IN THE SUPREME COURT OF FLORIDA

Case No. SC11-1737

On Appeal From The Fourth District Court of Appeal
4th DCA Case No. 4D10-4687

WILLIAM TELLI, Petitioner

v.

BROWARD COUNTY AND DR. BRENDA C. SNIPES, Respondents

ANSWER BRIEF OF BROWARD COUNTY AND DR. SNIPES

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STATEMENT OF THE CASE AND FACTS

On March 14, 2000, Broward County's voters overwhelmingly approved an amendment to the county charter that limited their county commissioners to three consecutive four-year terms in office. The question before this Court is whether those term limits are preempted by, and therefore violate, the Florida Constitution.

Petitioner, William Telli, challenged the term limits. The trial court found the term limits were invalid, relying on *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002). The Fourth District Court of Appeal reversed, finding *Cook* was not controlling because it addressed different officers and a different constitutional home rule provision. *Snipes v. Telli*, 67 So. 3d 415 (Fla. 4th DCA 2011). *Telli* held that the home rule provision at issue here, article VIII, section 1(e), empowered voters in charter counties to term-limit their own county commissioners. *Id*. at 419. This Court granted review.

SUMMARY OF THE ARGUMENT

Charter counties have broad home rule powers. There is no reason to conclude that Florida's electorate intended to exclude from those powers the right of a county's voters to choose term limits for their own county commissioners.

Petitioner neither identifies any public interest that would be served by invalidating these term limits, nor even attempts to explain why the Constitution would otherwise afford local voters broad home rule powers, yet deprive them of

this one. Petitioner's entire argument is that the 4-3 decision in *Cook* prohibits the term limits. The Fourth District in *Telli* disagreed with Petitioner and correctly ruled that *Cook* does not control and should not be extended to invalidate the term limits at issue. *Telli* conflicts with neither the holding nor the rationale of *Cook.*

The critical distinction between *Cook* and this case is that *Cook* considered only whether charter county voters may impose term limits on county officials governed by article VIII, section 1(d), of the Constitution (*e.g.*, sheriff, supervisor of elections, property appraiser). The issue here is whether those voters may impose such term limits on county commissioners under article VIII, section 1(e). Contrary to Petitioner's contentions, *Cook* did not address or decide this issue.

The Fourth District correctly found that *Cook*'s analysis of term limits under section 1(d) should not extend to term limits under section 1(e). The *Telli* decision was rooted in the recognition that section 1(e) gives voters in charter counties broad power to structure their local governing body, while section 1(d) grants only limited power to regulate non-legislative elected county officials. Section 1(e) was not considered in *Cook* because it was simply not at issue in that case.

Any decision to invalidate these term limits would undercut local voters' home rule power over local legislative officers without serving any countervailing statewide interest. No basis in law or reason exists, and none has been asserted by

Petitioner, to upend the will of the voters on this self-government decision that affects them and no other part of the state.

Petitioner argues that the powers granted under section 1(e) are the same as the powers granted under section 1(d), but this argument is refuted by the structure of the Constitution itself. The Constitution's allocation of home rule power to counties in separate, differently worded sections strongly indicates that those sections were intended to confer different powers. Had the Constitution intended to confer the same extent of home rule power regarding both county commissioners and the section 1(d) officers at issue in *Cook*, the framers would logically have done so in a single section applicable to all those officers.

Further, in contrast to section 1(d), the structure and plain language used in section 1(e) shows the framers bestowed upon the voters in charter counties wide latitude in designing their own county commissions. Nothing in the Constitution indicates any intent to infringe on the home rule autonomy exercised by Broward County's voters in selecting limits on the terms of their own commissioners.

For these reasons, Broward County respectfully requests that the decision of the Fourth District Court of Appeal in *Telli* be affirmed.

STANDARD OF REVIEW

The County agrees with Petitioner that the standard of review is *de novo*.

ARGUMENT

POINT I

THE FOURTH DISTRICT CORRECTLY RULED THAT *COOK* DOES NOT CONTROL AND, THEREFORE, THIS CASE PRESENTS AN ISSUE OF FIRST IMPRESSION

Cook did not address whether voters in charter counties have home rule power under article VIII, section 1(e), to term-limit their own commissioners. Section 1(e) was not at issue in *Cook*. The best evidence of this is that neither *Cook*'s majority nor its three-member dissent mentioned section 1(e).

Rather, as the Fourth District correctly recognized, *Cook* addressed only the constitutionality of term limits on section 1(d) officers (supervisor of elections, property appraiser, sheriff, *et al.*). The *Cook* Court started its analysis by stating: "The issue we address in these consolidated cases is whether a charter county may in its charter impose a 'term limit' provision upon those county officer positions which are authorized by **article VIII, section 1(d)**, Florida Constitution." *Cook*, 823 So. 2d at 90 (emphasis added). The Court repeated that "[t]he county offices subject to this review are **authorized by article VIII, section 1(d)** . . .." *Id*. (Emphasis added). And the Court concluded by stating:

> We find that article VI, section 4(a), provides the only disqualifications applicable to the county offices **established by article VIII, section 1(d)**, Florida Constitution. Thus, we hold that [these charter provisions] providing for a term limit on county officers **authorized by article VIII, section 1(d)**, are invalid . . ..

Id. at 94-95 (emphasis added). Thus, the *Cook* majority made clear that the issue actually decided involved only article VIII, section 1(d), officers.

Despite the limited issue before the *Cook* Court, Petitioner argues that *Cook* controls. He bases that argument on certain broad language in the opinion that could be read to prohibit term limits on all officers unless expressly authorized by article VI, section 4(b).[1] *Cook* should not be read this way for three reasons.

First, article VI, section 4(b), is very narrow in scope, expressly covering only elected state officers. By its express terms, the section shows no intent to preempt term limits for county officers.[2]

Second, the text of the Constitution proves that not all term limits and disqualifications are found in article VI, section 4. Disqualifications for Justices and Judges are contained in article V, section 8. Article IV, section 5(b), contains a gubernatorial term limit. The very existence of these provisions demonstrates that disqualifications, and more specifically term limits, may be based on constitutional

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[1] *Id*. at 90 ("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.").

[2] Article VI, section 4(a), in marked contrast, clearly covers all elected officers.

provisions outside article VI, section 4, and necessarily narrows the scope of the Court's language in *Cook*.

Third, a court decision is not authority on issues the parties did not raise and the court did not consider. *State v. Du Bose*, 128 So. 4, 6 (Fla. 1935) (holding that "no decision is authority on any question not raised and considered."); *Adams v. Aetna Cas. & Sur. Co.*, 574 So. 2d 1142, 1153 (Fla. 1st DCA 1991) ("It is elementary that the holding in an appellate decision is limited to the actual facts recited in the opinion."). As this Court has explained:

> [We are] committed to the method of a gradual approach to the general, by a systematically guarded application and extension of constitutional principles to particular cases as they arise, rather than by out of hand attempts to establish general rules to which future cases must be fitted.

Du Bose, 128 So. at 6 (internal quotation omitted).

Before determining whether the term limits at issue in *Cook* were valid, the Court considered the home rule power granted to charter counties in connection with article VIII, section 1(d), officers. *Cook*, 823 So. 2d at 94. In deciding this case, the Court must consider, as the Fourth District did in *Telli*, whether term limits on county commissioners are permissible under the broader home rule powers granted to voters in charter counties by article VIII, section 1(e).

POINT II

THE FOURTH DISTRICT CORRECTLY RULED THAT *COOK* SHOULD NOT BE EXTENDED TO INVALIDATE CHARTER-BASED TERM LIMITS ON COUNTY COMMISSIONERS

Rarely do more than 80% of voters agree on anything, but Broward voters agreed on the term limits at issue here.[3] Invalidating these term limits would thwart the will of Broward County voters about a matter that impacts only them. Because the term limits apply only within the County, the decision to impose them was a clear exercise of home rule power. Under article VIII, section 1(g), of the Constitution, exercises of home rule power are valid unless inconsistent with general law or the Constitution itself.[4] No inconsistency exists here.

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[3] 122,475 County residents voted in favor of the term limits, while 30,463 voted against. http://www.browardsoe.org/GetDocument.aspx?id=1160; County Question 2, Presidential Preference Primary, March 14, 2000.

[4] The Florida Constitution provides that charter counties "shall have all powers of local self-government not inconsistent with general law." FLA. CONST. art. VIII, § 1(g). In *State of Florida v. Broward County*, this Court noted that Broward County's Charter provides the county with all the powers granted charter counties under the Florida Constitution, and that such powers shall be "**liberally construed in favor of county government.**" 468 So. 2d 965, 969 (Fla. 1985) (emphasis added). In the absence of preemptive law, the paramount law of a charter county is its charter, which acts as the county's constitution. *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 609 (Fla. 4th DCA 1983), *rev. denied*, 440 So. 2d 352 (Fla. 1983).

A. The Applicable Standards.

The issue in this case is whether the power to impose charter-based term limits on county commissioners has been constitutionally preempted. Determining whether there was intent to preempt requires consideration of more than just article VI, section 4. It is a fundamental principle of constitutional interpretation that a court must read all applicable constitutional provisions *in pari materia* to determine the intent of Florida's voters. As this Court stated in *Bush v. Holmes*:

> It is well established that '[e]very provision of [the Constitution] was inserted with a definite purpose and all sections and provisions of it must be construed together, that is, *in pari materia*, in order to determine its meaning, effect, restraints, and prohibitions.' [I]n construing multiple constitutional provisions addressing a similar subject, the provisions 'must be read *in pari materia* to ensure a consistent and logical meaning that gives effect to each provision.'

919 So. 2d 392, 410-11 (Fla. 2006) (internal citations omitted).

There are two types of preemption; express and implied. Express preemption requires a specific and clear statement of intent to preempt. *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006) (citations omitted). Preemption is implied when the "scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted . . .." *Sarasota Alliance For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010) (citation omitted).

Nothing in the Constitution expressly preempts disqualifications from office, or more specifically term limits, or even more specifically charter-based term limits on county commissioners. Thus, there is no express preemption. The specific issue in the case, therefore, is whether there is implied constitutional preemption. For the reasons stated below, this Court should affirm the Fourth District's ruling that there is no implied preemption.

B. Even With Regard to the Narrower Grant of Home Rule Power Under Article VIII, Section 1(d), the *Cook* Court Was Deeply Divided Regarding Preemption.

1. The *Cook* Majority.

With regard to the article VIII, section 1(d), officers at issue in *Cook*, the majority found preemption through the maxim of *expressio unius est exclusio alterius*: "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." *Cook*, 823 So. 2d at 93-94. The majority considered the applicable home rule provisions of article VIII, section (1), but found they did not authorize the term limits at issue. *Id*. at 90-91, 94.

The majority also relied on a series of cases finding preemption in connection with qualifications and disqualifications stated in the Constitution. Petitioner relies on these same pre-*Cook* cases, attempting to create the perception

that the issue currently before this Court has been long-decided, and *Cook* merely reaffirmed that decision. That is incorrect.

The pre-*Cook* cases the *Cook* majority cited—upon which Petitioner relies—involved the validity of statutes that added qualifications or disqualifications to offices authorized by the Constitution. None of the cases involved the constitutional home rule power of charter county voters to structure their own county commission, so none of the cases is applicable to the question here.

At issue in *Thomas v. State ex rel. Cobb*, 58 So. 2d 173 (Fla. 1952), was whether the Legislature could add qualifications to a school superintendent office established by the 1885 Florida Constitution.[5] *State ex rel. Askew v. Thomas*, 293 So. 2d 40 (Fla. 1974), addressed the validity of a statute imposing residency requirements on school board members.[6] Neither case involved county home rule power. Petitioner acknowledges this by stating that in *Askew* "[t]he Court

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[5] Petitioner's brief (Initial Brief at 16 – 19) contains substantial block quotes from *Cobb*. Included is language that the qualifications and disqualifications stated in the Constitution are exclusive. Importantly, *Cobb* was decided before article VI, section 4(b), or article VIII, section 1(e), were part of the Constitution.

[6] Petitioner notes that the Court in *Askew* "began its analysis by looking directly at the provision of the Constitution concerning school board members" instead of beginning with "the general disqualifications for constitutional officers set forth in article VI, section 4(a)." (Initial Brief at 20). Likewise, *Telli*'s analysis properly focused on the home rule power under article VIII, section 1(e).

reaffirmed the precedent that 'statutes imposing additional qualifications for office are unconstitutional.'" (Initial Brief at 20) (emphasis added).

Grassi and *Newell* involved county commissioners, but the issue in each case was, again, the validity of statutes changing qualifications. *State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988); *Wilson v. Newell*, 223 So. 2d 734, 735 (Fla. 1969). Neither case addressed a charter provision enacted pursuant to constitutional home rule power. Thus, contrary to the Petitioner's implication, neither case is "virtually indistinguishable" from the issue before this Court. (Initial Brief at 19). Alleging that the *Grassi* Court "explained" that article VIII, section 1(e), "does not afford the power to either the legislature **or the electorate** to impose additional disqualifications for the office of county commissioner" mischaracterizes the Court's holding because *Grassi* had nothing to do with any action by the electorate. (Initial brief at 21) (emphasis added).

The Florida Legislature did not impose the term limits at issue here in a statute; neither did the Broward County Commission by ordinance (the local counterpart to a statute). Rather, the voters of Broward County imposed them directly by amending the County's constitution[7] under the broad power granted to them by article VIII, section 1(e). This principle of local self-government is at the

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[7] *Hollywood, Inc.*, 431 So. 2d at 609.

core of Florida's constitutional home rule structure, and it must be given full consideration in any preemption analysis.

Petitioner previously argued, and may argue in reply, that if the Legislature cannot do something by statute, a county may not do it by ordinance or charter because of the "supremacy" established by article VIII, section 1(g). This argument misses the point. The charter provision here is based on constitutionally-conferred home rule power. That grant of power is not negated because the state Legislature lacks the power to do what the voters in Broward County could do on an issue that impacts only them.[8]

2. The *Cook* Dissent.

The three-member *Cook* dissent found no constitutional preemption. Instead, based on the broad home rule power conferred by article VIII, section 1, and because article VI, section 4(b), addressed only elected state officers[9] without

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[8] Petitioner's brief also contains extensive block quotes from *State ex rel. Attorney General v. George*, 3 So. 81 (Fla. 1887). (Initial Brief at 16). While *George* is factually inapposite, the following language quoted by Petitioner is instructive: "Our inference rather is that [the Constitution's framers] 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." (Emphasis added). Here, "those who were to have the selection of officers" are Broward County's voters.

[9] Article VI, section 4(b), establishes term limits on Florida's State Representatives, Florida's State Senators, Florida's Lieutenant Governor, and members of the state Cabinet.

indicating any intent to preempt term limits on county officers, the dissent concluded that the term limits on section 1(d) officers were a valid exercise of home rule power. *Id*. at 95-96.

The dissent stated: "[The Constitution] vest[s] broad authority in charter counties regarding charter governments and county officers. This broad language was obviously intended to allow charter counties wide latitude in enacting regulations governing the selection and duties of county officers." *Id*. at 96. The dissent noted that the Constitution "imposes no restrictions on a county's authority to regulate [those] officers," and that the "autonomy of local governments is at the heart" of the grant of home rule power under article VIII, section 1. *Id*. at 95–96.

The dissent's reasoning applies with even greater force here given the broad grant of power under article VIII, section 1(e), which is fully discussed below.

C. The Fourth District Court Properly Determined that the Constitution Does Not Preempt Charter-Based Term Limits for Article VIII, Section 1(e), Officers.

Consistent with the principle of *in pari materia* and the fact that the Constitution contains term limits outside article VI, section 4(b), the Fourth District Court in *Telli* considered all pertinent constitutional provisions in its preemption analysis. The Fourth District found that article VIII, section 1(e), provides a constitutional basis for term limits on county commissioners because it grants charter county voters broad power to define the quintessential element of

local representative self-government—the composition of their own local governing body. Thus, the Fourth District held that the term limits at issue here are not constitutionally preempted. *Telli*, 67 So. 3d at 419. This ruling should be affirmed because:

1. Given the applicability of article VIII, section 1(e), the requirements for finding implied preemption are missing;

2. Differences in the nature of the offices at issue here and in *Cook* explain why the Constitution grants voters in charter counties broad home rule power regarding county commissioners;

3. Differences in the structure of the Constitution, and in the plain wording of the relevant home rule provisions, demonstrate the breadth of home rule power regarding county commissioners;

4. The principle of *expressio unius*, used in *Cook* to find preemption, supports a finding of no preemption regarding county commissioner term limits; and

5. There is no basis in public policy to deny this right of self-determination to voters in charter counties, particularly given that the intrusion into home rule would not serve any countervailing statewide interest.

1. Article VIII, Section 1(e), Prevents a Finding of Implied Preemption.

To find implied preemption, two elements must be present: a pervasive constitutional scheme regulating term limits, and a strong public policy supporting a finding of preemption. *Browning*, 28 So. 3d at 886. Neither element exists.

a. There is No Pervasive Scheme Regulating Term Limits.

The only term limits established in the Constitution apply to elected state offices. Nothing in article VI, section 4(b), suggests any intent to prohibit voters in charter counties, under their constitutional home rule power, from imposing term limits on their own officers.

As stated above, the *Cook* majority, with regard to the article VIII, section 1(d), officers at issue, inferred preemption through the principle of *expressio unius est exclusio alterius*. Because article VI, section 4(b), listed some term limits, the Court found that it "necessarily follows" that other term limits are preempted. *Cook*, 823 So. 2d at 93-94. There are two problems with extending this ruling to the term limits at issue here.

First, with regard to county commissioners, other conclusions could follow just as logically. For example, it could have been concluded that, in approving article VI, section 4(b), the voters intended to (and did) cover only elected state officers, with full knowledge that voters in charter counties had home rule power to decide the issue of term limits on county commissioners under article VIII,

section 1(e). It could also have been concluded that local officers were not included in article VI, section 4(b), because section 4(b) imposes mandatory term limits statewide and such imposition would unnecessarily intrude into a charter county's home rule autonomy to impose (or not impose) term limits on county commissioners.

Article VIII, section 1(e), grants specific and broad power to charter county voters to structure their county commissions. That power grant is strong evidence that the Constitution does not intend to preempt charter counties from exercising self-determination (home rule) on this issue. It is difficult, at best, to see any reasonable basis for interpreting the power granted under 1(e) as allowing voters to, for example, change the number of their commissioners, un-stagger commissioner terms, or change the length of their terms, but not allow term limits.

Second, this Court's prior application of the principle of *expressio unius* undercuts a finding of preemption in this case. In *Holmes*, the Court found the principle applicable because the constitutional section at issue (article IX, section (a)) "provide[d] a comprehensive statement of the state's responsibilities . . .." *Holmes*, 919 So. 2d at 408. The Court also recognized, however, that under *Taylor v. Dorsey*, 19 So. 2d 876 (Fla. 1944), the principle is inapplicable when a constitutional provision has a narrow rather than comprehensive "primary purpose." *Holmes*, 919 So. 2d at 408.

Here, the primary purpose of article VI, section 4(b), is the imposition of term limits on elected state officers. There is no "comprehensive statement" regarding all elected officials in Florida, and certainly no statement broad enough to preclude charter counties from term-limiting their own commissioners. In other words, Florida voters' imposition of term limits on elected state officers does not evidence an intent to even affect—much less preclude—term limits for county offices. As such, and consistent with precedent, *expressio unius* should not be employed to find preemption of the term limits at issue.

b. There is No Strong Public Policy Supporting a Finding of Preemption.

The second requirement for finding implied preemption is also absent, as there is no strong public policy to find that voters are preempted from term-limiting their own county commissioners. To the contrary, the people of Florida determined that term limits are good public policy when they amended the Constitution to impose them on state officers through article VI, section 4(b). The initiative petition that resulted in article VI, section 4(b), stated in applicable part:

> The people of Florida believe that politicians who remain in office too long may become preoccupied with re-election and become beholden to special interests and bureaucrats, and that present limitations on the President of the United States and Governor of Florida show that term limitations can increase voter participation, citizen involvement in government, and the number of persons who will run for elective office.

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Elective Offices, 592 So. 2d 225, 226 (Fla. 1991). Certainly, the people's concerns, as expressed in the above-quoted language, are no less applicable to county commissioners.

In perfect accord with the policy supporting term limits on state officials, the people of Broward County determined that term limits are also good policy for their commissioners, and amended their county charter to impose such term limits. Against this backdrop, there is no basis for finding that the term limits are against public policy. This precludes a finding of implied preemption.

2. The Difference in the Nature of the Offices at Issue Further Supports that Home Rule Power Exists for Voters to Impose Charter-Based Term Limits on Their County Commissioners.

The Fourth District's decision in *Telli* focused on fundamental differences in the nature of the respective offices at issue in *Cook* and *Telli*. *Telli*, 67 So. 3d at 418-19. Unlike the sheriff, supervisor of elections, property appraiser, and other limited-function officers considered in *Cook*, county commissioners exercise the county's broad home rule power. Sheriffs, for example, derive no power directly from the Constitution but rather exercise only those powers authorized by law. Fla. Stat. § 30.15(1) (2011). In contrast, under Article VIII, section 1(g), of the Florida Constitution:

> Counties operating under county charters shall have all the powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a

> county operating under a charter may enact county ordinances not inconsistent with general law.

FLA. CONST. art VIII, § 1(g).

As such, while sheriffs exercise only those powers granted by law, county commissioners exercise all powers of local government except as prohibited by law. A county governing its people on matters that impact only that county is the essence of home rule power. *See Dickinson v. Bd. of Public Instruction of Dade County*, 217 So. 2d 553, 555 (Fla. 1968). The recognition of broad home rule power preserves Florida's constitutional balance by honoring the vertical division of legislative power between the state and home rule counties. *See Jones v. Chiles*, 654 So. 2d 1281, 1283 (Fla. 1st DCA 1995) ("Within their area of competence, county commissioners enjoy full legislative autonomy.") (Citations omitted).

Given the broad home rule power exercised by county commissioners, the framers, in article VIII, section 1(e), gave charter county voters a commensurately broad right to structure their own county commission. This right of self-governance must be distinguished from the limited grant of power stated in section 1(d) with regard to the limited-function offices covered by that subpart.

For these reasons, Petitioner's contention that there is no difference between section 1(d) offices and section 1(e) offices is unpersuasive, and *Cook* should not be extended to prohibit charter-based term limits on county commissioners.

3. Differences in the Structure of the Constitution, and in the Plain Wording of the Relevant Home Rule Provisions, Also Support the Validity of Charter-Based Term Limits on County Commissioners.

Petitioner also contends that the home rule power conferred by article VIII, section 1(e), is the same as the power conferred by article VIII, section 1(d), and therefore *Cook* controls. This contention ignores the structure of the Constitution itself and the plain language of sections 1(d) and 1(e). The two provisions are separate sections and confer different home rule powers on charter counties. These differences support affirmance of the Fourth District Court's decision in *Telli*.

a. Constitutional Structure.

With specific regard to county offices, the Constitution confers home rule power on charter counties in two adjacent, differently-worded paragraphs. Were the home rule power regarding county commissioners under section 1(e) intended to be identical to the home rule power regarding the section 1(d) officers at issue in *Cook*, county commissioners would have been added to the other local officers addressed in section 1(d) instead of being separately addressed in section 1(e). The framers' decision to confer power in separate, differently-worded sections strongly indicates that different powers were being conferred. *Maddox v. State*, 923 So. 2d 442, 446 (Fla. 2006) (the use of different language in different provisions is strong evidence of intent for different meanings).

b. Structure of Sections 1(d) & (e).

In addition to conferring home rule power in separate paragraphs, the framers phrased sections 1(d) and 1(e) very differently. Section 1(e) is worded as a default provision, stating:

> (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.

FLA. CONST. art. VIII, § 1(e) (emphasis added).

Section 1(e) defines what the governing body of a charter county will look like unless the charter provides otherwise. The exception ("except when otherwise provided by county charter") in the first sentence of section 1(e) is unqualified. The specifics regarding the number of commissioners and terms apply unless a county charter specifies otherwise. As the Fourth District noted in *Telli*, the language of section 1(e) "expressly cedes power to a county charter when it comes to the creation of a county's governing body." *Telli*, 67 So. 3d at 417.[10]

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[10] Petitioner argues (Initial brief at 12 – 14) that the Fourth District erred by finding that article VIII, section 1(e), permits the County to abolish county commissioners altogether. Petitioner argues that this is incorrect because county commissioners are referenced elsewhere in the Constitution and in state statutes. That issue is not before the Court so it need not be addressed here.

This broad grant of power must be contrasted with the narrower power grant in the home rule provision at issue in *Cook*:

> (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 [1] be chosen in another manner therein specified, **or** [2] any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.

FLA. CONST. art. VIII, § 1(d) (emphasis added). Section 1(d) permits charter counties to do only two things regarding the offices addressed in that section: (1) change the manner in which the officers may be chosen; or (2) abolish an office entirely. Notably, the "except" language creating those two powers does not grammatically apply to the preceding clause containing the four-year term provision.

The distinction shows that the different paragraph structures used by the constitutional framers in sections 1(d) and 1(e) give charter county voters broader power to regulate county commissioners than section 1(d) officers. This further supports not extending *Cook* to prohibit the term limits at issue here.

4. The Principle of *Expressio Unius* Supports a Finding of No Preemption Here.

The *Cook* majority relied on *expressio unius est exclusion alterius* to hold that article VI, section 4(b), excluded term limits on section 1(d) officers. *Telli*, 67 So. 3d at 416. For the reason stated above, *supra* at 15-17, that maxim should not be applied to article VI, section 4(b), to find preemption here. Additionally, applying that maxim to article VIII, section 1(e), which must be read *in pari materia* with article VI, section 4(b), supports a finding of no preemption.

This is because the only requirements expressed in section 1(e) are that the population of each commission district must be periodically equalized and that there must be one commissioner per district elected as provided by law. FLA. CONST. art. VIII, § 1(e). Under *expressio unius*, the existence of only these two limitations on home rule power indicates that the power of charter counties to define their own county commission is not otherwise qualified. *Osbourne v. Dumoulin*, 55 So. 3d 577, 587 (Fla. 4th 2011) (citation omitted) (the mention of one thing implies the exclusion of another). Subject to the two mandates, which serve as limitations on the home rule power granted in the first sentence, section 1(e) is a local option provision for voters to define their own county commissions.

Thus, the principle of construction *Cook* applied to section 1(d) officers further demonstrates the validity of the term limits challenged here.

5. Public Policy Supports Affirming the Validity of the Term Limits.

Petitioner's entire argument is that the term limits are inconsistent with *Cook* and decisions on which the *Cook* majority relied. Petitioner does not identify any interest served by prohibiting Broward's voters from imposing term limits on members of their own commissions. In tacit recognition that such prohibition would undermine home rule power without serving any countervailing statewide interest, Petitioner does not claim that term limits on county commissioners must be allowed or disallowed on a uniform, statewide basis. Rather, Petitioner proposes a constitutional amendment authorizing local option term limits. (Initial Brief at 23-24). Where Petitioner's position falls short is in its failure to recognize that article VIII, section 1(e), is that local option provision so there is no need for a constitutional amendment to address this point.

The Fourth District Court's decision in *Telli* does nothing more than recognize that county voters have the same right to term-limit their own local legislators in their own county constitutions (home rule charters) that state voters have exercised in the state Constitution. Aside from there being no reason to prohibit these term limits, prohibiting them would create the following incongruity:

Officer:	**Source of Power to Impose Term Limits:**
Federal legislators U.S. Senators U.S. Representatives	Federal Constitution[11]
State officers State Representatives State Senators Governor/Lt. Governor Cabinet Officers	State Constitution
Municipal legislators	Municipal Charter[12]
County legislators	***State*** Constitution

A city charter may term-limit city officers. The state Constitution may term-limit state officers. The federal Constitution may term-limit federal officers. The Fourth District in *Telli* correctly held that voters in a charter county may term-limit their own county commissioners.

CONCLUSION

At stake in this case is the right of Broward County voters to decide an issue at the very core of the principle of self-government. More than 80% of those

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[11] Article VI, section 4(b), of the Florida Constitution lists term limits applicable to Florida's federal legislators, but these term limits were invalidated because a state lacks power to impose term limits on federal legislators. *Cook*, 823 So. 2d at 92 n.9 (citation omitted). Federal legislators are not currently term-limited under the federal Constitution.

[12] *See e.g.* Art. III, §3.02, Charter of the City of Fort Lauderdale.

voters exercised that right by limiting their county commissioners to serving no more than three consecutive four-year terms. Because they were empowered to do so by article VIII of the Florida Constitution, the term limit provision was upheld by the Fourth District Court of Appeal.

The Fourth District's ruling allows Broward County's voters to govern themselves on a purely local issue as contemplated by the Constitution. The ruling is not applicable to the officers addressed in *Cook*. Nor does it conflict with *Cook* or any appellate decision in Florida.

Petitioner's proposed "cure," that the Constitution be amended to permit local option term limits on county commissioners, is unnecessary. Voters in charter counties already have broad home rule power to deal with this issue that affects only them.

For the reasons stated in this answer brief, Broward County respectfully requests that the Court affirm the Fourth District's decision in *Telli*.

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy hereof was mailed on January 30, 2012, to all parties on the attached service list.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief was prepared in Times New Roman 14-point font.

Respectfully submitted,

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