

TO: The Honorable Chairman and Members of the  
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Authority for County Attorney to Initiate Litigation in the Case of  
Florida Association of Counties et al., Petitioner v. State of Florida,  
Department of Juvenile Justice  
Respondent Case No. 14-2801RP

DATE: June 24, 2014

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS RATIFY THE COUNTY'S PARTICIPATION AS A PETITIONER IN THE ABOVE-STYLED CASE.

DISCUSSION: This case arises out of proposed changes to the billing system rules that apply higher actual costs for juvenile detention to the County as compared to the State.

The 2014 Legislative Session concluded with no change regarding juvenile detention costs. The Department of Juvenile Justice ("DJJ") began rulemaking as the prior rules regarding the calculating costs had been struck down. DJJ's proposed rules adjust cost responsibility in a manner which increases pre-disposition detention costs to the detriment of the counties, despite DJJ's prior stipulation with counties including Pinellas. Under the stipulated language, county costs would be reduced to approximately 32% of total costs. Under the proposed rules, county costs increase to 57% of the total costs. The proposed rules shift to counties costs associated with juveniles who are charged while on probation (in a post-disposition status). The difference for Pinellas, between the stipulated and proposed language, is an increased cost of \$1,175,952.15.

The attached Rule Challenge is the best outlet for Pinellas to challenge the proposed rules. By filing a challenge before the rules take effect, the Florida Association of Counties ("FAC") shifted the burden of proof from the counties to the state. FAC has hired a law firm to challenge the new rules; the cost to the urban counties will be \$2,500.00 for the administrative challenge; appellate fees are capped at \$5,000.00.

Time constraints involved with filing the petition before the adoption of the rules necessitated the filing of the petition based upon the approval of the County Administrator's Office.

The challenge will focus on the DJJ pre- versus post- disposition status and the definition and methodology used to determine costs. It is requested that the Board of County Commissioners ratify the County's participation in the above styled matter as a Petitioner.

JLB:CEB:elb

Attachment

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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ASSOCIATION OF COUNTIES,  
ALACHUA COUNTY, BAY COUNTY,  
BREVARD COUNTY, CHARLOTTE COUNTY,  
COLLIER COUNTY, ESCAMBIA COUNTY,  
FLAGLER COUNTY, HERNANDO COUNTY,  
HILLSBOROUGH COUNTY, LAKE COUNTY,  
LEE COUNTY, LEON COUNTY, MANATEE COUNTY,  
MARTIN COUNTY, NASSAU COUNTY,  
OKALOOSA COUNTY, PALM BEACH COUNTY,  
PINELLAS COUNTY, SANTA ROSA COUNTY,  
ST. JOHNS COUNTY, ST. LUCIE COUNTY,  
SARASOTA COUNTY and WALTON COUNTY,

Petitioners,

CASE NO.

vs.

DEPARTMENT OF JUVENILE JUSTICE,

Respondent.

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**PETITION FOR RULE CHALLENGE**

FLORIDA ASSOCIATION OF COUNTIES, ALACHUA COUNTY, BAY COUNTY,  
BREVARD COUNTY, CHARLOTTE COUNTY, COLLIER COUNTY, ESCAMBIA  
COUNTY, FLAGLER COUNTY, HERNANDO COUNTY, HILLSBOROUGH COUNTY,  
LAKE COUNTY, LEE COUNTY, LEON COUNTY, MANATEE COUNTY, MARTIN  
COUNTY, NASSAU COUNTY, OKALOOSA COUNTY, PALM BEACH COUNTY,  
PINELLAS COUNTY, SANTA ROSA COUNTY, ST. JOHNS COUNTY, ST. LUCIE  
COUNTY, SARASOTA COUNTY and WALTON COUNTY, by and through their undersigned  
counsel, file this Petition pursuant to section 120.56(2), Florida Statutes, and Rule 28-106.201,

Florida Administrative Code, and request an administrative determination regarding the invalidity of proposed rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017. Florida Administrative Code, as they are an invalid exercise of delegated legislative authority.

**I. Name and Address of Affected Agency**

1. The agency affected is the Department of Juvenile Justice, Knight Building, 2737 Centerview Drive, Tallahassee, Florida 32399-3100.

**II. Name and Address of Petitioners**

2. Petitioners Alachua County, Bay County, Brevard County, Charlotte County, Collier County, Escambia County, Flagler County, Hernando County, Hillsborough County, Lake County, Lee County, Leon County, Manatee County, Martin County, Nassau County, Okaloosa County, Palm Beach County, Pinellas County, Santa Rosa County, St. Johns County, St. Lucie County, Sarasota County and Walton County are all political subdivisions of the State of Florida ("Petitioning Counties").

3. Petitioner Florida Association of Counties ("FAC") is a statewide association and not-for-profit corporation organized and existing under Chapter 617 of the Florida Statutes for the purpose of representing county government in Florida and protecting, promoting, and improving the mutual interests of all counties in the State. Among the express purposes for which FAC was organized is to defend the "rights. . .of county government under any constitutional provision [and] statute. . ." All of Florida's 67 counties are members of the FAC.

4. The name, address, telephone number, and email addresses of counsel for the Petitioners, to which all communications regarding this Petition shall be directed, are:

Gregory T. Stewart  
Carly J. Schrader  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
gstewart@ngnlaw.com  
cschrader@ngnlaw.com  
(850) 224-4070  
(850) 224-4073 (Facsimile)

Additional counsel of record are listed below.

5. This Petition is timely filed in these proceedings, within 10 days of the final hearing on the Proposed Rules, held June 6, 2014.

### **III. Explanation of Substantial Interests**

6. Proposed Rules 63G-1.011, 1.013, 1.016, and 1.017 (“Proposed Rules”) govern the allocation of costs amongst the counties and the State for the joint statutory responsibility for providing for the costs of secure detention care, under the provisions of section 985.686, Florida Statutes, the law implemented.

7. The Petitioning Counties and a substantial number of petitioner FAC’s members are non-fiscally constrained counties<sup>1</sup>, and pay a portion of the costs of secure juvenile detention, pursuant to section 985.686, Florida Statutes, and are substantially and adversely affected by the Proposed Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, Florida Administrative Code, because the Proposed Rules directly impact how cost for secure juvenile detention under Chapter 985, Florida Statutes, is allocated between the State and the various counties, and inappropriately allocate a portion of the costs to the counties for which they are not statutorily responsible.

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<sup>1</sup> “Fiscally constrained county” is defined by section 985.686(2)(b), Florida Statutes. Pursuant to section 985.686(4), Florida Statutes, “the state shall pay all costs of detention care for juveniles for which a fiscally constrained county would otherwise be billed.”

8. As alleged herein, a substantial number of FAC's members are substantially affected by the Department's Proposed Rules, and the subject matter of these proceedings are clearly within FAC's scope of interest and activity, and the relief requested is appropriate for FAC to receive on behalf of its members.

**IV. Notice of Agency Decision**

9. The Department's Notice of Proposed Rules for Rules 63G-1.011 63G-1.013, 63G-1.016, and 63G-1.017, Florida Administrative Code, appeared in the May 15, 2014, issue of the Florida Administrative Weekly.

10. A public hearing was held on June 6, 2014, in which the Petitioners participated, and comments and objections to the Proposed Rules were provided.

**V. Disputed Issues of Material Fact**

11. Whether the Proposed Rules inappropriately shift a portion of the costs of secure detention to the counties from the State for which the counties are not statutorily responsible.

12. Whether the Department's Proposed Rules are inconsistent with its agency practices and policies subsequent to the invalidation of its 2010 rules.

13. Whether the Proposed Rules enlarge, modify, or contravene section 985.686, Florida Statutes, the specific provisions of law implemented; are vague and fail to establish adequate standards for agency decisions, or vest unbridled discretion in the agency; and/or are arbitrary or capricious, and therefore an invalid exercise of delegated legislative authority.

14. Whether the Proposed Rules impose regulatory costs that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives, and are therefore an invalid exercise of delegated legislative authority.

**VI. Provisions Alleged to be Invalid and Concise Statement of Ultimate Facts or Grounds for the Invalidity**

15. Under Florida law, the cost for providing secure juvenile detention is shared between the State of Florida and various counties within the State. The respective responsibility, as between the State of Florida and the various counties, is established by section 985.686, Florida Statutes. Subsection 985.686(3), Florida Statutes, provides:

- (3) Each county shall pay the costs of providing detention care, exclusive of the costs of any preadjudicatory nonmedical educational or therapeutic services and \$2.5 million provided for additional medical and mental health care at the detention centers, for juveniles for the period of time prior to final court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties.

(Emphasis added).

16. On July 16, 2006, the Department of Juvenile Justice promulgated Rules 63G-1.002, 63G-1.004, 63G-1.007, and 63G-1.008, Florida Administrative Code, among others, setting forth the definitions and procedures for calculating the costs as between the State of Florida and the various counties. These rules were repealed as of July 6, 2010 and in their place, the Department adopted Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, Florida Administrative Code. Although the previous rules defined “final court disposition,” for purposes of determining the counties’ responsibility for providing the costs of secure detention, the 2010 rules replaced this with a definition of “commitment,” so that the State was only responsible for days occurring after a disposition of commitment. This had the effect of transferring the responsibility for tens of thousands of days of detention from the State to the counties. In addition, the 2010 rules failed to provide a process by which the counties were only charged their respective actual costs of secure detention.

17. In 2012, several counties challenged Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, Florida Administrative Code, as an invalid exercise of delegated legislative authority, because these rules replaced the statutory dividing line for the costs of secure detention with “commitment,” and because the rules resulted in the overcharging of counties for their respective actual costs of secure detention. On July 17, 2012, a Final Order was issued by Administrative Law Judge W. David Watkins, who agreed with the counties and found that the rules were an invalid exercise of delegated legislative authority. Okaloosa County, et al. v. Department of Juvenile Justice, DOAH Case No. 12-0891RX (Final Order July 17, 2012). This ruling was affirmed on appeal. Department of Juvenile Justice v. Okaloosa County, 113 So. 3d 1074 (Fla. 1st DCA 2013) (“Rule Challenge”).

18. Shortly after the decision of the First District Court of Appeal was issued in the Rule Challenge, the Department issued an interpretation that the decision required the State would be responsible for all detention days occurring after a final court disposition, including a final court disposition of commitment, probation, or dismissal of the charge. This interpretation changed the counties’ collective responsibility for the costs of detention care from approximately 74 percent of the total costs, to approximately 32 percent of the total costs. This interpretation was also stipulated to by the Department in three separate administrative proceedings. Bay County et al. v. Department of Juvenile Justice, DOAH Case Nos. 11-0995, et al. (consolidated) Joint Stipulation of Facts and Procedure filed December 6, 2013; Okaloosa County v. Department of Juvenile Justice, DOAH Case Nos. 11-5894, Joint Stipulation of Facts and Procedure filed December 9, 2013; Volusia County et al. v. Department of Juvenile Justice, DOAH Case Nos. 13-1442 et al. (consolidated), Joint Stipulation of Fact and Procedure filed December 17, 2013.

19. During the budgeting process for the 2014-15 Fiscal Year, the Department altered its interpretation of the Rule Challenge decision in order to limit its responsibility for the costs of detention care. Instead of accepting full responsibility for the costs of detention days occurring after final court disposition, the Department has now shifted to the counties the responsibility for detention days occurring after a final court disposition of probation for new law violations of probation. This changed the counties' collective responsibility for the costs of secure detention care from approximately 32 percent to approximately 57 percent.

20. On May 15, 2014, the Department advertised Proposed Rules 63G-1.011, 1.013, 1.016, and 1.017. The purpose of the amendments, as stated by the Department, was to "comply with a recent appellate decision invalidating portions of the department's rules implementing detention cost share." However, the Proposed Rules do not comply with section 985.686, Florida Statutes, the decision issued in the Rule Challenge, or the Department's prior interpretation of the same.

21. Instead, the Proposed Rules provide definitions in Rule 63G-1.011 for "predisposition" and "postdisposition" which, assign responsibility to the counties for days occurring after final court disposition, including but not limited to, those circumstances where a juvenile that is on probation has a new law violation of that probation.

22. These definitions must also be read in conjunction with Rules 63G-1.013, 1.016, and 1.017, which provide the process by which the Department calculates both the estimated costs to the counties at the beginning of the fiscal year, and the reconciliation process at the end of the fiscal year, which ultimately determines the costs to the counties. Through the application of the definitions for "predisposition" and "postdisposition" in the remaining Proposed Rules, the Department passes on the costs of secure detention days occurring after a "final court

disposition” that include, but are not limited to, those circumstances where a juvenile that is on probation has a new law violation of that probation.

23. The above definitions and the application thereof in the Proposed Rules enlarge, modify, or contravene the statute sought to be implemented.

24. The Proposed Rules are arbitrary and capricious by inappropriately applying an interpretation of the Rule Challenge decision in the Proposed Rules which is in conflict with that decision and the Department’s prior interpretation of the same, and its past agency practices or policies implemented shortly after the Rule Challenge decision, in fall of 2013.

25. The result of the Department’s invalid exercise of legislative authority is a misallocation of the respective costs of secure detention as between the counties and the State.

26. The Proposed Rules also fail to exclude from the “actual costs” certain costs exempted from the counties’ responsibility for detention cost share, in section 985.686(3), Florida Statutes, for the “costs of any preadjudicatory nonmedical educational or therapeutic services and \$2.5 million provided for additional medical and mental health care at the detention centers.”

27. The Proposed Rules are vague for failure to provide a definition of “actual costs” or “actual expenditures” or “total expenditures” as used within Rules 63G-1.011 and 1.017. In addition, the definition of “actual per diem” and its application within Proposed Rules 63G-1.011 and 1.017 is vague and ambiguous and internally inconsistent.

28. As currently drafted, the process prescribed by the Proposed Rules for calculating the estimate and the total year-end costs allocated to the counties is vague and ambiguous, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; and/or improperly attempts to enlarge, modify, or contravene section 985.686, Florida Statutes.

Further, Rules 63G-1.013 and 63-1.017 of the Proposed Rules fail to provide for input from the counties as provided for by section 985.686(6), Florida Statutes.

29. The Proposed Rules impose regulatory costs that could be addressed by the adoption of a less costly alternative.

**VII. Specific Statutes Requiring Reversal**

30. The Proposed Rules enlarge, modify, or contravene the specific provisions of law implemented, section 985.686, Florida Statutes, for the reasons stated herein, under sections 120.56 and 120.52(8)(c), Florida Statutes.

31. The Proposed Rules are vague and fail to establish adequate standards for agency decisions, or vest unbridled discretion in the agency; and/or are arbitrary and capricious, under sections 120.56 and 120.52(8)(d)-(e), Florida Statutes.

32. The Proposed Rules impose regulatory costs that could be addressed by the adoption of a less costly alternative, under sections 120.52(8)(f) and 120.541, Florida Statutes.

33. Petitioners are obligated to pay their attorneys a reasonable fee and are entitled to recover their reasonable costs and attorney's fees under section 120.595(2), Florida Statutes.

34. To the extent it may be required, (without conceding the same), this Petition is also being served on the Department of Financial Services under the provisions of section 284.30, Florida Statutes.

WHEREFORE, Petitioners, FLORIDA ASSOCIATION OF COUNTIES, ALACHUA COUNTY, BAY COUNTY, BREVARD COUNTY, CHARLOTTE COUNTY, COLLIER COUNTY, ESCAMBIA COUNTY, FLAGLER COUNTY, HERNANDO COUNTY, HILLSBOROUGH COUNTY, LAKE COUNTY, LEE COUNTY, LEON COUNTY, MANATEE COUNTY, MARTIN COUNTY, NASSAU COUNTY, OKALOOSA COUNTY,

PALM BEACH COUNTY, PINELLAS COUNTY, SANTA ROSA COUNTY, ST. JOHNS COUNTY, ST. LUCIE COUNTY, SARASOTA COUNTY and WALTON COUNTY, respectfully request:

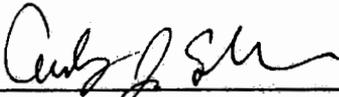
A. That a hearing be held in accordance with sections 120.56, 120.569 and 120.57, Florida Statutes;

B. That the ALJ enter an administrative determination finding and concluding that Proposed Rules 63G-1.011, 63G-1.013, 63G-1.016, and 63G-1.017, Florida Administrative Code are invalid;

C. That the ALJ enter an award of attorney's fees and costs pursuant to section 120.595(2), Florida Statutes; and

D. That the ALJ grant such other relief as is fair and appropriate.

DATED this 16th day of June, 2014.

  
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GREGORY T. STEWART  
Florida Bar No. 203718  
CARLY J. SCHRADER  
Florida Bar No. 14675  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
(850) 224-4070  
(850) 224-4073 (Facsimile)  
gstewart@ngnlaw.com  
cschrader@ngnlaw.com  
legal-admin@ngnlaw.com  
**COUNSEL FOR PETITIONERS**

VIRGINIA DELEGAL  
Florida Bar No. 989932  
General Counsel  
Florida Association of Counties  
100 South Monroe Street  
Tallahassee, Florida 32301  
850-922-4300  
850-488-7192 (Facsimile)  
gdelegal@fl-counties.com  
**Co-Counsel for Florida Association of Counties**

MICHELE L. LIEBERMAN  
Florida Bar No. 134864  
Alachua County Attorney  
ROBERT LIVINGSTON, IV  
Florida Bar No. 0003840  
Assistant County Attorney  
Post Office Box 5547  
Gainesville, Florida 32627  
(352) 374-5218  
(352) 374-5216 (Facsimile)  
mlieberman@alachuacounty.us  
rl@alachuacounty.us  
**Co-Counsel for Alachua County**

TERRELL K. ARLINE  
Florida Bar No. 306584  
County Attorney  
JENNIFER W. SHULER  
Florida Bar No. 728810  
Assistant County Attorney  
Bay County Attorney's Office  
840 West 11th Street  
Panama City, Florida 32401-2336  
(850) 248-8176  
(850) 248-8189 (Facsimile)  
tarline@baycountyfl.gov  
jshuler@baycountyfl.gov  
**Co-Counsel for Bay County**

SHANNON L. WILSON  
Florida Bar No. 332836  
Deputy County Attorney  
Brevard County  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940  
(321) 633-2090  
(321) 633-2096 (Facsimile)  
shannon.wilson@brevardcounty.us  
**Co-Counsel for Brevard County**

JANETTE S. KNOWLTON  
Florida Bar No. 77232  
Charlotte County Attorney  
DANIEL E. GALLAGHER  
Florida Bar No. 872822  
Assistant County Attorney  
18500 Murdock Circle, 5th Floor  
Port Charlotte, Florida 33948  
(941) 743-1330  
(941) 743-1550 (Facsimile)  
janette.knowlton@charlottefl.com  
daniel.gallagher@charlottefl.com  
**Co-Counsel for Charlotte County**

JEFFREY A. KLATZKOW  
Florida Bar No. 644625  
Collier County Attorney  
3299 Tamiami Trail East, Suite 800  
Naples, Florida 34112  
(239) 252-8400  
(239) 252-6300 (Facsimile)  
jeffklatzkow@colliergov.net  
**Co-Counsel for Collier County**

CHARLES V. PEPPLER  
Florida Bar No. 239739  
Deputy County Attorney  
Escambia County  
221 Palafox Place, Suite 430  
Pensacola, Florida 35202  
(850) 595-4970  
(850) 595-4979 (Facsimile)  
cpeppler@co.escambia.fl.us  
**Co-Counsel for Escambia County**

ALBERT J. HADEED  
Florida Bar No. 180906  
Flagler County Attorney  
1769 E. Moody Boulevard  
Building 2  
Bunnell, Florida 32110  
(386) 313-4005  
(386) 313-4105 (Facsimile)  
ahadeed@flaglercounty.org  
**Co-Counsel for Flagler County**

GARTH COLLER  
Florida Bar No. 374849  
Hernando County Attorney  
JON A. JOUBEN  
Deputy County Attorney  
20 N. Main Street, Suite 462  
Brooksville, Florida 34601  
(352) 754-4122  
(352) 754-4001 (Facsimile)  
garthc@co.hernando.fl.us  
jjouben@hernandocounty.fl.us  
**Co-Counsel for Hernando County**

STEPHEN M. TODD  
Florida Bar No. 886203  
Senior Assistant County Attorney  
Hillsborough County Attorney's Office  
Post Office Box 1110  
Tampa, Florida 33601-1110  
(813) 272-5670  
(813) 272-5758 (Facsimile)  
todds@hillsboroughcounty.org  
**Co-Counsel for Hillsborough County**

SANFORD A. MINKOFF  
Florida Bar No. 0220175  
Lake County Attorney  
MELANIE MARSH  
Florida Bar No. 0136522  
Deputy County Attorney  
Post Office Box 7800  
315 West Main Street, Suite 335  
Tavares, Florida 32778-7800  
(352) 343-9787  
(352) 343-9646 (Facsimile)  
sminkoff@lakecountyfl.gov  
mmarsh@lakecountyfl.gov  
**Co-Counsel for Lake County**

RICHARD WM. WESCH  
Florida Bar No. 710921  
County Attorney  
ASHLEY D. ROBERTS  
Florida Bar No. 138045  
Assistant County Attorney  
Lee County Attorney's Office  
2115 Second Street  
Post Office Box 398  
Fort Myers, Florida 33902-0398  
(239) 533-2236  
(239) 485-2106 (Facsimile)  
rwesch@leegov.com  
aroberts@leegov.com  
**Co-Counsel for Lee County**

HERBERT W. A. THIELE  
Florida Bar No. 261327  
Leon County Attorney  
301 South Monroe Street, Suite 202  
Tallahassee, Florida 32301  
(850) 606-2500  
(850) 606-2501 (Facsimile)  
thieleh@leoncountyfl.gov  
**Co-Counsel for Leon County**

MITCHELL O. PALMER  
Florida Bar No. 351873  
Manatee County Attorney  
JAMES A. MINIX  
Florida Bar No. 239240  
Assistant County Attorney  
Post Office Box 1000  
Bradenton, Florida 34206-1000  
(941) 745-3750  
(941) 749-3089 (Facsimile)  
mitchell.palmer@mymanatee.org  
jim.minix@mymanatee.org  
**Co-Counsel for Manatee County**

MICHAEL D. DURHAM  
Florida Bar No. 399485  
Martin County Attorney  
Martin County Administrative Center  
2401 SE Monterey Road  
Stuart, FL 34996-3322  
(772) 288-5438  
(772) 288-5439 (Facsimile)  
mdurham@martin.fl.us  
**Co-Counsel for Martin County**

DAVID A. HALLMAN  
Florida Bar No. 0825794  
County Attorney  
Nassau County Attorney's Office  
96135 Nassau Place, Suite 6  
Yulee, Florida 32097  
(904) 548-4590  
(904) 321-2658 (Facsimile)  
dhallman@nassaucountyfl.com  
jbradley@nassaucountyfl.com  
**Co-Counsel for Nassau County**

DENISE MARIE NIEMAN  
Florida Bar No. 642118  
County Attorney  
AMY T. PETRICK  
Florida Bar No. 0315590  
Assistant County Attorney  
Palm Beach County Attorney's Office  
300 N. Dixie Highway  
West Palm Beach, FL 33401  
(561) 355-2225  
(561) 355-3600 (Facsimile)  
DNieman@pbcgov.org  
APetrick@pbcgov.org  
**Co-Counsel for Palm Beach County**

JAMES BENNETT  
Florida Bar No. 698873  
Pinellas County Attorney  
CARL E. BRODY  
Florida Bar No. 0102229  
Senior Assistant County Attorney  
315 Court Street, 6th Floor  
Clearwater, Florida 33756  
(727) 464-3354  
(727) 464-4147 (Facsimile)  
jbennett@pinellascounty.org  
cbrody@pinellascounty.org  
**Co-Counsel for Pinellas County**

ANGELA J. JONES  
Florida Bar No. 096441  
Santa Rosa County Attorney  
6495 Caroline Street, Suite C  
Milton, Florida 32570  
(850) 983-1857  
(850) 983-1856 (Facsimile)  
angiej@santarosa.fl.gov  
**Co-Counsel for Santa Rosa County**

PATRICK F. McCORMACK  
Florida Bar No. 61980  
St. Johns County Attorney  
500 San Sebastian View  
St. Augustine, Florida 32084  
(904) 209-0805  
(904) 209-0806 (Facsimile)  
pmccormack@sjcfl.us  
**Co-Counsel for St. Johns County**

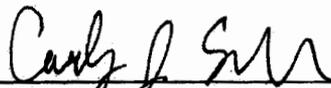
DANIEL S. MCINTYRE  
Florida Bar No. 287571  
St. Lucie County Attorney  
2300 Virginia Avenue  
Fort Pierce, Florida 34982  
(772) 462-1420  
(772) 462-1440 (Facsimile)  
mcintyred@stlucieco.org  
**Co-Counsel for St. Lucie County**

STEPHEN E. DEMARSH  
Florida Bar No. 0335649  
Sarasota County Attorney  
DAVID M. PEARCE  
Florida Bar No. 0107905  
Assistant County Attorney  
1660 Ringling Boulevard  
Second Floor  
Sarasota, Florida 34236  
(941) 861-7272  
(941) 861-7267 (Facsimile)  
sdemarsh@scgov.net  
dpearce@scgov.net  
**Co-Counsel for Sarasota County**

MARK D. DAVIS  
Florida Bar No. 764700  
Walton County Attorney  
Office of the County Attorney  
161 East Sloss Avenue  
DeFuniak Springs, Florida 32435  
(850) 892-8110  
(850) 892-8471 (Facsimile)  
mdd@co.walton.fl.us  
**Co-Counsel for Walton County**

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Rule Challenge has been furnished by U.S. Mail to Jeff Atwater, Chief Financial Officer, Florida Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0301, this 16th day of June, 2014.

  
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CARLY JSCHRADER