



Legislation Erodes Check and Balance on Courts

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Florida judges are supporting legislation that would reassign the statutory duties of Florida's clerks to Florida's judges. The proposed legislation, [House Bill 1121](#) and [Senate Bill 2108](#), use the pretense of the economy and the court's funding crisis to do far more than appropriate additional money to the courts. Instead, the bills effectively aim to eliminate the Clerk's independent role of protecting the integrity of court records and court funds. This amounts to the destruction of a critical check and balance guaranteed by the Florida Constitution.

The Clerk's Role

More than 150 years ago, the framers of the Florida Constitution designated the Clerk of the Circuit Court as the person responsible for protecting the integrity of public records and public funds. The Clerk receives, manages and processes all court documents, disburses all court fees, fines and costs, and provides the public with access to court records. In effect, the Clerk runs the "business arm" of the local court system and answers first and foremost to the public, ensuring the public's interests and convenience come first. Judges on the other hand, preside over courtrooms and are in the business of delivering justice. Their actions in cases are documented in court files, through which they are held accountable to the public.

BOTTOM LINE: This legislation would, in effect, take away the public's right to have control, through the elective process, over who will have the responsibility to protect their public records and public funds through the collection and distribution of fines, fees and court costs.

How does the legislation undermine the concept of separation of powers?

The very people who make decisions about the life, liberty and property of people going through the court system would have control over the records and revenue of that system. The Clerk is an important check and balance within the judicial system. Citizens' case files and court records should not be handled by an employee of the judges, but by an impartial officer of the court who answers directly to the public.

BOTTOM LINE: The responsibility for the protection and preservation of court records must remain with the Clerk. Any other arrangement would deal a serious blow to the public's trust and confidence in the impartiality of the judiciary.



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Contact your Legislators

Florida's Clerks are independent, constitutional officers who provide vital checks and balances within the judicial branch and within county government. Your trust in our judicial system is important to me. Please insist that it not be eroded by the passage of this legislation. I encourage you to contact your [legislators](#) to share your opinion on this issue.

For more information on the proposed bills and this issue, please visit www.mypalmbeachclerk.com and click on "[Get the Facts.](#)"

Fiction vs. Facts

Florida's judges have compiled and are disseminating erroneous and misleading information in an effort to gain support for this legislation. Here are just a few examples:

Fiction:

Clerk budgets grew by 33% over the last four years while state and court budgets grew by 13%.

Fact:

Clerk spending increased by only 13.7% over the last four years.

Fiction:

Because Clerks don't go through the appropriations process, they are not accountable, nor are they required to take budget cuts like other government agencies.

Fact:

Clerk budget procedures are set forth in F.S. 28.35, 28.36 and 28.37. Clerk budgets are submitted to the Clerk of Court Operations Corporation, a subdivision of the state, which reviews and certifies them using the process approved by Florida's Chief Financial Officer. These budgets are then certified to the President of the Senate, Speaker of the House of Representatives, the Chief Financial Officer and the Department of Revenue by October 15 of each year. The information certified includes data on the proposed budget, revenue projections to support the budget, and the measurement of each clerk in meeting performance standards. Because clerks are fully funded by fees and service charges, clerk budgets go down when revenue goes down. Finally, as to accountability, clerk financial practices and spending are audited not only by Florida's Auditor General, but also by seven other external entities.

Fiction:

Judges will save \$200 million if they take over the functions of the Clerk.

Fact:

The Clerk provides services to the judiciary, attorneys, other agencies and the public. These services must still be provided regardless of who is in control. There is no cost savings.

BOTTOM LINE: Florida's Clerks have, and will continue to, support any effort to create a stable funding source for the judicial branch of government, including state attorneys and public defenders. However, they do not support this proposed legislation, nor will they tolerate the misinformation being used to make way for its passage.

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