

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC11-1737

Fourth District Court of Appeal Case No. 4D10-4687
Seventeenth Judicial Circuit Case No. 10-07095(25)

WILLIAM TELLI,

Petitioner,

v.

BROWARD COUNTY AND DR. BRENDA C. SNIPES, BROWARD COUNTY
SUPERVISOR OF ELECTIONS

Respondents.

**JURISDICTIONAL BRIEF OF RESPONDENTS BROWARD COUNTY
AND BROWARD COUNTY SUPERVISOR OF ELECTIONS**

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STATEMENT OF THE CASE AND FACTS

In 2000, more than 80% of the Broward County residents who turned out to vote approved an amendment to the Broward County Charter that limited their own county commissioners to three consecutive four-year terms (the “Term Limit Provision”). The Term Limit Provision has no effect outside of Broward County.

Petitioner challenged the constitutionality of the Term Limit Provision, asserting that it was invalid under *Cook v. City of Jacksonville*, 823 So.2d 86 (Fla. 2002). Both sides agreed that the challenge presented a pure question of law, and both moved for summary judgment. The trial court granted Petitioner’s motion for summary judgment, and denied the motion filed by Broward County and the Broward County Supervisor of Elections (collectively, the “County”).

The Fourth District Court of Appeal reversed, and held that article VIII, section 1(e) of the Florida Constitution grants voters in charter counties the home rule power to term limit their own commissioners. *Snipes v. Telli*, 2011 WL 3477086 (Fla.App. 4 Dist.) (“*Telli*”). Petitioner seeks review of that decision.

SUMMARY OF ARGUMENT

This Court has discretionary jurisdiction because *Telli* construed article VIII, section 1(e) of the Florida Constitution. This Court should not, however, exercise that jurisdiction.

Telli conflicts with neither the holding nor the rationale of *Cook*. *Cook*

addressed a different set of constitutional officers and a different, much narrower grant of home rule power to charter counties. The constitutional provision at issue here, article VIII, section 1(e), broadly empowers voters in charter counties to structure their own local governing bodies. Section 1(e) was not considered, or even referenced, in *Cook* because it was simply not at issue in that case.

Although Petitioner asserts that the respective constitutional provisions applicable in *Cook* (article VIII, section 1(d)) and applicable here (section 1(e)) are “strikingly similar,” the Constitution’s allocation of home rule power to counties in separate, differently worded sections strongly indicates that those provisions confer fundamentally different powers. Had the Constitution intended to confer the same home rule powers regarding county commissions and the section 1(d) officers at issue in *Cook*, the Constitution would have done so in a single section applicable to all those officers. The Constitution’s separate treatment of county commissioners is designed to preserve Florida’s constitutional balance by honoring the vertical division of legislative power between the state and home rule counties.

In *Telli*, the Fourth District held only that, under section 1(e), charter counties may term limit their own county commissioners. *Telli* does not address or impact the article VIII, section 1(d) officers at issue in *Cook*. Because Petitioner has not stated any issue of great public importance that would be advanced by further review, this Court should not grant review.

ARGUMENT - THIS COURT HAS DISCRETIONARY JURISDICTION BUT SHOULD NOT GRANT REVIEW

This Court has discretionary jurisdiction because the Fourth District expressly construed article VIII, section 1(e) of the Florida Constitution. The issue is therefore not whether this Court *may* grant review, but whether it *should*. It should not.

Petitioner offers three reasons why this Court should grant review. First, Petitioner erroneously claims that *Telli* expressly and directly conflicts with this Court's decision in *Cook*, and that review is therefore necessary to "vindicate" *Cook's* principles. Second, Petitioner erroneously claims that *Telli* singled out county commissioners for "special treatment," and that review is appropriate to reign in the decision's "sweeping" [e]ffect." Finally, Petitioner argues that the issue of voter-imposed term limits on county commissioners in Broward County is of great statewide importance, and erroneously claims that even the Fourth District "acknowledg[ed] the need for this Court to take jurisdiction of this case." (Petition at 10). Petitioner's asserted reasons lack merit.

A. *Telli* Does Not Conflict with *Cook*.

Petitioner's argument throughout this case has been that *Cook* prohibits the County's Term Limit Provision. But *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*. Neither *Cook*'s majority nor its dissent even mentioned section 1(e).

As the Fourth District correctly recognized, *Cook* addressed only the constitutionality of term limits on section 1(d) officers.¹ The Fourth District found that *Cook*'s rationale for prohibiting term limits on those officers was inapplicable to section 1(e) officers because, unlike section 1(d), section 1(e) grants charter counties broad power to structure their own governing bodies.

Petitioner contends that the Fourth District drew a “distinction without a difference” because sections 1(d) and 1(e) are “strikingly similar.” (Petition at 2). This contention ignores the structure of the Constitution itself, as well as the plain language of sections 1(d) and 1(e). The two provisions are separate, address different officers, and confer different home rule powers on charter counties.

First, the Constitution confers home rule power on charter counties in two adjacent, differently-worded paragraphs, 1(d) and 1(e). Were the home rule power regarding county commissions intended to be identical to the home rule power

¹ The *Cook* majority started its analysis by unequivocally stating that the issue before the court involved the constitutionality of charter-based term limits on section 1(d) officers (“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) . . .”). *Cook*, 823 So.2d at 90. The Court concluded the same way (“We find that article VI, section 4(a), Florida Constitution, provides the only disqualifications applicable to the county offices established by article VIII, section 1(d), Florida Constitution.”). *Id.* at 94-95.

regarding the section 1(d) officers at issue in *Cook*, there is no reason county commissioners would not simultaneously have been addressed in section 1(d) instead of being separately addressed in section 1(e). The framers' decision to confer home rule power in separate, differently-worded sections strongly indicates that different power was being conferred. *See Maddox v. State*, 923 So. 2d 442, 446 (Fla. 2006) (It is a fundamental principle of construction that the use of different language in different provisions is strong evidence of intent for a different meaning).

Second, section 1(d) addresses executive officers (*e.g.*, sheriff, supervisor of elections, property appraiser, clerk of courts), who enforce or administer the law as authorized by state statute but who do not exercise general home rule power. *See, e.g.* Fla. Stat. § 30.15 (authorizing powers of sheriff). Section 1(e), by contrast, addresses legislative officers who, in charter counties, may make local law by “enact[ing] county ordinances not inconsistent with general law.” Fla. Const. Art. VIII, section 1(g). The Constitution’s separate treatment of county commissioners is designed to preserve Florida’s constitutional balance of power 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).

The critical distinction between sections (d) and (e) is further reinforced by their plain language and structure. Section 1(d) confers a narrow, limited power to charter counties:

(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.

(Emphasis, including bracketed numbering, added).

This section permits charter counties only to change the manner in which these officers may be chosen or to abolish the offices entirely. Section 1(e), however, confers a much broader power with respect to county 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.”

(Emphasis added).

The specifics regarding the number of commissioners and terms constitute a default provision applicable “except when otherwise provided by county charter.” As the Fourth District noted, 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, 2011 WL 3477086 at *2.

Because of these material differences in the home rule provisions, *Telli's* construction of section 1(e) does not conflict with *Cook's* construction of section 1(d). Contrary to Petitioner's claim, the two decisions are perfectly consistent and are far from being "hopelessly irreconcilable." (Petition at 8.)

Petitioner also reads far too much into the Fourth District's determination that county commissioners are not "constitutionally authorized officers" as that term was used in *Cook*. That determination was necessary to reconcile *Cook's* broader statements (that term limits on "constitutionally authorized officers" are prohibited unless they expressly appear in article VI, section 4) with its specific holding that section 1(d) does not permit term limits on section 1(d) officers. If read out of context, *Cook's* broad statements would invalidate even the term limits imposed on the Governor under article IV, section 5.²

That is why the Fourth District read *Cook's* broad statements in the context of *Cook's* actual holding and its repeated recognition that the Court was deciding only whether term limits were authorized under article VIII, section 1(d). Contrary to Petitioner's assertion (Petition at 1), there is nothing "novel" about the Fourth

² The very existence of article IV, section 5 demonstrates that term limits may be based on constitutional provisions other than article VI, section 4(b). *Cook* is therefore best understood as requiring a constitutional basis for imposing term limits. While *Cook* found no such basis for section 1(d) officers, the Fourth District found a basis for charter-based term limits on county commissioners in the express language of article VIII, section 1(e).

District determining that, when *Cook* referenced “constitutionally authorized officers,” the Court was referring specifically to the officers at issue in *Cook* and not to county commissioners or other officers not at issue and governed by different constitutional provisions. *Telli*, 2011 WL 3477086 at *2, *4 n4.³

Because *Telli* and *Cook* dealt with different officers and different constitutional home rule provisions, the two decisions do not conflict.

B. *Telli* Does Not Segregate County Commissioners.

Petitioner is also incorrect that the Fourth District somehow “singled out county commissioners for special treatment separate and apart from other constitutional officers,” and “segregate[d] the constitutional office of county commissioner from all other constitutionally created offices.” (Petition at 5, 10.) The Constitution’s framers, not the Fourth District, singled out county commissioners by addressing them in a separate constitutional provision instead of lumping them in with section 1(d) officers.

C. No Issue Of Great Public Importance Justifies Further Review.

Telli is a narrow decision. The Fourth District held only “that the voters may amend a county’s charter to impose term limits on county commissioners.”

³ Petitioner also mischaracterizes the County’s position when he claims (Petition at 10) that the County never asserted that the *Cook* majority, despite using the general term “constitutionally authorized officers,” did not intend to include officers other than section 1(d) officers in its holding. That point was and remains the County’s primary position as to why *Cook* did not address the issue in *Telli*.

Telli, 2011 WL 3477086 at *4. Despite this, Petitioner invokes a “parade of horrors” in which charter county voters might impose other “disqualifications” on county commissioners (Petition at 10), or in which charter county voters may try to claim that disqualifications expressly stated in article VI, section 4 are inapplicable to county commissioners. (Petition at 6). But these far-fetched hypotheticals were not presented or decided below and are not at issue here. They should not, therefore, serve as a basis for granting review.

This Court has long adhered to the principle of resolving constitutional questions only when they arise. *State v. Du Bose*, 128 So. 4, 6 (Fla. 1935) (“[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.”). Speculation about actions that voters in charter counties might take, and what cases might arise from those actions, is not a compelling reason for this Court to grant review.

Petitioner’s claim that the Fourth District “acknowledg[ed] the need for this Court to take jurisdiction of this case” is likewise without merit. (Petition at 10.) Nowhere does the Fourth District acknowledge the need for this Court’s review. To the contrary, the mechanism for doing that is to certify a question, which the Fourth District declined to do. The court merely stated that if it misunderstood the

scope of *Cook*, this Court *could* grant review. *Telli*, 2011 WL 3477086 at *4. That statement simply recognizes that discretionary jurisdiction exists, which is not disputed. It is not a suggestion that this Court take the case.

Finally, *Telli* does nothing more than recognize that county voters have the same right to term limit their own local legislators in their own county constitutions⁴ that state voters have exercised in the state Constitution. Petitioner has not asserted any public policy advanced by requiring statewide approval of this purely local issue, especially given the broad delegation of home rule power to charter counties under article VIII, section 1(e).

CONCLUSION

The important principle presented by this case has already been resolved. The Fourth District's unanimous ruling does nothing more than validate voter-imposed term limits on commissioners, thereby allowing each charter county to govern itself on purely local issues as contemplated by the Constitution. It is not applicable to the officers addressed in *Cook*. Nor does it conflict with *Cook* or any appellate decision in Florida.

For these reasons, Broward County respectfully requests that the Court deny review.

⁴ *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 609 (Fla. 4th DCA 1983), *rev. denied*, 440 So. 2d 352 (Fla. 1983) (the paramount law of a charter county is its charter, which acts as the county's constitution).

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy hereof was mailed on September 26, 2011, 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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