

>> PLEASE RISE.
HEAR YE HEAR YE HEAR YE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION AND YOU
SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THIS GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.
>> GOOD MORNING AND WELCOME TO
THIS SESSION OF THE FLORIDA
SUPREME COURT.
THE FIRST CASE ON THE COURT'S
CALENDAR THIS MORNING IS LEWIS
VERSUS LEON COUNTY.
ARE THE PARTIES READY TO
PROCEED?
>> WE ARE, YOUR HONOR.
PLEASE THE COURT, LEWIS HUBENER,
REPRESENTING THE APPELLATE IN
THE MATTER.
>> PLEASE SPEAK INTO THE MIC.
KEEP YOUR VOICE UP.
>> THANK YOU.
TWO YEARS AGO, IN CRIST VERSUS
FLORIDA ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS THE COURT HELD
THAT THE NEWLY CREATED PUBLIC
OFFICES OF CRIMINAL CONFLICT AND
CIVIL REGIONAL COUNCIL WERE NOT
PUBLIC DEFENDERS UNDER ARTICLE
5, SECTION 18A OF THE FLORIDA
CONSTITUTION, THIS CASE PRESENTS
THE QUESTION WHETHER THE PUBLIC
REGIONAL COUNCIL ARE COURT
APPOINTED COUNSEL WITHIN THE
MEANING OF ARTICLE 5, SECTION
14.

>> WELL, LET'S LOOK BACK,
THOUGH, ON THE PARTICULAR
HISTORY WITH RESPECT TO CONFLICT
COUNSEL.

AT THE TIME THAT ARTICLE 5 WAS
-- SECTION 14 WAS ADOPTED,
CONFLICT COUNSEL WAS -- THE COST
OF PAYING THE CONFLICT COUNSEL
WAS AN OBLIGATION OF THIS THE
STATE OR THE COUNTY.

>> IT WAS THE COUNTIES.

>> AND THEN, WAS IT VERY CLEAR
WHEN THE SYSTEM, WHEN ARTICLE 5,
SECTION 14, WENT INTO EFFECT
THAT THE COST OF CONFLICT
COUNSEL WAS TO BE BORNE BY THE
STATE.

>> OF THE CONFLICT COUNSEL AS
THEY EXISTED AT THAT TIME,
BECAUSE THEY WERE... THEY WERE
PRIVATE COUNSEL, AND THEIR FEES
WERE SET BY LAW, SO...

>> BUT, I GUESS WHAT I'M GETTING
AT IS THAT THE STATE TOOK -- HAD
TO TAKE ON THIS OBLIGATION OF
CONFLICT COUNSEL, AND THEY THEN
MADE A DECISION, AFTER HAVING
THE PRIVATE CONFLICT COUNSEL
SYSTEM IT WOULD BE A COST
SAVINGS FOR THE STATE TO GO TO A
SYSTEM OF REGIONAL COUNSEL.
AND, SO, THAT COST SAVINGS WAS
CERTAINLY A SAVINGS TO THE STATE
BUT I'M TRYING TO UNDERSTAND
WHAT LOGIC THERE WOULD BE THEN
TO SAY, WELL, BUT WORE GOING TO
NOW, THOUGH WE ARE SAVING ALL OF
THIS MONEY WILL NOW SHIFT THE
COST THAT WAS NEVER CONTEMPLATED
AT THE TIME OF ARTICLE 5,
SECTION 14, BACK TO THE
COUNTIES.

>> WELL, BECAUSE I THINK THE DISTINCTION IS CLEAR IN THE CONSTITUTIONAL LANGUAGE, AND THAT IS, ALL OF THE PUBLIC OFFICES THAT WERE PART OF THE JUDICIAL SYSTEM, WERE ENTITLED TO A CERTAIN AMOUNT OF PUBLIC FUNDING FROM THE COUNSEL FOR THEIR OVERHEAD COSTS.

>> BUT THAT ISN'T QUITE THE LANGUAGE -- WHAT THE LANGUAGE ACTUALLY SAYS.

THE LANGUAGE IS SPECIFIC AND ACTUALLY DELINEATES THOSE OFFICES THAT ARE SUPPOSED TO BE PAID BY THE STATE AND THOSE OFFICES AND THOSE ITEMS THAT ARE SUPPOSED TO BE PAID BY THE COUNTY.

ISN'T IT?

AND WHEN IT COMES TO THE COUNTY, DOES IT SAY ANYTHING ABOUT COURT-APPOINTED ATTORNEYS?

>> IT DOES NOT SAY ANYTHING ABOUT COURT APPOINTED COUNSEL, BUT YOU HAVE TO ASK THE REASON FOR THAT.

I THINK WHAT YOU HAVE TO DO IS TAKE THE APPROACH THAT THE 4TH DISTRICT COURT OF APPEALS TOOK IN THE RECENT CASE THAT DECIDED

--

IT DECIDED OF FORT LAUDERDALE VERSUS CROWDER, IN WHICH IT CONSTRUED THE SAME CONSTITUTIONAL PROVISION THAT SAID YOU HAVE TO CONSIDER WHAT IS THE OBJECT OR PURPOSE OF THE CONSTITUTIONAL LANGUAGE, WHAT WAS THE PRIOR STATE OF THE LAW, AND CONSTRUING THAT LANGUAGE IT HELD THAT THIS SAME PROVISION

DID NOT PRECLUDE THE LEGISLATURE FROM REQUIRING PUBLIC DEFENDERS -- I MEAN, FROM REQUIRING COUNTIES TO PAY PUBLIC DEFENDERS OR DEFENDING PERSONS WHO VIOLATED MUNICIPAL ORDINANCES. SO YOU CANNOT TAKE AN ABSOLUTELY LITERAL APPROACH TO THIS.

YOU HAVE TO LOOK AT WHAT WAS DONE AT THE TIME.

AND, IF YOU CONSIDER THAT, YOU FIND THAT THE DISTINCTION HERE FOR FUNDING IS BETWEEN PUBLIC OFFICES AND PRIVATE... AND COURT APPOINTED COUNSEL WHO ARE ALL PRIVATE, WHOSE FEES WERE PAID BY THE COUNTY, AND, WHO HAD NO NEED OF BEING PAID THESE VARIOUS ITEMIZED OVERHEAD COSTS BUT THAT DOES NOT INDICATE AN INTENTS TO FOREVER PRECLUDE THE LEGISLATURE TO REQUIRE COUNTIES TO FUND THE SAME COST FOR A PUBLIC OFFICE THAT DID NOT EXIST THEN BUT WAS SUBSEQUENTLY CREATED.

>> ARE WE READING SOMETHING AND SAYING THAT THIS IS WHAT THE PEOPLE WOULD HAVE VOTED FOR? HAD IT BEEN IN THE CONSTITUTION? BUT THAT IS NOT WHAT THE PEOPLE VOTED FOR, AS I SEE IT.

THE PEOPLE VOTED FOR FUNDING OF COURT APPOINTED COUNSEL, TO BE DONE BY THE STATE.

>> I WOULD --

>> AND IF WE WANTS TO CHANGE THAT, SHOULDN'T THERE BE A A -- A CONSTITUTIONAL AMENDMENT TO CHANGE THAT.

>> I WOULD BEG TO DIFFER WITH YOU FOR THIS REASON, ANYONE GOING TO THE STATUTES WHICH IS

WHERE YOU HAVE TO GO TO FIND OUT WHO THESE COURT APPOINTED COUNSEL WERE, AND WHAT THEY DID, WOULD FIND THAT THEY WERE PRIVATE.

AND --

>> WHAT ABOUT, IF YOU WENT TO THE CONSTITUTION, AND LOOKED FOR THE DEFINITION OF PUBLIC DEFENDERS.

WOULDN'T YOU FIND SOMETHING THERE THAT IS DIFFERENT THAN THE DEFINITION THAT HAS BEEN NOW ESTABLISHED BY THE LEGISLATURE? AND ISN'T THAT A PROBLEM FOR YOUR ARGUMENT?

>> THE LEGISLATIVE --

>> IT IS A CREATIVE ARGUMENT BUT I THINK THAT ONE OF THE IMPEDIMENTS YOU HAVE HERE IS THAT THAT VERY CLEAR DEFINITION IN THE CONSTITUTION, WHICH I THINK WE WOULD HAVE TO ASSUME, THAT THE VOTERS WERE AWARE OF, WHEN THEY WERE EMPLOYING THE TERM "PUBLIC DEFENDER" IN THE CONTEXT OF THIS AMENDMENT.

>> I'M NOT QUITE SURE I FOLLOW THAT, BECAUSE, THE -- MAYBE YOU CAN CLARE FIGHT FOR ME.

BUT THE... YOU SAID PUBLIC DEFENDERS ARE DEFINED DIFFERENTLY IN THE LAW THAN THE CONSTITUTION.

>> I'M NOT TALKING ABOUT ANYWHERE ELSE IN THE LAW, BUT, BASICALLY I THINK IF I UNDERSTAND WHAT IS GOING ON HERE, THE LEGISLATURE HAD INCLUDED THIS NEW OFFICE, WITHIN THE DEFINITION OF PUBLIC DEFENDER AND THAT IS NOT

SOMETHING THAT IS CONTEMPLATED
IN THE DEFINITION OF PUBLIC
DEFENDER IN THE CONSTITUTION.

>> OKAY.

I FOLLOW YOU.

BUT I THINK THE COURT
DISTINGUISHED THAT IN THE CRIST
CASE WHERE IT SAYS DEFINITIONS
WERE PURELY FOR PURPOSES OF
FUNDING.

THAT IS ALL.

IT DOES NOT, AS THE COUNTY
ARGUES, ENLARGE THE DEFINITION
OF PUBLIC DEFENDERS, I THINK YOU
CAN GIVE IT A CONSTITUTIONAL
CONSTRUCTION BY SAYING THE
REGIONAL CONFLICT COUNSEL ARE
ENTITLED TO THE SAME FUNDING AS
THESE OTHER --

>> WAIT --

>> BUT THE POINT IS, WHEN THE
PEOPLE IN A CONSTITUTIONAL
AMENDMENT USED THE TERM PUBLIC
DEFENDERS, WOULDN'T IT BE MOST
REASONABLE, OVERWHELMINGLY
REASONABLE TO ASSUME THEY MEAN
THE PUBLIC DEFENDERS THAT ARE
DEFINED IN THE CONSTITUTION?

>> WELL, I THINK WE'RE
GETTING...

>> I UNDERSTAND THAT IS A --
INCONSISTENT WITH YOUR ARGUMENT
BUT --

>> THE DISTINCTION OR THE
DEFINITIONAL PROBLEM IS EXISTENT
IN THE STATUTE.

NOT IN THE CONSTITUTION.

THE CONSTITUTIONAL LANGUAGE ONLY
REFERS --

>> I AGREE, WE ARE NOT HERE TO
DECIDE WHETHER THERE'S A PROBLEM
IN THE CONSTITUTION.

I AGREE WITH THAT.

WE'RE HERE TO DECIDE WHETHER THE STATUTE IS CONSISTENT WITH THE CONSTITUTION.

>> EXACTLY.

>> PLEASE ANSWER JUSTICE -- I WAS GOING TO FOLLOW UP ON SOMETHING YOU SAID, PLEASE ANSWER HIS QUESTION.

>> WELL, AGAIN, THE CONSTITUTIONAL LANGUAGE DISTINGUISHES BETWEEN PUBLIC OFFICES AND COURT APPOINTED COUNSEL.

A PERSON WHO IS VOTING IN 1998, WOULD HAVE UNDERSTOOD COURT APPOINTED COUNSEL TO BE PRIVATE COUNSEL WHO HAS NO NEED OF THESE OVERHEAD COSTS BEING PAID BY THE COUNTIES.

>> I GUESS THAT IS WHERE WE GET TO YOUR CREATIVE ARGUMENT. I GUESS WHAT I'M STILL HAVING TROUBLE UNDERSTANDING IS THAT BY SPECIFYING FIVE OR FOUR DIFFERENT CATEGORIES OF OFFICES, INCLUDING PUBLIC DEFENDERS, THEY NECESSARILY EXCLUDED ANYTHING ELSE, LIKE, FOR EXAMPLE, THE OFFICE OF CAPITAL COLLATERAL REPRESENTATIVE, IS NOT -- EXISTING BACK THEN AND IT WAS NOT, I THINK IT WAS, OR, YOU KNOW, NOBODY IS... I DON'T THINK THE STATE EVER ARGUED THAT THE COUNTY HAS THAT RESPONSIBILITIES.

>> I THINK, YOU ARE RELYING ON THE...

>> CCR, IS THAT A STATE OR A COUNTY RESPONSIBILITY?

>> FOR THEIR OFFICES, FOR THE

COST OF THEIR OFFICES.

>> THEY ARE, MOST OF THEM I THINK ARE PAYING FOR THEM, THEY ARE NOT BEING PROVIDED BY COUNTIES, AT THIS POINT, BUT UNDER THE 2007 ACT, THE COUNTIES ARE SUPPOSED TO PAY FOR THE FACILITIES OF ALL OF THESE --

>> ASKING ABOUT CAPITAL COLLATERAL.

CAPITAL COLLATERAL OFFICES ARE TOTALLY FUNDED BY THE STATE.

>> I --

>> IS THAT CORRECT.

>> YES.

>> AND IT CUTS AGAINST YOUR ARGUMENT THE IN THE MEANTIME WAS FOR ANY STATE ENTITY THAT THE COUNTY WOULD PAY, THE COST OF THE FACILITY, THAT IS... AND IT GOES BACK TO THE IDEA THAT THE WHOLE INTENT OF ARTICLE 5, SECTION 14, WAS TO SHIFT THE OVERWHELMING MAJORITY OF THE STATE COURT SYSTEM AND ITS ASSOCIATED ENTITIES TO THE STATE, OTHER THAN SPECIFICALLY DEFINED CATEGORIES, AND, FOR YOU NOW TO SAY THAT THE PUBLIC DEFENDER'S OFFICE, WHICH IS SPECIFICALLY STATED, WHICH IS A CLEARLY DEFINED -- IT WAS DEFINED IN 1998, WAS TO INCLUDE ANYBODY THAT WAS CONFLICT COUNSEL, IS JUST... I'M NOT FOLLOWING THAT.

>> I'M NOT MAKING THAT ARGUMENT. MY ARGUMENT IS THAT THE COURT APPOINTED COUNSEL IN 1997, 1998, WERE PRIVATE COUNSEL. THEY HAVE BEEN REPLACED BY A PUBLIC OFFICE.

THOSE PREVIOUS PRIVATE CONFLICT
COUNSEL ACTUALLY STILL EXIST AND
THEY ARE THE SECOND TIER
CONFLICT COUNSEL.

BUT --

>> I GUESS WHAT I'M -- YOUR
ARGUMENT IS THAT WE SHOULD
REWRITE THIS PROVISION IN THE
CONSTITUTION, THAT GIVES
SPECIFIC TYPES OF OFFICES,
PUBLIC DEFENDERS OFFICES, STATE
ATTORNEYS OFFICES, AND THE
OFFICE OF THE CLERK, AND, WRITE
INTO THAT, THAT THE INTENT WAS
THAT THE COUNTY WOULD FUND ANY
OFFICE THAT WAS A STATE CREATED
ENTITY.

AND THAT IS YOUR -- THE
ARGUMENT.

>> THAT IS NOT QUITE HOW I
ARGUED IT IN THE BRIEF, OR WOULD
ARGUE IT HERE.

>> ISN'T THAT DEFINED, IF WE CUT
THROUGH IT ALL, THAT IS -- YOU
KNOW, YOU ARE SAYING, YOU'RE
SAYING IT'S NOT FAIR, BECAUSE
THIS IS REALLY MORE AKIN TO A
PUBLIC DEFENDER OFFICE VERSUS
THE FUNDING PURPOSES, THAN IT IS
TO PRIVATE CONFLICT COUNSEL.

>> I THINK YOU ARE BASICALLY
RELYING ON THAT EXPRESSION IN
THE -- EXCLUSIO...

>> I DIDN'T SAY IT.
BECAUSE I CAN'T PRONOUNCE IT.

>> I HAVE PRACTICED IT.
THAT IS A STATUTORY
INTERPRETATION, NOT
CONSTITUTIONAL AND IT'S NOT
OFTEN APPLIED TO THE
CONSTITUTION.

BUT BECAUSE IT CUTS AGAINST THE

THEORY, AND THAT IS, THAT THE LEGISLATIVE'S LAW MAKING POWER IS PLENARY UNLESS IT IS RESTRAINED BY A CONSTITUTIONAL PROVISION.

YOU HAVE IN THIS PROVISION, YOU HAVE A LIST OF PUBLIC OFFICES THAT WERE ENTITLED TO COUNTY FUNDING AND YOU NOW HAVE A NEW ONE THAT DID NOT EXIST IN 1998. SO, THE QUESTION IS, UNDER OUR THEORY OF THE CONSTITUTION, IS, DOES IT CLEARLY PRECLUDE THE LEGISLATURE FROM ADDING TO THAT LIST?

>> I -- I'M SORRY.

THE REASON I'M SMILING IS BECAUSE YOU ACT AS IF IT IS A RIGHT OF THE OFFICE OF REGIONAL COUNSEL WHEN THEY ARE GETTING FUNDED WHETHER BY THE STATE OR THE COUNTY.

SO, THE -- WHAT WE'RE -- WE'RE NOT LOOKING AT THE CONSTITUTIONAL RIGHT OF THE OFFICE OF REGIONAL COUNSEL, WE ARE JUST TRYING TO DECIDE WHETHER THE VOTERS INTENDED THAT THAT COST OF AN OFFICE THAT IS NOT THE PUBLIC DEFENDERS OFFICE TO BE BORNE BY THE COUNTY OR THE STATE.

SO, IS IT --

>> I THINK I WOULD... I WOULD PHRASE IT DIFFERENTLY.

I WOULD SAY WHAT THE VOTERS INTENDED WAS THEY WOULD FUND ALL THE PUBLIC -- ONLY PUBLIC OFFICES THAT WERE PART OF THE JUDICIAL SYSTEM AND PRIVATE COUNSEL WOULD NOT BE FUNDED --

>> YOU WOULD HAVE A MUCH BETTER

ARGUMENT IF THERE WAS LANGUAGE
IN THE CONSTITUTIONAL PROVISION
THAT SAID, YOU KNOW, OFFICES
THAT ARE COURT RELATED.

BUT, IN FACT, THEY DIDN'T AND
THE -- I STILL GO BACK TO THE
CCRC PROVISION, WHICH -- AND
THEY WERE IN FACT IN EFFECT AT
THE TIME THAT THIS
CONSTITUTIONAL PROVISION WAS
PASSED, AND WHEN IT WAS
IMPLEMENTED.

YET, THEY ARE NOT FUNDED, THEIR
OVERHEAD IS NOT FUNDED BY THE
COUNTY.

AND I DON'T SEE A REAL
DIFFERENCE BETWEEN THESE
REGIONAL CONFLICT COUNSEL
OFFICES AND THOSE OFFICES.

>> WELL, I DON'T KNOW THAT THE
LEGISLATURE MIGHT CONSIDER THAT
DIFFERENTLY IF IT WERE TO MAKE
THAT DECISION THAT PERHAPS THE
CCR OFFICES COULD BENEFIT FROM
SOME SUPPORT FROM THE COUNTY.

>> BUT YOU SEE, IT SEEMS TO ME
WHAT WE ARE ALLOWING TO HAPPEN,
EVEN IF THEY WANTED TO DO
SOMETHING LIKE THAT, IS, WE ARE
ALLOWING THEM TO AMEND THE
CONSTITUTIONAL PROVISION.

WITHOUT GOING TO THE VOTERS AND
ASKING THE VOTERS, LOOK, THINGS
HAVE CHANGED HERE.

LET'S AMEND THE CONSTITUTIONAL
PROVISION AND PROVIDE THAT ALL
OF THESE PUBLIC OFFICES THAT ARE
COURT RELATED HAVE THEIR
COMMUNICATIONS AND BUILDINGS AND
ALL OF THAT FUNDED BY THE
COUNTY.

>> WELL, BECAUSE THESE OFFICES,

THIS OFFICE, DID NOT EXIST IN 1998, I -- MY ARGUMENT IS THAT THE VOTERS DID NOT INTEND TO PRECLUDE THE LEGISLATURE FROM FUNDING AN ADDITIONAL PUBLIC OFFICE.

>> JUST THINK ABOUT THIS AGAIN, I GUESS I START WITH MY COMMON-SENSE ARGUMENT THAT... OR LOOK -- APPROACH TO THIS, WHICH IS THAT THE STATE IN CREATING THESE OFFICES WAS INTENDING FOR THERE TO BE A COST SAVINGS TO THE STATE.

NOW, WHAT THEY -- NOW THEY WANT NOT ONLY ALL OF THE MILLIONS OF DOLLARS OF COST SAVINGS TO THE STATE BUT THEN NOW THEY WANT TO SHIFT ADDITIONAL COSTS BACK TO THE COUNTIES AND THE COUNTIES HAVE EVERY REASON -- THAT IS -- WHETHER THERE IS A CONSTITUTIONAL VIOLATION FOR THE COUNTIES, BUT THE COUNTIES ARE -- THEY CAN'T RAISE ADDITIONAL REVENUE.

SO WE'RE TAKING THE STATE AND SAYING THEY CAN SHIFT COSTS THAT WERE STATE COSTS BACK TO THE COUNTIES, WHO DON'T HAVE THE ABILITY TO RAISE THE REVENUE.

>> WELL, THEY ARE ALREADY FUNDING THESE OTHER OFFICES, AND THE ITEMIZED EXPENSES.

I DON'T KNOW THAT --

>> SO THERE IS NO COST ASSOCIATED.

>> THERE IS A COST ASSOCIATED WITH IT BUT I DON'T KNOW IT IS OVERWHELMING OR IMPOSSIBLE.

>> DO THE REGIONAL COUNSELS HAVE AN OFFICE IN EVERY COUNTY.

>> I DON'T THINK THEY DO IN EVERY COUNTY.

NO.

>> HOW DOES THAT WORK? FOR THE COUNTIES, THEN, IN A PARTICULAR CIRCUIT.

>> THEY TRY TO NEGOTIATE -- HAVE TRIED TO NEGOTIATE SPACE WHERE THEY THINK IT IS MOST NEEDED.

AND...

>> ONLY THE COUNTY WHERE THAT IS ACTUALLY LOCATED IN FLORIDA --

>> IF THEY WILL DO IT THEY PROBABLY MADE OVERTURES TO ALL THE COUNTIES IN THEIR DISTRICT.

>> THEY CHIP IN.

>> YES.

>> THAT IS SET OUT IN THE STATUTE, HOW THAT IS --

>> NO, I DON'T BELIEVE IT IS.

>> I'M WELL INTO MY OVERTIME AND THERE IS ANOTHER ISSUE, THAT I WOULD LIKE TO ALLUDE TO BRIEFLY, AND THAT IS, WHETHER THE INCLUSION OF THE FUNDING PROVISIONS COMPLIES WITH ARTICLE 7, SECTION 18A WHICH REQUIRES THE LEGISLATURE DETERMINE THAT THE LAW FULFILLS AN...

[INAUDIBLE].

>> IS THERE LANGUAGE -- SPECIFIC LANGUAGE IN THE STATUTE THAT COMPLIES WITH THAT ARTICLE ABOUT THE UNFUNDED MANDATE.

>> OH, THINK THERE IS IN SECTIONS 4 AND 31, WHERE IT SAYS THE LAW FULFILLS THE CONSTITUTIONAL MANDATES FOR PROVIDING COUNSEL TO BE INDIGENT AND PROVIDES FOR LEGAL REPRESENTATION AND REQUIRED BY GENERAL LAW.

>> IT CERTAINLY SAYS THE STATE BELIEVES IT IS GOOD FOR THEM BECAUSE IT WILL SAVE THEM MONEY, BUT...

>> NO.

NO.

NO.

IT GOES FAR BEYOND THAT.

IT ALLUDES TO THE CONSTITUTIONAL MANDATES THAT ARE FULFILLING --

IT SAYS PROVIDING LEGAL

REPRESENTATION, WHERE, IN

ADDITION IT MAY BE REQUIRED BY

GENERAL LAW, I THINK THAT IS A

CLEAR STATEMENT OF PUBLIC

IMPORTANCE, THE DISAGREEMENT IS

NOT WITH WHETHER THE ACT SERVES

THE IMPORTANT PUBLIC PURPOSE, IT

IS WHETHER THE LEGISLATURE USED

MAGIC WORDS TO SAY THAT.

AND, IT DID NOT, BUT I WOULD

SUBMIT THAT SAID EVERYTHING BUT

THOSE MAGIC WORDS AND IN THE END

TO DETERMINE WHETHER A LAW

SERVES THEM OR -- STATE INTEREST

UNDER THIS PROVISION, YOU HAVE

TO LOOK AT THE LAW.

NOT SOME -- MAGIC WORDS.

AND, I THINK THE LAW CLEARLY

REFLECTS A LEGISLATIVE FINDING

OF PUBLIC IMPORTANCE.

>> YOU HAVE A MINUTE LEFT ON YOUR REBUTTAL.

>> PLEASE THE COURT, ED DION.

WE ARE PRIVILEGED TO REPRESENT

25 COUNTIES IN THE FLORIDA

ASSOCIATION OF COUNTIES IN THIS

MATTER.

AND, JUSTICE CANADY AT LEAST OUR

26 COUNTIES INCLUDING VOLUSIA

HAVE BEEN REQUESTED TO PAY FOR

OFFICES AND OTHERS, THOSE

OVERHEAD EXPENSES, IF YOU WILL,
THAT YOU PREVIOUSLY REQUESTED.

>> SO, IF THE REGIONAL COUNSEL
OFFICES ARE IN EVERY DISTRICT,
LIKE THE DISTRICT COURTS OF
APPEAL, AND SO, IF FOR EXAMPLE,
IN THE SECOND DISTRICT AREA, ALL
OF THOSE 14 COUNTIES HAVE BEEN
ASKED TO CHIP IN FOR THE
REGIONAL COUNSEL OFFICE.

>> CHIEF JUSTICE I'M NOT SURE
ALL OF THEM HAVE AND THE SMALLER
COUNTIES THEY MAY NOT HAVE THOSE
OFFICES, BUT, I BELIEVE IN THE
VAST MAJORITY OF THE COUNTIES IN
THE STATE OF FLORIDA, THE
REGIONAL CONFLICT COUNSEL HAS
ESTABLISHED AN OFFICE AND HAS
EMPLOYEES TO REPRESENT THOSE
PERSONS AS THEY ARE REQUIRED TO
DO UNDER THE STATUTE.

I THINK CLEARLY UNDER ARTICLE 5,
SECTION 14 THE STATE IS
RESPONSIBLE FOR PAYING ALL THE
COSTS ASSOCIATED WITH THE STATE
COURT SYSTEM EXCEPT FOR THOSE
OVERHEAD COSTS WE HAVE BEEN
REFERRING TO SET FORTH IN
SUBSECTION 15.

SUBSECTION C, I APOLOGIZE AND
THOSE ARE ONLY FOR THE TRIAL
COURTS, PUBLIC DEFENDERS
OFFICES, AND STATE ATTORNEYS
OFFICES, AND THE OFFICES OF THE
CLERKS, THOSE ARE ALL
CONSTITUTIONAL OFFICES.
THEY ARE NOT JUST PUBLIC
OFFICES, THEY ARE CONSTITUTIONAL
OFFICES.

>> I WAS THINKING, IT IS ALSO
THE DISTRICT COURTS OF APPEAL
ARE NOT IN THERE, BUT THAT IS --

HAS ALWAYS BEEN A STATE FUNDED
MAN TATE...

>> THAT IS PART OF THE STATE
COURT SYSTEM AND THIS COURT, YOU
ARE 100% FUNDED NOT BY THE
COUNTIES BUT THE STATE OF
FLORIDA.

>> WE'RE NOT 100 FUNDED.

>> WELL...

[LAUGHTER].

>> BUT THE COUNTIES DID NOT PAY
FOR ANY OF -- ANY OF THE
EXPENSES INVOLVED IN THIS
COURT'S OPERATIONS.

SO, WE KNOW THAT THE STATE UNDER
ARTICLE 5, SECTION 14 THE STATE
OF FLORIDA HAS TO WHOLLY FUND
COURT APPOINTED COUNSEL, NOW
KNOWN AS THE OCCRC REGIONAL
CONFLICT COUNSEL -- I CALL THEM
REGIONAL CONFLICT COUNSEL, OR
WHATEVER ELSE YOU WANT TO CALL
THEM, AND, WHETHER THEY'RE
PUBLIC OR PRIVATE CONTRARY TO
THE APPELLANT'S ARGUMENT THE
CONSTITUTION MAKES NO
DISTINCTION BETWEEN PUBLIC AND
PRIVATE, AND MAKES NO REFERENCE
TO ANY OVERHEAD COSTS.

ALL OF THE COSTS ASSOCIATED WITH
COURT APPOINTED COUNSEL HAVE TO
BE PAID FOR BY THE STATE OF
FLORIDA.

IN ADDITION TO THAT CLEAR
LANGUAGE OF THE CONSTITUTION, WE
ALSO ARE FORTUNATE TO HAVE THE
INTENT OF THE FRAMERS OF THAT
PROVISION, WHICH CLEARLY STATED
IT WAS THEIR INTENT THAT THE
STATE BE PRIMARILY RESPONSIBLE
FOR FUNDING THE STATE COURT
SYSTEM, AND, WHOLLY RESPONSIBLE

FOR FUNDING COURT APPOINTED
COUNSEL AND RELATED COSTS.

>> IS IT REALLY THE INTENT OF
SOMEBODY ON THE COMMISSION OR --
WHOEVER THE FRAMERS WERE, IS
THAT REALLY THE INTENTS WE NEED
TO LOOK AT?

OR SHOULD WE BE LOOKING AT WHAT
WE WOULD UNDERSTAND TO BE THE
INTENT OR THE UNDERSTANDING OF
THE VOTERS WHO ADOPTED THE
AMENDMENT?

>> I BELIEVE IT IS BOTH, JUSTICE
CANADY.

>> WHAT IS THE DIFFERENCE?

>> WELL, BUT THE ONE THING YOU
HAVE --

>> DOES THAT INFORM OUR JUDGMENT
ABOUT WHAT THE PEOPLE WOULD HAVE
THOUGHT ABOUT IT.

>> IT CERTAINLY SHOULD, BECAUSE
WE HAVE NO WRITINGS FROM THE
PUBLIC.

WE HAVE THIS STATEMENT OF INTENT
BY THE FRAMERS OF THESE
PROVISIONS.

THAT CLEARLY SET FORTH WHAT IT
WAS THEY WANTED TO...

>> REALLY, IN TERMS OF LOOKING
AT CONSTITUTIONAL CONSTRUCTION,
WHICH IS SOMETHING SIMILAR TO
STATUTORY CONSTRUCTION WE LOOK
AT THE PLAIN LANGUAGE, AND, YOU
KNOW, ANY WAY YOU SLICE IT,
PUBLIC DEFENDERS OFFICES ARE
DIFFERENT FROM CONFLICT COUNSEL
OFFICES.

>> AND YOU SPECIFICALLY FOUND
THAT, JUSTICE PARIENTE, IN THE
CRIST DECISION WHERE YOU
SPECIFICALLY SAID THEY ARE NOT
PUBLIC DEFENDERS AND IT IS

ILLOGICAL TO SAY THEY ARE NOT PUBLIC DEFENDERS UNDER ARTICLE 5, SECTION 18 BUT, FOR SOME REASON THEY ARE PUBLIC DEFENDERS UNDER THE SAME ARTICLE 5, BUT SECTION 14.

>> I THINK IN THE OPINION I -- I HAVEN'T LOOKED AT IT RECENTLY, WE KNEW THE CONTROVERSY WAS BREWING AND SO WE DIDN'T ADDRESS IT BECAUSE IT WASN'T BEFORE US.

>> CORRECT.

>> RIGHT THERE -- REFERENCE TO THAT.

WE WERE NOT GOING TO ADDRESS THAT.

>> YOU NEVER ACTUALLY GET TO ARTICLE 5, SECTION 15, BECAUSE I BELIEVE IT WAS NEVER RAISED, THAT WAS A QUOTE, WHERE -- IN THE CASE THAT CAME BEFORE AND IT WAS CLEARLY BROUGHT BEFORE YOU ON THE BASIS OF ARTICLE 5, SECTION 18, THE DEFINITION OF PUBLIC DEFENDER.

THAT WASN'T HERE BEFORE, JUSTICE, WE BELIEVE IT WAS ALMOST AN INVITATION FOR THE COUNTIES TO CHALLENGE THE FUNDING PROVISION, BECAUSE IT WASN'T ADDRESSED IN THAT CASE. SO YOU ALSO FOUND OUT THAT OTHER THAN THE FACT THAT ARE NOW GOVERNMENT OFFICES AND THE PRIVATE REGISTRY OFFICE ARE INDEPENDENT CONTRACTORS THEIR RESPONSIBILITIES ARE IDENTICAL AND THE WHOLE POINT OF THE CRIST CASE WAS IT IS NOT WHAT YOU CALL THEM, IT IS WHAT THEY DO AND WHAT THESE PEOPLE DO UNDER SECTION 2740 IS THEY ARE CLEARLY

COURT APPOINTED COUNSEL AS INTENDED BY THE FRAMERS AND BY THE PEOPLE WHO ADOPTED ARTICLE 5, SECTION 14.

>> BUT THERE COULD BE AN ARGUMENT THAT A VOTER REALLY, PUBLIC DEFENDERS OFFICES ARE, YOU KNOW, IT IS PEGGY FOR THE COST OF THE DEFENSE OF INDIGENTS AND THEY WOULDN'T KNOW THE DIFFERENCE OF WHETHER THEY HAVE THE... REPRESENTING AN INDIGENT, ONE A CONFLICT OR NOT AND LOOKING AT H VOTER'S INTENT, OTHER THAN THE PUBLIC DEFENDERS OFFICES HAVE A CLEAR MEANING AND WE DON'T GO FARTHER WOULDN'T LOOK AT THE STATEMENT OF INNOCENT I GUESS IS MY POINT.

>> WE AGREE WITH THAT. WE BELIEVE THE CLEAR LANGUAGE OF THE CONSTITUTION PROVIDES THAT THE COUNTIES DO NOT HAVE TO PROVIDE ANY FUNDING FOR THESE COURT APPOINTED COUNSEL, IRRESPECTIVE OF WHAT THEY ARE CALLED, IRRESPECTIVE OF WHERE THEY SIT, AND IRRESPECTIVE OF HOW MANY COUNTIES THEY ARE IN. THEY ARE CLEARLY COURT APPOINTED COUNSEL AND THE CONSTITUTION REQUIRES THE STATE OF FLORIDA TO, 100%, FUND THOSE --

>> WHAT ABOUT THE STATE'S ARGUMENT THAT IT IS -- THE LEGISLATURE HAS BROAD AUTHORITY AND IT IS THEIR PREROGATIVE TO TEST LAWS, UNLESS THEY ARE CLEARLY UNCONSTITUTIONAL, WE HAVE TO DEFER TO THE LEGISLATURE?
HOW DOES THAT WORK IN THE

CONTEXT OF THIS CONSTITUTIONAL PROVISION?

>> ARTICLE 5, SECTION 14, PROVIDES THE EXCLUSIVE METHOD FOR FUNDING THE COMPONENTS OF THE STATE COURT SYSTEM.

AND, THEREFORE, BECAUSE IT -- THAT IS THE EXCLUSIVE METHOD, THE LEGISLATURE HAS NO AUTHORITY TO GO OVER AND ABOVE THAT.

THEY HAVE TO CONFORM WITH THE PROVISIONS OF ARTICLE 5-SECTION 14.

WHICH IS CLEARLY WHAT THEY HAVEN'T DONE IN THIS INSTANCE.

BUT, WHAT THEY TRIED TO DO IS, IN ORDER TO OVERCOME THAT LIMITATION, THEY CHANGED THE DEFINITION OF PUBLIC DEFENDER IN ORDER TO TRY AND INCLUDE THESE COURT APPOINTED COUNSEL INTO THAT DEFINITION IN ORDER TO REQUIRE THE COUNTIES TO DO THAT AND WE HAVE ARGUED, IN OUR BRIEF, AND BELOW, THAT THAT IS IMPROPER FOR TWO REASONS, NUMBER ONE IS, THEY HAVE NO AUTHORITY TO EXPAND THE DEFINITION OF PUBLIC DEFENDER, AND I THINK WE HAVE DISCUSSED THAT A LITTLE BIT EARLIER.

ARTICLE 5, SECTION 18, IS VERY CLEAR, THE LEGISLATURE HAS NO AUTHORITY TO CHANGE THE CONSTITUTIONAL DEFINITION BY STATUTE, AND --

>> ISN'T THAT TRULY THE BASIS OF THE CRIST DECISION, THE REASON WE HAVE SAID THESE OFFICES WERE OKAY, WAS BECAUSE THEY DID NOT VIOLATE THAT DEFINITION OF WHAT A PUBLISHING DEFENDER'S OFFICE

IS.

>> YES, CHIEF JUSTICE THAT IS EXACTLY WHAT THE STATE ARGUED IN THE CRIST CASE, IS THEY HAVE TO BE OKAY.

BECAUSE THEY ARE NOT PUBLIC DEFENDERS, AND, NOW THEY ARE COMING IN HERE AND SAYING, IT IS OKAY TO CALL THEM PUBLIC DEFENDERS.

THAT DOESN'T WASH.

YOU CAN'T HAVE IT BOTH WAYS IN THIS INSTANCE.

SO, BECAUSE IT IS CLEAR THAT EXPRESS OR IMPLIED PROVISIONS OF THE CONSTITUTION CANNOT BE ALTERED OR CRACKED OR ENLARGED BY LEGISLATIVE ENACTMENTS THEIR ATTEMPT TO INCLUDE REGIONAL CONFLICT COUNSEL IN THE DEFINITION OF PUBLIC DEFENDER LIKEWISE FAILS.

IF I MAY I'D LIKE TO GO TO ARTICLE 7, SECTION 18.

WE BELIEVE THAT THIS LAW CLEARLY VIOLATES THAT PROVISION AS WELL.

>> I MEAN, THEIR ARGUMENT IS WHEN YOU READ THOSE SECTIONS, I BELIEVE 31 AND 4, THAT IT REALLY DOES SET OUT A STATE -- THIS IS A STATE INTEREST WHICH IS BASICALLY A... STATE INTEREST WHICH IS BASICALLY THE LANGUAGE YOU ARE SUPPOSED TO USE AND THAT THAT LANGUAGE COMPLIES WITH THAT, AND, WHAT IS WRONG WITH THAT, BECAUSE IT DOES SEEM TO ME, IT SETS OUT WHY WE NEED THESE OFFICES AND THE PUBLIC BE GOOD FOR THESE OFFICE, ALL OF THAT.

>> CHIEF JUSTICE, ARTICLE 7,

SECTION 18A REQUIRES THE LEGISLATURE MUST DETERMINE THAT A BILL, A GENERAL LAW THAT IMPOSE IS A MANDATE UPON THE COUNTIES, FULFILLS AN IMPORTANT STATE INTEREST.

THAT IS THE LANGUAGE THAT IS USED BY --

>> IS THERE A DECISION IN WHICH WE HAVE SAID, YOU ABSOLUTELY MUST USE THOSE WORDS, OTHERWISE, THIS PROVISION IS NOT SATISFIED?

>> JUSTICE LEWIS, I'M UNAWARE OF ANY CASES WHERE THIS COURT HAS SPECIFICALLY DONE THAT.

HOWEVER, THE LEGISLATURE HAS DONE THAT PREVIOUSLY AS WE HAVE PROVIDED EXAMPLE BEFORE.

>> ARE YOU SAYING WITHOUT QUESTION THAT UNLESS THOSE WORDS APPEAR, THAT THE LEGISLATIVE PROVISION MUST BE STRICKEN?

>> NO, I'M NOT.

>> OKAY.

AND SO HOW IS THIS ONE DIFFERENT?

JUSTICE QUINCE IS HITTING RIGHT ON THE ISSUES.

IF YOU SAY IT IN SO MANY WORDS, YOU KNOW, IF YOU DON'T HAVE AN ABSOLUTE REQUIREMENT WHERE DOES THIS ONE FAIL.

>> WELL, WHAT THE PROVISIONS PROVIDE, JUSTICE LEWIS, ARE THAT THEY FOUND THAT THE CREATION OF THESE COUNSEL ARE NECESSARY AND, THE BEST STEPS TOWARD ENHANCING THE PUBLICLY FUNDED PROVISION OF LEGAL REPRESENTATION IN A FISCALLY RESPONSIBLE AND EFFECTIVE MANNER.

I DON'T BELIEVE THAT THAT STATES

THAT THIS ACT FULFILLS AN
IMPORTANT STATE PURPOSE, BUT,
EVEN MORE IMPORTANTLY --
>> ARE YOU SAYING BECAUSE WE IN
THE SYSTEM UNDERSTAND IT TO A
DIFFERENT LEVEL, THAT THE
LAYPERSON -- WHEN YOU SAY THOSE
WORDS IT SEEMS TO ME TO A GROUP
OF FOLKS THAT ARE HERE THIS
MORNING, THAT IS' PRETTY GOOD
STATEMENT AS TO, THIS IS A GREAT
NEED.

>> WELL, BUT --

>> DO YOU DISAGREE WITH THAT.

>> I THINK, MORE IMPORTANTLY
THAN THAT, IF I MAY, IS THAT THE
PROVISION SAYS THEY MUST
DETERMINE THAT IT FULFILL AN
IMPORTANT STATE INTEREST.

PART OF OUR ARGUMENT IS, THAT HE
DIDN'T EVEN DETERMINE THAT.

AND, IT IS CLEAR FROM THE STAFF
ANALYSES --

>> HOW DO YOU DETERMINE THAT?
I'M NOT SURE WHAT MORE, WITHOUT
USING THOSE SPECIFIC WORDS, THAT
THE LEGISLATURE COULD HAVE DONE,
TO SAY THIS IS AN IMPORTANT
STATE INTEREST.

>> CHIEF JUSTICE, WHAT THEY DID,
WHAT THE LEGISLATIVE BODIES DID,
IS ONCE ARTICLE 7, SECTION 18
WAS DEVELOPED, THEY CREATED A
PROCESS WHEREBY WHENEVER A BILL
MAY AFFECT, MAY BECOME AN
UNFUNDED MANDATE, THEY HAVE A
SOLE -- PROVISION IN THE STAFF
ANALYSES, WHICH ADDRESSES THAT.

CLEARLY, IN THIS CASE, THEY --

>> IS THAT A REQUIREMENT.

>> THEY DIDN'T ADDRESS THAT.

IT'S NOT A CONSTITUTIONAL

REQUIREMENT.

BUT IT IS A LEGISLATIVE
REQUIREMENT.

ALL IT GOES TO IS TO SHOW YOU
THAT THE LEGISLATURE NEVER
CONSIDERED WHETHER THIS WAS AN
UNFUNDED MANDATE OR NOT.

>> DIDN'T THEY -- WELL, THERE IS
A PART OF THE LEGISLATIVE
ANALYSIS THAT TALKS ABOUT, THEY
WERE APPROPRIATED MONIES FOR THE
BEGINNING OF THE SETUP OF THE
REGIONAL COUNSEL'S OFFICE,
CORRECT?

AND THEN THEY SAID IN LATER
YEARS, THIS WAS GOING TO BE
BORNE BY THE COUNTY OR SOME
LANGUAGE TO THAT EFFECT.
SO, IT SEEMS TO ME, THAT AT
LEAST THERE WAS SOME
CONSIDERATION GIVEN TO THE FACT
THAT THIS WAS GOING TO BE COUNTY
FUNDED, AFTER THAT INITIAL
POINT.

>> I WOULD REFER YOU TO THE
PROFESSIONAL STAFF ANALYSIS AND
ECONOMIC IMPACT STATEMENT FOR
PCS SENATE BILL 1088, ARTICLE
IV, WHICH ARE CONSTITUTIONAL
ISSUE, WHICH IS WHAT THEY GO
THROUGH WHENEVER THERE IS THE
POTENTIAL OF AN UNFUNDED
MANDATE.

AND, IT SPECIFICALLY SAYS,
MUNICIPALITY COUNTY MANDATES
RESTRICTIONS, NONE.

SINCE THEY DON'T HAVE ANY
LANGUAGE IN THE BILL THAT SAYS
ANYTHING THAT WE HAVE MADE THIS
DETERMINATION, AND THERE IS
NOTHING IN THEIR STAFF ANALYSES
THAT WOULD LEAD TO US BELIEVE

ANYBODY IN THE LEGISLATURE
ACTUALLY CONSIDERED IT THERE IS
NO WAY THEY COULD HAVE
DETERMINED, SPECIFICALLY
DETERMINED THAT THIS BILL
FULFILLS...

>> IS THIS PURPOSE OF THE
CONSTITUTIONAL PROVISION NOT
JUST TO SAY WE HAVE SAID IT IS
AN IMPORTANT STATE INTEREST,
BUT, SAY IT IS THE UNFUNDED
MANDATE SECTION, THE LEGISLATURE
SENTENCE SUPPOSED TO BE PASSING
BILLS THAT PASS COSTS ONTO THE
COUNTIES, WITHOUT PROVIDING A
MEANS FOR THE DOUBTS PAY FOR IT.
SO, WHAT I'M MORE INTERESTED IN,
IS NOT WHAT THE STATEMENT IS,
BUT, WHAT IS THE... THE PURPOSE
OF THIS PROVISION TO BEGIN WITH.
AREN'T THEY SUPPOSED TO SEE IF
THERE IS A WAY TO FUND WHATEVER
IT IS THAT THEY ARE PASSING ONTO
THE COUNTIES, SHORT OF JUST
SAYING YOU HAVE TO PAY FOR IT?
IS THAT PART -- ISN'T THAT PART
OF THE INTENT OF THE
CONSTITUTIONAL PROVISION?

>> I BELIEVE THE INTENT OF THE
CONSTITUTIONAL PROVISION IS JUST
TO GET THE LEGISLATURE TO TAKE A
STEP BACK, AND CONSIDER WHETHER
THIS IS AN UNFUNDED MANDATE.

>> BUT, ISN'T THAT OBVIOUS?
FROM THE TEXT OF THE STATUTE,
COUNTY FUNDING OF COURT RELATED
FUNCTION AND THEY ASKED
SOMETHING THAT HAS TO BE FUNDED
THAT WAS NOT PREVIOUSLY THERE.
RIGHT THERE.

>> BUT, THAT --

>> I DON'T KNOW HOW ANYBODY CAN

MISS THAT.

>> THAT DOESN'T MEAN THEY ACTUALLY SAT THERE AND SAID YOU KNOW WHAT --

>> LOOK AT WHAT THEY PASSED.

>> WELL, I --

>> THAT WOULD BE TRUE EVEN IF THEY HAD THE MAGIC WORDS IN THERE, RIGHT?

>> THE FACT IS, THAT THE CONSTITUTION REQUIRES THAT THE LEGISLATURE MAKE AN ACTIVE -- TAKE AN ACT, AND THAT ACT IS TO DETERMINE THAT SUCH A BILL, GENERAL LAW, FULFILLS AN IMPORTANT --

>> IT GOES FULL CIRCLE, TO ME, IN THE CASE -- IF THEY USED THE ACTUAL WORDS, THIS WAS A MANDATE TO THE STATE TO PAY FOR CONFLICT COUNSEL AND THEY CAME UP WITH A VERY, YOU KNOW, GOOD WAY FROM THE LEGISLATURE'S POINTS OF VIEW TO SAVE A LOT OF MONEY, FOR THE STATE OF FLORIDA.

AND, THEN THEY SAID, WE CAN EVEN SAVE MORE BY PASSING THE COSTS ON AND I MEAN, THAT IS WHERE WE GO BACK TO PROBABLY THE FIRST ARGUMENT IN FRONT OF THE -- PROBABLY THE STRONGER ONE.

>> I ABSOLUTELY AGREE AND PLEASE, LET ME BE CLEAR, THAT EVEN IF THEY HAD COMPLIED WITH THE PROVISIONS OF ARTICLE 7, SECOND 18 THE BILL WOULD BE UNCONSTITUTIONAL ON THE BASIS OF ARTICLE 5, SECTION 14.

>> WITH THAT YOU ARE INTO YOUR CO-COUNSEL'S TIME.

>> THANK YOU, CHIEF JUSTICE.

>> PLEASE THE COURT, I'M DAN

CELL ECKERT, FOR THE COUNTY OF VOLUSIA AND I WOULD PICK UP WHERE THE COURT LEFT OFF IN QUESTIONING.

VOLUSIA'S POSITION TODAY AND THROUGHOUT THE CASE HAS BEEN THAT ARTICLE 7, SECTION 18, DOES NOT MATTER.

ARTICLE 5, SECTION 14 EXCLUSIVELY GOVERNS THAT THE CONSTITUTIONALITY OF THE STATUTE IS MEASURED ACCORDING TO ITS TERMS, THE STATUTE IS CLEARLY UNCONSTITUTIONAL BUT THE ARTICLE 7, SECTION 18 DISCUSSION IS BESIDE THE POINTS.

JUDICIAL FUNDING IS UNDOUBTEDLY AN IMPORTANT STATE INTEREST. IF THAT FINDING CAN EASILY BE MADE, WHETHER THE COURT REQUIRES IT IN A PARTICULAR FORM.

IF THE COURT WERE TO SAY THAT YOU COULD PROCEED UNDER ARTICLE 7, SECTION 18, THE LEGISLATURE WOULD HAVE ONLY THE REQUIREMENT TO PASS IT BY REQUISITE MAJORITY.

THAT CONSTRUCTION OF THE CONSTITUTION WOULD ENTIRELY UNDO ARTICLE 5, SECTION 14.

WHICH WAS WRITTEN LATER, AND IS MORE SPECIFIC AND SAYS THAT IT EXCLUSIVELY GOVERNS.

THE FRAMERS KNEW IN 1998, WHAT ARTICLE 7, SECTION 18 PROVIDED. THEY SAID THIS SECTION EXCLUSIVELY GOVERNS.

AND THAT IS THE TEST HERE.

I DON'T THINK THE LANGUAGE COULD BE ANY MORE CLEAR.

EXCEPT AS OTHERWISE PROVIDED SUBSECTION A, SAYS EXCEPT AS

OTHERWISE PROVIDED IN SUBSECTION C.

AND THEN, SUBSECTION C SAYS, NO COUNTY, MUNICIPALITY, EXCEPT AS PROVIDED IN THE SUBSECTION. SHALL BE REQUIRED TO PROVIDE ANY FUNDING FOR COURT APPOINTED COUNSEL.

FROM VOLUSIA'S POINT OF VIEW THE COURT'S DECISION SHOULD SAY THAT ARTICLE, 5, SECTION 14, EXCLUSIVELY GOVERNS, WE WOULD ASK YOU TO AFFIRM THE DECISION OF THE FIRST DISTRICT, AND CLARIFY THAT ARTICLE 7, SECTION 18, HAS NO APPLICATION HERE.

>> LET ME ASK YOU ABOUT THAT.

I MEAN, THE COUNTIES ARE CERTAINLY SENSITIVE TO THE LEGISLATURE PASSING UNFUNDED MANDATES, SO, I HAVE -- AND I DON'T KNOW -- I MEAN, WOULDN'T NEED TO GET TO IT, BUT, I AM STILL HAVING TROUBLE WITH THE WHOLE NOTION THAT ALL OF THE LEGISLATURE HAS TO DO -- ALL THE LEGISLATURE HAS TO DO TO COMPLY WITH ARTICLE 5, SECTION 18 IS TO STAY IT'S AN IMPORTANT STATE INTEREST AND IT CAN BE SHIFTED TO THE COUNTY --

>> YOU CAN PASS IT BY A RECKLESS MAJORITY, MY UNDERSTANDING OF THE TERMS AND THE STATUTE WAS PASSED BY UNANIMOUS OR VIRTUALLY UNANIMOUS LEGISLATURE.

IF YOU --

>> YOU ARE ALWAYS

--

>> IF --

>> WELL, YOU WERE ALWAYS, I MEAN, IF YOU HAVE A BATTLE BETWEEN THE COUNTIES AND THE STATE, STATE HAS AN INTEREST IN PASSING AS MUCH ON, I MEAN, IT'S THE CITIZENS.

WE'RE ALL GOING TO END UP PAYING, IT'S NOT A STATE ENTITY, SO ISN'T IT -- WON'T IT BE BETTER, I GUESS, TO GIVE ARTICLE 5, SECTION 18 SOME TEETH TO IT AS TO WHAT THE LEGISLATURE REALLY HAS TO CONTEMPLATE BEFORE THEY'RE GOING TO SHIFT FUNDING ONTO THE COUNTIES AND MUNICIPALITIES.

>> WELL, THE COURT MAY CHOOSE TO DO THAT, BUT I'M SAYING -- AND THERE'S CERTAIN SUBJECTS WHICH THEY CAN PASS ON TO US, INCLUDING ELECTIONS.

THEY DON'T HAVE TO MAKE SPECIFIC FINDINGS, THE CONSTITUTION DOES IT, ESSENTIALLY, FOR THEM.

>> LET ME ASK YOU A QUICK QUESTION ABOUT IS THERE A REGIONAL COUNSEL OFFICE ACTUALLY IN VOLUSIA COUNTY?

>> YES, MA'AM.

>> AND WHO IS -- ARE ALL THE COUNTIES IN THAT -- I GUESS THAT'S THE FIFTH DISTRICT COURT OF APPEALS AREA -- ALL THE COUNTIES IN THAT AREA PAYING FOR THESE EXPENSES?

>> CHIEF JUSTICE, IT'S MY UNDERSTANDING THAT THERE'S A OFFICE IN MOST EVERY COUNTY IN THE FIFTH DISTRICT, CERTAINLY THERE IS IN VOLUSIA WHICH LARGELY CONSISTS OF MEDIUM-SIZED COUNTIES.

THE OFFICE IN DAYTONA BEACH, IN OUR CASE, SERVICES VOLUSIA COUNTY.

IT'S VERY CLOSE TO THE FIFTH DISTRICT COURT OF APPEAL, AS A MATTER OF FACT, BUT IT'S NOT LIKE THE PUBLIC DEFENDER'S OFFICE --

>> BUT THERE ARE OTHER COUNTIES IN THAT AREA, ST. JOHNS COUNTY IN THAT AREA OR PUTNAM COUNTY IN THE SAME DCA AREA AS VOLUSIA COUNTY?

>> MY RECOLLECTION IS THAT ST. JOHNS IS --

>> PART OF THE --

>> WELL, I THINK ST. JOHNS IS IN THE FIFTH AND PUTNAM'S IN THE FIFTH, BUT SEMINOLE, FOR EXAMPLE, SEMINOLE IS WHERE THE REGIONAL CONFLICT COUNCIL FOR OUR DISTRICT MAINTAINS HIS OFFICE.

IT'S OUR NEIGHBORING COUNTY TO THE SOUTHWEST.

SO YOU'RE TALKING ABOUT AN OFFICE, ESSENTIALLY, A SMALLER, AN OFFICE OF ABOUT SEVEN OR SO LAWYERS.

>> IT MAY BE THAT THERE'S ONE IN EACH DISTRICT, THERE'S ONE MAIN OFFICE, BUT THEN THEY MAINTAIN SMALLER OFFICES.

I THINK JUSTICE CANADY'S ORIGINAL QUESTION WAS THIS MAY BE SOMETHING UNEQUALLY BORNE BY COUNTIES DEPENDING ON WHERE THE MAIN OFFICE IS FOR EACH DISTRICT.

>> IT MAY BE.

BUT I THINK THEY TRY TO STAFF ACCORDING TO THE CASE LOAD, AND

THEY HAVE AN OFFICE IN OUR CASE
IN VOLUSIA COUNTY.

>> WE THANK YOU VERY MUCH.

>> THANK YOU, YOUR HONOR.

>> I BELIEVE YOU HAVE A MINUTE
FOR REBUTTAL.

>> THANK YOU.

JUST ONE OR TWO POINTS.

IN THE -- I DON'T THINK THE
CHRIS DECISION HAS MUCH EFFECT
HERE BECAUSE THERE AT LEAST AS
FAR AS THE INCLUSION OF THE
REGIONAL CONFLICT COUNSEL AND
THE DEFINITION OF PUBLIC
DEFENDERS, YOU RECOGNIZED THAT
THAT WAS, THAT WAS A FUNDING
PROVISION, AND THERE WAS A
DISTINCTION BETWEEN FUNDING AND
FUNCTION.

>> WHO PAYS FOR THE ATTORNEY
GENERAL'S OFFICES AROUND THE
STATE?

>> AS FAR AS I KNOW, THAT'S ALL
STATE MONEY.

>> I MEAN, SO THIS, AGAIN, THIS
IDEA, I GUESS BACK TO YOUR
PREMISE THAT IF IT'S A STATE
OFFICE, BUT IT'S IN COUNTIES,
THE COUNTIES WERE INTENDING TO
PAY FOR IT, IT JUST DOESN'T SEEM
LIKE IT HOLDS ANY, YOU KNOW,
IT'S NOT CONSISTENT IN TERMS OF
HOW IT'S APPLIED.

>> WELL, I HAVE TO DIFFER
BECAUSE I THINK THE ONLY ENTITY
THAT DID NOT GET THIS COUNTY
FUNDING WAS, WERE PRIVATE
COUNSEL AND THAT THAT WAS THE
DISTINCTION THAT THE VOTER WOULD
HAVE UNDERSTOOD.

>> ATTORNEY GENERAL, DISTRICT
COURTS OF APPEAL WERE NOT --

>> DCRC.

>> DCRC WERE ALL NOT FUNDED BY
THE COUNTIES.

>> WELL, THAT'S TRUE.

BUT THAT DOES NOT MEAN THAT THE
LEGISLATURE COULDN'T ADD THIS
ONE OFFICE TO IT IN THE ABSENCE
OF SOME CLEAR PROHIBITION.

THANK YOU.

>> ALL RIGHT.

THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.

WE REALLY APPRECIATE YOUR HELP
WITH THIS CASE.