IN THE SUPREME COURT OF FLORIDA

Case No. SC11-1737

WILLIAM TELLI

Petitioner,

v.

BROWARD COUNTY AND
DR. BRENDA C. SNIPES

Respondents.

PETITIONER'S INITIAL BRIEF ON THE MERITS

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Points on Appeal

THE FLORIDA CONSTITUTION PREEMPTS THE FIELD OF DISQUALIFICATIONS PERMISSIBLY IMPOSED UPON THE OFFICE OF COUNTY COMMISSIONER AND THEREFORE PROHIBITS LOCAL GOVERNMENTS FROM ADDING DISQUALIFICATIONS UNDER THEIR HOME-RULE POWERS

Preface

This Initial Brief on the Merits is submitted on behalf of Petitioner WILLIAM TELLI, a Broward County resident, who was Plaintiff in the circuit court and Appellee in the Fourth District Court of Appeal.

The Respondents are DR. BRENDA C. SNIPES, in her official capacity as Supervisor of Elections for Broward County, Florida, and BROWARD COUNTY, a political subdivision of the State of Florida.

The following symbols will be used:

"App. ___" references are to the Appendix to Petitioner's Initial Brief.

Statement of Case and Facts

In 2000, Broward County voters approved an amendment to the county charter that limited Broward County Commissioners to no more than three consecutive four year terms.[1] (App. p. 1.) William Telli, Petitioner, challenged the charter amendment on the ground that it conflicts with the Florida Constitution. *Id*. The circuit court agreed, finding that under this Court's holding in *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), a term limit is a disqualification from office that can only be imposed on constitutional officers through amendment to the Constitution itself. *Id*. In an opinion dated August 10, 2011, the Fourth District Court of Appeal reversed, concluding that the holding in *Cook* is inapplicable because the office of County Commissioner of a Charter County is not an expressly authorized constitutional office under the Florida Constitution. *Id*. at 4. On December 12, 2011, this Court accepted discretionary jurisdiction to review the Fourth District's decision.

Summary of Argument

Broward County's Term Limit Amendment is unconstitutional under this Court's decision in *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), which unequivocally determined that the Florida Constitution preempts the entire field of

[1] That amendment is set forth in Article II, Section 2.02, of the Code of Broward County

disqualification of **all** constitutional officers. In *Cook*, this Court explicitly held that article VI, section 4, provides the exclusive roster of permissible disqualifications from election to office, and further determines the positions authorized by the constitution upon which a term limit provision may be permissibly imposed. The Court held that constitutionally authorized offices not included in article VI, section 4(b), necessarily may not have a term limit disqualification imposed. The constitutional officers in *Cook* were authorized under article VIII, section 1(d).[2] Because article VIII, section 1(d) officers are not included in article VI, section 4(b), the Court concluded that any charter amendment purporting to place term limits on these constitutionally authorized officers is an impermissible disqualification of a constitutional office.

The Fourth District's attempt to distinguish *Cook* from the instant case by holding that County Commissioner of a Charter County is not an authorized constitutional office is unsupported by precedent and in direct contravention of the rationale underlying *Cook*. In addition, the Fourth District's decision casts aside the strikingly similar language between article VIII, sections 1(d) and (e) by creating a distinction without a difference and, in the process, creating an irreconcilable conflict with the plain language of *Cook*.

[2] The County officers authorized under article VIII, section 1(d) are sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court.

Finally, the Fourth District's decision not only conflicts with this Court's holding in *Cook*, but the long-standing precedent which led to *Cook*. This Court has made clear that if a disqualification, such as a term limit, is to be imposed upon county commissioners or other constitutional officers, the proper mechanism is an amendment to the Constitution, not the enactment of a statute or local ordinance.

Argument

I. STANDARD OF REVIEW

The proper standard of review for issues involving constitutional or statutory interpretation by a district court is *de novo*. *Florida Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 485 (Fla. 2008); *Zingale v. Powell*, 885 So. 2d 277, 280 (Fla.2004).

II. THE FLORIDA CONSTITUTION PREEMPTS THE FIELD OF DISQUALIFICATIONS PERMISSIBLY IMPOSED UPON THE OFFICE OF COUNTY COMMISSIONER AND, THEREFORE, PROHIBITS LOCAL GOVERNMENTS FROM ADDING DISQUALIFICATIONS UNDER THEIR HOME-RULE POWERS

This Court's holding in *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), is both factually analogous and on all fours with the instant case. The Fourth District discounted the decision in *Cook* because the petitioners in that case held constitutional offices created under Article VIII, Section 1**(d)**, whereas the term limit amendment at issue in the instant case limits terms for county

commissioners who hold constitutional offices created under Article VIII, Section 1**(e)**. Aside from not paying heed to the nearly indistinguishable language used to describe constitutional officers in sections 1(d) and 1(e), the court's narrow interpretation completely overlooks this Court's express holding:

> **We hold** that a term limit provision is a disqualification from election to office and that article VI, section 4(a), Florida Constitution, **provides the exclusive roster of those disqualifications which may be permissibly imposed. We also hold** that article VI, section 4(b), Florida Constitution, provides those positions authorized by the constitution upon which a term limit provision may be permissibly imposed.
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> . . .
>
> Clearly, by virtue of article VI, section 4(b), the Florida Constitution contemplates that term limits may be permissibly imposed upon certain offices authorized by the constitution. **By the constitution identifying the offices to which a term limit disqualification applies, we find that it necessarily follows that the constitutionally authorized offices not included in article VI, section 4(b), may not have a term limit disqualification imposed. If these other constitutionally authorized offices are to be subject to a term limit disqualification, the Florida Constitution will have to be amended to include those offices.**

Id. at 90, 93-94 (emphasis supplied).

By attempting to distinguish *Cook* because it concerns constitutional officers referenced in Article VIII, section 1(d), as opposed to section 1(e), the district court deviated from the Court's holding, which relies solely on an interpretation of

Article VI, Section 4. In fact, this holding in *Cook* does not mention any of the subsections of Article VIII, Section 1. *See Cook*, 823 So. 2d at 90, 93-94. Moreover, the *Cook* Court specifically identified those limited situations to which the holding does not apply, making no mention of any distinctions over arguable theoretical differences among the various subsections of Article VIII, Section 1: "[W]e do not address the validity of a term limit provision upon an office authorized in a county charter but **not expressly** authorized in the Florida Constitution." *Id*. at 90-91 (emphasis supplied). A fortiori, the holding preempting the field of permissible disqualifications applies to **all offices expressly** authorized under the Florida Constitution, which includes those officers created under Article VIII, Section (1), regardless of whether they are referenced in subsection (d) or (e).

A closer examination of this Court's decision in *Cook*, in conjunction with the well-established precedent underlying that decision, further highlights the flaws in the Fourth District's analysis.

A. Cook is Decisive

Cook was a consolidated case opinion growing out of *Cook v. City of Jacksonville* and *DeBlaker v. Eight is Enough in Pinellas*. In *Cook*, the Court confronted the issue of the constitutionality of a Jacksonville Charter ordinance imposing a two-term limitation on various constitutionally created offices. *Id*. at

87. The trial court, in declaring the term limit ordinance unconstitutional, held that there was nothing in the Florida Constitution authorizing the City to prescribe such an imposition and, thus, deemed the City impermissibly "added an unconstitutional qualification or disqualification" from election to the constitutionally created offices. *Id*. at 88. The City appealed and the First District reversed, reasoning that "where the constitution establishes no qualifications, the Legislature may impose additional qualifications." *Id*. Consistent with Jacksonville Charter's home rule power, the appellate court held that the ordinance was constitutional and that the local legislature had the authority to prescribe additional qualifications/disqualification impacting those constitutionally created offices. *Id.*

The facts in the consolidated case, *DeBlaker v. Eight is Enough in Pinellas*, are virtually identical to the facts in the instant matter. In *Eight is Enough*, the plaintiff was a citizen who brought an action for injunctive relief which required the trial court to determine the constitutionality of a Pinellas Charter amendment imposing term limits on specific constitutionally created offices, including board of county commissioners for Pinellas County, clerk of the circuit court, tax collector, sheriff, supervisor of elections, and property appraiser.[3] *Id*. at 90. In declaring the

[3] Specifically, "the goal of the initiative was to impose term limits on members of the board of county commissioners," *Cook*, 823 So. 2d at 89. The ballot initiative proposed by the Pinellas County Charter provided under Sec. 3.01. Board of county commissioners: "No person may appear on the ballot for re-election to the office of county commissioner if, by the end of the current term of office, the person will have served . . . in that office for eight consecutive years."

Pinellas Charter amendment constitutional, the lower court found "that the disqualifications enumerated in article VI, section 4, Florida Constitution, did not prohibit charter counties from imposing term limits within their counties." *Id*. Shortly after the trial court's ruling, the order was appealed to the Second District by the citizen who brought the suit as well as by several intervening parties, including the board of county commissioners, the tax collector, clerk of the circuit court, sheriff, property appraiser, and supervisor of elections. *Id*. In affirming, the Second District determined that there were no statutes or constitutional provisions prohibiting a charter county from imposing term limits which did not affect the "composition, election, term of office and compensation of [county commission] members." *Id*. at 89-90. Although the proposed initiative at issue in the case placed term limits on both county officers and commissioners, for reasons unknown only the clerk of the circuit court, tax collector, and sheriff petitioned this Court for review. Nevertheless, any fair reading of the case leads to the inescapable conclusion that the Court's holding applies with equal force to all constitutional officers.

The issue the *Cook* Court addressed is whether a charter county may in its charter impose a term limit provision upon those county officer positions authorized by the Florida Constitution. *Id*. at 90. In quashing the First District's

decision in *Cook* and the Second District's decision in *Eight is Enough*, this Court unambiguously held:

> (1) a term limit provision is a disqualification from election to office;
>
> (2) art. VI, § 4, Fla. Const., provides the exclusive roster of those disqualifications which may be permissibly imposed; and
>
> (3) art. VI, § 4, Fla. Const., provides those positions authorized by the constitution upon which a term limit provision may be permissibly imposed.

Id.

Significantly, the Court recognized that art. VI, § 4, Fla. Const., "**preempted the field**" of disqualifications "permissibly imposed upon certain offices authorized by the constitution" (emphasis supplied).[4] *Id*. at 93. The Court determined that:

> by virtue of article VI, section 4(b), the Florida Constitution contemplates that term limits may be permissibly imposed upon certain offices authorized by the constitution. **By the constitution identifying the offices to which a term limit disqualification applies, we find that it necessarily follows that the constitutionally authorized offices not included in article VI, section 4(b), may not have a term limit disqualification imposed**. If these other constitutionally authorized offices are to be subject to a term limit disqualification, the Florida Constitution will have to be amended to include those offices.

[4] Article VI, § 4, Fla. Const. applies to the disqualifications of *all* constitutional officers and, "is the only section of organic law that does so relate to *all* officers." *Thomas v. State ex rel. Cobb*, 58 So.2d 173, 177 (Fla. 1952).

Id. 93-94 (emphasis supplied). In so holding, the Court rejected the argument that a Charter County, pursuant to its home rule power, could impose additional qualifications and/or disqualifications on constitutionally authorized offices. The Court reaffirmed its prior position in *Thomas v. State ex rel. Cobb*, that "[t]he Constitution is the charter of our liberties. It cannot be changed, modified or amended by legislative or judicial fiat. It provides within itself the only method for its amendment." *Id*. at 94 *citing Thomas v. State ex rel. Cobb*, 58 So.2d 173, 174 (Fla. 1952).

The Fourth District's reliance on a charter county's powers of self-government disregards the rationale of *Cook*. *See id.* ("We do not agree with . . . the Second District's reliance on a charter county's home rule powers"). In fact, the district court overlooked most of the *Cook* opinion, choosing instead to narrowly focus on the Court's closing remarks to support its conclusion that *Cook* only applies to those constitutional officers authorized by article VIII, section 1(d). That approach overlooked the eight pages of analysis, and more than a century of precedent, on the subject of constitutional preemption in the area of disqualification, that was the foundation for *Cook*.

B. The Fourth District's Interpretation of the Phrase "constitutionally authorized" is Not Persuasive

The Fourth District attempted to distinguish the instant case from *Cook*, *creating* a distinction without a difference. *Cook* held "that article VI, section 4 (b), Florida Constitution, provides those positions authorized by the constitution upon which a term limit provision may be permissibly imposed." *Cook*, 823 So. 2d at 93-94. As discussed *supra*, the respondents in *Cook* were officers authorized by article VIII, section 1 (d), whereas the constitutional officers at issue in this case are established by article VIII, section 1(e). These respective subsections to article VIII, section 1, provide, *inter alia*:

> (d) **County officers**. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; **except, when provided by county charter or special law approved by vote of the electors of the county**, any county officer may be chosen in another manner therein specified, or **any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.** (emphasis supplied).

> (e) **Commissioners**. **Except when otherwise provided by county charter**, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as

> practicable. One commissioner residing in each district shall be elected as provided by law. (emphasis supplied).

The Fourth District held that the officers identified in section 1(e) are not "constitutionally authorized" officers because of the introductory language: "Except when otherwise provided by county charter." (App. p. 4.) The court held that county commissioners under 1(e) are merely default officers and that "[t]o equate the legal effect of [sections 1(d) and 1(e)]—to say that section 1(e) establishes county officers with the same exactness as section 1(d) constitutional officers—would be to ignore the first seven words of section 1(e)." *Id*. Section 1(d), however, contains nearly the exact same language, resulting in the exact same default classification, whereby counties "shall" elect 1(d) officers "except, when provided by county charter or special law approved by vote of the electors of the county." As a result, the opinion of the Fourth District and this Court's opinion in *Cook* cannot be reconciled.

Moreover, an examination of section 1(e), as well as of other constitutional provisions in article VIII and associated implementing statutes, highlights the error of the district court's analysis. Many of the most important functions of a county must be performed by an elected board of county commissioners. While section 1(e) clearly gives a charter county the option of establishing a *governing body* of its own devise, it does not give charter counties the option of abolishing the office of county commissioner in its entirety. Likewise, no authority is given to take

certain prescribed powers or functions from the board of county commissioners. In fact, the plain language of section 1(e) establishes the decennial redistricting process as one of the functions of county government that can only be performed by a board of county commissioners. The section further requires county commissioners to be elected as prescribed by law with one commissioner residing in each commission district. As a result, section 1(e) clearly establishes the office of county commissioner.

Other provisions in article VIII, and the statutes implementing these provisions, further evidence the significant role that county commissioners are required to play in county government. For example, article VIII, section 1(b), provides that the method of disbursing county funds shall be provided by law. Article VIII, section 1(g) provides that charter counties can enact county ordinances not inconsistent with general law. The implementing statutes for these provisions are found in Chapters 129 and 125, respectively. Florida Statutes section 129.01(2)(a) expressly mandates that "[t]he budget must be prepared, summarized, and approved by the board of county commissioners of each county." Florida Statutes section 126.66(2)(a), which concerns the enactment procedures for ordinances, only provides for the enactment of ordinances by a board of county commissioners ("The board of county commissioners at any regular or special meeting may enact or amend any ordinance). Finally, Florida Statutes section

125.86 requires that "[t]he legislative responsibilities and power of the county shall be assigned to, and vested in, the board of county commissioners."

Accordingly, under our present constitutional and statutory scheme in every county, whether a charter county or a non-charter county, certain functions of county government, including the redistricting process, the ordinance making process, and the budget process are performed by an elected board of county commissioners. Although a charter county under Section 1(e) may have the option of creating its own governing body to conduct the day to day administrative affairs of a county, it clearly does not have the option of completely eliminating the office of county commissioner and the role of the board of county commissioners.

Just as importantly, the district court's failure to recognize that the phrase "constitutionally authorized" is just as applicable to commissioners as to other county officers conflicts with prior precedent in which this Court specifically refrained from distinguishing between 1(d) and 1(e) officers. For example, in *In re Advisory Opinion to Governor-Sch. Bd. Member-Suspension Auth.*, 626 So. 2d 684, 689 (Fla. 1993), the Court was asked to determine whether article IV, section 7, applies to school board members. As part of its analysis, the Court specifically concluded that the term "county officers" applies with equal force to the officers identified in article VIII, section 1(d), and the county commissioners identified in article VIII, section 1(e). *Id*. at 689-90.

In this case, the district court did not cite to any authority in distinguishing between county commissioners under 1(e) and this Court's treatment of 1(d) officers in *Cook*. Ironically, to the extent that any distinction exists between section 1(d) and 1(e) officers, precedent, , dating back more than a century, offers greater support for preemption in the field of disqualification regarding 1(e) commissioners than it does for 1(d) officers. These cases are sometimes distinguished depending on whether they were decided under the 1885 or 1968 Constitution. Under either line of cases, the inescapable conclusion is that the Florida Constitution unequivocally preempts the field of all disqualifications permissibly imposed upon the office of County Commissioner, including the imposition of term limits.

1. Pertinent Cases Decided Under the 1885 Constitution

State ex rel. Attorney General v. George 3 So. 81 (Fla. 1887), is one of the first decisions of this Court discussing constitutional preemption in the area of disqualification. In *George,* the Court held that where the Constitution is silent as to the qualifications for the office of marshal and collector, it was unconstitutional for a city to impose its own disqualifications. As part of its analysis, the Court considered the significance of the omissions of qualifications from the Constitution:

> The constitution prescribes no qualifications for office, except for governor, senators, and members of the house of representatives, and judges of the supreme and circuit courts; and, as to these, only the governor, senators, and members are required to be qualified electors. It is silent as to the qualifications of all other officers. We do not infer from this that the framers of the constitution were unmindful of the importance of having only such persons put into office as would be endowed with suitable qualifications. **Our inference rather is that they deemed it best to leave that without rigid restriction trusting that those who were to have the selection of officers would take care that none but fit persons should be selected or appointed**,-fit, not only in respect to capacity and character, but also in having citizenship to identify them in interest with the communities in which their official duties were to be performed.
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> . . .
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> **There is no absolute connection between voters and officers by which the qualification for the latter should necessarily be determined by those for the former.** Each is regulated to its own end, the former always by special provision, the latter sometimes not at all, except, as in this state, the more important political and judicial places; so that, **as to all other officers, the people, in the absence of other requirements, are left to their own discretion, limited only by a common understanding, equivalent to law, that prohibits electing to office any person who is not in somewise a member of the body politic.**

Id. at 82-83 (emphasis supplied).

The Court has held fast to the principles first espoused in *George*. *Thomas v. State ex rel. Cobb*, 58 So.2d 173 (Fla. 1952), for example, involved a resident of Duval County who wanted to run for the office of school superintendent but was

precluded under a statute that required candidates for that office to hold a valid Florida Graduate Teacher's Certificate. *Id*. at 173. In affirming an order finding the statute unconstitutional, the Court relied on *George* as well as substantial additional authority upholding the same principles:

> Since the Constitution has declared that all elections shall be free, each elector is entitled to cast his vote for any eligible person for any office provided for by the Constitution, free from any restraint not authorized by the Constitution itself. . . . It is essential to the freedom of elections mentioned in the Constitution that every voter shall be permitted to choose from all eligible persons, and shall not be required to choose from certain classes.
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> . . .
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> The expression of the disabilities specified excludes others. The declaration in the Constitution that certain persons are not eligible to office implies that all other persons are eligible.

Id. at 182 (quoting *People ex rel. Hoyne v. McCormick*, 103 N.E. 1053, 1056 (Ill. 1913)).

> From the provision (of the Constitution), 'no person shall be eligible to any office * * * who is not a qualified elector,' the implication is very strong that a qualified elector shall be eligible to any office, unless otherwise provided; and, in view of the fact that it is otherwise provided as to certain offices, the implication becomes a necessary one, and decisive against the claim of power in the legislature to add to the constitutional qualifications for office.

Id. (quoting *Wynn v. State ex rel. District Attorney*, 7 So. 353, 355 (Miss 1890)).

> [W]here, as in this state, the Constitution has declared so unequivocally the conditions essential to the eligibility to some offices, and has stated with equal precision other conditions which will render a person ineligible for any office created by it, it may be assumed that when it failed to prescribe any special qualifications as essential to eligibility to constitutional offices, it did not intend any.

Id. at 182-83 (quoting *Quenstedt v. Wilson*, 194 A. 354, 358 (Md. 1937)). With *George* and the aforementioned out of state authority in mind, the *Cobb* Court summarized:

> Our State Constitution, as we have pointed out, prescribes in no uncertain terms that certain persons are disqualified to hold certain constitutional offices, such as, Governor, Members of the Legislature, Justices of the Supreme Court, Judges of the Circuit and Criminal Courts. As to all officers the Constitution further excludes from office all persons 'convicted of bribery, perjury, larceny or of infamous crime, or who shall make, or become directly or indirectly interested in, any bet or wager, the result of which shall depend upon any election; or that shall hereafter fight a duel or send or accept a challenge to fight, or that shall be second to either party, or that shall be the bearer of such challenge or acceptance; but the legal disability shall not accrue until after trial and conviction by due form of law.' This solemn declaration in our Constitution about qualifications or disqualifications to hold public office are conclusive of the whole matter whether in the affirmative or in the negative form.
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> These plain and unambiguous specifications of disabilities exclude all others unless the Constitution provides otherwise. The effect of this declaration in the Constitution that certain officers are not qualified carries with it the necessary implication that all others are qualified.

Id. at 183.

Finally, in *Wilson v. Newell*, 223 So.2d 734, 735 (Fla. 1969), the Court addressed the constitutionality of a Florida statute that prescribed an additional residency qualification for those seeking election to the office of County Commissioner. The Court, in affirming the lower tribunal's decision, held that the subject Florida statute was facially "unconstitutional, invalid and ineffective **because it prescribes qualifications for the office of County Commissioner in addition to those prescribed by the Constitution**." *Newell*, 223 So.2d at 735-36 (emphasis supplied). The essential facts in *Newell* are virtually indistinguishable from the facts *sub judice*. Here, Broward County's Term Limit Amendment attempts to prescribe an additional qualification (non-incumbency) upon those individuals seeking election to the office of County Commissioner.

2. Pertinent Cases Decided Under the 1968 Constitution

Prior to *Cook* and the addition of article VI, section 4(b), the cases decided under the 1968 Constitution began taking a narrower approach by placing a greater focus on whether the Constitution provided qualifications for the specific office at issue before determining that the field of disqualification was preempted. *State ex rel. Askew v. Thomas*, 293 So. 2d 40 (1974), examined whether the field of disqualifications was preempted under the 1968 Constitution with regard to school board members. At issue in *Askew* was the constitutionality of a statute imposing

residency requirements on school board members. Rather than looking to the general disqualifications for constitutional officers set forth in article VI, section 4(a), the Court began its analysis by looking directly at the provision of the Constitution concerning school board members, article IX, section 4. *Id*. at 42. The Court reaffirmed the precedent that "statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements." *Id.*

In *State v. Grassi*, 532 So.2d 1055 (Fla. 1988), the Court reached a similar conclusion. *Grassi* concerned Florida Statute section 99.032, which required that "[a] candidate for the office of county commissioner shall, *at the time he qualifies,* be a resident of the district from which he qualifies." *Id* at 1055-56 (quoting Fla. Stat. § 99.032) (emphasis in original). At issue was whether the November 1984 amendment to art. VIII, § 1(e), Fla. Const., "delegates the establishment of specific county commissioner qualifications to the legislature." *Id*. at 1056. [5] The Court found that it did not, reasoning that the amendment was substantive, "delegating to the legislature the task of establishing procedures for election of county commissioners, **not the power to set qualifications for that office**." *Id*.

[5] The amendment added the following language which is *identical* to the language in the Florida Constitution currently: "(e) *Commissioners.* Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five *or seven* members serving staggered terms of four years.... One commissioner residing in each district shall be elected as provided by law."

(emphasis supplied). This Court went on to hold that, "[b]ecause article VIII, section 1(e) provides requirements for office of county commissioner, **the legislature may not impose additional requirements**." *Id*. Thus, because article VIII, section 1(e) contains within it the qualification of residency at the time of election, the additional qualification imposed by section 99.032 on the office of county commissioner of residency *at the time of qualifying* for election was unconstitutional. *Id*. Consistent with the *Askew* Court's preemption analysis concerning school board members, the Court in *Grassi* began its analysis by looking to the specific constitutional provision applicable to the office at issue in that case; namely, county commissioners.

Again, the facts and central issue in *Grassi* are analogous to the issue here. Like the statute in *Grassi*, which imposed unconstitutional residency requirements as a disqualification for the office of County Commissioners, Broward County's amendment impermissibly imposes additional term limit qualifications/disqualifications for election to the office of County Commissioners not otherwise permitted by the Florida Constitution. As the *Grassi* Court explained, art. VIII, § 1(e), Fla. Const., does not afford the power to either the legislature or the electorate to impose additional disqualifications for the office of county commissioner in addition to those already contained in the Constitution. *Id*. At most, section 1(e) provides the *method* by which the county board shall be filled

and the size of the board. Because the Broward County Term Limits Amendment goes one step farther in mandating that commissioners only serve for three consecutive terms, thereby disqualifying some and not others, the County has added an unconstitutional disqualification for the office of county commissioner. Certainly, the residents of a County have just as great an interest in their elected officials being residents as they do in limiting the number of terms an otherwise qualified individual may serve.

Based on the foregoing, the rationale of *Cook's* predecessors applies with greater force to officers authorized under section 1(e) than those authorized under section 1(d). The *Cook* Court's reliance on article VI, section 4, renders meaningless any minor differentiations between the language used in section 1(d) and 1(e).

C. Term Limit Disqualifications for County Commissioners Can Only be Prescribed Through Amendment to the Florida Constitution

This case is not about the merits of term limits. In both the trial and district courts, Respondents emphasized that the term limit at issue in this case was passed by over 80% of Broward County voters. That is beside the point, because one of the functions of a constitution is to restrain legislative departments of government especially when they unconstitutionally respond to "the will of the people."

This Court expressed similar sentiments in *Cobb*, quoting President Washington's farewell address to the Nation:

> If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates. But let there be no change by usurpation; for, though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly over-balance in permanent evil any partial or transient benefit which the use may at any time yield.

Thomas v. State ex rel. Cobb, 58 So.2d at 84. In the same vein, are the observations of Justice Shaw in his partial concurrence in *VanBibber v. Hartford Acc. & Indem. Ins. Co.*, 439 So.2d 880 (Fla. 1983)

> The fact that a legislative act is said to be good public policy is not a basis for deferring to the legislature when a constitutional right is violated.

Id. at 884 (emphasis added) (Shaw, J., concurring in part, dissenting in part). The issue in this case does not concern the merits of term limits, but simply whether the constitutional framers intended to allow the legislature (state or local) to add qualifications and/or disqualifications to those offices expressly established in the constitution.

This is not to say, however, that the public is helpless in the matter. The Florida Constitution reserves to the people of this State the right to amend the constitution by initiative. *See* Art. XI, § 3, Fla. Const. Thus, there is nothing

preventing members of the public from undertaking to place an initiative on the ballot proposing a constitutional amendment that would allow counties to decide for themselves whether to impose term limits on county officers and commissioners.

Conclusion

Based on the foregoing, this Court should quash the opinion of the district court and remanding the case to the Fourth District Court of Appeal with directions to reinstate the trial court's order entering final summary judgment in favor of Petitioner and declaring Article II, Section 2.02, of the Code of Broward County, unconstitutional.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U. S. Mail to all counsel on the attached Mailing List on this 5th day of January, 2012.

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The undersigned counsel certifies that the type and style used in this brief is 14 point Times New Roman.

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