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Charles J. Crist v. Florida Association of Criminal Defense Lawyers, Inc.

SC08-2

>> ALL RISE.

O YE, O YE, O YE.

THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL THOSE HAVING BUSINESS
BEFORE THIS COURT, DRAW NIGH,
GIVE ATTENTION, AND YE SHALL BE
HEARD.

GOD SAVE THE UNITED STATES, THE
GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.

>> GOOD MORNING.

GOOD MORNING.

GOOD MORNING.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING, FRIENDS.

WELCOME TO THE FLORIDA SUPREME
COURT AND THE ORAL ARGUMENT
CALENDAR FOR WEDNESDAY,
FEBRUARY 27th.

THE CASE ON THE CALENDAR THIS
MORNING IS THE HONORABLE
CHARLIE CRIST AGAINST THE
FLORIDA ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS.

>> MAY IT PLEASE THE COURT,
LOUIS HUBENER FROM THE OFFICE
OF THE ATTORNEY GENERAL
REPRESENTING THE APPELLANTS IN
THIS CASE.

CHAPTER 2007-62 LAWS OF FLORIDA
CREATES FIVE OFFICES OF
CRIMINAL CONFLICT AND CIVIL
REGIONAL COUNSELS, EACH OF
WHICH IS HEADED BY AN APPOINTED
COUNCIL.

IT IS IMPORTANT TO THIS CASE TO
UNDERSTAND EXACTLY WHAT THE
DUTIES OF THESE OFFICES ARE.

>> CAN I ASK YOU AN INITIAL
QUESTION?

IN LOOKING OVER ALL THE
MATERIALS, THERE WAS NEVER AN
AS APPLIED KIND OF

CONSTITUTIONAL CHALLENGE ON THE BASIS OF ANY OF THESE INDIVIDUALS NOT BEING LAWYERS IN FLORIDA, WAS THERE?

>> NO.

>> OKAY.

>> AND I THINK THAT JUST SO WE CAN GET TO THE, THE CORE OF THE ISSUE HERE, BECAUSE WE HAD TRANSFERRED THIS PETITION BACK, I THINK WE'RE FAMILIAR WITH THE MANY OF THE DUTIES ARE CIVIL, THEY'VE TAKEN OVER FOR WHAT THE PRIVATE REGISTRY PUBLIC DEFENDERS OR THE PRIVATE COUNSEL WERE DOING, SO THEY'RE HANDLING CONFLICTS IN THE CRIMINAL CASE, AND IT SEEMS LIKE A PRETTY RATIONAL SYSTEM, SO WHAT WE -- AND THERE'S NO ATTACK ON THAT AGAIN.

NOT ONLY AREN'T THEY QUALIFIED, BUT THAT SOMEHOW THE -- THE REPRESENTATION ISN'T BEING, GOING TO BE COMPETENTLY DELIVERED, SO LET'S GET JUST TO WHERE THE JUDGE BELOW ESSENTIALLY SAID THIS IS, THE LEGISLATURE CANNOT DO THIS BECAUSE THEY HAVE ESSENTIALLY CREATED ANOTHER OFFICE OF PUBLIC DEFENDER, AND THERE CAN ONLY, AND THEY DIDN'T PROVIDE FOR ELECTIONS, SO IF YOU COULD JUST ADDRESS THAT -- WHERE, WHERE DID THE JUDGE GO WRONG? WHERE IS THIS ARGUMENT FLAWED?

>> THAT'S EXACTLY WHERE I WAS GOING TO START.

THE TRIAL COURT HELD THAT THE REGIONAL COUNSEL OR PUBLIC DEFENDERS, BECAUSE THE LEGISLATURE IN ONE PROVISION OF THE ACT PROVIDED THAT THEY BE FUNDED AS SUCH PURSUANT TO ARTICLE V SECTION 14, AND THEREFORE, MUST COMPLY WITH THE, THE ELECTION AND RESIDENCY REQUIREMENTS OF ARTICLE V SECTION 14 PERTAINING TO PUBLIC DEFENDERS, BUT IT'S IMPORTANT, AND THE REASON I STARTED OUT WITH WHAT THEY DO IS, IS THIS, BECAUSE THAT FUNDING PROVISION

DOES NOT MAKE THE REGIONAL
COUNSEL PUBLIC DEFENDERS.
IT IS ONLY A FUNDING MECHANISM.
YOU HAVE TO LOOK AT WHAT THE
REGIONAL COUNCIL DO TO
DETERMINE WHETHER THEY ARE
PUBLIC DEFENDERS OR NOT.
>> ISN'T THE FLAW IN ALL OF
THIS IS THAT THE IF THE
LEGISLATURE HAD SET OUT TO
CREATE ANOTHER OFFICE OF PUBLIC
DEFENDERS, SAY THEY WERE
UNHAPPY WITH WHAT PUBLIC
DEFENDERS WERE DOING AND THEY
CREATED ANOTHER OFFICE, SET
THEM UP, GAVE THEM
RESPONSIBILITIES, WOULDN'T THAT
ALSO VIOLATE THE CONSTITUTION
BECAUSE THERE CAN ONLY BE --
WAS THAT ARGUMENT MADE TO THE
TRIAL JUDGE THAT YOU REALLY
COULDN'T HAVE, YOU COULDN'T
HAVE SET THIS UP AND HAD THEM
ELECTED AND CALLED THEM, AND
THEM BE PUBLIC DEFENDERS
BECAUSE THAT WOULD -- THAT
WOULD EXPRESSLY VIOLATE THE,
THE CONSTITUTION?

>> WELL, I THINK WE HAVE MADE
THAT ARGUMENT ALL ALONG THAT
THEY ARE NOT PUBLIC DEFENDERS,
SO, YOU KNOW, THEY, THEN THEY
CANNOT BE TWO PUBLIC DEFENDERS
UNDER THE CONSTITUTION.
BUT BEFORE YOU GET TO THAT
QUESTION, YOU HAVE TO DECIDE
WHETHER THEY QUALIFY IN ANY
RESPECT AS PUBLIC DEFENDERS,
AND THEY DON'T.

>> BUT THE CONSTITUTION DOESN'T
EVEN SET OUT THEIR
RESPONSIBILITIES.

>> NO, IT DOES NOT.

>> TO SAY THAT THEY'RE A PUBLIC
DEFENDER, YOU HAVE TO GO TO
WHAT THE LEGISLATURE HAS GIVEN
THE DUTIES OF THE PUBLIC
DEFENDER.

I MEAN, IS THAT WHAT YOU'RE
SAYING?

WHICH IS KIND OF -- I DON'T
KNOW ANOTHER CASE OFFHAND WHERE
YOU'D HAVE TO GO AND SAY, WE'RE
NOT EVEN GOING TO LOOK AT THE

CONSTITUTIONAL PROVISION.
WE'RE NOW GOING TO LOOK AT ALL
THE STATUTES TO SEE IF THE, IF
THEY DUPLICATED
RESPONSIBILITIES, AND THAT
WOULD MAKE THEM A PUBLIC
DEFENDER OR NOT.
IS THAT YOUR ARGUMENT IS WHAT
WE HAVE TO DO?

>> WELL, OUR, OUR ARGUMENT IS,
I THINK THERE MUST BE SOME CORE
RESPONSIBILITIES THAT ONE COULD
SAY BELONG TO THE PUBLIC
DEFENDER, ALTHOUGH THE
CONSTITUTION SAYS THAT THE
PUBLIC DEFENDER'S DUTIES ARE
ASSIGNED BY LAW, AND THEY ARE
UNDER 27.51 OF THE FLORIDA
STATUTES.

THERE ARE DUTIES ASSIGNED TO
PUBLIC DEFENDER.

THE REGIONAL COUNSEL DO NOT
PERFORM ANY OF THOSE DUTIES.
WHAT THEY DO IS AS FAR AS THE
PUBLIC DEFENDER IS CONCERNED,
WHEN THERE IS A CONFLICT OF
INTEREST IN A CRIMINAL CASE
THAT THE PUBLIC DEFENDER CANNOT
HANDLE, THEN THAT GOES, THAT
CASE GOES TO THE REGIONAL
COUNSEL.

>> LET ME ASK THE QUESTION --
>> [INAUDIBLE]

>> LET ME ASK THE SAME QUESTION
REALLY BUT IN A DIFFERENT WAY
AND THAT IS, WHAT IS THE
DIFFERENCE BETWEEN WHAT THE
LAWYERS THAT WORK IN THESE
OFFICES WILL DO OR DO AND WHAT
THE PUBLIC DEFENDER LAWYERS DO?
IS THERE ANY DIFFERENCE BETWEEN
WHAT THE LAWYERS THAT WORK IN
THESE OFFICES DO AND THE
LAWYERS THAT WORK IN PUBLIC
DEFENDER OFFICES DO?

>> THEY BOTH REPRESENT INDIGENT
PERSONS WHO ARE ENTITLED TO
COUNSEL, EITHER
CONSTITUTIONALLY OR UNDER
FLORIDA LAW.

>> I MEAN, THERE IS ESSENTIALLY
NO DIFFERENCE.

>> AND THAT'S --

>> -- IN WHAT THESE LAWYERS

WILL DO OR DO.

>> AND THAT'S IF THERE IS NO DIFFERENCE BUT WHERE THE DIFFERENCE LIES IS THAT THE LEGISLATURE HAS ASSIGNED DUTIES TO THE PUBLIC DEFENDER UNDER SECTION 27.51, AND THE REGIONAL COUNSEL DO NOT SHARE IN THOSE DUTIES.

THEY HAVE NO AFFECT ON THE PUBLIC DEFENDER'S OFFICE AT ALL.

>> SO IT IS YOUR POSITION THAT THIS IS JUST AN ORGANIZATIONAL STATUTE REALLY?

THAT IS, THAT THE PREVIOUS INDIVIDUAL LAWYERS WHO HAVE BEEN APPOINTED AS CONFLICT COUNCIL, THAT THIS IS SIMPLY A WAY THAT THE LEGISLATURE HAS APPROACHED IT AS AN ORGANIZATIONAL TOOL?

>> THE REGIONAL COUNSEL --

>> PERHAPS WITH OBVIOUSLY, WITH, WITH COSTS IN MIND, WHATEVER, BUT IT'S JUST A, IT'S JUST A REORGANIZATION OF THE SYSTEM OF CONFLICT COUNSEL, IS THAT --

>> -- THE PREVIOUS PRIVATE COUNCIL WHO HANDLED PRIVATE CASES.

THEY CAN'T SUPPLANT --

>> THIS ORGANIZATION IN FACT HAS COME ABOUT BY REASON OF THE ARTICLE V REORGANIZATION OR WHAT WE CALL AMENDMENT 7 HAVING TO DO WITH THE FUNDING FOR THIS TO PAY THESE LAWYERS.

THEY'RE A CONFLICT COUNSEL BECAUSE PRIOR TO THE PASSAGE OF THAT AMENDMENT, THE FUNDING FOR CONFLICT COUNSEL MAINLY CAME FROM THE COUNTIES, ISN'T THAT CORRECT?

>> YES.

BEFORE --

>> AND UNDER, UNDER THE NEWLY ADOPTED CONSTITUTIONAL PROVISION, IT NOW COMES FROM THE STATE.

>> ALMOST ENTIRELY FROM THE STATE.

THE, THE COUNTIES AS FAR AS

STATE ATTORNEYS DO SUPPLY A, SOME DEGREE OF FUNDING THAT IS ESSENTIALLY FOR OVERHEAD MATTERS, THAT IS THE ONLY BASIS THEY HAVE FOR SAYING THAT REGIONAL COUNSEL ARE PUBLIC DEFENDERS, BECAUSE THEY ARE ENTITLED TO A LITTLE BIT OF, OF COUNTY FUNDING.

YOU TAKE AWAY --

>> THAT ISSUE, IS SOMETHING MAYBE THE COUNTIES MAY AT SOME POINT HAVE PROBLEMS WITH AS TO WHETHER THEY REALLY ARE GOING TO BE REQUIRED TO DO THIS.

BUT THAT'S, THAT HAS NOT BEEN AN ISSUE NOW ADDRESSED HERE.

>> WELL, IT HAS NOT BEEN AN ISSUE, BUT I, THAT HAS BEEN, THE WHOLE, THEIR CASE.

THE LEGISLATURE PROVIDED THEY SHOULD BE PROVIDED AS PUBLIC DEFENDERS, THEREFORE THEY ARE PUBLIC DEFENDERS.

THAT DOES NOT BEGIN TO ANSWER THE QUESTION OF WHETHER THEY ARE IN FACT PUBLIC DEFENDERS.

THIS, THIS COURT'S CASE LAW HAS SAID THAT THE LEGAL CHARACTER OF ANY ENTITY DEPENDS ON WHAT THAT ENTITY IS OR DOES NOT ON HOW IT IS CLASSIFIED OR HOW IT MAY BE CALLED.

>> WELL, DISTINGUISH BUSH v. HOLMES, THE ARGUMENT IN, BY THE, AND ACCEPTED BY THE TRIAL COURT BELOW WAS THE EXPRESSIO UNIUS PROVISION OR BUSH v. HOLMES.

CAN YOU ADDRESS THAT ARGUMENT?

>> RIGHT, THIS, I DON'T THINK BUSH v. HOLMES HAS ANY BEARING ON THIS CASE WHATSOEVER BECAUSE IN THAT CASE, YOU HAD A THE OPPORTUNITY SCHOLARSHIPS WHICH WENT TO PUBLIC SCHOOL STUDENTS, AND, AND THIS COURT FOUND THAT THE, THE LEGISLATURE HAD SET UP AN ALTERNATIVE SCHOOL SYSTEM IN CONFLICT WITH THE REQUIREMENT THAT THERE BE ONE PUBLIC UNIFORM SCHOOL SYSTEM.

THIS IS, THE REGIONAL COUNCIL ARE NOT AN ALTERNATIVE SYSTEM

THAT COMPETES WITH THE PUBLIC DEFENDERS AS THE OPPORTUNITY SCHOLARSHIPS CREATED A SYSTEM THAT COMPETED WITH PUBLIC SCHOOLS.

SO --

>> IF WE HAVE HAD --

>> THERE'S NO SIMILARITY THERE AT ALL.

THEY CITE, AND THE LOWER COURT RELIED ON BUSH v. HOLMES SIMPLY FOR THE PROPOSITION THAT IF YOU HAD, OR IF THE REGIONAL COUNSEL WERE PUBLIC DEFENDERS, THEN THEY HAD TO COMPLY WITH THE ELECTION REQUIREMENTS.

THAT DOESN'T ANSWER THE QUESTION OF ARE THEY PUBLIC DEFENDERS AND THAT'S WHAT THE TRIAL COURT AVOIDED.

>> SINCE WE HAVE HAD THE PUBLIC DEFENDER SYSTEM, WE HAVE ALMOST ESSENTIALLY SINCE WE'VE HAD THEM, WE'VE ALWAYS HAD SOME KIND OF SYSTEM, WHERE WHEN THE PUBLIC DEFENDER HAD TO CONFLICT OFF OF A CASE, THAT THAT CASE WAS SENT TO SOME OTHER LAWYER, CORRECT?

>> CORRECT.

>> AND SO HOW, EXCEPT FOR AN ORGANIZATIONAL STRUCTURE, IS THERE ANY DIFFERENCE IN THESE REGIONAL COUNSEL OFFICES AND ACTUALLY GIVING A CASE TO A PRIVATE ATTORNEY?

OTHER THAN THE, THE STRUCTURE BECAUSE NOW WE HAVE, THE HEAD OF AN OFFICE WITH ASSISTANCE BASICALLY.

>> AHEAD OF THE STRUCTURE, THERE ISN'T BASICALLY, AND IF IT TURNS OUT THET THE REGIONAL COUNSEL IS REFERRED SOME CASES, AND HE OR SHE FINDS THAT ARE CONFLICTS WITH THOSE CASES, THEN THE, ONE, ONE OF THE CASES HAS GOT TO GO TO PRIVATE COUNSEL, SO THE SYSTEM IS ESSENTIALLY THE SAME BUT WHAT IS, WHAT HAS BEEN SUPPLANTED IS THE ROLE THAT PRIVATE COUNSEL PREVIOUSLY PLAYED, NOT THE PUBLIC DEFENDER.

>> SO WE REALLY, I MEAN, I, I'M TRYING VERY HARD TO TRY TO GRASP AN ARGUMENT THAT'S BEING MADE ABOUT THESE PEOPLE BEING PUBLIC DEFENDERS, AND AS I SEE THEM, THEY REALLY STAND IN THE SAME ROLE AS THE PRIVATE ATTORNEYS DID BUT NOW IT'S MORE OF AN ORGANIZED SYSTEM AS OPPOSED TO JUST HAVING A REGISTRY WHERE PEOPLE ARE APPOINTED, INDIVIDUALS ARE APPOINTED.

NOW YOU APPOINT A PARTICULAR OFFICE.

>> AS FAR AS OUR REVIEW, WAS THERE ANYTHING THAT OCCURRED AT THE TRIAL COURT LEVEL IN THE FORM OF TAKING EVIDENCE OR ANYTHING THAT THE HEARING IS NOT TRANSCRIBED, SO ESSENTIALLY I FEEL LIKE WE'VE AGAIN JUST SORT OF GOING OVER THIS IS JUST WHAT WE LOOK AT THE CONSTITUTION, WE LOOK AT THE STATUTES, AND THAT'S ABOUT THE END OF IT.

>> THESE ARE LEGAL QUESTIONS. THERE WAS, THERE WAS NO EVIDENCE.

THE ARGUMENT AT THE TRIAL COURT PRETTY MUCH TRACKED WHAT WAS PRESENTED IN THE PETITION AND THE RESPONSE.

THE TRIAL COURT WAS NOT ASKED TO CONSIDER WHETHER THE FUNDING ITSELF WAS CONSTITUTIONAL.

IF THE COURT FOUND THAT THE REGIONAL COUNSEL WERE NOT PUBLIC DEFENDERS AND THIS HAS BEEN, THIS HAS BEEN THE, THE TENSION IN THE CASE.

THERE ARE, I'LL SAY SEEMINGLY CONTRADICTORY PARTS OF THE STATUTE.

THOSE THAT GIVE THE REGIONAL COUNSEL DUTIES THAT THE PUBLIC DEFENDER CANNOT PERFORM, AND THEREFORE DO NOT MAKE THEM PUBLIC DEFENDERS, AND THE ONE PROVISION SAYING THAT THEY SHALL BE FUNDED AS PUBLIC DEFENDERS.

>> WELL, --

>> THERE'S A TENSION THERE --
>> THAT GOES TO THE SPACE TO
THE PROVIDED BY THE COUNTIES
AND TECHNOLOGY.

>> RIGHT, RIGHT.

>> AND THOSE KINDS OF THINGS.
ISN'T THAT WHAT THAT'S REALLY
DIRECTED TO AS OPPOSED TO
WHERE THEY ARE GOING TO HANG
THEIR HAT AND CONDUCT THEIR
BUSINESS?

>> RIGHT.

BUT THE TRIAL COURT USED THAT
TO REACH THE CONCLUSION THAT
THEY WERE PUBLIC DEFENDERS, AND
THAT'S ALL THE TRIAL COURT
RELIED ON.

THERE ARE A COUPLE OF OTHER
ISSUES IN THE CASE.

THEY, THEY DO HAVE A, SOMETHING
OF A FALLBACK ARGUMENT THAT AS
I UNDERSTAND IT, IS BASED
ARTICLE V SECTION 18 PERTAINING
TO PUBLIC DEFENDERS, WHAT THEY
CALL THE UNDERLYING POLICY AND
THEY --, THE ASSOCIATION
SUGGESTED THAT EVEN IF REGIONAL
COUNSEL ARE NOT PUBLIC
DEFENDERS PER SE, THE POLICY
UNDERLYING THE PUBLIC DEFENDER
PROVISION OF THE CONSTITUTION
REQUIRES THAT THEY BE ELECTED.
IF THAT PROVISION DOESN'T APPLY
TO REGIONAL COUNSEL, AND IT
CLEARLY DOESN'T, THEN THE
UNDERLYING POLICY DOESN'T.

>> I, I MEAN I FIND THAT
ARGUMENT TO BE REALLY, IF, WELL
HERE IF IT'S MADE TODAY, BUT
THERE IS, YOU'VE GOT PUBLIC
DEFENDERS WHO WERE DEPENDENT ON
THE LEGISLATURE FOR FUNDING,
ELECTED SYSTEM COULD MAKE THEM
MORE BEHOLDEN TO PEOPLE, AND SO
THERE COULD BE AN ARGUMENT MADE
THAT IN A APPOINTED SYSTEM IN
FACT MORE LIKELY TO BE
INDEPENDENT.

SO UNLESS THERE WAS -- THAT'S
WHY I WANT TO KNOW.

UNLESS THERE WAS SOMETHING ELSE
THAT WAS OFFERED AT THE TRIAL
COURT ON THIS, I THINK THAT
THE, THE QUESTION OF WHETHER

SOMEONE, THEY COULD SAY JUDGES THAT ARE ELECTED, ARE THEY MORE INDEPENDENT THAN JUDGES --

>> I AGREE.

YOU COULD DEBATE THAT QUESTION INFINITEM.

>> IS IT CORRECT THAT THERE WAS NO EVIDENCE TAKEN AT THE HEARING?

>> THAT'S CORRECT, YOUR HONOR. THE ONLY ISSUE LEFT IS THE SEVERABILITY QUESTION, AND I'M NOT GOING TO DWELL ON THAT. I THINK IF THE COURT FOR SOME REASON WERE TO FIND THAT THE REGIONAL COUNSEL WERE, HAD TO BE ELECTED IN ORDER TO PERFORM THEIR CRIMINAL CASE ROLE, AND LET ME PAUSE TO NOTE THAT THERE IS NO DISPUTE AS I UNDERSTAND IT THAT, THAT, THAT THE REGIONAL COUNSEL AS THEY ARE NOW STRUCTURED, CAN PROVIDE REPRESENTATION OF CIVIL CASES, AND WHAT WE ARE TALKING ABOUT REALLY IS THE POSSIBILITY THAT THE COURT MIGHT FIND THAT THEY ARE, THAT THEY CANNOT HANDLE CRIMINAL CONFLICT CASES UNLESS THEY ARE ELECTED.

ARGUMENT IS SIMPLE.

IF THAT IS THE CONCLUSION OF THE COURT, THEN YOU CAN SIMPLY SEVER THE, THE, THE CRIMINAL RESPONSIBILITIES.

AND I DON'T THINK THERE'S ANY QUESTION BUT THAT YOU HAVE A SYSTEM REMAINING THAT IS LARGELY IN TACT THAT COULD PROVIDE CIVIL REPRESENTATION, AND THAT MEETS ALL THE CRITERIA OF THE TEST SET FORTH IN RAY v. WORTHEM AND SMITH v. DEPARTMENT OF INSURANCE.

>> YOU'RE WELL INTO YOUR REBUTTAL.

IF YOU WANT TO SAVE SOME TIME FOR REBUTTAL JUST TO ALERT YOU TO, USE THE TIME AS YOU WISH AND REVERSE THE TRIAL COURT'S JUDGMENT.

>> MS. ^RUDENSTINE.

>> SONYA RUDENSTINE.

MAY IT PLEASE THE COURT?

>> MY MAJOR CONCERN WITH YOUR ARGUMENT IS THAT IF YOU ARE CORRECT AND THIS STATUTE IS UNCONSTITUTIONAL, THEN YOU ALSO SEEM TO BE MAKING A VERY ARGUMENT FOR SAYING THAT THE SYSTEM OF REGISTRY COUNSEL IS UNCONSTITUTIONAL AS WELL BECAUSE THIS NEW OFFICE IS PERFORMING THE PRECISE DUTIES THAT REGISTRY WERE PERFORMING BEFORE SO IF THAT'S A PUBLIC DEFENDER, SO WHY AREN'T REGISTRY COUNSEL ESSENTIALLY PUBLIC DEFENDERS AS WELL?

>> WELL, TWO REASONS, YOUR HONOR.

THEY HAVEN'T DEFINED REGISTRY COUNSEL AS PUBLIC DEFENDERS AND I THINK IT'S NOT A SMALL POINT THAT 29.008 AND 29.001

SPECIFICALLY SAY THESE OFFICES AND THE REGIONAL COUNSEL ARE DEFINED AS PUBLIC DEFENDERS.

>> THAT'S FOR PURPOSES OF FUNDING, THOUGH, ISN'T IT? ISN'T THAT THE SOLE PURPOSE FOR THAT DEFINITION?

>> THEY DON'T HAVE ANY CASE NOR CAN I FIND ONE THAT SOMETHING CAN BE DEFINED AS A SPECIFIC TYPE OF ENTITY FOR FUNDING PURPOSES UNDER ONE PROVISION OF THE CONSTITUTION AND NOT BE BEHOLDEN TO THE REQUIREMENTS OF THAT CONSTITUTIONAL OFFICE FOR THE PURPOSES OF, OF ANOTHER PROVISION OF THE CONSTITUTION. THE LEGISLATURE HAS DEFINED THE OFFICES AS PUBLIC DEFENDERS. THAT GETS INTENT.

IT'S VERY CLEAR FROM, FROM THE LANGUAGE OF THE STATUTE.

IT DOESN'T MATTER WHETHER IF IT'S FOR PURPOSES OF FUNDING OR WHY THEY DID IT BUT --

>> SO IF THE LEGISLATURE SAID THAT WE ARE GOING TO DEFINE PUBLIC DEFENDER TO INCLUDE A REGISTRY COUNSEL IN CONFLICT CASES, THEN WE WOULD HAVE TO FIND THAT DESPITE THE FACT THAT THEY'RE PRIVATE COUNSEL, DESPITE THE FACT THAT THEY'RE

NOT ELECTED, DESPITE THE FACT THAT THEY'RE NOT BEHOLDEN TO THE STATE FOR ANYTHING, OTHER THAN THE FACT THAT THEY ARE REPRESENTING DEFENDANTS IN CONFLICT CASES, PURELY BECAUSE ANOTHER SECTION OF THE FLORIDA STATUTES DEFINES PUBLIC DEFENDER TO INCLUDE REGISTRY COUNSEL, THEN FOR ALL PURPOSES, WE MUST CONSIDER THEM AS PUBLIC DEFENDERS.

>> YEAH, I MEAN, I THINK AS LONG AS, AS WE CONCLUDE THAT THAT DEFINITION FULFILLS THE INTENT OF THE LEGISLATURE, THEN, YES, THAT, THAT WOULD BE THE CASE.

AND I THINK IT'S IMPORTANT TO LOOK AT THE PURPOSE BEHIND THE COUNTY FUNDING PROVISION WHICH IS PRESUMABLY TO LIMIT THE EXTEND TO WHICH THAT STATE CAN PLACE THE BURDEN OF FUNDING INDIGENT DEFENSE ON THE SHOULDERS OF THE COUNTY, AND THAT WAS SPECIFICALLY PASSED DURING THE SHIFT TO MOVE FUNDING FOR INDIGENT DEFENSE TO THE STATE.

>> BUT YOU DIDN'T TRY TO SEEK TO GET THE, I MEAN, THE PROBLEM I HAVE IS THAT AS I INDICATED, THERE, THE COUNTIES MAY HAVE A GOOD ARGUMENT AT SOME POINT THAT THEY ARE NOT REQUIRED TO FUND THIS SYSTEM.

AND THEY MAY SAY THAT THAT IS UNCONSTITUTIONAL WHAT THEY'RE TRYING TO DO UNDER, YOU KNOW, ARTICLE V, THE IDEA OF WHO'S SUPPOSED TO FUND FOR WHAT SYSTEM.

OBVIOUSLY AT LEAST UNDER THE PRIVATE REGISTRY, THERE WEREN'T OFFICES, SO THE COUNTY DIDN'T HAVE TO BEAR IT, BUT THAT'S NOT BEFORE US HERE.

>> NO, YOUR HONOR. THAT'S NOT BEFORE US BUT WHAT IS BEFORE IS US HOW THE LEGISLATURE HAS DEFINED THESE OFFICES. I THINK YOU CAN LOOK NOT ONLY

TO THE PLAIN LANGUAGE OF THE STATUTE WHICH IS QUITE FRANKLY WHERE THIS COURT HAS TO START AND THEY HAVE SPECIFICALLY SAID I DON'T KNOW HOW THEY COULD'VE MADE IT ANY CLEARER.

THESE OFFICES ARE DEFINED.

>> LET'S GO BACK.

DID YOU SAY THE INTENT OF THE LEGISLATURE IS APPROPRIATE? DO YOU AGREE THAT THIS OFFICE DOES NOT PERFORM ANY WORK THAT THE PUBLIC DEFENDER COULD OTHERWISE PERFORM BECAUSE OF THE CONFLICT?

>> YES.

TECHNICALLY THAT'S RIGHT. OF COURSE, THEY, THEY TAKE THE CASES ONLY --

>> SO IF THE PUBLIC DEFENDER IS UNABLE TO PERFORM ANY OF THE SERVICES THIS OFFICE PERFORMS, IS IT YOUR POSITION THAT THE STATE IS THEREBY LIMITED TO FUNDING PRIVATE CONFLICT COUNSEL?

>> NO, YOUR HONOR.

I THINK THEY CERTAINLY COULD'VE SET UP THIS STRUCTURE WITHIN THE BOUNDARIES OF ARTICLE V PROVIDED THAT THE DIRECTOR OF THE OFFICES WAS INDEPENDENT ON SOME LEVEL FROM THE LEGISLATURE, AND OBVIOUSLY, PROVIDED THEY DIDN'T DEFINE THEM AS PUBLIC DEFENDER OFFICES.

>> WELL, LET'S GO FURTHER. IT SEEMS LIKE FROM YOUR ARGUMENT THE ONLY THING THE LEGISLATURE HAS TO DO IS REMOVE THE OFFICE FROM THE DEFINITION OF PUBLIC DEFENDER AND THEN EVERYTHING IS COPESETIC.

>> WELL, I THINK AS A, PLACE TO START, THAT'S, THAT'S, THAT'S TRUE, ALTHOUGH OUR PUBLIC POLICY ARGUMENT, YOU KNOW, WHICH AS THE COURT HAS INDICATED BELOW THAT IT WOULD NOT ENTERTAIN IS, IS A STRONG ONE AS WELL, AND I THINK SECTION 18 IS GREAT EVIDENCE OF PUBLIC POLICY IN FLORIDA, WHICH

IS OUR PUBLIC DEFENDERS AND
THESE OFFICES AS JUSTICE
ANSTEAD POINTED OUT DID EXACTLY
WHAT PUBLIC DEFENDERS DO,
PUBLIC DEFENDERS HANDLE
CRIMINAL CONFLICT CASES AS WELL
AS CIVIL CASES AS WELL AS
THESE --

>> YOU ARE NOT ARGUING THESE
CONFLICT CASES SHOULD BE KEPT
WITHIN THE PUBLIC DEFENDERS
OFFICE, ARE YOU?

>> NO, NO, YOUR HONOR.
THEY HAVE TO BE SEPARATE
BECAUSE THE CONFLICT.
BUT THAT DOESN'T MEAN THEY DO
SOMETHING DIFFERENT.
IT JUST MEANS THEY TAKE A
DIFFERENT SET OF CASES.
WHEN THERE'S THREE DEFENDANTS,
THE PUBLIC DEFENDER TAKES THE
FIRST CASE AND THIS OFFICE
WOULD TAKE THE SECOND AND THE
PRIVATE COUNSEL WOULD TAKE THE
THIRD.

>> WELL, LET ME JUST ASK YOU.
ARE YOU SAYING THEN IF THE
LEGISLATURE HAD DONE EVERYTHING
AS THEY DID IT, BUT PROVIDED
THAT THE PERSON WHO'S THE HEAD
OF THE OFFICE IS TO BE ELECTED,
THAT THAT WOULD BE
CONSTITUTIONAL?

>> I THINK THAT'S ALSO TRICKY
BECAUSE OF SECTION 18, WHICH
REQUIRES THAT THERE BE ONLY ONE
PUBLER DEFENDER, BUT THAT'S
JUST YET ANOTHER REASON WHY
THESE OFFICES ARE IN VIOLATION
OF SECTION 18.

>> WELL, THAT'S WHY -- I
THOUGHT IN ANSWER TO WHEN
JUSTICE CANTERO'S QUESTIONS
THAT YOU WERE SAYING WELL IT'S
JUST REALLY THE PROBLEMS WITH
THE TOP PERSON.

>> YES, AND IF I COULD GET TO
THE END OF THAT, WHAT I WAS
SUGGESTING WAS THAT, THAT THE
TOP PERSON COULD BE APPOINTED
BY THE INDEPENDENT JUDICIARY AS
IS DONE IN THE FEDERAL SYSTEM,
THE FEDERAL DEFENDER IS
APPOINTED BY THE CIRCUIT, AND

IN ALL BUT 13 OF THE STATES,
THERE IS AN INDEPENDENT
NONLEGISLATIVELY OR, OR --
>> WHERE IS THE, THE
CONSTITUTIONAL REQUIREMENT
UNDER THE FLORIDA CONSTITUTION
THAT THAT BE DONE AS OPPOSED TO
BEING A POLICY DECISION THAT'S
MADE, YOU KNOW, SOMEWHERE ELSE.

>> WELL, I THINK, THAT THE,
THERE IS THE SIXTH AMENDMENT
RIGHT TO CONFLICT FREE COUNSEL
AND THE STATE v. BREMER DID
INDICATE IN A VERY STRONG WAY
THAT IN PART OF THAT THAT
COUNSEL BE IN A VERY STRONG
ZEALOUS REPRESENTATION
INDEPENDENTLY FROM THE STATE
THAT IT IS CHARGED WITH
DEFENDING THE CLIENT AGAINST,
SO THAT'S THE, THAT WOULD BE
THE, THE BASIS OF THE SIXTH
AMENDMENT RIGHT TO COUNSEL.
THAT CLAIM IS NOT BEFORE THIS
COURT IN ANY PARTICULAR CASE.

>> IS THERE A NUMBER OF STATES
THAT HAVE THEIR PUBLIC
DEFENDERS APPOINTED BY THE
GOVERNOR, APPOINTED BY THE
LEGISLATURES, HAVE, IN ANY OF
THOSE STATES, HAS IT BEEN
DECLARED THAT THESE PEOPLE ARE,
ARE NOT INDEPENDENT AND
THEREFORE YOUR ARGUMENT, THIS
WHOLE PUBLIC POLICY ARGUMENT
THAT YOU'RE MAKING ABOUT THE,
THE SIXTH AMENDMENT RIGHT TO
COUNSEL, HAS THAT BEEN FOUND IN
ANY OF THESE STATES?

>> YOUR HONOR, ACTUALLY, I
DON'T KNOW THE ANSWER TO THAT,
BUT IT'S NOT A HUGE NUMBER.
ALTHOUGH, ALTHOUGH APPELLANTS
CLAIM THAT THERE ARE ONLY TWO
STATES, TENNESSEE AND FLORIDA
IN WHICH COUNSEL ARE ACTUALLY
ELECTED BY THE PEOPLE, WHICH IS
TRUE,.

>> NEBRASKA.

>> IN ALL BUT 13 OF THE STATES,
COUNSEL ARE APPOINTED BY SOME
INDEPENDENT BODY NOT THE
LEGISLATURE AND NOT THE
GOVERNOR.

SO --

>> BUT IN THOSE STATES WHERE IT HAS BEEN, HAS THERE BEEN ANY FINDING THAT THAT PARTICULAR SYSTEM IS UNCONSTITUTIONAL?

>> I DON'T KNOW, YOUR HONOR, BUT IN FLORIDA, WE HAVE SECTION 18 OF THE CONSTITUTION, WHICH EXPLICITLY SAYS OUR PUBLIC DEFENDERS HAVE TO BE ELECTED.

>> SEE, THERE'S WHERE I FELT LIKE THERE WAS A LITTLE, YOU KNOW, THAT'S WHAT I ASKED YOU, I SAID SO THEN ARE YOU SAYING THEY SHOULD BE ELECTED AND YOU GO OH, NO, THEY COULD BE APPOINTED BY THE JUDICIARY.

SO NOW I'M THINKING, WELL, WHERE IS THAT COMING FROM? AND NOW YOU'RE SAYING, WELL IT COMES FROM THE SIXTH AMENDMENT RIGHT TO CONFLICT-FREE COUNSEL BUT THERE IS NOTHING TO BE SAID THAT SOMEBODY THAT IS AT THE APPOINTED BY THE GOVERNOR OR BY THE LEGISLATURE ISN'T GOING TO PERFORM THEIR DUTIES IN A INDEPENDENT MANNER.

OTHERWISE, ALL OF US UP HERE WHO ARE ALL APPOINTED BIDE A GOVERNOR, YOU ARE SAYING WE COULD NOT PERFORM OUR DUTIES IN AN IMPARTIAL WAY BECAUSE WE'RE APPOINTED BY THE THIRD BRANCH, ANOTHER BRANCH OF GOVERNMENT.

>> WELL, IF I COULD, YOUR HONOR, THERE ARE A COUPLE QUESTION THERE.

THE FIRST IS, YOU'RE ALL INDEPENDENT BECAUSE YOU SERVE -- YOU ARE NOT UP FOR REAPPOINTMENT EVERY FOUR YEARS AND THAT'S THE PROBLEM WITH THIS.

IF SIX MONTHS BEFORE A PUBLIC DEFENDER OR REGIONAL COUNSEL IS UP FOR REAPPOINTMENT, THERE'S A HUGE FUNDING ISSUE AND THEY DON'T BELIEVE THEY CAN, YOU KNOW, THEY CAN REPRESENT THEIR CLIENTS WITH THE FUNDING THAT THEY'VE BEEN GIVEN AND THEY WANT TO WITHDRAW FROM ALL THEIR CASES AND CHALLENGE THE

LEGISLATURE BUT THEY'RE UP FOR REAPPOINTMENT IN SIX MONTHS. THEY FACE A DIFFERENT ISSUE, OBVIOUSLY THAN YOU ALL DO. BUT THIS IS THE ELECTION REQUIREMENT --

>> JUSTICE LEWIS ASKED EARLIER IF THERE IS ANY AS APPLIED CHALLENGE MADE, THAT IS THAT WHETHER --

>> NO, YOUR HONOR.

>> THERE HASN'T BEEN, AND YOU NOW ARE TALKING THEORETICALLY THAT SOMEBODY THAT IS DEPENDENT ON THE LEGISLATURE, SORT OF LIKE SAYING, WELL, ARE THE, IN THE POST-CONVICTION REALM OR THE REGIONAL REGISTRY OFFICES, ARE THEY LESS INDEPENDENT THAN PRIVATE COUNSEL?

AS YOU KNOW, WE'VE SORT OF LOOKED AT IT AND WE SAID THAT'S A BETTER SYSTEM.

>> RIGHT.

>> AND I HAVE TO SAY THAT AS I LOOK AT THIS SYSTEM, I'M HOPEFUL THAT THIS IS GOING TO BE A BETTER SYSTEM FOR DEFENDANTS.

IN ALL DUE RESPECT TO PRIVATE COUNSEL AND THE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, I'M NOT SURE THAT OVER THE YEARS THAT WE COULD SAY THAT THEY'VE JUST BEEN AS A BODY PERFORMING STELLAR CONFLICT -- YOU KNOW, THAT THEY'RE NOT LOOKING TO GET THEIR MONEY, GET IN, AND OUT. I MEAN WE COULD MAKE SOME PRETTY -- SO THE IDEA OF WHAT YOU'RE SAYING REALLY CONCERNS ME BECAUSE WE'RE GETTING AWAY NOW FROM ANY CONSTITUTIONAL BASIS.

>> RIGHT.

WELL, YES, I MEAN, I, CERTAINLY I WOULD LIKE TO JUST STATE FOR THE RECORD THIS, THIS COURT DOESN'T HAVE TO FIND THAT PUBLIC POLICY REQUIRES THAT PUBLIC -- THESE REGIONAL COUNCIL COUNSEL BE ELECTED IN ORDER TO RULE IN OUR FAVOR. I THINK YOU START WITH THE

PLAIN LANGUAGE OF THE STATUTE, WHICH SAYS THESE ARE PUBLIC DEFENDER OFFICES AND AS SUCH, THEY VIOLATE SECTION 18 FOR THREE REASONS: ^THERE'S MORE THAN ONE ONE PUBLIC DEFENDER IN CERTAIN DISTRICTS, THEY ARE NOT IN THEIR CIRCUITS, AND THEY ARE NOT ELECTED.

THE LANGUAGE OF SECTION 18 IS CLEAR REGARDLESS OF WHETHER OR NOT THIS COURT AGREES THAT THAT STANDS FOR A BROADER PUBLIC POLICY --

>> BUT THIS COURT IS, HAS TO GIVE THE CONSTITUTION A REASONABLE INTERPRETATION AND GIVE THE LEGISLATURE THE BENEFIT OF THE DOUBT. THAT THEY ARE ACTING CONSTITUTIONALLY.

AND WHAT I'VE SEEN OVER THE 14 YEARS THAT I'VE BEEN HERE, IS THAT THERE IS A REAL NEED IN THIS STATE TO SOLVE THE ISSUE OF CONFLICT COUNSEL.

AND PARTICULARLY, OCCUR DURING THE 1990s WHEN WE COULDN'T GET CONFLICT COUNSEL IN CAPITAL CASES AND SO MANY CASES.

WERE JUST STOPPED IN THEIR TRACKS BECAUSE THE DEFENDANTS COULD NOT GET CONFLICT COUNSEL. NOW THE FACT -- THE LEGISLATURE HAS TAKEN A VERY CONSTRUCTIVE STEP IN TRYING TO SOLVE THAT PROBLEM.

AND THE CONSTITUTION DOESN'T PROHIBIT THERE BEING A, A CONFLICT RESOLUTION -- RESOLUTION OF CONFLICT COUNSEL.

AND SO I'M, I'M SOMEWHAT CONCERNED THAT WHAT IS GOING ON IS THAT WE'RE LOSING THE FOREST FOR THE TREES IN THAT WE'VE GOT A SOLUTION NOW THAT COMES WITHIN THE BOUNDARIES OF THE CONSTITUTION, AND I'D LIKE TO UNDERSTAND BETTER HOW THERE IS AN ARGUMENT THAT PROVIDES THAT THERE COULD NOT BE BY THE STATE AN ORGANIZATION PROVIDED PROVIDING FOR LAWYERS IN CONFLICT SITUATIONS.

IS, AGAIN, IS THERE SUCH AN ARGUMENT?

>> NO, YOUR HONOR, I THINK THAT WOULD BE FINE.

AGAIN, I THINK IF THE LEGISLATURE CHANGED THE STATUTE IN ANY WAY, SHAPE, AND FORM, THEN WE CAN ARGUE ABOUT WHETHER THAT NEW INCARNATION FITS WITHIN THE BOUNDARIES OF THE CONSTITUTION, BUT YES, I THINK ABSOLUTELY, THEY COULD CREATE A STRUCTURE AND THAT'S NOT A BAD IDEA.

ECONOMIES OF SCALE ENHANCING EXPERTISE, ALL OF THAT.

THE PROBLEM IS AS YOU SAY WE HAVE TO GIVE THE, THE, THE LEGISLATURE THE BENEFIT OF THE DOUBT THAT THEY'VE CREATED SOMETHING THAT'S CONSTITUTIONAL.

I THINK THAT WE'RE IN A LITTLE BIT OF A BOX HERE BECAUSE IT'S UNCONSTITUTIONAL EITHER WAY.

RIGHT, IF YOU SAY THAT THEY ARE PUBLIC DEFENDERS AS THE PLAIN LANGUAGE DICTATES, IT'S UNCONSTITUTIONAL WITH REGARD TO SECTION 18.

IF YOU SAY THEY'RE NOT PUBLIC DEFENDERS, THEN 29.008.

>> WELL, YOU KNOW, I CAN'T FIND IN SECTION 18.

I WAS SITTING UP HERE STUDYING IT, AGAIN, ANY PROHIBITION. ANY PROHIBITION.

AGAINST THIS TYPE OF RESOLUTION OF THE PROBLEM OF CONFLICT COUNSEL, AND POINT ME OUT THE LANGUAGE THAT YOU SAY PROHIBITS.

>> NO, YOUR HONOR, IT DOESN'T PROHIBIT THE STRUCTURE ITSELF. IT SIMPLY CIRCUMSCRIBES THE, THE REQUIREMENTS OF THE OFFICE. THE MANNER IN WHICH THEY'RE PUT IN PLACE.

>> IT SAYS EACH, IN EACH CIRCUIT, A PUBLIC DEFENDER SHALL BE ELECTED. THIS LEGISLATURE -- THE LEGISLATION DOES NOT CHANGE THAT.

IN EACH CIRCUIT, THERE IS GOING TO BE AN ELECTED PUBLIC DEFENDER, CORRECT?

>> WELL, YOUR HONOR, WE CONTEND THAT BECAUSE THEY'VE CALLED THESE PUBLIC DEFENDERS AND APPOINTED THEM, THAT IT WOULD BE IN CONFLICT WITH --

>> WELL, THE PROBLEM --, IT'S ONLY FOR THE SOURCE OF WHERE THEY CONDUCT THEIR BUSINESS, THOUGH, ISN'T IT?

I MEAN IT'S REALLY THE FUNDING SO HOW -- THAT COMES BACK TO HIS ORIGINAL QUESTION.

HOW DOES SIMPLY FUNDING THEM IN THE SAME MANNER FROM THE SAME SOURCE AS MAYBE A PUBLIC DEFENDER MAYBE FUNDED IN SOME WAY, DOES IT CONFLICT WITH THE LANGUAGE?

THAT'S WHAT I THINK HE'S REALLY GETTING TO HERE.

YOU KEEP SAYING THEY ARE PUBLIC DEFENDERS BUT THAT'S FOR WHERE THEY GET THEIR OFFICE SPACE AND THEIR DESK AND THEIR CHAIR.

>> WELL, COUNTIES MAY ONLY BE REQUIRED TO PAY FOR PUBLIC DEFENDERS, SO IT'S OUR CONTENTION THAT IF THE COUNTIES ARE BEING REQUIRED TO PAY FOR THESE OFFICES AND THESE OFFICES DO EXACTLY WHAT PUBLIC DEFENDERS DO, THEN WHY AREN'T THEY PUBLIC DEFENDERS?

>> WELL, I GUESS THAT WE AGAIN, THAT GOES BACK TO MY QUESTION, AND MAYBE IF THE COUNTIES ARE LISTENING THEY ARE GOING TO GO YEAH, NOW WE ARE THE NEXT -- IT SEEMS TO ME THAT THAT MAY BE A POSSIBLE PROBLEM WITH THE STATUTE BUT NOT WITH THE ARGUMENT YOU HAVE MADE, WHICH IS THAT, YOU KNOW, THEY CAN'T, THE LEGISLATURE CAN'T REQUIRE FUNDING THESE, THIS ENTITY BECAUSE THEY'RE NOT PUBLIC DEFENDERS, BUT THAT'S NOT THE ARGUMENT BEING MADE, AND I THINK THAT IF THE LEGISLATURE HAD IN FACT CREATED AN OFFICE CALLED THEM ANYTHING IN THE

WORLD, THE OFFICE OF, YOU KNOW, CONFLICT-FREE COUNSEL AND TRANSFERRED AND SAID THAT OFFICE IS GOING TO HANDLE ALL THE CONFLICT CASES AND WE'RE GOING TO GIVE ALL THE FUNDING TO THAT AND SO THERE WILL BE TECHNICALLY AN OFFICE IN EACH PLACE BUT THAT PUBLIC DEFENDER WILL BASICALLY HAVE THE NAME ONLY, WELL, THEN YOU'D HAVE AN ARGUMENT THAT THIS IS TRULY NOW TRYING TO SUBVERT A SYSTEM OF PUBLIC DEFENDERS.

BUT NOWHERE HAVE YOU YET TOLD US IF THERE IS ONE RESPONSIBILITY THAT THESE REGIONAL OR THIS COUNSEL'S OFFICE IS GOING TO PERFORM THAT WILL DUPLICATE WHAT PUBLIC DEFENDERS ARE DOING EVERY DAY IN THE STATE.

THEY ARE DOING SOMETHING IN FACT THAT PUBLIC DEFENDERS CAN DO, WHICH IS REPRESENT THE CONFLICT CASES AND ALL PUBLIC DEFENDERS HAVE TO DO IS DECIDE WE HAVE MUCH LESS, FEWER CONFLICTS AND THEY'LL, THAT OFFICE WON'T EVEN HAVE THOSE CASES.

SO CAN YOU TELL ME IF THERE IS ONE, ONE DUTY THAT THEY ARE PERFORMING THAT WOULD OTHERWISE GO TO THE PUBLIC DEFENDER?

>> WELL, YOU'RE RIGHT THAT THEY ARE ONLY TAKING THESE CASES IN THE, IN AN INSTANCE OF CONFLICT, BUT WHAT THEY DO IS EXACTLY THE SAME, THAT IS TO SAY, IT'S JUST THAT THEY'RE THE SECOND TIER AS OPPOSED TO THE FIRST TIER.

SO IF YOU HAVE TWO DEFENDANTS, IN A MULTIDEFENDANT CASE, ONE GOES TO THIS, THIS OFFICE AND ONE GOES TO THE PUBLIC DEFENDER OFFICE.

THEY'RE DOING THE SAME THING.

>> THAT'S, THAT'S THE SYSTEM NOW.

THE PUBLIC DEFENDER REPRESENTS ONE AND REGISTRY COUNSEL.

>> YEAH, REGISTRY COUNSEL IS

PERFECTLY APPROPRIATE UNDER THE CONSTITUTION BECAUSE THEY'RE APPOINTED BY THE JUDICIARY, AND THEY HAVEN'T BEEN CALLED PUBLIC DEFENDERS BY THE LEGISLATURE. THE BILL THAT CREATES THE REGISTRY SYSTEM DOESN'T SAY THIS IS --

>> SO THIS GOES BACK, I GUESS, FULL CIRCLE TO THE FIRST QUESTION I ASKED AND YOUR FIRST ANSWER, WHICH WAS EVERYTHING IS FINE EXCEPT ONE STATUTE CALLS THEM PUBLIC DEFENDER.

IF THEY DIDN'T DO THAT, THEN EVERYTHING ELSE WOULD BE CONSTITUTION.

BECAUSE YOU SEEM TO BE HARPING ON THE FACT THAT THE STATUTE CALLS THEM A PUBLIC DEFENDER.

>> YES, WELL I THINK IT'S THE COURT'S DUTY TO LOOK FIRST AT THE PLAIN LANGUAGE OF THE STATUTE.

THAT'S WHERE WE ALWAYS START, RIGHT?

AND SO IF A STATUTE SPECIFICALLY SAYS THESE ARE PUBLIC DEFENDERS, AND IN FACT, THEY DO EXACTLY WHAT PUBLIC DEFENDERS DO, THEY'RE A SECOND TIER, BUT THAW DO THE SAME --

>> THAT PART -- YOU SEEM TO CONCEDE THAT PART DOESN'T REALLY MATTER BECAUSE PRIVATE COUNSEL DO EXACTLY WHAT PUBLIC DEFENDERS DO.

>> OKAY WELL YOU COULD LEAVE IT AT THE PLAIN LANGUAGE FOR SURE BUT I THINK THAT PART CERTAINLY DOESN'T REFUTE THE FACT THAT THESE ARE, ARE PUBLIC DEFENDERS.

I WOULD TURN THE QUESTION ON ITS HEAD AND SAY WHERE IS IT EVIDENCE IN THE STATUTE THAT THESE AREN'T PUBLIC DEFENDERS? THAT THEY DO ANYTHING DIFFERENT THAN PUBLIC DEFENDERS?

>> WELL, THE EVIDENCE IS THAT THEY ARE INVOLVED ONLY WHEN THE PUBLIC DEFENDER HAS A CONFLICT. THEY DO NOT -- THEY WILL NEVER TAKE A CASE WHERE THERE'S ONLY

ONE DEFENDANT.

BECAUSE BY DEFINITION, THERE'S
NO CONFLICT.

AND THEY WILL NEVER TAKE A CASE
WHERE EITHER THE PUBLIC
DEFENDER'S OFFICE ITSELF OR THE
COURT HAS NOT DETERMINED THAT
THERE WAS A CONFLICT.

>> YES, YOUR HONOR, BUT THE,
THE LEGISLATURE HAS PRIMARY
DUTY UNDER THE GENDER LAWS FOR
DECIDING WHAT A PUBLIC DEFENDER
IS.

THERE'S NOTHING IN THE
CONSTITUTION THAT TELLS US WHAT
THEIR DUTIES ARE, SO HERE I
WOULD ARGUE THEY HAVE SIMPLY
SAID A PUBLIC DEFENDSER YOU
HAVE ORIGINAL JURISDICTION FOR
CRIMINAL CASES AND SOME CIVIL
AND IN THE SECOND TIER OF THE
OFFICES YOU HAVE CONFLICT
JURISDICTION.

THAT'S WHAT, THAT'S WHAT A NEW
PUBLIC DEFENDER APPARENTLY.
SO THERE'S NOTHING THAT, THAT
PREVENTS THE LEGISLATURE FROM
REDEFINING PUBLIC DEFENDERS AS
BOTH DEFENDERS IN THE ORIGINAL
INCIDENCE AND IN THE CONFLICT
CASE.

AND THEY BASICALLY DIDN'T DO
WITH PRIVATE COUNSEL, WHICH IS
WHY WE'VE NEVER HAD THIS ISSUE.
THEY'VE DONE IT HERE.

AND THEY, AND THEY'VE CERTAINLY
-- AND THEY'VE BYPASSED SECTION
18 OF THE CONSTITUTION IN DOING
SO.

>> WITH OUR HELP, YOU'VE
EXCEEDED YOUR TIME, SO IF YOU
WILL BRING YOUR ARGUMENT TO A
CONCLUSION.

>> YES, YOUR HONOR.

THANK YOU FOR YOUR TIME.

WE WOULD JUST SIMPLY ASK THAT
YOU AFFIRM THE CIRCUIT COURT'S
DECISION QUASHING THESE
APPOINTMENTS AND DECLARING THE
CONSTITUTION -- DECLARING THE
STATUTE UNCONSTITUTIONAL.

THANK YOU.

>> THANK YOU.

REBUTTAL?

>> YOUR HONOR, UNLESS THERE ARE
QUESTIONS, WE HAVE NOTHING
FURTHER TO, TO SAY TO THE
COURT.

>> WELL, THE COURT'S STANDING
SILENT FOR ONE, ON ONE
OCCASION.

I GUESS WE HAVE NO FURTHER
QUESTIONS.

>> THANK YOU.

>> THE COURT WILL STAND IN
RECESS.

>> ALL RISE.

>> COURT IS IN RECESS, THANK
YOU.