

WHY DOES FLORIDA HAVE PUBLIC DEFENDER ELECTIONS?

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I. INTRODUCTION

The Sixth Amendment to the Constitution guarantees that anyone within the borders of the United States who is accused of a crime will have effective assistance of counsel.¹ The Supreme Court of the United States has deemed this principle as so fundamental to our society that it is mandated in all criminal trials.² The public defender system was implemented by every state to accomplish this noble goal.³

The state of Florida is different from all other states, with the exception of Nebraska, Tennessee, and parts of California, in its implementations of this mandate.⁴ Florida uses an election process to determine who will take the position of public defender in each of its judicial districts.⁵

Section II of this article provides a brief overview of the history of the right to assistance by counsel.⁶ This background information is crucial in

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1. U.S. CONST. amend. VI.

2. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

3. *See e.g.*, FLA. CONST. art. V, § 18.

4. Ronald F. Wright, *Public Defender Elections and Popular Control over Criminal Justice*, 75 MO. L. REV. 803, 814 (2010).

5. FLA. CONST. art. V, § 18.

6. *See infra* Section II; *see also Gideon*, 372 U.S. at 344.

evaluating the arguments in favor and against popular elections for public defenders.⁷

Section III of this article discusses why Florida elects its public defenders and the arguments for and against this election system.⁸ Determining these reasons is crucial in understanding whether Florida has a system that is in the best interest of the public and strikes a balance with the preservation of our adversarial system.⁹ This section also addresses the advantages and downfalls of this election system.¹⁰ Additionally, this section explores some strategies and campaign tactics that previous public defender candidates have used in the past in order to determine whether this system establishes the goals it was set out to meet.¹¹

Section IV discusses the Office of Criminal Conflict and Civil Regional Counsel (“OCCRC”).¹² The Florida legislature has now passed into law essentially a second public defender’s office.¹³ This has come to light in view of the conflict of interest that sometimes exists when the public defender’s office is assigned to two co-defendants.¹⁴ This piece of legislation raises a significant issue because the OCCRC is appointed by the governor whereas the public defenders are elected.¹⁵

The importance of this issue is a matter of public policy.¹⁶ The office of the public defender is essential to our adversarial system.¹⁷ In order for an indigent individual to have a fair trial, it is imperative that the public defender office be free from any outside influences.¹⁸ The purpose of this article is to explore whether an appointed public defender is less capable of guaranteeing the Sixth Amendment to the Constitution’s promise of effective assistance of counsel when compared to an elected public defender.¹⁹ This is very important to the public as a whole, especially in the state of Florida.²⁰ Finally, Section V argues that the Florida

7. See Wright, *supra* note 4, at 814.

8. See *infra* Section III; see also Crist v. Fla. Ass’n of Crim. Def. Lawyers, Inc., 978 So. 2d 134, 146–47 (Fla. 2008).

9. See Crist, 978 So. 2d at 147.

10. See e.g., Wright, *supra* note 4, at 812.

11. See *id.* at 817.

12. See *infra* Section IV; Crist, 978 So. 2d at 137 (discussing the Criminal Conflict and Civil Regional Counsel).

13. Crist, 978 So. 2d at 137

14. *Id.* at 138.

15. See *id.* at 146–48.

16. See Wright, *supra* note 4, at 822.

17. Crist, 978 So.2d at 147 (citing Wilson v. Wainright, 474 So. 2d 1162, 1164 (Fla. 1985)).

18. See Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

19. See Crist, 978 So. 2d at 146–48.

20. See Wright, *supra* note 4, at 822.

Constitution should be amended to provide for the appointment of public defenders.²¹

II. A HISTORICAL OVERVIEW

The right to have counsel has been a fundamental part of our nation for almost its entire existence.²² The Sixth Amendment to the Constitution states that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.”²³ However, this guarantee was not mandated for indigents until 1932.²⁴ In *Powell v. Alabama*,²⁵ the Supreme Court of the United States recognized the need to provide assistance to indigents for capital cases.²⁶ The Court executed this mandate by applying the Due Process Clause of the Fourteenth Amendment to the Sixth Amendment and thus making it a right protected by the Constitution.²⁷ However, the Court did not decide whether an indigent should be provided assistance of counsel in non-capital cases.²⁸ It was not until six years later when the Court decided *Johnson v. Zerbst*,²⁹ that the Court broadened this mandate to all federal courts.³⁰ However, in 1942, in its decision in *Betts v. Brady*,³¹ the Court declared that the right to assistance of counsel to indigents was not a fundamental right.³² The Court reviewed all of the original thirteen states’ constitutions and determined that they did not include an inherent right to the assistance of counsel.³³ The court looked at the constitutions of all of the states and determined that in a majority of states, while a defendant could not be denied the option to appoint counsel, a defendant was not entitled to assistance of counsel.³⁴ This case was the law for more than twenty years.³⁵

21. See *infra* Part V.

22. See U.S. CONST. amend. VI.

23. *Id.*

24. David A. Simon, *Equal Before the Law: Toward a Restoration of Gideon’s Promise*, 43 HARV. C.R.–C.L. L. REV. 581, 584–85 (2008).

25. *Powell v. Alabama*, 287 U.S. 45 (1932).

26. *Id.* at 73.

27. See *id.* at 72–73.

28. Simon, *supra* note 24, at 585.

29. *Johnson v. Zerbst*, 304 U.S. 458 (1938).

30. *Id.* at 467–68.

31. *Betts v. Brady*, 316 U.S. 455 (1942), *overruled by* *Gideon v. Wainwright*, 372 U.S. 335 (1963).

32. See *id.* at 471.

33. *Id.* at 467–71.

34. *Id.* at 468.

35. Simon, *supra* note 24, at 585.

In 1963, the Supreme Court of the United States decided *Gideon v. Wainwright* was decided.³⁶ This landmark case established that assistance of counsel is a right guaranteed to indigent individuals who face criminal charges.³⁷ The petitioner Gideon was charged with a misdemeanor for breaking into a pool hall with intent to commit a misdemeanor within,³⁸ a felony under Florida law.³⁹ When Gideon appeared at trial, he had no funds to hire a lawyer and requested that one be appointed to him.⁴⁰ The court responded that it could not appoint a lawyer under the laws of the state of Florida.⁴¹ Gideon had no choice but to represent himself.⁴² He argued and conducted his defense as well as could be expected from a person who was not an educated lawyer.⁴³ The jury returned a verdict of guilty and he was sentenced to five years imprisonment.⁴⁴ He then filed a habeas corpus petition with the Florida Supreme Court.⁴⁵ However, under the Supreme Court of the United States' holding in *Betts v. Brady*, the Florida Supreme Court had to deny him all relief he sought.⁴⁶ Then the Supreme Court of the United States granted certiorari to review this decision.⁴⁷ The Court noted that the facts and circumstances surrounding Gideon's case were almost indistinguishable from those in *Betts v. Brady*.⁴⁸ The Court's analysis began by looking at the precedent established before *Betts v. Brady* that led the Court to its decision.⁴⁹ The Court looked to this analysis and ultimately concluded that the *Betts v. Brady* Court had mistakenly analyzed the precedents before it.⁵⁰ In reaching its decision the Court quoted:

We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution.⁵¹

36. *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963).

37. *Id.* at 344–45.

38. *Id.* at 336.

39. *Id.* at 336–37.

40. *Id.* at 337.

41. *Gideon*, 372 U.S. at 337.

42. *See id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 338.

47. *Gideon*, 372 U.S. at 338.

48. *Id.*

49. *Id.* at 341.

50. *Id.* at 342.

51. *Id.* at 343 (quoting *Grosjean v. Am. Press Co.*, 297 U.S. 233, 243–44 (1936)).

To elevate its position it quoted again:

The assistance of counsel is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. . . . The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not 'still be done.'⁵²

With these quotations as evidence the Court proceeded to state that the *Betts v. Brady* Court indeed had misinterpreted past precedent and should be overruled.⁵³ In explanation of their ruling, the Court said:

In returning to these old precedents, sounder we believe than the new, we but restore constitutional principles established to achieve a fair system of justice. Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.⁵⁴

This seems quite elementary now. However, indigents were not provided the assistance of counsel for any charge less than a capital offense a mere fifty-one years ago.

III. THE DEBATE OVER PUBLIC DEFENDER ELECTIONS

Immediately following this case, Florida established the office of the Public Defender.⁵⁵ Peculiarly, Florida chose to elect its public defenders instead of having either a committee or the governor appoint them.⁵⁶ Interestingly enough, the landmark case of *Gideon v. Wainwright* was a Florida born case, yet Florida is one of the few distinct states that still elects its public defenders.⁵⁷ As to the reasons for the election system, there are two distinct arguments that must be evaluated to understand why Florida elects its public defenders.

A. THE ARGUMENT FOR ELECTIONS

The Florida Supreme Court has stated that an indigent defendant is allowed effective assistance of counsel free from conflict.⁵⁸ As a safeguard to this system, the argument in favor of electing public defenders is that a

52. *Id.* at 343 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 462 (1938)).

53. *Gideon*, 372 U.S. at 345.

54. *Id.* at 344.

55. *Wright*, *supra* note 4, at 814.

56. *See* FLA. CONST. art. V, § 18.

57. *See* *Wright*, *supra* note 4, at 814.

58. *Hunter v. Florida*, 817 So. 2d 786, 791 (Fla. 2002).

system without elections would cause the public defender to have a major conflict between vigorously representing his client and working in his capacity as an appointed state officer.⁵⁹ However, in most other states, public defenders are appointed either by a governor or a committee established by the state.⁶⁰ This being so, the argument still has some legal muster. In discussing judicial elections, the Indiana Supreme Court stated:

The security of human rights and the safety of free institutions require freedom of action on the part of the court. Courts from time immemorial have been the refuge of those who have been aggrieved and oppressed by official and arbitrary actions under the guise of governmental authority. It is the protector of those oppressed by unwarranted official acts under the assumption of authority. Our sense of justice tells us that a court is not free if it is under financial pressure, whether it be from a city council or other legislative body, in the consideration of the rights of some individual who is affected by some alleged autocratic or unauthorized official action of such a body. One who controls the purse strings can control how tightly those purse strings are drawn, and the very existence of a dependent. Justice, as well as the security of human rights and the safety of free institutions requires freedom of action of courts in hearings cases of those aggrieved by official actions, to their injury.⁶¹

These observations can be extended to election of public defenders. The basic idea is that while being an appointee of the state, the public defender cannot adequately and vigorously serve his client because of his interest in getting reappointed.⁶² The public defender is in an adversarial position, an opposite party to the state attorney in every case in which he serves, thus if he were worried about his appointment from the government this could be a real conflict.⁶³

Public Defenders can also be seen as checks and balances on an imperfect justice system.⁶⁴ Howard Finkelstein, the Public Defender for the seventeenth judicial circuit, is an example of these checks and balances.⁶⁵ On June 13, 2011, Mr. Finkelstein wrote a letter to Jack Smith, the Chief of the Public Integrity System for the Department of Justice.⁶⁶ Finkelstein's office became aware of some corruption taking place in the Broward

59. *See Crist v. Fla. Ass'n of Crim. Def. Lawyers, Inc.*, 978 So. 2d 134, 146–47 (Fla. 2008).

60. Wright, *supra* note 4, at 812–13.

61. *Carlson v. Indiana*, 220 N.E.2d 532, 533–34 (Ind. 1966).

62. *See Crist*, 978 So. 2d at 147.

63. *Id.*

64. *See, e.g.*, Letter from Howard Finkelstein, Pub. Defender, Seventeenth Judicial Circuit, to Jack Smith, Chief, Pub. Integrity Sec. (June 13, 2011) (on file with the South Florida Times) [hereinafter Letter from Howard Finkelstein].

65. *Id.*

66. *Id.*

Sheriff's Office ("BSO").⁶⁷ In his letter, he told Mr. Smith of this corruption.⁶⁸ He stated that the State Attorney's office had failed to prosecute employees of the BSO on several occasions.⁶⁹ According to Finkelstein, the State Attorney's office would not prosecute the employees of the BSO without evidence of corroboration and the reasonable chance of a conviction.⁷⁰ This alleged violation of law and duty by both the State Attorney's office and the BSO was brought to light by Mr. Finkelstein.⁷¹ It would appear unlikely that he would have written this letter had he been an appointed official.⁷² However as an elected official, Mr. Finkelstein had no conflict of interest to prevent him from writing this letter.⁷³ This is an ability that most likely would not be in place if he was not elected.⁷⁴ The supporters of an election system for the public defender's office rally behind one central theme.⁷⁵ This theme is that a fair adversarial system must be free from ineffectiveness of counsel and thus cannot involve the appointment of the public defenders.

B. THE ARGUMENT AGAINST ELECTIONS

Florida is one of the only states in the United States that has an election system for its public defender offices.⁷⁶ Appointment is the way that the majority of public defender offices are filled.⁷⁷ The most common method that these appointments are made is by a judicial committee board.⁷⁸ The next most common method is appointment by a governor or other state elected official.⁷⁹

67. *Id.*

68. *Id.*

69. Letter from Howard Finkelstein, *supra* note 64.

70. *Id.*

71. *Id.*

72. *See supra* text accompanying notes 62–63.

73. *See supra* text accompanying notes 62–63.

74. *See supra* text accompanying notes 62–63.

75. *See generally* Wright, *supra* note 4, at 814 (stating that supporters of an election system for public defenders rally behind the theme of favoring elections "because they prefer[] stability in their offices and fear[] that state-level officials would have too much influence over the appointments").

76. *See id.* at 803.

77. *Id.*

78. *Id.* at 812.

79. *Id.* at 813.

Most states choose to appoint rather than elect for a number of reasons.⁸⁰ One of the biggest reasons states choose to appoint is a matter of public policy.⁸¹ A challenger running against an incumbent public defender needs to have a campaign in order to get the public to vote for him.⁸² This is a pretty basic statement of how our election system works, but the campaign strategy of a public defender is not an easy task.⁸³ How is one to run against the incumbent without seemingly affecting the adversarial system? For example, what platform would one use to point out the flaws of the incumbent and then show the ways they would fix it?⁸⁴ However, all throughout Florida people are constantly challenging the incumbents for their offices.⁸⁵ Over the course of the public defender system's existence in the state of Florida, there have been a number of platforms that have been initiated by the challenging party.⁸⁶ An example of a platform that turned out to be quite offensive to the adversarial system was that of the challenger in the 2008 elections for Jacksonville's public defender's office.⁸⁷ The challenger allegedly promised the fraternal order of police that a policeman's integrity would no longer be challenged by a public defender in court.⁸⁸ The challenger had the fraternal order's support and was elected to the office.⁸⁹ Almost immediately after being elected, the challenger fired ten very experienced attorneys within the public defender's office.⁹⁰ This action was obviously against the adversarial system because a public defender is supposed to act in the best interest of his clients and by making this promise, the challenger was clearly in violation of it.⁹¹

Another example of a platform that has been used is the destruction of an incumbent's reputation as in the case of Richard Jorandby.⁹² In 2000, Jorandby was the incumbent running against the challenger Carey

80. *Id.* at 803–04.

81. *See* Wright, *supra* note 4, at 823–24.

82. *See id.* at 804.

83. *See* David Oscar Markus, *Public Defender Elections*, SOUTHERN DISTRICT OF FLORIDA BLOG (Dec. 1, 2008, 4:46 PM), <http://sdfla.blogspot.com/2008/12/public-defender-elections.html>; *see also* Wright, *supra* note 4, at 804 (noting that the campaign strategy of a public defender is more difficult than that of a prosecutor since the public defenders are “bound at every turn by their professional responsibilities” among other things).

84. *See* Markus, *supra* note 83; *see also* Wright, *supra* note 4, at 804.

85. *See* Markus, *supra* note 83; *see also* Wright, *supra* note 4, at 816.

86. *See* Wright, *supra* note 4, at 816.

87. Markus, *supra* note 83.

88. *Id.*; Wright, *supra* note 4, at 821.

89. *Id.*

90. Markus, *supra* note 83.

91. Wright, *supra* note 4, at 821 (asserting that challengers have promised voters that they “will refrain from using certain defense techniques in future cases”).

92. *See id.* at 817.

Haughwout.⁹³ Jorandby had maintained the public defender office for nearly two decades.⁹⁴ He lost the race because two of his aides came forward and claimed that he had threatened to fire them if they did not contribute ten thousand dollars to his campaign.⁹⁵ Haughwout maintained that her campaign slogan had been efficiency in running the office but this piece of information somehow materialized right before the election.⁹⁶ In fact, it was this information that destroyed Jorandby's reputation and dealt the decisive blow in the election's result.⁹⁷

An additional example of a platform is where incumbents state that the challenger does not have the managerial skills needed to run an office.⁹⁸ On the other side, the challenger says that the incumbent does not know the needs of the public because he spends too much time managing and not enough time in the courtroom.⁹⁹ Also, there are plenty of campaigns that point to the moral integrity of the candidates and not to their policies or positions.¹⁰⁰ There are even campaign themes that imply favoritism from the incumbent.¹⁰¹ Another very controversial tactic is where the challenger promises to have higher turnover of attorneys that will lead to lower salaries.¹⁰² These, however, are just a few of the examples that many platforms are based upon. These campaign themes and the election process in and of itself are exactly the reasons why a public defender being elected is not a good idea.

Another public policy argument is that if the election system remains, a "race to the bottom" could occur.¹⁰³ This theory is basically that a challenger to an incumbent in a public defender election race will promise

93. *Id.*

94. John Burstein, *New Top Official Shuffles Public Defender's Office*, SUN SENTINEL Dec. 30, 2000, 1B, available at http://articles.sun-sentinel.com/2000-12-30/news/0012300095_1_public-defender-s-office-assistant-public-defender-jorandby.

95. *Id.*

96. *Id.*

97. *Id.*

98. See William R. Levesque, *Public Defender's Race Gets Uglier*, ST. PETERSBURG TIMES, Sept. 1, 2000, at 1B, available at http://www.sptimes.com/News/090100/TampaBay/Campaign_f_or_public_d.shtml; Nancy L. Othon, *Jorandby Ousted After 28 Years*, SUN-SENTINEL, Nov. 8, 2000, at 1B, available at http://articles.sun-sentinel.com/2000-11-08/news/0011080379_1_public-defender-jorandby-voters.

99. See Levesque, *supra* note 98.

100. See, e.g., Gary Fineout, *5 Accused in Election Probe*, MIAMI HERALD, Dec. 7, 2004, at 3B.

101. See David Sommer, *Dillinger, Angelis fight to be defender*, TAMPA TRIBUNE, Sept. 2, 2000, at 1.

102. See Anthony Colarossi, *2 Wrangling in Struggle to Lead Criminal Defense Team*, ORLANDO SENTINEL, Oct. 31, 2004, at K4.

103. Wright, *supra* note 4, at 822.

less vigorous defense of criminals while he is in office.¹⁰⁴ This may help him to win the election.¹⁰⁵ The news of this strategy will reach other challengers and they will do the same thing during the next election.¹⁰⁶ This will culminate with the public defender's office being nothing more than a mirage of a defense because all its tactics will be off limits.¹⁰⁷ This would be detrimental to the adversarial system and ultimately destroy the Sixth Amendment to the Constitution's guarantee to effective assistance of counsel.¹⁰⁸

IV. ANALYSIS

In order to determine the legality of these arguments it is imperative to examine what exactly is the meaning of "ineffectiveness of counsel."¹⁰⁹ In *Strickland v. Washington*,¹¹⁰ the Supreme Court of the United States set out the criteria that are to be considered by a court when it decides whether counsel gave his client effective assistance.¹¹¹ The Court explained that a fair trial is one where evidence, which is subject to scrutiny by adversarial parties, is presented to an impartial decision maker in order to resolve issues that were defined preceding the trial.¹¹² The Court went on to say that assistance of counsel is crucial to this process because the defendant will need the counsel's wisdom and knowledge to be able to effectively defend himself against the prosecution's charges.¹¹³ Then the Court elaborated on the right to effective assistance of counsel by stating: "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result."¹¹⁴ Following this statement, the Court set the standard for capital cases, all federal cases, and any case that might be presented for review.¹¹⁵ For a capital case the Court set out two criteria.¹¹⁶ First, the defendant must

104. *Id.*

105. *Id.*

106. *Id.*

107. *See id.*

108. *See Wright, supra* note 4, at 822; *see* U.S. CONST. amend. VI.

109. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984).

110. *Id.*

111. *Id.* at 687–88.

112. *Id.* at 685.

113. *Id.* (citing *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275–76 (1942); *Powell v. Alabama*, 287 U.S. 45, 68–69 (1932)).

114. *Id.* at 686.

115. *Strickland*, 466 U.S. at 687–88.

116. *Id.* at 687.

prove that his counsel was deficient.¹¹⁷ A showing of deficiency has to be serious enough that it took from the defendant the guarantee of counsel made by the sixth amendment.¹¹⁸ Second, the defendant must show that this deficiency prejudiced his defense.¹¹⁹ Both of these criteria must be fulfilled by the defendant in order to show a breakdown of the adversarial system and to obtain the relief he seeks.¹²⁰ The Court further explained that in all federal cases the standard for a court to determine an attorney's performance is that of "reasonably effective assistance."¹²¹ This means that when a defendant makes a claim of ineffectiveness of counsel he has to prove that the attorney went below an objective standard of reasonableness.¹²² Thus the proper standard is "simply reasonableness under prevailing professional norms."¹²³

These standards are the only guidelines the Supreme Court of the United States gives to evaluate an ineffectiveness of counsel claim.¹²⁴ The Court explains that it would be impossible to give more insight into the specific guidelines that constitute reasonably effective attorney performance.¹²⁵ Because the standard is one of reasonableness, how the standard should apply varies on case-by-case basis.¹²⁶ If the Court were to attach specific guidelines it would come close to violating the guarantee of effectiveness of counsel and possibly violate it.¹²⁷ In a case-by-case comparison it is impossible to say exactly what the minimal requirements would be for an attorney to give effective assistance.¹²⁸ According to the Court, when a court is presented with a claim of ineffectiveness of counsel, that court must be highly deferential to the counsel's performance.¹²⁹ The Court addresses the fact that when looking back at what counsel did during the course of a trial it be would very easy after knowing the outcome of the trial to critique the counselor.¹³⁰ The Court stated that there is a presumption that whatever counsel did during the trial was "sound trial

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Strickland*, 466 U.S. at 687 (citing *Trapnell v. United States*, 725 F. 2d 149, 151–52 (2d. Cir.1983)).

122. *Id.* at 687–88.

123. *Id.*

124. *Id.* at 688–89.

125. *Id.*

126. *Id.* at 689.

127. *See Strickland*, 466 U.S. at 689.

128. *See id.*

129. *Id.*

130. *Id.*

strategy.”¹³¹ There are many ways to represent a defendant and during the course of a trial even the most competent defense attorneys might choose a tactical plan that similar competent attorneys would not agree is a good decision.¹³²

In order to gain a deeper understanding of what the Court looks for when it is evaluating what is reasonable effective assistance of counsel it is important to study a few examples. In *Cuyler v. Sullivan*,¹³³ the claim of ineffectiveness of counsel was based on a conflict of interest.¹³⁴ The defendant made a claim that his counsel rested his case because he did not want to expose other witnesses that were going to testify for some of the co-defendants.¹³⁵ The Court stated that the mere possibility of a conflict of interest was not sufficient grounds to reverse a conviction.¹³⁶ Instead, the Court said that the defendant must show there is a conflict of interest and then show that this conflict of interest prejudicially affected his trial.¹³⁷

In *Brooks v. Tennessee*,¹³⁸ the Court held that a state statute was unconstitutional because it forced the defendant to testify first in trial, if he chose to testify.¹³⁹ The Court explained that a defendant’s decision to testify is both a tactical decision and one protected by the constitution.¹⁴⁰ The penalty for not testifying first, according to the statute in question, was that the defendant was precluded from testifying at all.¹⁴¹ The Court held that by keeping the defendant off the stand unless he testified first, the state violated the defendant’s right to assistance of counsel.¹⁴² All these cases focus on what the attorney or the state actually did during the trial.¹⁴³ Not one of the cases mentioned above, nor any case that the Supreme Court of the United States has reviewed based on a claim of ineffectiveness of counsel, has dealt with the office in which the attorney worked. Therefore, the argument in favor of elections is very shaky at best. There is absolutely no case law in the federal system that deals with this issue because it is not an effective legal argument.

131. *Id.* (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)).

132. *Id.*

133. *Cuyler v. Sullivan*, 446 U.S. 335 (1980).

134. *Id.* at 349.

135. *Id.* at 350.

136. *Id.*

137. *Id.*

138. *Brooks v. Tennessee*, 406 U.S. 605 (1972).

139. *Id.* at 612–13.

140. *Id.* at 612.

141. *Id.*

142. *See id.* at 613.

143. *See e.g.*, *Strickland v. Washington*, 466 U.S. 668, 689–90 (1984).

A. THE FLORIDA SUPREME COURT'S OPINION

Similar to the federal system, the state of Florida does not have any case law to support the argument for elections.¹⁴⁴ In fact, the Florida Supreme Court addressed this issue in one of its fairly recent decisions.¹⁴⁵ The legislature of the State of Florida created a bill designed to help public defenders when they had a conflict of interest.¹⁴⁶ This law created the OCCRC.¹⁴⁷ It was designed to allow the withdrawal of a public defender in a case where there were multiple defendants and a conflict of interest was created by the public defender representing both co-defendants.¹⁴⁸ The peculiar thing about this office is that the legislature designed the regional conflict counsel to be appointed:

Each regional counsel must be, and must have been for the preceding 5 years, a member in good standing of The Florida Bar or a similar organization in another state. Each regional counsel shall be *appointed by the Governor* and is subject to confirmation by the Senate. The Supreme Court Judicial Nominating Commission shall recommend to the Governor three qualified candidates for appointment to each of the five regional counsel positions. The Governor *shall appoint* the regional counsel for the five regions from among the recommendations, or, if it is in the best interest of the fair administration of justice, the Governor may reject the nominations and request that the Supreme Court Judicial Nominating Commission submit three new nominees. The regional counsel shall be appointed to a term of 4 years, the first beginning on July 1, 2007. Vacancies shall be filled in the same manner as appointments.¹⁴⁹

Effectively, the legislature created a non-constitutional officer to fulfill duties extremely similar to that of a public defender.¹⁵⁰ The Florida Association of Criminal Defense Lawyers, Inc. ("FACDL"), brought suit as soon as this bill was signed into law declaring this office to be unconstitutional.¹⁵¹ The Florida Supreme Court had to review this bill in its entirety to determine whether it was constitutional.¹⁵²

144. See e.g., *Crist v. Florida Ass'n of Crim. Def. Lawyers, Inc.*, 978 So. 2d 134, 141–42 (Fla. 2008) (summarizing the existing case law in Florida prior to *Crist*).

145. *Id.* at 137.

146. *Id.* at 138.

147. *Id.* at 137.

148. FLA. STAT. § 27.511(5) (2013).

149. FLA. STAT. § 27.511(3) (emphasis added).

150. See *id.*

151. See *Crist v. Florida Ass'n of Crim. Def. Lawyers, Inc.*, 978 So. 2d 134, 138 (Fla. 2008).

152. *Id.* at 139–48.

The first issue that was presented to the court was whether this statute went against the expressed language of the Florida Constitution.¹⁵³ The Court first looked at the plain language of the public defender statute.¹⁵⁴ The plain language is as follows:

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.¹⁵⁵

The court then found that there were three fundamental requirements set by the legislature for the public defender.¹⁵⁶ The requirements are:

(1) each judicial circuit shall have *one* public defender; (2) the public defender must be elected for a term of four years; and (3) the public defender must be an elector of the State, reside in the territorial jurisdiction of the circuit in which he or she is elected, and be a member in good standing of The Florida Bar for the preceding five years.¹⁵⁷

The court then stated that there was nothing in the Florida Constitution besides this section that gave any insight into the specific duties of a public defender.¹⁵⁸ Aside from this section the way a public defender was to operate was not designated by the constitution.¹⁵⁹ The only thing the court ruled was “clearly and unequivocally” stated by the constitution was that the legislature had the authority to control what types of cases the public defender was allowed to defend.¹⁶⁰ Therefore, the OCCRC could logically defend cases that the legislature deemed were unfit for the public defender.¹⁶¹ The court’s reasoning led to the next logical issue: if the legislature had created a second public defender’s office, this would not be constitutionally correct because the court had already determined there was an expressed intent by the legislature to have only one public defender per judicial district.¹⁶²

153. *Id.* at 140.

154. *Id.*

155. FLA. CONST. art. V, § 18.

156. *Crist*, 978 So. 2d at 141.

157. *Id.*

158. *Id.*

159. *See id.*

160. *Id.*

161. *See id.* at 141–42.

162. *See Crist*, 978 So. 2d at 142; *see also* FLA. CONST. art. V, § 18.

The court then had to decide whether this piece of legislation effectively created a second public defender's office.¹⁶³ The FACDL alleged that because the legislature had referred to the OCCRC as a public defender when describing how it would be funded, the legislature had actually said the OCCRC was a second public defender.¹⁶⁴ The court rejected this assertion and stated that the legal character of the OCCRC should be defined by what the OCCRC actually does and not by what it is referred to for funding purposes.¹⁶⁵ Specifically, the Court looked at the duties of the OCCRC as compared to the duties of the public defender.¹⁶⁶ The Court then said that there was no difference in the type of cases that both the OCCRC and the public defender would handle.¹⁶⁷ The Court then analyzed the specific duties of the OCCRC.¹⁶⁸ It noted that the OCCRC only steps in and takes cases that create a conflict of interest for the public defender.¹⁶⁹ Therefore, it would be impossible for the OCCRC to be a second public defender's office.¹⁷⁰ By virtue of the fact that the OCCRC only represents clients that the public defender cannot represent, the OCCRC does not undertake the same duties as a public defender.¹⁷¹ Thus, the Court concluded that the OCCRC was not a second public defender's office.¹⁷²

At the conclusion of its analysis of this issue, the court had to address the assertion made by the FACDL that the OCCRC was not constitutionally viable because it lacked the independence of an elected official.¹⁷³ First, the court noted the FACDL had not cited any case law to bolster its argument.¹⁷⁴ The fact the FACDL did not provide any support suggests that its arguments were weak.¹⁷⁵ Next, the court looked at its past precedent on the issue.¹⁷⁶ The court started off reiterating its past ruling that "[t]he state is constitutionally obliged to respect the professional

163. *See Crist*, 978 So. 2d at 142–43.

164. *Id.* at 144–45.

165. *Id.* at 145.

166. *Id.*

167. *Id.*

168. *See id.*

169. *Crist*, 978 So. 2d at 145.

170. *Id.* at 145–46.

171. *See id.* at 146.

172. *Id.* at 148.

173. *Id.* at 146–47.

174. *Id.* at 147.

175. *See Crist*, 978 So. 2d at 147 (noting the lack of supporting evidence and case law in support of FACDL's argument).

176. *See id.* at 147–48.

independence of the public defenders whom it engages.”¹⁷⁷ This statement stands for the proposition that by constitutional decree the state of Florida must take the independence of the public defenders as a serious matter.¹⁷⁸

The court then quoted from the Supreme Court of the United States:

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.¹⁷⁹

Indeed the court considers the independence of a public defender to be one of the most important characteristics of the office.¹⁸⁰ The court went on to cite from many different cases to show this sense of importance and respect that the court gives to the public defender.¹⁸¹ The court quoted, “the public defender is an advocate, who once appointed owes a duty only to his client, the indigent defendant. His role does not differ from that of privately retained counsel.”¹⁸² The court then cited its discussion in *Wilson v. Wainwright*:

[T]he basic requirement of due process in our adversarial legal system is that a defendant be represented in court, at every level, by an advocate who represents his client zealously within the bounds of the law. Every attorney in Florida has taken an oath to do so and we will not lightly forgive a breach of this professional duty in any case . . .
.”¹⁸³

These examples proffered by the court make it abundantly clear that the court does not consider an elected official any more capable of representing his client than an appointed official.¹⁸⁴ The court even specifically stated, “[i]n the context of the Sixth Amendment, effective representation does not depend upon the office structure from which the attorney came or for whom the attorney works, but the actual legal representation provided to the individual client.”¹⁸⁵ The court cited *Makemson v. Martin County*¹⁸⁶ to exemplify this statement.¹⁸⁷ In this case, the court held that to use of a maximum fee structure for all appointed

177. *Id.* at 147 (quoting *State ex rel. Smith v. Brummer*, 426 So. 2d 532, 533 (Fla. 1982)).

178. *See id.*

179. *Id.* (quoting *Ferri v. Ackerman*, 444 U.S. 193, 204 (1979)).

180. *Id.*

181. *See Crist*, 978 So. 2d at 147.

182. *Id.* (quoting *Schreiber v. Rowe*, 814 So. 2d 396, 398 (Fla. 2002)).

183. *Id.* (quoting *Wilson v. Wainwright*, 474 So. 2d 1162, 1164 (Fla. 1985)).

184. *Id.*

185. *Id.*

186. *Makemson v. Martin Cnty.*, 491 So. 2d 1109, 1112 (Fla. 1986).

187. *Crist*, 978 So. 2d at 147–48.

counsel was unconstitutional as applied.¹⁸⁸ The court stated that a public defender might vary his amount of preparation for trial depending on the circumstances of the case.¹⁸⁹ This variation makes it impossible for a statute to project what the maximum fee must be for any type of case.¹⁹⁰ If the statute were applied, court appointed defense counsel could not give his client effective assistance of counsel if his costs exceeded the maximum allowable.¹⁹¹ Thus, the court concluded that the statute was unconstitutional because it caused ineffective assistance of counsel.¹⁹²

Similarly, in *Schommer v. Bentley*,¹⁹³ the court looked at the actual assistance of the counsel given to the defendant.¹⁹⁴ The same was held true in the case of *Olive v. Maas*¹⁹⁵ where the court looked at the assistance given by counsel and not what position he held.¹⁹⁶ All these examples point to the way that the Florida Supreme court approaches the effective assistance of counsel debate.¹⁹⁷ The court does not look at what office the counselor is from, but instead looks at the actual legal assistance the counselor gives to his client.¹⁹⁸ In other words, “it is not the form of representation that implicates the Sixth Amendment, but rather a question of whether the representation itself is effective.”¹⁹⁹ Thus, the creation of the OCCRC was deemed by the Florida Supreme Court not to be a violation of the Sixth Amendment’s guarantee to the right to have effective assistance of counsel.²⁰⁰

B. THE FLORIDA BAR

Every attorney who is admitted to the Florida Bar is held to a professional standard of ethics specifically designed by the Florida Bar.²⁰¹ In order to be admitted, an attorney must take an oath and be sworn in by a

188. *Makemson*, 491 So. 2d at 1112.

189. *See id.* at 1114.

190. *Id.* at 1115.

191. *See id.* at 1114.

192. *Id.* at 1114–15.

193. *Schommer v. Bentley*, 500 So. 2d 118 (Fla. 1986).

194. *See id.* at 120.

195. *Olive v. Maas*, 811 So. 2d 644 (Fla. 2002).

196. *Id.* at 654.

197. *See Crist v. Florida Ass’n of Crim. Def. Lawyers, Inc.*, 978 So. 2d 134, 147–48 (Fla. 2008).

198. *Id.* at 146–47.

199. *Id.* at 148.

200. *Id.*

201. *See Oath of Admission to the Florida Bar*, THE FLORIDA BAR, <http://www.floridabar.org/tfb/TFBProfess.nsf/basic+view/04E9EB581538255A85256B2F006CCD7D?OpenDocument> (last visited Mar. 12, 2014) [hereinafter *Oath*].

judge within ninety days of passing the bar examination.²⁰² The attorney must state in this oath that:

[He or She] will not counsel or maintain any suit or proceedings which shall appear to [him or her] to be unjust, nor any defense except such as [he or she] believe to be honestly debatable under the law of the land; [he or she] will employ for the purpose of maintaining the causes confided to [him or her] such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; [he or she] will maintain the confidence and preserve inviolate the secrets of [his or her] clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval . . . [he or she] will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which [he or she is] charged²⁰³

These words are a clear indication of what is required by the state of Florida for any individual to become a member of its bar.²⁰⁴ It is clearly evident that when an individual is accepted into the Florida Bar they are no longer allowed to act as a layman, in ignorance of the law.²⁰⁵ More importantly they are not allowed to take any “compensation in connection with their business except from [their client] or with their knowledge and approval.”²⁰⁶ This oath is proof that any person who becomes a Florida Bar member, which is a pre-requisite to being a public defender, is bound by an oral contract to not let any sort of compensation or influence affect their vigorous defense of their client.²⁰⁷ Furthermore, the oath requires that the attorney “will never seek to mislead the judge or jury by any artifice or false statement of fact or law.”²⁰⁸ If an attorney is influenced by his office to alter or amend a certain defense at trial, it would be a direct violation of this oath.²⁰⁹ This oath is not something that the bar of the state of Florida

202. See The Fla. Bar Re: Amendment to Rules Regulating the Fla. Bar, 605 So. 2d 252, 282–83 (Fla. 1992) (providing information about the required oath); see also *Examination Results Frequently Asked Questions*, FLORIDA BOARD OF BAR EXAMINERS, <https://www.floridabarexam.org> (last visited Mar. 12, 2014).

203. *Oath*, *supra* note 201.

204. *Id.*

205. See *id.*

206. *Id.*

207. See *id.*; see also FLA. CONST. art. V § 18 (requiring an elected public defender to have been a member of the Florida Bar for at least five years prior to election).

208. *Oath*, *supra* note 201.

209. See *id.*

takes lightly.²¹⁰ A lawyer who violates this oath may be subjected to sanctions and possibly disbarred.²¹¹ Therefore, a public defender who is swayed by his appointment is in violation of the oath and could be disbarred.²¹² Logically, this factor alone should be enough of a deterrent to accurately say that a public defender would not be swayed by his appointing office and would therefore not have a conflict of interest due to his appointment.²¹³

In addition to the oath that is taken by every attorney admitted to the bar in the state of Florida, every attorney who practices law in the state of Florida is subject to the bar of Florida's jurisdiction.²¹⁴ This means that every attorney who practices law in the state of Florida is subject to the Florida Bar's standards of conduct.²¹⁵

The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.²¹⁶

A lawyer who is practicing in the state of Florida must adhere his conduct to this description of professional conduct.²¹⁷ A lawyer in the state of Florida who commits an act "contrary to honesty and justice," may be subjected to discipline by the bar of the state of Florida.²¹⁸ This statement seems quite obvious but goes against the notion that a public defender could not vigorously defend his client if he were appointed.²¹⁹ Therefore, the argument for elections is logically inconsistent with the professional standard that lawyers in Florida are required to adhere to.²²⁰ Furthermore, an attorney who violates this standard would be subjected to discipline and possibly disbarment.²²¹

210. *The Fla. Bar Re: Amendment to Rules Regulating the Fla. Bar*, 605 So. 2d at 282.

211. *See id.* at 283–85.

212. *See Oath*, *supra* note 201.

213. *The Fla. Bar Re: Amendment to Rules Regulating the Fla. Bar*, 605 So. 2d at 282.

214. *Id.* at 281–82.

215. *Id.* at 281–82.

216. *Id.* at 282.

217. *See id.*

218. *Id.*

219. *See The Fla. Bar Re: Amendment to Rules Regulating the Fla. Bar*, 605 So. 2d at 282.

220. *See id.*

221. *Id.*

C. THE MAJORITY APPOINTS

Another reason that strengthens the argument against electing public defenders is that the majority of jurisdictions appoint them.²²² This fact seems quite simple but it is interesting to note that not one Supreme Court of the United States opinion has dealt with a conflict of interest where the primary claim was that the public defender was appointed. In addition, this fact suggests that this argument put forth by supporters of elections for public defender offices is not only weak but also has no backing.²²³ Therefore, this system of elections must be changed as quickly as possible.

V. CONCLUSION

Florida's public defender election system needs to be changed to fall in line with the rest of the country.²²⁴ As a matter of public policy, the campaign themes and general behavior of the election system is not good for the public.²²⁵ This race to the bottom approach that could take hold of the public defender campaigns could seriously impair the court system of Florida.²²⁶

Also, adherence to the guarantee of the Sixth Amendment does not require elections of public defenders.²²⁷ This argument for elections is not legally consistent. Ineffectiveness of assistance of counsel has never been claimed purely based on the office from which an attorney was employed.²²⁸ The Florida Supreme Court specifically states the premise for this argument and completely refutes it.²²⁹ In fact the Supreme Court of Florida uses examples from the Supreme Court of the United States to bolster this argument.²³⁰ The Supreme Court of the United States has consistently held that a public defender, like any other attorney, is required to perform a professional duty in line with the oath that he or she took when they were barred by their respective states.²³¹ The Florida Supreme Court goes on to say that the argument for elections being part of the guarantee of the Sixth Amendment of the Constitution has no backing

222. Wright, *supra* note 4, at 812.

223. See *Crist v. Fla. Ass'n of Crim. Def. Lawyers, Inc.*, 978 So. 2d 134, 148–47 (Fla. 2008).

224. See Wright, *supra* note 4, at 812.

225. *Id.* at 822.

226. *Id.*

227. *Crist*, 978 So. 2d at 146–47.

228. See *e.g.*, *Strickland v. Washington*, 466 U.S. 668, 690 (1984) (stating what the court must analyze while looking at the challenged conduct).

229. *Crist*, 978 So. 2d at 148.

230. See *id.* at 147 (quoting *Polk County v. Dodson*, 454 U.S. 312 (1981)).

231. *Id.*

because there is no case law to support it.²³² It also states that the OCCRC is allowed under the Florida constitution.²³³ The Florida Supreme Court is basically saying that even under the constitutional provision that addresses the qualifications of the public defender, there is not a constitutional argument to keep the legislature from creating an office which, in the form of its duties, does the same thing as a public defender.²³⁴ In other words, the Florida Supreme Court is basically suggesting that there is no legal reason why public defenders should be elected.²³⁵ Therefore if there is not a reason for the elections, and the majority of jurisdictions appoint their public defenders, it is logically consistent to state that Florida should become in line with this majority view.

Furthermore, the Florida Bar has a professional standard to which all attorneys who practice in the state of Florida must comply with.²³⁶ This professional standard requires all attorneys, including public defenders, not to maintain trial and legal claims that are not “contrary to honesty and justice.”²³⁷ This is yet another reason why an elected official would be no more likely than an appointed official to promote the Sixth Amendment’s guarantee to effective assistance of counsel free from conflict.²³⁸

The issue then becomes how can Florida change its system of electing public defenders? This question is easily answered by Florida’s own constitution.²³⁹ There are five ways to modify Florida’s constitution.²⁴⁰ It can be modified either by (1) a proposal by the legislature with a joint resolution, (2) a proposal by a Constitution Revision Commission, (3) a proposal by a Tax and Budget Reform Commission, (4) a proposal by citizen initiative, or (5) a proposal by a constitutional convention.²⁴¹ A proposal by the legislature is the most logical way that this could happen.²⁴² A member of either house of the legislature would just have to propose an amendment to the constitution and then it would be voted on.²⁴³ In order to pass, three-fifths of both the houses would have to vote to make the bill a

232. *Id.*

233. *Id.* at 148.

234. *Id.* at 146.

235. *Crist*, 978 So. 2d at 147.

236. The Fla. Bar Re: Amendment to Rules Regulating the Fla. Bar, 605 So. 2d 252, 281–82 (Fla. 1992).

237. *Id.* at 282.

238. *See* U.S. CONST. amend. VI.

239. FLA. CONST. art. XI. (showing the various ways to amend the Florida Constitution).

240. FLA. CONST. art. XI, §§1–6.

241. *Id.*

242. FLA. CONST. art. XI, §1.

243. *Id.*

law.²⁴⁴ A proposal by the Constitution Revision Commission would be one of the slowest methods to get an amendment to the constitution.²⁴⁵ This method would be slow because a Constitution Revision Commission will not meet again until 2017.²⁴⁶ A Constitution Revision Commission only meets once every twenty years.²⁴⁷ This was designed as a check and balance procedure by the legislature into the constitution in order to keep up with the times.²⁴⁸ A proposal by a Tax and Budget Reform Commission would be the slowest way to amend the constitution.²⁴⁹ Like the Constitution Revision Commission, the Tax and Budget Reform Commission meets once every twenty years.²⁵⁰ However, the last time the Tax and Budget Reform Commission met was in 2007.²⁵¹ This means that the Tax and Budget Reform Commission will not meet again until 2027.²⁵² Nevertheless, this is another possible way to amend the constitution.²⁵³ A proposal by citizen initiative is another route that could be taken to amend the constitution.²⁵⁴ This option gives the power to the voters of the state of Florida.²⁵⁵ This option starts with the filing of the proposed amendment with the custodian of state records in a petition.²⁵⁶ This petition must be signed by:

a number of electors in each of one half of the congressional districts of the state and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.²⁵⁷

The next option available is a proposal by a constitutional convention.²⁵⁸ This is another public option where the action to be taken is left to the people of Florida.²⁵⁹ In order to form this convention a petition

244. *Id.*

245. FLA. CONST. art. XI, § 2.

246. *Our Purpose*, FLORIDA. CONST. REVISION COMMISSION, <http://www.law.fsu.edu/crc/> (last visited Mar. 12, 2014).

247. *Id.*

248. *See* FLA. CONST. art. XI, § 2.

249. FLA. CONST. art. XI, § 6(a).

250. *Id.*

251. *Id.*

252. *See id.*

253. *Id.*

254. FLA. CONST. art. XI, § 3.

255. *Id.*

256. *Id.*

257. *Id.*

258. FLA. CONST. art. XI, § 4(a).

259. *Id.*

must be filed with the custodian of state records.²⁶⁰ This petition must contain a declaration that a constitutional convention is desired.²⁶¹ The petition must be signed by:

a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to fifteen percent of the votes cast in each such district respectively and in the state as a whole in the last preceding election of presidential electors.²⁶²

The proposed convention is then voted on at the next general election.²⁶³ If the amendment passes, the voters of Florida can vote to elect representatives to be on the convention at the next general election.²⁶⁴ There is one member for each district that there is an elected representative in one of the two houses.²⁶⁵ Then after the convention is formed, the representatives decide and propose an amendment to the constitution not less than ninety days before the next general election.²⁶⁶ After any of these five options, the amendment is then proposed to the voters of the state of Florida at the next general election.²⁶⁷ However, before this amendment is put on the general election ballot to be voted, it must be published in a newspaper of general circulation in each of the judicial districts.²⁶⁸ Finally, the amendment is voted on by the voters of the State of Florida and if sixty percent of the voters affirm the amendment, then the constitution will be amended.²⁶⁹ Regardless of the form in which the amendment is passed, the revision or amendment is then presented to the electors and if more than sixty percent of the voters vote for it, the constitution is changed to reflect the revision or amendment.²⁷⁰

In conclusion, the Florida Supreme Court has specifically addressed the argument for elections and clearly refuted its premise.²⁷¹ It is time that the Florida constitution be changed to reflect this opinion.²⁷² Today is the day, for the state of Florida to come into league with the majority of the

260. *Id.*

261. *Id.*

262. *Id.*

263. FLA. CONST. art. XI, § 4(b).

264. *Id.*

265. *See id.*

266. *Id.*

267. FLA. CONST. art. XI, § 5(a).

268. FLA. CONST. art. XI, § 5(d).

269. FLA. CONST. art. XI, § 5(e).

270. FLA. CONST. art. XI, § 5(a).

271. *Crist v. Florida Ass'n of Crim. Def. Lawyers, Inc.*, 978 So. 2d 134, 146–47 (Fla. 2008).

272. *See* FLA. CONST. art. V, § 18.

jurisdictions that appoint their public defenders.²⁷³ It is a matter of public policy that the legislature make the office of the public defender appointed by whatever means it sees fit.²⁷⁴ This could easily be done by amending the Florida constitution.²⁷⁵ Any of the five options that are drafted in the constitution could be used to amend the constitution.²⁷⁶ In order for the interests of the public to be satisfied, it is imperative that this amendment be done as soon as possible.²⁷⁷

273. Wright, *supra* note 4, at 812.

274. See Markus, *supra* note 83.

275. See FLA. CONST. art. XI.

276. *Id.*

277. See Wright, *supra* note 4, at 822.