

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL
CIRCUIT IN AND FOR MONROE COUNTY, STATE OF FLORIDA

JESSE JAMES HILTON, MICHAEL
TIERNEY AND VIRGINIA JOHNSON ,

CASE NO.:

Plaintiffs/Petitioners,

v.

CATHERINE VOGEL in her capacity as
THE STATE ATTORNEY FOR THE
SIXTEENTH JUDICIAL CIRCUIT.

Defendant/Respondent.

PETITION FOR QUO WARRANTO AND REQUEST
FOR DECLARATORY JUDGMENT

Plaintiffs/Petitioners, JESSE JAMES HILTON, MICHAEL TIERNEY AND
VIRGINIA JOHNSON, individually through the undersigned counsel sue
Defendant/Respondent, Catherine Vogel in her capacity as The State Attorney for
Monroe County Florida and petition this Court under Article V, §§ 3(b)(8), 4(b)(3),
5(b), of the Florida Constitution, Florida Statute 86.011, and the Florida Rules of
Civil Procedure 1.630, for a writ of quo warranto and declaratory judgment and
Plaintiffs/Petitioners say:

COUNT I

QUO WARRANTO

1. This is an action for Writ of Quo Warranto.
2. The Florida Constitution Article V, §§ 3(b)(8), 4(b)(3), 5(b), of the Florida Constitution, Florida Statute 86.011 and the Florida Rules of Civil Procedure 1.630, vest this Court with jurisdiction to issue a writ of Quo Warranto to State Officers when a State Officer has improperly exercised a power or right derived from the State. *See Martinez v. Martinez*, 545 So.2d 1338, 1339 (Fla.1989).
3. The Plaintiffs/Petitioners are citizens and taxpayers of the State of Florida.
4. The Defendant/Respondent is the State Attorney for the Sixteenth Judicial Circuit in Monroe County Florida. The State Attorney's Office is located in Monroe County, Florida.
5. The case presents particular circumstances in which the functions of government will be adversely affected absent an immediate determination by this Court, specifically whether Defendant/Respondent acted, continues to act and will act in the future in *excess of her authority* by ratifying, adopting, and implementing "Partnership Funding Agreement" attached as Exhibit A. Pursuant to the

“Partnership Funding Agreement” the Defendant/Respondent has accepted monies, continues to accept monies and will continue to accept monies from the Monroe County Coalition Inc (hereinafter referred to as the “MCC”) and the Guidance Care Center, Inc (hereinafter referred to as the “GCC”) to pay the salary of an Assistant State Attorney in violation of Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001 and 27.34. The Plaintiffs/Petitioners fully adopt and incorporate the “Partnership Funding Agreement” attached as Exhibit A in this count.

6. The “Partnership Funding Agreement” provides in part the following:

WHEREAS, MCC and GCC have partnered with the SA’s Office to support prosecution of DUI and adult enablers of underage drinking cases, to increase prosecution and the perception of being prosecuted; and

WHEREAS, MCC and GCC wish to support the SA’s Office in these prosecutions by funding an additional prosecutor position to prosecute DUI cases and cases involving adult enablers of underage drinking through Grants administered by South Florida Behavior Health Network (“SFBHN”). Copies of the SFBHN administered grants are attached hereto and made a part hereof as if done so verbatim as collective Exhibit 1.

- 1. That MCC shall provide \$25,000.00 to the SA’s office to fund approximately one-half of a full time prosecutor to prosecute DUI and adult enabler of underage drinking cases. This \$25,000.00 shall be reimbursed to SA’s

Office at a rate of \$31.25 per billable hour paid over a 10 month period (8 remaining months).

- 2. That GCC shall provide \$27,094.00 to the AG's Office to fund approximately one-half of a full time prosecutor to prosecute DUI and adult enabler of underage drinking cases. This \$27,094.00 shall be reimbursed to the SA's Office at a rate of \$39.00 per billable hour paid over a 10 month period (8 remaining months)
- 3. That the SA's Office agrees that the assigned prosecutor will prepare daily Service Activity Logs (SAL form attached) necessary for MCC and GCC to bill for the activities performed. The Logs will be submitted at least once per week and all daily logs for the month are to be submitted no later than the second day of the month following. SALs shall be sent to MCC attention of Brooke Brown at brookeleabro@yahoo.com. SALs shall be sent via GCC attention of Janet Cook (janet.cook@westcare.com).
- 4. That the SA's office agrees to provide monthly invoices for payment to MCC and GCC separately no later than the 10th of the month following. Documentation of time expenditure should include submitting timesheets and payroll registers. Invoices for MCC shall be sent to Brook Brown, Project Coordinator, at email brookeleabro@yahoo.com. Invoices for GCC shall be sent to Marianne K. Benvenuti, Regional Controller via fax (305-434-9040) or email (Marianne.benvenuti@westcare.com).

- 5. That the SA's Office will have a representative from said Office attend at least one, either General Membership or Board of Directors meeting of MCC and GCC, each calendar quarter to provide progress reports to MCC and GCC.

7. Plaintiffs/Petitioners requested and the Attorney General declined Plaintiffs/Petitioners request to bring this action. The Plaintiffs'/Petitioners' letter to the Attorney General including all exhibits and the Attorney General's written refusal and authorization to proceed are attached as Exhibit B and C respectively and are fully incorporated in this count. Plaintiffs/Petitioners have no adequate remedy at law as money damages are not at issue.

8. In good faith, Plaintiffs/Petitioners requested confirmation that the Defendant/Respondent rescinded the "Partnership Funding Agreement". To date, the Defendant/Respondent has refused to respond to Plaintiffs'/Petitioners' request. See attached as Exhibit D, counsel for Plaintiffs'/Petitioners' letter to the State Attorney requesting written confirmation of rescission of the contract.

FLORIDA LAW AND ARGUMENT

Under Article 5, §14, of the Florida Constitution all funding for salaries, expenses and costs of the state attorneys' offices shall be paid by general revenue funds. Article 5, §14, of the Florida Constitution.

FUNDING

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined

by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

(d) The judiciary shall have no power to fix appropriations.

The "Statement of Intent" of Article 5, §14, of the Florida Constitution provides that all funding for salaries, expenses and costs of the state attorney's office including salaries of assistant state attorneys shall be paid by public monies paid for by public agencies.

STATEMENT OF INTENT
ARTICLE V, SECTION 14

A. Section 14(a). Section 14(a) requires the state to fund the state courts system, state attorneys' offices, public defenders' offices and court-appointed counsel, except as provided in subsection (c). It is the intent of the proposers that the state be primarily responsible for funding the state courts system, state attorneys' offices and public defenders' offices, and wholly responsible for funding court-appointed counsel and related costs necessary to ensure the protection of due process rights. Subsection (a) requires the state to:

Provide all funding for the state courts system, except as provided in subsection (c). As used in section 14, it is the intent of the proposers that the term "state courts system" be construed to mean the supreme court, district courts of appeal, circuit courts, county courts as well as any additional courts hereafter constitutionally created, and all divisions thereof. The state's obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements which are statewide in nature. It is further the intent of the proposers that the state fund all salaries, costs, and expenses of the state courts system necessary to ensure the rights of people to have access to a functioning and efficient judicial system. The state's funding obligation pursuant to subsection (a) includes, but is not limited to, funding for justices, judges, judicial assistants, law clerks, court administrators, and their respective staffs and related costs including, but not limited to, office expenses and equipment, telephone services, operating costs, legal research, information technology resources except as provided in subsection (c), transportation and travel. The

state shall continue to provide all funding for construction or lease, utilities, maintenance and security of facilities for the supreme court and district courts of appeals;

Provide all funding for salaries, expenses and costs of the state attorneys' offices, public defenders' offices, except as provided in subsection (c), and court-appointed counsel including, but not limited to, office expenses and equipment, telephone services, operating costs, legal research, information technology resources except as provided in subsection (c), transportation and travel. As used in section 14, court-appointed counsel means counsel appointed in criminal and civil proceedings;

Provide all necessary funding for court reporting/recording and transcripts, deposition costs, experts and other witnesses, consultants, interpreters, investigative services, mental health, scientific, medical or other necessary testing services and evaluations as required by the state attorneys, public defenders and indigent litigants, and all funding necessary to provide a trial guaranteed by either the United States Constitution or the Constitution of the State of Florida; and

Provide any other funding that may be required by the United States Constitution or the Constitution of the State of Florida for the administration of justice.

It is further the intent of the proposers that the legislature ensure that the state courts system as well as appropriations for costs that must be incurred to ensure the rights of people under the United States Constitution or the Constitution of the State of Florida are protected from the across-the-board reductions which have been the traditional response to revenue shortfalls. The proposers also recognize that costs necessary to ensure due process rights including, but not limited to, court-appointed counsel, expert witness fees, court reporting services,

and court interpreters can vary unpredictably from year to year. Given this reality, it is the intent of the proposers that the legislature adopt a procedure to provide adequate supplemental funding for the state courts system, state attorneys and public defenders in the event that appropriations in a given year, notwithstanding diligent efforts to achieve efficiencies, are insufficient.

B. Section 14(b). Section 14(b) provides that all funding for the offices of the clerks of the circuit and county courts performing court-related functions shall, except as otherwise provided in subsections (b) and (c), be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions (hereinafter “filing fees, service charges and costs”) which are collected and retained by the offices of the clerks of the circuit and county courts. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees, service charges and costs sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, subsection (b) requires the state to provide adequate and appropriate supplemental funding from state revenues appropriated by general law.

It is the intent of the proposers that the legislature, when developing the schedule of filing fees, services charges and costs, adopt: (1) a procedure to fund

the offices of the clerks of the circuit and county courts when filing fees, services charges and costs are insufficient to cover the court-related salaries, costs, and expenses of the offices of the clerks of the circuit and county courts in a given fiscal year; and (2) a procedure for the disposition of filing fees, service charges and costs retained by the offices of the clerks of the circuit and county courts which, at the end of any fiscal year, exceed the court-related salaries, costs and expenses of the offices of the clerks of the circuit and county courts during the preceding fiscal year.

It is further the intent of the proposers that the legislature, when developing the schedule of reasonable and adequate filing fees, service charges and costs, review the court-related operations of the offices of the clerks of the circuit and county courts and make an independent determination as to what should be the reasonable cost to perform the court-related operations of the clerks' offices. The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks' offices spend to perform the same functions. The determination by the legislature as to the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks' offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard

which is independently established by the legislature.

Subsection (b) also provides that selected salaries, costs and expenses of the state courts system may be funded from appropriate filing fees for judicial proceeding and service charges and costs. In this regard it is intended that the legislature provide certain types of funding for the state courts system from appropriate filing fees, service charges and costs. Some examples of current revenue streams to the state courts of this nature include civil filing fees that go into the Court Education Trust Fund and the Mediation and Arbitration Trust Fund or local option fees used for purposes not inconsistent with other provisions of the proposed amendment,

C. Section 14(c). Section 14(c) provides that no county or municipality shall, except as provided in subsection (c), be obligated to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Pursuant to subsection (c), counties are required to fund the following costs:

Communication services. Subsection (c) requires counties to fund the costs of communications services. It is the intent of the proposers that communications services be limited to reasonable and necessary data communications-related cabling, hardware and software, and telephone system equipment and infrastructure not inconsistent with that utilized

by each county within a given judicial circuit.

Existing radio systems. The counties' obligation to pay for radio systems is limited to those multi-agency radio systems in existence and funded by the counties on the date of adoption of this amendment.

Existing multi-agency criminal justice information systems. With the exception of existing multi-agency criminal justice information systems in existence or being implemented on the date of adoption of this amendment and currently funded by counties, counties are not obligated to fund information systems. As used herein, a multi-agency criminal justice information system means network cabling, hardware and software infrastructure required for efficient and effective support and integration of the information system, and the applications within which this information resides, serving elements of the criminal justice system at the local level in each county or judicial circuit.

Construction or lease, maintenance, utilities and security of facilities. Subsection (c) requires counties to fund the cost of adequate and necessary construction or lease, maintenance, utilities and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and offices of the clerks of the circuit and county courts. As used in this subsection (c), it is the intent of the proposers that:

“utilities” be limited to fuel, water and electricity;

“maintenance” be interpreted to mean preventative and corrective facility renovation, repair and upkeep, custodial services and waste collection services. Service levels shall not be less than those provided by each county for its own services and programs;

“construction” shall include land acquisition, planning and design costs; construction costs for new facilities; the renovation or refurbishment of existing facilities; cabling or wiring for communications and technology; and fixtures and furnishings which are appropriate and customary for courtrooms, hearing rooms, jury facilities, and other public areas in courthouses; and

“security” shall mean all personnel, equipment and other costs reasonably necessary to secure the public and court-related personnel in leased and county-owned facilities for the trial courts, state

attorneys, public defenders, and clerks of the circuit and county courts performing court-related functions; and

Local Requirements. Subsection (c) also requires counties to pay for the reasonable and necessary salaries, costs and expenses of the state courts system to meet local requirements. A local requirement exists where there are special circumstances in a given circuit or county which have resulted in or necessitate implementation of specialized programs or the commitment of resources which would not generally be required in other circuits such as were a county adopts a local program, enacts a local ordinance or pursues extraordinary activities which have a substantial financial or operational impact upon a given circuit. Examples may include, but are not limited to, specialized support personnel, staffing and resources for video arraignments, pretrial release programs or misdemeanor probation. Core functions and requirements of the state courts system and other court-related functions and requirements which are statewide in nature cannot be local requirements. Further, it is the intent of the proposers that any function or requirement of the state courts system which is mandated by general law of statewide application cannot be a local requirement.

The proposers recognize that over the years the counties have borne an increasingly large proportion of the costs of the state courts system as well as other costs such as court-appointed counsel, witness fees and court reporting services because of, among other reasons, shortfalls in revenue at the state level. It is the intent of the proposers that local needs which are caused by reduced or inadequate allocations by the state for the state courts system, either as a result of a decrease in the dollars allocated, an insufficient increase in the dollars allocated or a percentage reduction relative to other statewide allocations, do not create local requirements.

Florida Statutes implementing Article 5, §14, of the Florida Constitution further mandate that salaries of Assistant State Attorneys must be paid by general revenue funds.

Florida Statute 29.005

For purposes of implementing s. 14, Art. V of the State Constitution, the elements of the state attorneys' offices to be provided from state revenues appropriated by general law are as follows:

- (1) The state attorney of each judicial circuit and assistant state attorneys and other staff as determined by general law.
- (2) Reasonable court reporting and transcription services necessary to meet constitutional or statutory requirements, including the cost of transcribing and copying depositions of witnesses and the cost of foreign language and sign-language interpreters and translators.
- (3) Witnesses, including expert witnesses, summoned to appear for an investigation, preliminary hearing, or trial in a case when the witnesses are summoned by a state attorney, and any other expert witnesses required in a court hearing by law or whomever the state attorney deems necessary for the performance of his or her duties.
- (4) Reasonable transportation services in the performance of constitutional and statutory responsibilities. Motor vehicles owned by the counties and provided exclusively to state attorneys as of July 1, 2003, and any additional vehicles owned by the counties and provided exclusively to state attorneys during fiscal year 2003-2004 shall be transferred by title to the state effective July 1, 2004.
- (5) Travel expenses reimbursable under s. 112.061 reasonably

necessary in the performance of constitutional and statutory responsibilities.

(6) Reasonable library and electronic legal research services, other than a public law library.

(7) Reasonable pretrial consultation fees and costs.

Florida Statute: 29.001:

For the purpose of implementing s. 14, Art. V of the State Constitution, the state courts system is defined to include the enumerated elements of the Supreme Court, district courts of appeal, circuit courts, county courts, and certain supports thereto. The offices of public defenders and state attorneys are defined to include the enumerated elements of the 20 state attorneys' offices and the enumerated elements of the 20 public defenders' offices and five offices of criminal conflict and civil regional counsel. Court-appointed counsel are defined to include the enumerated elements for counsel appointed to ensure due process in criminal and civil proceedings in accordance with state and federal constitutional guarantees.

Funding for the state courts system, the state attorneys' offices, the public defenders' offices, the offices of criminal conflict and civil regional counsel, and other court-appointed counsel shall be provided from state revenues appropriated by general law.

Florida Statute 27.34

Limitations on payment of salaries and other related costs of state attorneys' offices other than by the state

(1) A county or municipality may contract with, or appropriate or contribute funds to the operation of, the various state attorneys as provided in this subsection. A state attorney prosecuting violations of special laws or county or municipal ordinances punishable by incarceration and not ancillary to a state charge shall contract with counties and municipalities to recover the full cost of services rendered on an hourly basis or reimburse the state for the full cost of assigning one or more full-time equivalent attorney positions to work on behalf of the county or municipality. Notwithstanding any other provision of law, in the case of a county with a population of less than 75,000, the state attorney shall contract for full reimbursement, or for reimbursement as the parties otherwise agree.

(a) A contract for reimbursement on an hourly basis shall require counties and municipalities to reimburse the state attorney for services rendered at a rate of \$50 per hour. If an hourly rate is specified in the General Appropriations Act, that rate shall control.

(b) A contract for assigning one or more full-time equivalent attorney positions to perform work on behalf of a county or

municipality shall assign one or more full-time equivalent positions based on estimates by the state attorney of the number of hours required to handle the projected workload. The full cost of each full-time equivalent attorney position on an annual basis shall be \$50, or the amount specified in the General Appropriations Act, multiplied by the legislative budget request standard for available work hours for one full-time equivalent attorney position, or, in the absence of that standard, 1,854 hours. The contract may provide for funding full-time equivalent positions in one-quarter increments.

(c) Persons employed by the county or municipality may be provided to the state attorney to serve as special investigators pursuant to the provisions of s. 27.251. Any payments received pursuant to this subsection shall be deposited into the Grants and Donations Trust Fund within the Justice Administrative Commission for appropriation by the Legislature.

(2) A state attorney or assistant state attorney may not receive from any county or municipality any supplemental salary, except as provided in this section.

(3) Notwithstanding s. 27.25, the Chief Financial Officer may contract with the state attorney of any judicial circuit of the state for the prosecution of criminal violations of the Workers' Compensation Law and related crimes if the Chief Financial Officer contributes funds for such purposes. Such contracts may provide for the training, salary, and expenses of one or more assistant state attorneys used in the prosecution of crimes. If the Chief Financial Officer contributes funds to the state attorney to prosecute these violations and the accused person is indigent and represented by the public defender, the Chief Financial Officer shall also contract with the public defender to provide representation to the person accused of these crimes. The contract may provide for the training, salary, and expenses of one or more assistant public defenders used in the defense of these crimes.

(4) Unless expressly authorized by law or in the General Appropriations Act, state attorneys are prohibited from spending state-appropriated funds on county funding obligations under s. 14, Art. V of the State Constitution beginning January 1, 2005. This includes expenditures on communications services and facilities as defined in s. 29.008. This does not prohibit a state attorney from spending funds for these purposes in exceptional circumstances when necessary to maintain operational continuity in the form of a short-term advance pending

reimbursement by the county. If a state attorney provides short-term advance funding for a county responsibility as authorized by this subsection, the state attorney shall request full reimbursement from the board of county commissioners prior to making the expenditure or at the next meeting of the board of county commissioners after the expenditure is made. The total of all short-term advances authorized by this subsection shall not exceed 2 percent of the state attorney's approved operating budget in any given year. No short-term advances authorized by this subsection shall be permitted until all reimbursements arising from advance funding in the prior state fiscal year have been received by the state attorney. All reimbursement payments received by the state attorney pursuant to this subsection shall be deposited into the General Revenue Fund. Notwithstanding the provisions of this subsection, the state attorney may expend funds for the purchase of computer systems, including associated hardware and software, and for personnel related to this function.

ARGUMENT

Quo warranto is the proper remedy to challenge actions beyond the authority granted a public official. *Martinez v. Martinez*, 545 So.2d 1338 (Fla. 1989); *State ex rel. Christian v. Austin*, 302 So.2d 811 (Fla. 1974). The *Martinez* Court held that “[i]n quo warranto proceedings seeking the enforcement of a public

right the people are the real party to the action and the person bringing the suit ‘need not show that he has any real or personal interest in it.’*Id.* at 1339. In *MacNamara v. Kissimmee River Valley Sportsmans’ Ass’n*, 648 So. 2d 155, 164 (Fla. 2d DCA 1994) the court held that (“[A]ctions in the nature of quo warranto to question the authority for the exercise of rights, privileges [,] and powers derived from the state can be brought by any person.”). The right to have state officials perform their duties and exercise their powers in conformity with the Constitution may be properly enforced in quo warranto proceedings. *Martinez v. Martinez*, 545 So. 2d 1338, 1339 n. 3 (Fla. 1998). In the instant case, the powers of a state attorney, like other state officers, are only those that have been conferred by statute or the Constitution or necessarily implied from the powers granted; the state attorney has no inherent powers and can exercise only those powers conferred by statute or the Constitution. See, § 67 C.J.S. Officers § 190 (1978); *State, Dept. of Citrus v. Office of Comptroller*, 416 So.2d 820 (Fla. 2d DCA 1982); *Florida Development Commission v. Dickinson*, 229 So.2d 6 (Fla. 1st DCA 1969), *cert.den.*, 237 So.2d 530 (Fla.1970); AGO 71–28; *accord*, *Stone v. State*, 71 So. 634 (Fla.1916); AGO’s 72–97, 74–534.

Petitions for a writ of quo warranto are ripe when a public official has acted. See *Florida House of Representatives v. Crist*, 999 So. 2d 601 (Fla. 2008);

Chiles v. Phelps, 714 So. 2d 453 (Fla.1998); *State ex rel. Butterworth v. Kenny*, 714 So. 2d 404 (Fla.1998). The Plaintiffs/Petitioners assert that the Defendant/Respondent will act in excess of her authority by ratifying, adopting, and implementing the “Partnership Funding Agreement” in the future. The Defendant/Respondent has made public statements wherein she stated that there “is nothing, immoral, unethical or illegal” in accepting monies transmitted by the MCC and GCC to the State Attorney’s Office. She continues to ratify, adopt, and implement the “Partnership Funding Agreement”. Plaintiffs/Petitioners request that this court issue a quo warranto writ to prohibit any future action. In good faith, Plaintiffs/Petitioners requested confirmation that the Defendant/Respondent rescinded the “Partnership Funding Agreement”. To date, the Defendant/Respondent has refused to respond to Plaintiffs’/Petitioners’ request. A quo warranto writ is expressly available to challenge future actions by the Defendant/Respondent. *Fouts v. Bolay*, 795 So. 2d 1116 (Fla. 5th DCA2001); *State ex rel. Bruce v. Kiesling*, 632 So. 2d 601 (Fla. 1994); *State ex rel. Booth v. Byington*, 168 So. 2d 164 (Fla. 1st DCA 1964), *judgment aff’d*, 178 So. 2d 1 (Fla. 1965).

The Defendant/Respondent has ratified, adopted and continues to abide by the “Prosecutor Funding Agreement” with the Monroe County Coalition Inc.

("MCC") and the Guidance/Care Center, Inc. ("GCC"). The Defendant/Respondent continues to receive monies pursuant to the "Prosecutor Funding Agreement" *and utilizes said funds to pay for the* salary of an Assistant State Attorney. Pursuant to the "Prosecutor Funding Agreement" two private corporations are funding the position of a prosecutor in Monroe County Florida. These corporations are not public entities and certainly cannot bare any legal resemblance to a municipality, county, state agency, and federal agency or any other public entity. The "Prosecutor Funding Agreement" ratified and accepted by the Defendant/Respondent requires the Assistant State Attorney to bill on an hourly basis, attend the board meeting of the MCC and JCC (two private corporations), and provide progress reports to these corporations.

The Plaintiffs/Petitioners aver and contend that the Defendant/Respondent accepted monies, continues to accept monies and will accept monies from the "MCC" and "GCC" to fund the salary of an Assistant State Attorney in violation of Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001, 27.34. The words contained in Florida Statutes 29.005, 29.001, 27.34 and Article V, §14, of the Florida Constitution are clear, precise and unambiguous. Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001, 27.34 s do not authorize the payment of an Assistant State Attorney salary by private entities. If

the Florida legislature decided to allow private corporations to pay for the position of a prosecutor they certainly would have placed such an option in some statute. The fact that they did not do so necessarily means that they never authorized same. Furthermore, the case law regarding statutory interpretation is on point regarding this issue. A statute should be construed so as to give a meaning to every word and phrase in it. *Stein v. Biscayne Kennel Club, Inc.*, 145 Fla. 306, 199 So.364, 365 (Fla. 1940); *Terrinoni v. Westward Ho!*, 418 So.2d 1143, 1146 (Fla. 1st DCA 1982); *Vocelle v. Knight Brothers Paper Co.*, 118 So.2d 664, 667 (Fla. 1st DCA 1960). *It is a general principle of statutory construction that where a statute directs how a thing is to be done, it is, in effect, a prohibition against it being done in any other manner.* *Thayer v. State*, 335 So.2d 815, 817 (Fla. 1976). Any express exceptions made in a statute give rise to a strong inference that no other exceptions were intended. *Dobbs v. Sea Isle Hotel*, 56 So.2d 341, 342 (Fla. 1952); *State Road Department v. Levato*, 192 So.2d 35, 39 (Fla. 4th DCA 1966), *cert. dismiss'd*, 199 So.2d 714 (Fla. 1967); *Biddle v. State Beverage Department*, 187 So.2d 65, 67 (Fla. 4th DCA 1966), *cert. dismiss'd*, 194 So.2d 623 (Fla. 1966); *Williams v. American Surety Company of New York*, 99 So.2d 877, 880 (Fla. 2d DCA 1958). The only express exception to paying for the salary of an Assistant State Attorney contained in the Florida Statutes above is when the State Attorney prosecutes local and county ordinances. In this exclusive exception, the county will

reimburse the State Attorney's Office for hours expended in such prosecutions. Again, the only exception is reimbursement from **another public entity**. The MCC and GCC are not public entities. As the *Dobbs* court eloquently stated:

We have oft-times held that the rule expressio unius est exclusio alterius is applicable in connection with statutory construction

The legislature made one exception to the precise language of the statute of limitations. We apprehend that had the legislature intended to establish other exceptions it would have done so clearly and unequivocally We cannot write into the law any other exception ...

Dobbs, 56 So.2d at 342.

Plaintiffs/Petitioners aver that the Defendant/Respondent accepted private monies from the MCC and GCC to pay the salary of an Assistant State Attorney in violation of Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001, 27.34. Plaintiffs/Petitioners aver that the salary of an Assistant State Attorney can only be paid by general revenue funds (i.e., public monies authorized by the Florida Legislature). The Plaintiffs/Petitioners assert that the Defendant/Respondent accepted private monies from the MCC and GCC,

continues to use and will use these monies in violation of Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001, and 27.34.

Wherefore, Plaintiffs/Petitioners requests the court issue a writ of quo warranto directing Defendant/Respondent to show cause why the subject action is lawful, and grant such other relief as may be appropriate. Plaintiffs/Petitioners demand a jury trial.

COUNT II

ACTION FOR DECLARATORY JUDGMENT

1. This is an action to determine whether the “Prosecutor Funding Agreement” ratified, adopted and accepted by the Defendant/Respondent constitutes a violation of Article 5, §14 of the Florida Constitution and violates Florida Statutes 27.34; 29.005; 27.34; and 29.001.

2. There is a present, genuine dispute between Plaintiffs/Petitioners, and Defendant/Respondent.

3. Plaintiffs/Petitioners contend that the “Prosecutor Funding Agreement” and the acceptance of private monies from the Monroe County Coalition Inc (hereinafter referred to as the “MCC”) and the Guidance Care Center, Inc (hereinafter referred to as the “GCC”) to pay the salary of an Assistant State

Attorney violates Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001 and 27.34.

4. Plaintiffs/Petitioners requested and the Attorney General declined Plaintiffs'/Petitioners' request to bring a quo warranto action. See Exhibits B and C.

5. Plaintiffs/Petitioners have the right to file this action for declaratory relief pursuant to *Orange County vs. City of Orlando*, 327 So.2d 7, (Fla. 1976) wherein the Florida Supreme Court held that “in the event **quo warranto** is **not** available, i.e., the **Attorney General** refuses to allow **quo warranto** to proceed, then an **action** for injunctive and declaratory relief would be proper” id.

6. Plaintiffs/Petitioners make claim for declaratory relief under § 86.011, F.S., seeking judgment as to the constitutionality of Defendant's/Respondent's actions to wit: ratifying, adopting, accepting and implementing the “Private Funding Agreement” entered between the State Attorney and The Monroe County Coalition Inc (hereinafter referred to as the “MCC”) and the Guidance Care Center, Inc hereinafter referred to as the “GCC”) and by doing so the Defendant/Respondent accepted private monies to pay for the salary of an Assistant State Attorney in violation of Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001 and 27.34.

7. The Plaintiffs/Petitioners are citizens and taxpayers of the State of Florida.

8. The Defendant/Respondent is a state officer in the capacity of State Attorney for the Sixteenth Judicial Circuit in Monroe County Florida.

9. This court has jurisdiction pursuant to Art. V, § 5, Constitution of Florida; and Fla. R. Civ. P. 1.630.

10. The Defendant/Respondent has ratified, adopted, accepted the “Private Funding Agreement” entered between the State Attorney, The Monroe County Coalition Inc (hereinafter referred to as the “MCC”) and the Guidance Care Center, Inc (hereinafter referred to as the “GCC”). In furtherance of the “Private Funding Agreement” the Defendant/Respondent paid and continues to pay the salary of an Assistant State Attorney in violation of Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001 and 27.34.

11. The constitutionality and lawfulness of Defendant’s/Respondent’s actions present a question of great public importance that is capable of repetition, yet evading review.

12. This action should not be dismissed or rendered “moot” if the error is likely to recur or is capable of repetition yet evading review. *Caproc Third Ave., LLC v. Donisi Ins. Inc.*, 67 So. 3d 312, 314 (Fla. 4th DCA 2011).

13. Denying relief to the Plaintiffs/Petitioners will result in their

constitutional rights being violated.

14. In good faith, Plaintiffs/Petitioners requested confirmation that the Defendant/Respondent rescinded the “Partnership Funding Agreement”. To date, the Defendant/Respondent has refused to respond to Plaintiffs/Petitioners’ request. See Exhibit D.

15. Plaintiffs/Petitioners request that the Defendant/Respondent rescind the “Partnership Funding Agreement”. Defendant’s/Respondent’s refusal to do same creates a bona fide conflict giving rise to a present, practical need for a declaration concerning the constitutionality of Defendant’s/Respondent’s actions to wit: ratifying, adopting, accepting and implementing the “Private Funding Agreement” entered between the State Attorney, The Monroe County Coalition Inc (hereinafter referred to as the “MCC”) and the Guidance Care Center, Inc hereinafter referred to as the “GCC”) in violation of Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001 and 27.34.

16. Defendant’s/Respondent’s refusal to rescind the “Partnership Funding Agreement” creates a direct, immediate and material harm to Plaintiffs/Petitioners.

17. The harm to Plaintiffs/Petitioners from the refusal to rescind the “Partnership Funding Agreement” is irreparable, and Plaintiffs/Petitioners lack an

adequate remedy at law.

18. Plaintiffs/Petitioners are entitled to a declaration concerning the constitutionality of Defendant's/Respondent's actions to wit: ratifying, adopting, accepting and implementing the "Private Funding Agreement" entered between the State Attorney, The Monroe County Coalition Inc (hereinafter referred to as the "MCC") and the Guidance Care Center, Inc hereinafter referred to as the "GCC") in violation of Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001 and 27.34. Defendant/Respondent cannot rely on any lawful justification for a continuing, indefinite and essentially permanent denial of an adjudication by this court.

19. Unless this Court declares its duties to be otherwise, the Defendant/Respondent will continue to violate Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001 and 27.34.

WHEREFORE, Petitioners/Plaintiffs ask this Court to:

a) Declare that the Defendant's/Respondent's actions to wit: ratifying, adopting, accepting and implementing the "Private Funding Agreement" entered between the State Attorney, The Monroe County Coalition Inc (hereinafter referred to as the "MCC") and the Guidance Care Center, Inc hereinafter referred to as the

“GCC”) is a violation of Article V, §14, of the Florida Constitution and Florida Statutes 29.005, 29.001 and 27.34.

b) Enter judgment permitting Plaintiffs/Petitioners to recover from Defendant/Respondent the reasonable costs, including reasonable attorneys’ fees.

Respectfully submitted,

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