**IN THE SUPREME COURT OF FLORIDA**

Case No. SC11-1737

WILLIAM TELLI

Petitioner,

v.

BROWARD COUNTY AND
DR. BRENDA C. SNIPES

Respondents.

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# PETITIONER'S REPLY BRIEF

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# Table of Contents

# Table of Authorities

## Cases



## Constitutional Provisions

## 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

# Argument

## I. 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

In *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), this Court held:

> 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.
>
> . . .
>
> 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).

The issue in this case is simply whether County Commissioners are constitutionally authorized officers and therefore subject to this Court's holding in

*Cook*. Respondents' arguments focusing on the popularity of the term limit amendment and whether prior cases concern constitutional violations by statute as opposed to the electorate serve no purpose but to distract from this seemingly straight-forward issue. Petitioner relies upon the exhaustive arguments presented in the Initial Brief in support of the position that County Commissioners are constitutionally authorized officers as that phrase is used in *Cook*. A few of the arguments raised by respondents, however, merit additional comment.

First, Respondents' assertion that the holding in *Cook* was limited to the constitutionality of term limits on officers authorized under article VIII, section 1(d), as opposed to section 1(e), misses the mark. Rather, as discussed in Petitioner's Initial Brief, *Cook* is notable for addressing the novel issue of the applicability of the term limit amendment in article VI, section 4, to all constitutional officers that were not expressly referenced therein. An interpretation of this amendment necessarily encompasses *all* officers authorized under article VIII, section 1 because none of these officers are expressly referenced in article VI, section 4.

Respondents also claim that article VI, section 4 "is very narrow in scope, expressly covering only selected state officers. By its express terms, the section shows no intent to preempt term limits for county officers." (*See* Respondents' Answer Brief, p. 5.) The *Cook* court, however, rejected this narrow interpretation

of article VI, section 4, by doing exactly what Respondents find so objectionable: applying article VI, section 4 to constitutional officers who are elected at the county level rather than the state level. In so arguing, Respondents highlight the implicit argument running through their brief that this Court should not distinguish so much as recede from *Cook*. Such an argument is inappropriate and wholly inconsistent with this Court's application of the doctrine of *stare decisis*.

As this Court stated in *Rotemi Realty, Inc. v. Act Realty Co., Inc.*, 911 So. 2d 1181 (Fla. 2005), "The doctrine of *stare decisis* counsels us to follow our precedents unless there has been 'a significant change in circumstances after the adoption of the legal rule, or ... an error in legal analysis.'" *Id*. at 1188 (quoting *Dorsey v. State*, 868 So.2d 1192, 1199 (Fla. 2003)). While it is true that *Cook* was decided by a 4-3 majority, the only change in the ten years since that decision is the Court's membership. That is not a reason for a change to the law.

> A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve.

. . .

> We agree that a basic change in Florida law at this point would constitute an unprincipled abrogation of the doctrine of *stare decisis* and would invite the popular misconception that this Court is subject to the same

> political influence as the two political branches of government. Nothing could do more lasting injury to the legitimacy of this Court as an institution. It is in issues such as the present – where popular sentiments run strong and conflicts deep – that stability in the law is paramount and that the doctrine of *stare decisis* applies perforce

*N. Florida Women's Health & Counseling Services, Inc. v. State*, 866 So. 2d 612, 638-39 (Fla. 2003) (citations omitted).

Likewise, the fact that 80% of the voters approved the County's term limit amendment has no place in the constitutional analysis. *See Cobb* (quoting President Washington's farewell address):

> "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."

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) (Shaw, J., concurring in part, dissenting in part):

> The rights and the grants and limitations of power embodied in our federal and state constitutions were inserted precisely because they were good public policies . . . 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.

Finally, Respondents side-step the analysis in Petitioner's Initial Brief setting forth other constitutional provisions and statutes to show that article VIII, section 1(e) does not permit the local abolishment of the office of county commissioner. (*See* Respondents' Answer Brief, p. 21, n.10.) Respondents fail to explain their contention that this issue is not before the Court. However, because a great deal of the Fourth District's analysis rests upon the court's erroneous belief that county commissioner is nothing more than a default officer that can be wholly abrogated by a charter amendment, the issue is undoubtedly a factor that this Court can consider in deciding whether the district court erred in finding that the office of county commissioner is not expressly authorized by the Florida Constitution.

## Conclusion

Based on the foregoing, as well as the arguments raised in Petitioner's Initial Brief, this Court should quash the opinion of the district court and remand 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 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 14th day of February, 2012.

## Certificate of Type Size and Style

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

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