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CLERK, SUPREME COURT  
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IN THE SUPREME COURT OF FLORIDA

Florida Association of Criminal  
Defense Lawyers, Inc.

Petitioner,

Case No. \_\_\_\_\_

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.

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**PETITION FOR WRIT OF QUO WARRANTO**

Petitioner, Florida Association of Criminal Defense Lawyers, Inc., sues respondents, Florida Governor Charlie Crist; Ken Pruitt, as President of the Florida Senate; Kurt Browning, as Secretary of State of Florida; and Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Massa, and Jeffrey Dean, as Criminal Conflict and Civil Regional Counsel, and alleges:

**I. BASIS FOR INVOKING JURISDICTION**

1. This is an action for writ of *quo warranto* pursuant to Article V, section 3(b)(8) of the Florida Constitution, Florida Rules of Appellate Procedure 9.030(3) and 9.100, and Florida Rule of Civil Procedure 1.630.

2. This Petition seeks the reversal of the Governor's appointment of five Criminal Conflict and Civil Regional Counsel,

namely Respondents Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Massa, and Jeffrey Dean. It also seeks a prohibition of Senate confirmation of the aforementioned individuals.

3. Petitioner requested and the Attorney General declined Petitioner's request to bring this action. Petitioner's letter and the Attorney General's written refusal and authorization to proceed are attached. (Appendix A)

4. Petitioner is a private not-for-profit Florida membership organization of criminal defense lawyers. Petitioner has standing to bring this action as an organization of members of the public seeking the enforcement of the public right to "have the Governor [and members of the Florida Senate] perform [their] duties and exercise [their] powers in a constitutional manner." *Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989) ("In *quo warranto* proceedings seeking the enforcement of a public right the people are the real party to the action and the person bringing the suit 'need not show that he has any real or personal interest in it.'" (footnote omitted) (quoting *Pooser v. Wester*, 170 So. 736, 737 (Fla. 1936)); see also *Chiles v. Phelps*, 714 So. 2d 453 (Fla. 1998) (Petitioners in writ *quo warranto* action have standing as members of the general public to enforce a public right); *Austin v. State*, 310 So.2d 389, 290 (Fla. 1975) (defendant was proper party to bring *quo warranto* proceeding challenging Governor's appointment of State Attorney in violation of

constitutional eligibility requirements).

5. Respondents are Florida state public officials whom Petitioner claims either have exercised or will exercise their rights and duties in a manner that is unconstitutional.

## **II. STATEMENT OF THE FACTS**

6. On May 24, 2007, Governor Charlie Crist signed into law CS/SB 1088, Ch. 2007-62, Laws of Fla. (Hereinafter "The Act") (Attached hereto in redline version as Appendix B). The Act provides for the establishment of five Offices of Criminal Conflict and Civil Regional Counsel (hereinafter "OCCRCs") to handle the large majority of the criminal conflict cases previously handled by private counsel, as well as to represent indigent clients in certain civil proceedings. (App. B, Preamble at 1-3) These offices are to be located "within the geographical boundaries of each of the five district courts of appeal." (App. B at 6; § 27.511(1), Fla. Stat. (May 24, 2007)).

7. The Act requires that the Governor appoint five Criminal Conflict and Civil Regional Counsel (hereinafter "CCCRC") to direct the OCCRCs, following receipt of recommendations for candidates by the Supreme Court Judicial Nominating Commission. (App. B at 6; §§ 27.511(1), (3), Fla. Stat.).

8. The Act further requires that the Florida Senate confirm the Governor's appointments for them to take effect. (App. B at 7; § 27.511(3), Fla. Stat.). Pursuant to section 114.05(b), 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 valid without any further action by the Senate until such vote.

9. Finally, the Act amends several Florida statutes to include in the definition of "Public Defender Offices" these new OCCRCs. See, e.g., App. B at 29, 32; § 29.008(1), Fla. Stat. (May 24, 2007) ("[T]he term 'public defender offices' includes the offices of criminal conflict and civil regional counsel."); § 29.001(1), Fla. Stat. (May 24, 2007) ("For the purposes of implementing s. 14, Art. V of the State 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).

### **III. NATURE OF THE RELIEF SOUGHT**

10. Petitioner Florida Association of Criminal Defense Lawyers, Inc., respectfully requests that this Honorable Court issue a writ of *quo warranto* to provide for the following:

A. Grant oral argument on the issues presented herein and expedite these proceedings to prevent irreparable harm to the parties;<sup>1</sup>

B. Declare Ch. 2007-62, Laws of Florida, unconstitutional and therefore void because it violates Article V, section 18 of the Florida Constitution;

C. Quash Respondent Governor Crist's appointments of Respondents Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Massa and Jeffrey Dean as CCCRC pursuant to The Act;

D. Enjoin Respondent Kurt S. Browning, Secretary of State, 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 Massa and Jeffrey Dean;

E. Enjoin the Senate, through Respondent Senate President Ken Pruitt, from confirming Respondents Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Massa and Jeffrey Dean as CCCRC pursuant to The Act; and

F. Enjoin Respondents Jeffrey Lewis, Jackson Flyte, Joseph George, Jr., Philip Massa and Jeffrey Dean from performing any duties under The Act.

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<sup>1</sup>Petitioner has filed a separate Motion for Oral Argument and to Expedite Proceedings simultaneously with this Petition.

#### IV. ARGUMENT AND CITATIONS OF AUTHORITY

- A. The CCCRCs Are Public Defenders and Are Therefore Subject to the Requirements of Article V, Section 18 of the Florida Constitution.

11. By including within the definition of "public defender offices" the OCCRCs, the legislature has made clear that The Act is intended to establish a second tier of public defender offices to handle criminal conflict cases where a conflict of interest would result from representation by the first, existing tier.

12. This intention is confirmed by the fact that the legislature amended section 29.001, Florida Statutes, to include the OCCRCs in the enumerated elements of the public defender offices, making it possible to require the counties to cover various expenses pertaining to the infrastructure of the new offices pursuant to Article V, section 14 of the Florida Constitution. Section 14 states, 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) 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 added.)

13. Only by defining the OCCRCs as public defender offices could the legislature save money on the new offices by requiring the counties to pay for their infrastructure. Said another way, were the OCCRCs *not* public defender offices, section 29.001(1) would violate Article V, sections 14(a) and (c) of the Constitution.

14. Because the OCCRCs are simply public defender offices by a different name, they and their directors must conform to the constitutional provision addressing such offices, namely Article V, section 18, which 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.) Because The Act provides that the 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 Act is in violation of section 18.

15. Although the legislature has the authority to require that public defenders "perform duties prescribed by general law" pursuant to Article V, section 18, it cannot ignore or alter the accompanying constitutional requirement that all public defenders be elected and reside in the circuit they represent.

16. In *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), this Court held that the Constitution is a limitation upon, not a grant of, legislative power. *Id.* at 406; see also *Chiles v. Phelps*, 714 So. 2d 453, 458 (Fla. 1998) (citing *Savage v. Board of Public Instruction*, 133 So. 341, 344 (Fla. 1931) for the proposition that "[t]he Constitution of this state is not a grant of power to the Legislature, but a limitation only upon legislative power[.]"). The *Holmes* Court further explained that:

Where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. . . . Therefore, when 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.

*Id.* at 407 (citing *Weinberger v. Board of Public Instruction*, 112 So. 253, 256 (Fla. 1927)).

17. The *Holmes* decision reaffirmed the principle that constitutional provisions "must be read *in para materia*, rather

than as distinct and unrelated obligations." 919 So.2d at 406. In doing so, this Court declared that a legislative scheme that granted educational vouchers for students to attend private schools violated the constitutional requirement that free education be provided through a uniform system of public schools. While noting that nothing in the Constitution prohibited educational vouchers, the Court determined that the constitutional requirement that public education be provided through a uniform and free system was a constitutional mandate with a restriction, one which the voucher program violated. *Id.* at 407.

18. Like the constitutional provision considered by the *Holmes* Court, the language in Article V, section 18 unambiguously mandates that public defenders be elected, and further requires that they reside in each judicial circuit. Having prescribed the terms for a public defender's qualifications to hold office, there is simply no manner of construing the constitutional provision to allow for a second tier of unelected public defenders in separate offices residing not in the circuits but within the jurisdictional boundaries of the district courts of appeal.

19. This Court has consistently invalidated legislative schemes in derogation of the principle that the requirements for office of constitutional officers cannot be supplanted by the legislature. For example, in *Maloney v. Kirk*, 212 So.2d 609 (Fla. 1968), the Court affirmed a lower court's decision that invalidated

a statute which imposed requirements on a constitutional officer beyond those set forth in the Constitution. In a specially concurring opinion, Justice Roberts explained 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 the coverage be complete, the legislature is, by implication, denied the power to take from or to add to the constitutional provisions. This rule is particularly applicable to a specification of who may and who may not serve as governor if duly chosen by the people.

212 So. 2d at 611 (Roberts, J., specially concurring). See also *In re Investigation of a Circuit Judge*, 93 So. 2d 601, 606-08 (Fla. 1957) (citing *Weinberger* and finding that where the constitution creates an office, fixes its term, and provides under what conditions the officer may be removed before expiration of 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 constitution).

20. Similarly, in *Askew v. Thomas*, 293 So. 2d 40 (Fla. 1974), a *quo warranto* proceeding, the Court considered a constitutional question involving residency requirements to hold office, and echoed the same principles that Petitioner contends control here:

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.

*Id.* at 42.

21. A more recent example is found in this Court's decision in *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002). In *Cook*, this Court invalidated a legislative attempt to modify the election requirements of constitutional officers by imposing term limits. In doing so, the Court determined that the constitutional provision that specified which constitutional officers were subject to term limits necessarily preempted the field, and that term limits imposed on additional constitutional officers was invalid. 823 So.2d at 93-94.

22. In sum, Article V, section 18 limits the field of public defenders to those who are elected and reside in each judicial circuit. The Act therefore violates the constitutional restriction imposed by section 18 by creating a second tier of non-elected public defenders within the jurisdiction of each District Court of Appeal.

B. The Act Violates The Policy Considerations that Gave Rise to the Constitutional Mandate Discussed Herein.

23. In addition to an analysis of the plain language of the Florida Constitution relevant to Petitioner's claim, it is also proper for this Court to consider the primary purpose behind the constitutional requirement that public defenders be elected, *Holmes*, 919 So.2d at 407-08; namely, to insure that such officers maintain independence from the political process and thereby protect the Sixth Amendment guarantee to the effective assistance

of counsel in criminal cases at trial and on direct appeal.

24. In *State v. Brummer*, 443 So. 2d 957, 959 (Fla. 1984), this Court identified public defenders as the primary guardians of this Sixth Amendment right:

The Office of the Public Defender is a creature of the state constitution and of statute, not of the common law. The State of Florida, in order to meet its responsibility to provide the assistance of counsel guaranteed to defendants against state action by the sixth amendment of the United States Constitution, made applicable to states through the fourteenth amendment, has created this office in article V, section 18 of the Florida constitution.

25. Unlike many other states, Florida has placed an exceptionally high premium on maintaining the independence from state control of these guardians, as articulated in *Brummer*:

The United States opinion in *Polk County v. Dodson*, 454 U.S. 312, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981), concisely summarizes this Court's view concerning the primary purpose of the public defender. Quoting from *Ferri v. Ackerman*, 444 U.S. 193, 204, 100 S. Ct. 402, 409, 62 L. Ed. 2d 355 (1979), the Court agreed that "His [the public defender's] principal responsibility is to serve the undivided interests of his client. Indeed, an indispensable element of the effective performance of his responsibilities is the ability to act independently of the Government and to oppose it in adversary litigation." 102 S.Ct. at 450 n.8 (emphasis supplied).

426 So.2d at 533.

26. This premium on independence is given voice through the Florida constitutional requirement that public defenders be elected

by the citizens of the state, not appointed and confirmed by Government officials. Art. V, § 18, Fla. Const. The election of public defenders serves to prevent the inherent conflict that results when an attorney charged with vigorously defending an indigent person against the state in a criminal prosecution is nonetheless subject every four years to the approval of that very government through the actions of the Governor and Senate.

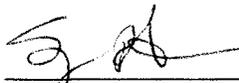
27. To be sure, where existing section 18 public defenders have a conflict of interest in representing a criminal defendant, some other person or entity must be appointed to represent that individual. That person, however, must be able to maintain the same level of independence the Constitution requires of public defenders. Prior to the enactment of The Act, such conflict attorneys were appointed by the independent judiciary so that they would be insulated from political considerations in the representation of their clients.<sup>2</sup>

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<sup>2</sup>Unlike the Executive Branch, the Judiciary has the inherent power to appoint attorneys to represent persons charged with a crime to "ensure the adequate representation of the criminally accused." See *Makemson v. Martin County*, 491 So. 2d 1109, 1112 (Fla. 1986). See also *State v. Ford*, 626 So. 2d 1338, 1345 (Fla. 1993) ("All courts in Florida possess the inherent powers to do all things that are reasonable and necessary for the administration of justice within the scope of their jurisdiction, subject to valid existing laws and constitutional provisions.") (quoting Roger A. Silver, *The Inherent Power of the Florida Courts*, 39 U.Miami L.Rev. 257, 263 (1985)); *State ex rel. Harris v. McCauley*, 297 So. 2d 825, 829 (Fla. 1974) (circuit court judge was not constrained by constitutional electoral requirements in selecting attorney to temporarily fill position of state attorney because it possessed the inherent power to do so).

28. The Act, by largely eliminating the role of private, court-appointed attorneys for criminal conflict cases<sup>3</sup> and establishing second-tier public defender offices that are to be directed by appointed officers, wholly undermines the independence this Court has deemed critical to the preservation of an indigent defendant's Sixth Amendment right to counsel. If the OCCRCs are to be the chosen vehicle for handling the large majority of criminal conflict cases in Florida, they must be directed by elected officials.

Respectfully submitted,



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<sup>3</sup>The Act amends s 27.5303(2), Fla. Stat., to provide that the Office of Criminal Conflict and Civil Regional Counsel (OCCRC) shall be appointed in the first instance if the public defender has a conflict of interest, and that if the OCCRC has a conflict of interest, private counsel shall be appointed. (App. B at 16)

**CERTIFICATE OF SERVICE**

I certify that a copy of this Petition has been mailed to Governor Charlie Crist, Office of the Governor, State of Florida, The Capitol PL-05, Tallahassee, FL 32399-0001, (850) 488-7146; Ken Pruitt, Senate President, Suite 409, The Capitol, 404 South Monroe Street, Tallahassee, FL 32399-1100, (850) 487-5229; Kurt Browning, Secretary of State, Florida Department of State, R. A. Gray Building, 500 South Bronough Street, Tallahassee, FL 32399-0250, (850) 245-6500; Jeffrey Lewis, P.O. Box 12666, Pensacola, FL 32574-2666; Jackson Flyte, P.O. Box 1598, Bartow, Florida 33831-1598; Joseph George, Jr., 9400 S. Dadeland Blvd. Ph 5, Miami, Florida 33156-2841; Philip Massa, 110 SE 6th St. Fort Lauderdale, Florida 33301-5000; and Jeffrey Dean 2101 Climbing Ivy Dr., Tampa, Florida 33618-1710; and Bill McCollum, Attorney General, The Capitol PL-01, Tallahassee, FL 32399-1050, (850)414-3300, on this the 20<sup>th</sup> day of September, 2007.

**CERTIFICATE OF FONT SIZE**

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).

  
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Sonya Rudenstine  
Attorney for Petitioner