IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-1698

JEFFREY E. LEWIS, et al.,
Appellants,

v.

LEON COUNTY, et al.,
Appellees.

REPLY BRIEF OF APPELLANTS

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

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REPLY ARGUMENT

I. SECTION 19 OF CHAPTER 2007-62, LAWS OF FLORIDA, DOES NOT VIOLATE ARTICLE V, SECTION 14 OF THE FLORIDA CONSTITUTION.

As the Counties and FAC acknowledge, in construing a constitutional provision a court must consider not only the language of the provision, but also the intent of the framers and voters. See Brief of the Counties and FAC at 14-15 (citing Zingale v. Powell, 885 So. 2d 277, 282 (Fla. 2004), and Caribbean Conservation Corp. v. Fla. Fish and Wildlife Conservation Comm'n, 838 So. 2d 492, 501 (Fla. 2003)). But the Counties ignore critical language from Gray v. Bryant, 125 So. 2d 846 (Fla. 1960), quoted in each of these cases, which makes the intent of the people paramount:

> 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.

Id. at 852; see also Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc., 978 So. 2d 134, 140 (Fla. 2008) (quoting Gray v. Bryant).

The Counties assume the term "court-appointed counsel," which article V, section 14 does not define, requires no inquiry, and therefore the Court need not consider what the term meant in 1998. That is a convenient assumption, but it

begs the question because here the Court must determine the meaning of the constitutional language. When a key statutory or constitutional term is not defined, hence is ambiguous, a court may resort to other sources to determine its proper meaning. See Nehme v. Smithkline Beecham Clinical Labs., Inc., 863 So. 2d 201, 204-205 (Fla. 2003); Allstate Inc. Co. v. Rudnick, 761 So. 2d 289, 292 (Fla. 2000). In this case the meaning of "court-appointed counsel" can be determined only by reference to Florida statutes. And it is the 1997 statutes, not those of 2007, that tell us the meaning of the term and the intent of the framers and the people.

In 1998, court-appointed counsel were either public defenders or private attorneys appointed when the public defender had a conflict. See §§ 27.51, 27.52, 27.53(3), Fla. Stat. (1997). A "conflict attorney" was defined as "a private attorney assigned by the court to handle the case of a defendant who is indigent and who cannot be represented by the public defender due to a conflict of interest or due to the public defender's excessive caseload, as certified to the court by the public defenders." § 27.005(2), Fla. Stat. (1997). The fees of private conflict counsel were set by statute. See §§ 27.525, 27.53(3), and 925.036, Fla. Stat. (1997). Their overhead costs were not an extra item paid separately. [1]

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[1] The brief of Volusia County correctly notes a misstatement in the appellants'

It is clear that the intent of the framers and voters in 1998 was to require counties to pay the specified overhead costs of all public offices involved in the judicial system -- the trial courts, public defenders, state attorneys, and clerks of the circuit and county courts. It is equally clear, on the other hand, that counties would not be compelled to pay various overhead costs for court-appointed private attorneys -- precisely because they were private and their overhead costs were subsumed in fees set by law. See § 925.036, Fla. Stat. (1997). Contrary to the argument of Volusia County, this conclusion does not add words to the constitutional language but simply derives its proper meaning -- the court-appointed counsel referred to in article V, section 14 were private attorneys entitled only to prescribed fees.

"A determination of legislative intent is appropriate when the court considers a factual situation not contemplated by the legislature." Dade County v. AT&T Information Systems, 485 So. 2d 1302, 1306 (Fla. 3d DCA 1986) (citing Powell v. Gessner, 231 So. 2d 50, 53 (Fla. 4th DCA), aff'd, 238 So. 2d 101 (Fla. 1970)). The same logic applies to the construction of article V, section 14,

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initial brief. At page 11 of the initial brief, appellants stated: "In 1998, when Revision 7 was proposed and approved, all court-appointed private counsel were compensated by the state and their overhead costs subsumed in state rates." It is not correct to say that all court-appointed private counsel were compensated by the state. However, their fees were prescribed by law. See § 925.036, Fla. Stat. (1997).

because that provision did not address the prospect of a public office providing court-appointed conflict counsel, nor did the Statement of Intent of the Constitution Revision Commission. The Commission must have understood in 1998 that, by law, court-appointed conflict counsel were private and not entitled to separately paid overhead costs. Therefore, it cannot be concluded that the framers and voters intended to prohibit, and did prohibit, county funding for a public entity such as the Offices of Criminal Conflict and Civil Regional Counsel. Because section 14 does not limit the authority of the legislature in this respect, that body is free to require county support for the Regional Conflict Counsel consistent with other provisions of the Florida Constitution. That is the theory of our state constitution. "The legislature may exercise any lawmaking power that is not forbidden by organic law." Crist, 978 So. 2d at 141 (quoting Chiles v. Phelps, 714 So. 2d 453, 458 (Fla. 1998)).

The Counties contend that the interpretive adage "expressius unius est exclusio alterius," as applied to article V, section 14, forecloses any county funding for the Regional Conflict Counsel. As explained, the term "court-appointed counsel" refers only to private attorneys, and those attorneys may even today be appointed by the courts and paid according to prescribed rates. Article V,

section 14 means now exactly what it meant in 1998; it does not prohibit county funding for the newly-created, public Regional Conflict Counsel.

The Counties rely on Crist in support of the argument that there is "no significant legal difference" between the Regional Conflict Counsel created by section 19 of chapter 2007-62 and "the prior system of appointing private counsel in conflict cases." See Crist, 978 So. 2d at 146. This argument disregards the paradigm structural shift wrought by section 19. The Regional Conflict Counsel may do what private conflict counsel formerly did, but they are not private and their needs are different. Here, the dispositive question is whether in 1998 the framers and voters intended to foreclose county funding of a public office that would be part of the justice system. That question must be answered in the negative. The framers and voters intended to provide limited county funding for all public offices that were part of the justice system, but not court-appointed counsel who were private and whose compensation was otherwise prescribed by law. In view of the clear intent of the framers and voters in 1998, article V, section 14 cannot be said to prohibit the legislature from providing for limited county funding of the offices of the Regional Conflict Counsel.

The Counties also contend that sections 29.001(1) and 29.008(1), Florida Statutes, impermissibly enlarge the constitutional language creating the office of

public defender, see art. V, § 18, Fla. Const., by defining it to include the Regional Conflict Counsel. As this Court pointed out in Crist, that is not what the legislature did. The statutory definitions do not change the legal character of the public defender's office or the types of cases that are handled by the public defenders and the Regional Conflict Counsel. The definitions "are used solely for purposes of implementing the constitutional guidelines concerning funding." Crist, 978 So. 2d at 145. In the absence of a constitutional prohibition, the legislature may require county funding for the Regional Conflict Counsel. Defining the public defender's office to include the Regional Conflict Counsel is just the mechanism by which the legislature specifies the amount and purpose of the funding. The question at issue here is not what the Regional Conflict Counsel do, but what the framers and voters intended to accomplish in 1998.

II. SECTION 19 OF CHAPTER 2007-62, LAWS OF FLORIDA, DOES NOT VIOLATE ARTICLE VII, SECTION 18(a) OF THE FLORIDA CONSTITUTION.

Article VII, section 18(a) requires the legislature to "determine" that a spending requirement imposed on counties and municipalities serves an important state interest, but it does not tell the legislature how to make that determination. The Counties' argument adds words to article VII, section 18(a) in contending that the legislature must "formally" determine that a general law requiring county

spending fulfills an important state interest, and that this determination must take the form of a declaration. See Counties' Br. at 24. All that article VII, section 18(a) requires is that the legislature "determine," not that it "formally" do so or that it make some express declaration in the general law.

As pointed out in appellants' initial brief, the word "determine" means to "decide," not "declare." What the legislature decides is inherent in the law itself and does not require a collateral statement. While the Counties suggest that all the legislature need do is state that the law fulfills an important state interest, as it did in chapter 2004, section 2, Laws of Florida, formal declarations may ring hollow. Such statements would not suffice under article VII, section 18(a) if the state interest, as gleaned from the law, were not important. It is the law itself that must reflect the important state interest. The Counties' argument elevates form over substance.

Chapter 2007-62 creates five public offices to serve the needs of thousands of indigent persons charged with crimes, as well as thousands of indigents in a variety of civil proceedings. See Crist, 978 So. 2d at 138, n.2 and 145, n.8. Provision of counsel to such persons is either constitutionally mandated or required by law. Chapter 2007-62 plainly serves an important state interest, a point the Counties have never disputed. This interest is explicitly set out in

sections 4 and 31 of that law. The Counties are being asked to do no more for the Regional Conflict Counsel than they do for do state attorneys, public defenders, and clerks of the circuit and county courts.

The Counties also take the legislature to task for not following procedures suggested in a 1994 law review article. See Nancy Perkins Spyke, Florida's Constitutional Mandate Restrictions, 18 Nova L. Rev. 1403 (1994). The procedures followed by the legislature are no measure of a law's constitutionality. When reviewing the constitutionality of legislation, "it is the court's job to review the final product of the legislature rather than its internal operating procedures." Environmental Confederation of Southwest Fla. v. Dep't of Environmental Protection, 886 So. 2d 1013, 1021 (Fla. 1st DCA 2004) (citing Fla. Senate v. Public Employees Council 79, AFSCME, 784 So. 2d 404, 408 (Fla. 2001), and Moffitt v. Willis, 459 So. 2d 1018, 1022 (Fla. 1984)). Here, the final product, chapter 2007-62, serves an important state interest, and the legislature's determination that it does so is plain from the act's terms.

CONCLUSION

Section 19 of chapter 2007-62, Laws of Florida, does not violate the Florida Constitution. The decision of the First District of Appeal should be reversed.

Respectfully Submitted,

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