

FILED

IN THE CIRCUIT COURT OF THE SECOND  
JUDICIAL CIRCUIT, IN AND FOR LEON  
COUNTY, FLORIDA

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BOB INZER  
CLERK CIRCUIT COURT  
LEON COUNTY, FLORIDA

FLORIDA ASSOCIATION OF CRIMINAL  
DEFENSE LAWYERS, INC.,

PETITIONER/APPELLEE,

CASE NO.: 2007 CA 2898

v.

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 DEAN,  
AS CRIMINAL CONFLICT AND CIVIL  
REGIONAL COUNSEL,

RESPONDENTS/APPELLANTS.

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NOTICE OF APPEAL

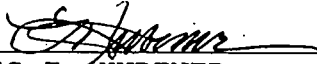
Respondents, Charlie Crist, as Governor of Florida; Ken Pruitt, as President of the Florida Senate; Kurt Browning, as Secretary of State; and Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Massa, and Jeffrey Dean, as Criminal Conflict and Civil Regional Counsel, Respondents/Appellants, appeal to the First District Court of Appeal the Order of this Court rendered December 20, 2007. The nature of the Order is a final order granting a petition for writ of quo warranto and quashing the appointment of respondents Lewis, Flyte, George, Massa, and Dean as Criminal Conflict and Civil Regional Counsel

pursuant to chapter 2007-62, Laws of Florida, and enjoining them from performing any duties as such counsel pursuant to chapter 2007-62, and further enjoining the Governor, the Secretary of State and the Florida Senate from taking any action relative to appointment of such counsel. A copy of the order is attached.

Respectfully Submitted,

BILL MCCOLLUM  
ATTORNEY GENERAL

SCOTT D. MAKAR  
Solicitor General


  
\_\_\_\_\_  
LOUIS F. HUBENER  
Chief Deputy Solicitor General  
Florida Bar No. 0140084  
OFFICE OF THE ATTORNEY GENERAL  
PL 01 - The Capitol  
Tallahassee, Florida 32399-1050  
(850) 414-3681  
Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following on this 20<sup>th</sup> day of December, 2007.

Sonya Rudenstine  
1221 N.E. 3<sup>rd</sup> Street  
Gainesville, Florida 32601

Todd Doss  
725 S.E. Baya Drive  
Suite 102  
Lake City, Florida

  
\_\_\_\_\_  
Louis F. Hubener

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

Florida Association of Criminal  
Defense Lawyers,

Petitioner,

v.

Case No. : 2007-CA-002898

Florida Governor Charlie Crist,  
Ken Pruitt, as President of the  
Florida Senate, Kurt Browning, as  
Secretary of State, Jeffrey Lewis,  
Jackson Flyte, Joseph George, Jr.,  
Philip Massa and Jeffrey Dean,

Respondents.

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ORDER GRANTING PETITION FOR WRIT OF QUO WARRANTO

Petitioner, the Florida Association of Criminal  
Defense Lawyers seeks Quo Warranto relief against the  
Respondents, Charlie Crist, as Governor of the State of  
Florida; Ken Pruitt, as President of the Florida Senate;  
Kurt Browning, as Florida Secretary of State; as well as  
Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip  
Massa and Jeffrey Dean, as the prospective "Criminal  
Conflict and Civil Regional Counsel".

Having considered the Petition, Response, Reply, the  
applicable legal precedent; and the arguments of respective  
counsel at the hearing conducted on December 19, 2007, this

Court finds and decides that the Petition For Quo Warranto should be granted.

Petitioner seeks the reversal of Governor Crist's appointment of five Criminal Conflict and Civil Regional Conflict Counsel, namely Respondents Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Massa, and Jeffrey Dean.<sup>1</sup> Petitioner also seeks to prohibit the Senate from confirming the regional counsel respondents, as adjunct relief.

The first issue presented to the Court is whether Petitioner has standing to bring this action. It is clear, in Florida that members of the general public seeking enforcement of a public right may obtain relief through quo warranto. Chiles v. Phelps, 714 So. 2d 453, 456 (Fla. 1998). Petitioner asserts that the Respondents have exercised, or will exercise, their rights and duties in a manner which contravenes the Florida Constitution. The right to have state officials perform their duties and exercise their powers in conformity with the Constitution may be properly enforced in quo warranto proceedings. Martinez v. Martinez, 545 So. 2d 1338, 1339 n. 3 (Fla. 1998). In such a proceeding, a petitioner need not show

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<sup>1</sup>The court will refer to these five individuals as the "regional counsel respondents."

any real or personal interest in the outcome. Id., at 1339. Petitioner has legal standing in this controversy.

Moreover, the court finds that quo warranto is the proper remedy to challenge the appointment of the regional counsel respondents. Austin v. State ex rel. Christian, 310 So. 2d 289 (Fla. 1975). "Quo warranto is an appropriate and adequate remedy to determine the right of an individual to hold a public office." State ex rel. Booth v. Byington, 168 So. 2d 164, 175 (Fla. 1st DCA 1964).<sup>2</sup>

Chapter 2007-62, Laws of Florida, provides for the establishment of five Offices of the Criminal Conflict and Civil Regional Counsel ("OCCRCs") to be headed by appointed counsel. These OCCRCs were created to provide criminal representation in criminal cases where the public defender has a conflict of interest. The OCCRCs also have primary responsibility for providing representation in certain civil proceedings. Ch. 2007-62 § 4, Laws of Florida. Each OCCRC is located within the geographic boundaries of one of the five district courts of appeal. Id. The five regional counsel are appointed to a term of

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<sup>2</sup> Respondents urge the proper remedy is a Declaratory Judgment; and Petitioner mentioned its availability during the hearing. While declaratory judgment pursuant to Chapter 86, Florida Statutes may provide an alternative, legal vehicle for relief, it was not sought in the Petition and is therefore not before this Court.

four years by the governor subject to confirmation by the Florida Senate. Id.

Initially, it should be noted the function of courts is to interpret the law, not to legislate. The court is not concerned with the wisdom of the policy of legislation, so long as such legislation squares with the Constitution. Holley v. Adams, 238 So. 2d 401, 404 (Fla. 1970).

Therefore, this Court declines to address any issues regarding the public policy of establishing Offices of Criminal Conflict and Civil Regional Counsel.

Similarly, this 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.<sup>3</sup>

The primary issue properly before this Court is whether Chapter 2007-62, Laws of Florida requires the Governor and the Senate to exceed their constitutional authority by appointing and confirming, respectively, the regional counsel respondents. The court finds that it does.

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<sup>3</sup>Section 14 provides, in pertinent part, that funding for "public defender offices", *inter alia*, "shall be provided from State revenues appropriated by general law." (emphasis supplied). The legislation in question mandates that this species of Public Defender be funded by the various county governments.

The court agrees with Petitioner that the regional counsel respondents are essentially public defenders that have not been subject to the qualifications provided by Article V, Section 18 of the Florida Constitution. An examination of Chapter 2007-62, Laws of Florida, reveals that the Legislature has attempted to create a hybrid state office that is a public defender for some purposes<sup>4</sup>, 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. The Supreme Court of Florida has explained that the Constitution "cannot be changed, modified or amended by legislative or judicial fiat. It provides within itself the only method for its amendment." Cook v. City of Jacksonville, 823 So. 2d 86, 94 (Fla. 2002) (citations omitted).

Furthermore, our Supreme Court has stated:

Where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. . . . Therefore, where the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision.

Bush v. Holmes, 919 So. 2d 392, 407 (Fla. 2006).

<sup>4</sup> See Section 29.008(1), Florida Statutes, which includes the offices of criminal conflict and civil regional counsel in the definition of public defenders.

Therefore, Chapter 2007-62, Laws of Florida, cannot alter the constitutional requirements provided by Article V, Section 18 of the Florida Constitution. Because this provision requires public defenders to 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.

Based upon this legal analysis of the clear and established precedent in Florida, the Petition for Writ of Quo Warranto should be granted.

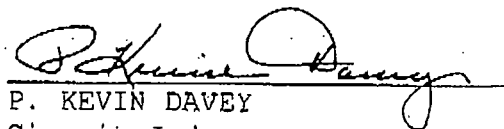
Accordingly, it is ORDERED and ADJUDGED that:

- 1.) Respondent Governor Charlie Crist's appointments of Respondents Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Massa and Jeffrey Dean as Criminal Conflict and Civil Regional Counsel are hereby QUASHED;
- 2.) Respondent Kurt S. Browning, Secretary of State, is hereby ENJOINED from submitting certificates of appointment and biographical questionnaires to Respondent Ken Pruitt, President of the Florida Senate, on behalf of Respondents Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Masa and Jeffrey Dean;
- 3.) The Florida Senate, through Respondent Senate President Ken Pruitt, is hereby ENJOINED from confirming Respondents Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Masa and

Jeffrey Dean as Criminal Conflict and Civil Regional Counsel pursuant to Chapter 2007-62, Laws of Florida; and

- 4.) Respondents Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Masa and Jeffrey Dean are hereby ENJOINED from performing any duties as Criminal Conflict and Civil Regional Counsel pursuant to Chapter 2007-62, Laws of Florida.

DONE and ORDERED on this 20<sup>th</sup> day of December, 2007.

  
P. KEVIN DAVEY  
Circuit Judge

Copies furnished to:

Sonya Rudenstine  
1221 N.E. 3rd Street  
Gainesville, Florida 32601  
Attorney for the Petitioner

Louis F. Hubener  
Chief Deputy Solicitor General  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050  
Attorney for the Respondents