a provision stating: "The Legislature determined and declares that this act fulfills an important state interest." R1: 176. They conceded,

however, that chapter 2007-62 met the two-thirds voting requirement of section 18(a) as it was approved unanimously in both chambers. R1: 174, n. 1.

B. Disposition in the Trial Court.

The trial court ruled in favor of the Counties. R2: 329. It concluded that there was "no significant legal difference" between the state-created Regional Conflict Counsel and "the prior system of appointing private counsel" in conflict cases. R2: 335, ¶19. The trial court reasoned that the "court-appointed counsel" referred to in article V, section 14(a) were once the private attorneys, but are now the legislatively-established public Regional Conflict Counsel created in chapter 2007-62, Laws of Florida. Id. Therefore, under article V, section 14, counties could not be required to fund those offices.

The trial court also held that although the legislature had "some discretion" in the language it used in complying with article VII, section 18(a), it did not state with sufficient clarity that the act fulfilled an important state interest. R2: 342, ¶35. Accordingly, the court entered final summary judgment in favor of the Counties.

C. Disposition on Appeal

On appeal, the First District Court of Appeal affirmed the decision of the trial court. The First District noted that article V, § 14(a) provides that the state

shall fund "court-appointed counsel" and that § 14(c) provides that counties shall fund various capital and overhead costs for certain offices, including those of the public defender. App. 2. It also noted the stated intent of the CRC in 1998 to make the state wholly responsible for funding "court-appointed counsel." App. 6.

Reviewing this Court's decision in Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc., 978 So. 2d 134, 138 (Fla. 2008), the First District, like the trial court, concluded that the Regional Conflict Counsel are not public defenders and that there is "no significant legal difference" between the current Regional Conflict Counsel and the "previous private court-appointed private counsel system." App. 7. It was, therefore, the state's obligation under article v, § 14 to provide all funding for the Regional Conflict Counsel.

The First District further ruled that the legislature failed to comply with article VII, § 18(a) because section 19 of chapter 2007-62 provides no indication that the legislature ever determined that creation of the Regional Conflict Counsel fulfilled an important state interest. It rejected the argument that "the 'importance' of the act was declared when the Legislature deemed this law 'necessary,' and stated the law's purpose to provide adequate representation to persons entitled to court-appointed counsel under the state and federal constitutions." App. 8. The First District also pointed to a legislative staff analysis to support its conclusion

that "the legislature simply did not consider the unfunded mandate issue." App. 8-9.

STANDARD OF REVIEW

The issues in this case involve the constitutionality of a statute and the interpretation of two provisions of the Florida Constitution. These 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).

SUMMARY OF THE ARGUMENT

Article V, section 14 must be interpreted and applied according to the intent of the framers and voters in 1998. Section 14(a) requires that "court-appointed counsel" be funded with state revenues, but does not define that term. When adopted in 1998, "court-appointed counsel" within the meaning of this provision were exclusively private attorneys whose fees were paid by the state, and whose overhead costs were subsumed in those fees. The intent of section 14 has not changed because private attorneys still act as "court-appointed counsel," and are compensated only by the state.

In contrast, the Regional Conflict Counsel are legislatively-established public law offices. The framers and voters did not anticipate in 1998 the future creation of the Regional Conflict Counsel, and the constitution does not foreclose

the possibility of county funding for those public offices. Under Article V, section 14(c), the counties are required to pay specified capital and overhead costs of public entities that comprise the state court system. Because the state-funding limitation in section 14(a) was intended to apply only to private attorneys, it does not prohibit the legislature from requiring counties to pay the prescribed capital and overhead costs of the public Regional Conflict Counsel.

The purpose of article VII, section 18(a) is to make clear to the legislature that any spending requirement imposed on local government must actually fulfill an important state interest, not to mandate a statement that may or may not be consistent with the content of the law. Section 18(a) requires only a legislative "determination," not a formal declaration, of this effect. When the state's important interest is undisputed, as here, it is sufficient if the interest is manifest in the law. Sections 4 and 31 of chapter 2007-62 clearly reflect the legislature's determination that that act fulfills an important state interest.

ARGUMENT

SECTION 19 OF CHAPTER 2007-62, LAWS OF FLORIDA, DOES NOT VIOLATE THE FLORIDA CONSTITUTION.

A. Section 19 Does Not Violate Article V, Section 14 of the Florida Constitution.

Principles of statutory and constitutional construction are many and varied. Some, though appearing to state simple and easily applicable rules, are in obvious tension with others, equally straightforward, that might also resolve an issue but yield altogether different results. Here, the First District, like the trial court, chose to consider only what it deemed to be the "clear and unambiguous" language of article V, section 14, but not the intent and effect of that language when the amendment was approved in 1998. Had they done so, both courts would have been compelled to conclude that section 19 of chapter 2007-62, Laws of Florida, does not violate article V, section 14.

It is of course axiomatic that statutes are presumed constitutional, must be construed to that effect whenever possible, and any invalidity must be demonstrated beyond a reasonable doubt. Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc., 978 So. 2d 134, 139 (Fla. 2008). Accord Franklin v. State, 887 So. 2d 1063, 1073 (Fla. 2004) (citing cases). Critical to this case, in interpreting

constitutional provisions courts must 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." City of Fort Lauderdale v. Crowder, 983 So. 2d 37, 39 n. 2 (Fla. 4th DCA 2008). And most important here is this Court's repeated acknowledgment that its overriding imperative is to construe a constitutional provision to fulfill the intent of the framers and the voters:

> 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 a manner as to fulfill the intent of the people, never to defeat it. Such a provision must never be construed in such a manner as to make it possible for the will of the people to be frustrated or denied.

Crist, 978 So. 2d at 140 (quoting Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n, 838 So. 2d 492, 501 (Fla. 2003)) (emphasis the Court's). The same quoted language appears in Florida Dep't of Revenue v. City of Gainesville, 918 So. 2d 250 256 (Fla. 2005), Zingale v. Powell, 885 So. 2d 277, 282 (Fla. 2004), and Gray v. Bryant, 125 So. 2d 846, 852 (Fla. 1960). The intent of the people is gleaned from what they understood the constitutional provision to mean at the time it was adopted. In re Advisory Op. to the Governor, 223 So. 2d 35, 39 (Fla. 1969). As the First District itself has held, "[T]he purpose of the

framers or adopters of the Constitution may be shown by implication as well as express provision, and what is implied is as effective as what is expressed." The Florida Bar v. Lewis, 358 So. 2d 897, 899 (Fla. 1st DCA 1978).

The First District ignored this entire line of authority, preferring to think that there is no significant difference between counsel appointed in 1998 and the Regional Conflict Counsel. There is, however, a significant difference which goes to the structure of the state court system in 1998 and is key to the question of what was then intended: in 1998, all appointed conflict counsel were private attorneys.

"Court-appointed counsel" are the only entities not expressly referred to in article V, section 14 as a public office. That section does not define the term "court-appointed counsel," and only by turning to the statutes could this term be understood. In 1998, public defenders were considered by statute to be "court-appointed," as were the private attorneys, see §§27.51 & 27.52, Fla. Stat. (1997). The funding distinction in Revision 7, therefore, was between public offices constituting the state court system and attorneys who were privately employed. In 1998, when Revision 7 was proposed and approved, all court-appointed private attorneys were compensated by the state and their overhead costs were subsumed in the state rates. See § 27.711, Fla. Stat. (Supp. 1998). Accordingly, there was no reason for the counties to pay the costs of communications, leases, utilities, and

security for private attorneys as they were required to do for the specified public offices.

Article V, section 14, when proposed and approved in 1998, did not look beyond the existing arrangement. Its purpose was to require limited county funding for all public offices that were part of the court system, but not for private attorneys. Neither the constitutional language nor the CRC's Statement of Intent anticipated the creation of another public entity such as the Regional Conflict Counsel. The Statement of Intent provided only that "[a]s used in section 14, court appointed counsel means counsel appointed in criminal and civil proceedings." R1: 190, ¶A.(2). Today, even with the creation of the Regional Conflict Counsel in 2007, private attorneys are still appointed when the Regional Conflict Counsel themselves have a conflict, and the fees paid by the state still subsume their overhead costs. See §§ 27.40(2) & 27.5304, Fla. Stat. (2007). Hence, the original meaning and intent of the constitutional language continue: court-appointed private counsel are not entitled to compensation for overhead costs from the counties.

Revision 7 did not consider the funding of a public entity such as the Regional Conflict Counsel, nor did the electorate that approved the revision. Therefore, it cannot be concluded that language that referred only to private

counsel in 1998 now refers to a public office. While requiring the Counties to fund certain overhead costs of the Regional Conflict Counsel is certainly consistent with the intent of the framers and voters who in 1998 proposed and approved limited county funding for each public office that was part of the court system, that alone is not what compels reversal of the decision below. What compels reversal is that article V, section 14 never contemplated the creation of public Regional Conflict Counsel and therefore does not prohibit the state from requiring such funding. The First District and the trial court gave no effect to the following critical language in the Crist decision:

> The Constitution of this state is not a grant of power to the Legislature, but a limitation only upon legislative power, and unless legislation be clearly contrary to some express or necessarily implied prohibition found in the Constitution, the courts are without authority to declare legislative Acts invalid. The Legislature may exercise any lawmaking power that is not forbidden by organic law.

978 So. 2d at 141 (quoting Chiles v. Phelps, 714 So. 2d 453, 458 (Fla. 1998)) (emphasis added). As the Crist decision further states, "[a]bsent a constitutional limitation, the Legislature's 'discretion reasonably exercised is the sole brake on the enactment of legislation.'" Crist, 978 So. 2d at 141 (quoting Bush v. Holmes, 919 So. 2d 392, 406 (Fla. 2006)).

It cannot be said beyond a reasonable doubt that the CRC and voters foresaw the creation of the Regional Conflict Counsel and intended to foreclose even the slightest measure of county funding for that public office when at the same time they approved a measure of county funding for all other public offices that were part of the state court system. It is, therefore, this Court's duty to uphold the constitutionality of section 19 of chapter 2007-62, Laws of Florida. See Crist, 978 So. 2d at 139 (should any doubt exist, the presumption is in favor of constitutionality). "To overcome the presumption of constitutionality, the invalidity must appear beyond a reasonable doubt. . . ." Id. (quoting Franklin v. State, 887 So. 2d at 1073).

Here, the Counties and the lower courts relied almost exclusively on a terse statement in Crist in which this Court said, almost in passing, that "there appears to be no significant legal difference between the current [Regional Conflict Counsel] system and the prior system of appointing private counsel in conflict cases." R2: 335, ¶19 (quoting Crist, 978 So. 2d at 146). From a functional standpoint, which was the issue in Crist, this is largely true, but from a structural and funding standpoint it is not. Nor is it consistent with the intent of the framers and voters.

The lower courts erred in holding that for funding purposes the court-appointed counsel referred to in section 14 are now the Regional Conflict Counsel. Now, as in 1998, private attorneys are still "court-appointed counsel," stepping in when a Regional Conflict Counsel has a conflict, and are still compensated by the state. They have never had any claim on county funding, nor should they have. Moreover, the issue in Crist concerned the respective legal duties of public defenders, the Regional Conflict Counsel, and court-appointed private counsel. This Court was not concerned with funding or the intent of article V, section 14. As the Court stated in Crist:

> In the context of our constitutional inquiry in this case, we agree with the Governor that the legal character of the [Regional Conflict Counsel] should depend on what they do, not on how they might be characterized for purposes of funding.

978 So. 2d at 145.

This Court thus concluded that the Regional Conflict Counsel were not public defenders. The fact that the Regional Conflict Counsel assumed the legal obligations that had previously fallen to private attorneys has nothing to do with the intent of section 14, which concerns only funding. That section 14 provided for state funding of private conflict counsel does not compel the conclusion that it

barred any county funding of a public office such as those of the Regional Conflict Counsel, whose creation was never anticipated.

The Counties have also argued that defining public defenders' offices to include the Regional Conflict Counsel impermissibly expands the definition of that office, which is created by article V, section 18 of the Florida Constitution. As this Court made clear in Crist, the definition has no such purpose or effect. See 978 So. 2d at 145 (the definitions in sections 29.001(1) and 29.008(1), Florida Statutes, "are used solely for the purposes of implementing the constitutional guidelines concerning funding").

Because these definitions relate only to the matter of funding, not unlawful expansion of the public defenders' offices, the question is simply whether article VII, section 14, when approved in 1998, intended to prohibit county funding of the public offices of the Regional Conflict Counsel. Article V, section 14 did not so intend, and therefore the Counties' challenge to section 19 of chapter 2007-62 must fail.

B. Section 19 Does Not Violate Article VII, Section 18(a) of the Florida Constitution.

Pursuant to article VII, section 18(a), counties are not bound by any general law requiring the expenditure of funds "unless the legislature has determined that

such law fulfills an important state interest and unless: . . . the law requiring the expenditure is approved by two-thirds of the membership in each house of the legislature."[2] The lower courts held section 19 of chapter 2007-62 invalid because the legislature did not make a formal declaration that that act fulfills an important state interest.

Nothing in article VII, section 18(a) compels the legislature or its staff to follow any particular procedure in enacting such a law. See Florida Senate v. Florida Pub. Employees Council 79, 784 So. 2d 404, 408 (Fla. 2001) ("It is the final product of the legislature that is subject to review, not the internal procedures.") Furthermore, the word "determine" does not mean "declare." The word "determine" has been defined as "the act of making or arriving at a decision," i.e., it means to "decide." American Heritage Dictionary (2d ed. 1985).

A legislative decision under section 18(a) can be evidenced by something other than a formal declaration identifying the state interest as "important." The purpose of section 18(a) is not to require a mere pro forma statement of importance from the legislature regardless of the content of the law, but to make plain to that body that any spending requirement imposed on local government

[2] The Counties conceded, and the lower court found, that the second prong of the test was met as both houses of the legislature passed chapter 2007-62 unanimously. R1: 174, n. 1; R2: 340, n. 2.

must in fact serve an important state interest. Thus, it is the law itself that must reflect that interest. If the importance of that interest is open to question, a court might well expect not only a clear statement from the legislature but also an explanation of the state interest at stake. Here, however, the importance of the state interest is undisputed. Accordingly, the Court should examine the law itself to decide whether the legislature's determination of that interest is sufficiently apparent.

The First District gave no weight to the fact that chapter 2007-62 states on its face the legislature's intent to fulfill state and federal constitutional mandates and to further expand representation of indigent persons in civil cases beyond what public defenders have previously been required to do. The legislature stated:

> (1) 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 within the geographic boundaries of each of the five district courts of appeal. The regional counsel shall be appointed as set forth in subsection (3) for each of the five regional offices. The offices shall commence fulfilling their constitutional and statutory purpose and duties on October 1, 2007.

Ch. 2007-62, §4, Laws of Florida (creating §27.511, Fla. Stat.).

The legislature also stated:

> (1) 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.
>
> (2) 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 on July 1, 2007. . . . The Justice Administration Commission shall assist the regional counsel as necessary in establishing their offices. In addition, it is the intent of the Legislature that the various agencies and organizations that comprise the state judicial system also assist with the transition from current law to the creation and operation of the regional offices.

Ch. 2007-62, §31, Laws of Florida.

The language from sections 4 and 31 of chapter 2007-62 could hardly be more expressive of an important state interest. In these sections, the legislature declared the constitutional importance of the act, found the creation of the regional counsel "necessary and best steps," provided for representation beyond what is

constitutionally required, stated further that it would do so in a fiscally responsible manner, and directed the Justice Administration Commission and other agencies and organizations to assist the transition. These are clear and unambiguous statements of the importance of the act. If not a literal declaration of an important state interest, they are certainly a determination of that fact. Except for the direction to the Justice Administration Commission and other organizations to provide assistance with the transition, there was no reason for the legislature to set forth what is in sections 4 and 31 other than to articulate the importance of the state's interest.

The words of the constitution "are to be interpreted in their most usual and obvious meaning, unless the text suggests that they have been used in a technical sense." Wilson v. Crews, 34 So. 2d 114, 118 (Fla. 1948) (quoting City of Jacksonville v. Glidden Co., 169 So. 216, 217 (Fla. 1936)). The word "determined" in article VII, section 18 (a) is not used in a technical sense; it does not require the legislature to make a "formal" declaration. What the legislature determined can be understood from the words expressing the purpose and significance of the act. State v. Hodges, 506 So. 2d 437, 439-440 (Fla. 1st DCA 1987) ("Legislative intent is to be gleaned primarily from the language of the statute.").

The Counties have not argued that chapter 2007-62 does not fulfill an important state interest, but only that the legislature did not use the right words to state that fact. But sections 4 and 31 of chapter 2007-62 make clear that the legislature intended the act to serve an important state interest and describe why it did so. As Hodges states, all legislative enactments are presumed to be constitutional and therefore will not be stricken unless "clearly erroneous, arbitrary or wholly unwarranted." Id. at 439. Moreover, "[a]ll doubts as to validity must be resolved in favor of constitutionality." Id. As otherwise stated, "invalidity must be demonstrated beyond a reasonable doubt." State v. Ocean Highway and Port Auth., 217 So. 2d 103, 105 (Fla. 1968).

The Counties' arguments and the lower courts' reasoning do not meet this test. While it has never been disputed that chapter 2007-62 serves an important state interest, the lower courts read a technical requirement into article VII, section 18(c) by comparing the act to chapter 2004-263, section 2, Laws of Florida, which contains an express declaration. R2: 342, ¶35. But section 18(a) requires only that the legislature "determine," not that it "declare." Accordingly, the Counties have not met their burden of demonstrating section 19 of the act invalid beyond a reasonable doubt, and therefore the judgment below must be reversed.

CONCLUSION

Section 19 of chapter 2007-62 does not violate article V, section 14 or article VII, section 18(a) of the Florida Constitution. The decision of the First District should be reversed and this case remanded for entry of judgment in favor of the appellants.

Respectfully Submitted,

BILL MCCOLLUM
ATTORNEY GENERAL

Scott D. Makar (FBN 709697)
Solicitor General

/s/
Louis F. Hubener (FBN 0140084)
Chief Deputy Solicitor General
OFFICE OF THE ATTORNEY GENERAL
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
(850) 410-2672 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 2nd day of October, 2009, by U.S. Mail, postage prepaid, and electronic transmission to:

Robert L. Nabors
Harry F. Chiles
Bethany A. Burgess
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308

Daniel D. Eckert
County Attorney
County of Volusia
123 West Indiana Avenue
DeLand, FL 32720-4613

Edward A. Dion
Nabors, Giblin & Nickerson, P.A.
208 S.E. 6th Street
Fort Lauderdale, FL 33301

/s/
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.

/s/
Attorney

LEWISFSCTinitialbrief.doc