

IN THE
SUPREME COURT OF FLORIDA

HENRY W. COOK,

Petitioner,

v.

Case No. SC00-1745
(1DCA No.: 99-4593)

CITY OF JACKSONVILLE and
JOHN STAFFORD, SUPERVISOR OF
ELECTIONS, DUVAL COUNTY, FLORIDA.

Respondents.

ON APPEAL FROM
THE FIRST DISTRICT COURT OF APPEAL,
STATE OF FLORIDA

RESPONDENTS' ANSWER BRIEF

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STATEMENT OF THE CASE

This cause came before the trial court upon a two-count complaint of Henry W. Cook (“Mr. Cook”), seeking (1) a declaration that an amendment to the Charter of the City of Jacksonville which establishes a two-term limit for the Office of the Clerk of the Circuit and County Courts (the “Clerk”) is unconstitutional, and (2) the issuance of a writ of mandamus directing the Duval County Supervisor of Elections to accept the “Statement of Candidate” which Mr. Cook sought to file pursuant to Section 106.023, Florida Statutes.

The Trial Court

At trial, the parties presented a stipulation of facts and other evidence. The parties stipulated to two issues of law for the court’s determination:

1. If the Clerk is an Article V officer, does that status preclude the City of Jacksonville and its electors from adopting and enforcing Section 12.11 of Article 12, Charter of the City of Jacksonville?
2. If Section 12.11, Charter of the City of Jacksonville, is an additional qualification for election of the Clerk, is it unconstitutional?

See Amended Pretrial Stipulation, p. 6 (R1:161) [Pet. App. 3].¹ The trial

¹All references to the Record, to Respondents’ Appendix and to the Initial Brief and Appendix of Petitioner, shall be referenced as follows:

(R# :#) Record on Appeal, Volume No.: Page No.

court made no findings of fact in its Final Judgment. Although there were two issues before the trial court, it only ruled on the second one, concluding that Section 12.11 of Jacksonville’s Charter is unconstitutional because “it prescribes additional qualifications or disqualifications for the Clerk of the Circuit Court.”² Final Judgment at 9; (R1:189); [Pet. App. 2].

The trial court, in its Final Judgment, made no findings of fact. Instead, it listed within the order the parties’ Amended Stipulation of Facts, to which the trial court added its own emphasis to Jacksonville’s original clerk of the circuit and county court Charter provisions and its own emphasis to the timing of Jacksonville’s election process for the Clerk. *Compare* Final Judgment ¶¶3, 23; (R1:182, 187) [Pet. App. 2]; *with* Amended Pretrial Stipulation ¶¶3, 23; (R1:157,161) [Pet. App. 3]. Jacksonville filed a notice of appeal on November 23, 1999 (R2:191).

[Resp. App. #] Respondents’ (Jacksonville’s) Appendix, Tab No.
[PIB#] Petitioner’s Initial Brief, Page No.
[Pet. App. #] Petitioner’s (Cook’s) Appendix, Tab No.

²Mr. Cook also presents, as “fact,” that the trial court rejected the City’s argument that Article VIII, Section 1(d), was a grant of authority to impose additional qualifications [PIB 2-3]. Jacksonville, however, has consistently maintained that the Florida Constitution is not a grant of power but a limitation of power. *See* Jacksonville’s Proposed Final Judgment, page 5 [Resp. App. 1]

The First District Court of Appeal

In a *per curiam* decision, the First District Court of Appeal reversed the trial court and upheld the constitutionality of Jacksonville's Charter provision for term limits for the Clerk. *City of Jacksonville v. Cook*, 765 So. 2d 289 (Fla. 1st DCA 2000).

The First District relied upon Supreme Court case law to harmonize the provisions of Articles V and VIII of the Florida Constitution with the Jacksonville Charter two-term limit relating to the Clerk. The First District held that because the Constitution is silent in both Article V, Section 16, and Article VIII, Section 1(d) as to specific qualifications for clerk of the circuit court, Jacksonville is not precluded from adopting and enforcing a two-term limit for the Clerk. Additionally, the First District held that Jacksonville's Charter provision is not an unconstitutional qualification for the office of the Clerk. *Id.* at 293.

The Court specifically rejected Mr. Cook's argument that the Clerk is a quasi-judicial officer, thereby precluding state and local governments from establishing qualifications for that position. *Id.* at 292-93. Finally, the First District found that "Jacksonville's home rule powers authorize it to establish a governmental framework within its governmental boundaries which may affect all county officers enumerated in the constitution," including clerk of the circuit court. *Id.*

STATEMENT OF THE FACTS

The City of Jacksonville (“Jacksonville”) is a consolidated city/county government which was created pursuant to the authority provided by Article VIII, Section 9, Florida Constitution (1885), as amended. *See* Amended Pretrial Stipulation, ¶1; (R1:156) [Pet. App. 3]. In 1967, the Florida Legislature adopted Chapter 67-1320, Laws of Florida, creating charter provisions for the consolidated City of Jacksonville. A few days later, two amendatory acts, Chapter 67-1535 and 67-1547, Laws of Florida, were also adopted by the Legislature. These three acts were subsequently approved by the electorate of Duval County and became the Charter of the City of Jacksonville, as amended (the “Charter”). *See* Amended Pretrial Stipulation ¶¶1-2, (R1:156) [Pet. App. 3].

The Florida Legislature empowered Jacksonville, in its Charter, with general powers of both a city and a county including, in pertinent part:

Section 3.01. General powers.-- The consolidated government:

(a) Shall have and may exercise any and all power which counties and municipalities are or may hereafter be authorized or required to exercise under the Constitution and the general laws of the State of Florida, including, but not limited to, all powers of local self-government and home rule not inconsistent with general law conferred upon counties operating under county charters by s. 1(g) of Article VIII of the State Constitution; conferred upon municipalities by s. 2(b) of Article VIII of the State

Constitution; conferred upon consolidated government as of counties and municipalities by section 3 of Article VIII of the State Constitution; conferred upon counties by ss. 125.85 and 125.86, Florida Statutes; and conferred upon municipalities by ss. 166.021, 166.031 and 166.042, Florida Statutes; all as fully and completely as though the powers were specifically enumerated herein.

§ 3.01(a), Charter of the City of Jacksonville (1999); [Resp. App. 2].³

Jacksonville's Charter provides for a sheriff, a supervisor of elections, a tax collector, a property appraiser, and a clerk of the circuit and county court. *See* Arts. 8 - 12, Charter of the City of Jacksonville. As to the clerk of the circuit and county court, the Jacksonville Charter specifically provides:

Section 12.06. Clerk of the circuit and county court.--
The office of the clerk of the circuit and county court shall continue, and all general and special laws applicable thereto and not in conflict with this act shall continue in full force and effect except that the clerk of the circuit and county court shall be elected as herein provided and shall no longer have any duty or right to act as clerk of the board of county commissioner or the ex officio auditor of the county. The salary of the clerk of the circuit and county court shall be fixed by the council. . . .

³Unlike Pinellas County, Jacksonville does not contain any specific limitation on its power with respect to those county constitutional officers specified in Article VIII, Section 1(d), Florida Constitution (sheriff, tax collector, property appraiser, supervisor of elections and clerk of the circuit court). *Compare* Art. 3, Charter of the City of Jacksonville [Resp. App. 3] *with* § 2.06 Charter, Pinellas County Code, [Tab 15 of Appendix to Petitioners' Initial Brief on the Merits in *Pinellas County v. Eight is Enough in Pinellas*, 775 So. 2d 317 (Fla. 2d DCA 2000)]

§ 12.06, Charter of the City of Jacksonville (1999) (emphasis added); [Pet. App. 5].

In 1992, the electors of Duval County voted to amend Article 12 of the Charter to include Section 12.11, which provides for a term limit for that office:

Section 12.11. Two-term limit.- No person elected and qualified for two consecutive full terms as Clerk of the Court shall be eligible for election as Clerk of the Court for the next succeeding term. The two-term limitation shall apply to any full term which began in 1992 or thereafter.

§ 12.11, Charter of the City of Jacksonville (1999); [Pet. App. 5]. A general and special election was held November 3, 1992, in Duval County, in which the electors approved Section 12.11 by approximately seventy-two percent.⁴ Defendant's Exhibit No. 2 at 32-33; (R1:113-14) [Resp. App. 3]. There was also on the ballot a separate question relating to term limits as to each of the following county officers: Duval County Sheriff, Supervisor of Elections, Property Appraiser, Tax Collector, School Board members and Civil Service Board members. Amended Pretrial Stipulation ¶¶5-6; (R1:2-3); *see also* Defendants' Exhibit No.1 at 9-10; (R1:80-81) [Pet. App. 4]. The electors voted with the same wide margin (more than 70%) to approve a two-term limit for each of these officers, as well. Defendant's Exhibit No.2, at 32-33; (R113-14); [Resp. App. 3].

⁴ Of those electors voting on the term limit for the clerk of the circuit court, 149,915 electors voted for the two-term limit and 56,928 electors voted against it. Defendant's Exhibit No. 2 at 32-33. (R1:113-14) [Resp. App. 3].

Except for the present constitutional challenge by Mr. Cook regarding the term limit for the Clerk of the Court, it is undisputed that the November 3, 1992, ballot and general and special elections were conducted lawfully. Amended Pretrial Stipulation ¶8 (R1:158) [Pet. App. 3].

SUMMARY OF THE ARGUMENT

In 1998, after serving twelve years as Clerk of the Duval County Circuit and County Courts, Mr. Cook filed suit against the City of Jacksonville and challenged the constitutionality of the two-term limit imposed by the voters of Duval County on the Office of Clerk of Courts.

The First District Court of Appeal correctly applied controlling Supreme Court case law in reversing the trial court. The Florida Constitution is not a grant of power, but only a limitation on the sovereign power of the State. The courts do not look to the Constitution to determine which legislative actions are authorized; rather, the courts look to the Constitution to determine which legislative actions are prohibited. *State ex rel. Askew v. Thomas*, 293 So.2d 40 (Fla. 1974) is directly on point. The Legislature is prohibited from establishing qualifications for an office only where the Constitution itself has undertaken to set forth the qualifications for that office. Where the Constitution is silent, as it is here with the clerk of the circuit court, the Legislature is free to establish such qualifications.

STANDARD OF REVIEW

Where the trial court enters an order concerning the constitutionality of a statute, the appropriate standard of review is *de novo*. *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982). Moreover, there is an overriding presumption that the statute is constitutional; that is, the reviewing court begins the process of appellate review with a presumption that the statute is constitutionally valid. *In re Estate of Caldwell*, 247 So. 2d 1, 3 (Fla. 1971).

Mr. Cook, asserting the unconstitutionality of a legislative act, has the burden of proving that it is unconstitutional. *Milliken v. State*, 131 So. 2d 889, 892 (Fla. 1961). He must overcome a “strong presumption in favor of the constitutionality” of the act and every reasonable doubt should be resolved in favor of its constitutionality. *State v. Kinner*, 398 So. 2d 1360, 1363 (Fla. 1981) (emphasis added). The act cannot be declared unconstitutional unless the challenging party proves it invalid beyond a reasonable doubt. *Id.*

“[W]here there is a reasonable doubt as to the constitutionality of an act, it must be resolved in favor of the act, and it should be upheld.”

State ex rel. Moodie v. Bryan, 50 Fla. 293, 355, 39 So. 929, 949 (1905) (emphasis added); *see also State v. Kinner*, 398 So. 2d 1360, 1363 (Fla. 1981) (“It is well established that all doubt will be resolved in favor of the constitutionality of a

statute.”); *State v. McDonald*, 757 So. 2d 405, 407 (Fla. 1978) (“Legislative enactments are presumptively valid.”). The First District Court of Appeal correctly reversed the trial court in concluding that Mr. Cook failed to meet his burden of proving that Section 12.11 of the Jacksonville Charter was unconstitutional.

ARGUMENT

I. THE FIRST DISTRICT COURT OF APPEAL CORRECTLY HELD THAT JACKSONVILLE’S CHARTER PROVISION FOR A TWO-TERM LIMIT FOR THE CLERK IS NOT AN ADDITIONAL QUALIFICATION AND IS NOT UNCONSTITUTIONAL.

The Supreme Court case of *State ex rel. Askew v. Thomas*, 293 So. 2d 40 (Fla. 1974), controls this issue. In *Askew*, the Supreme Court addressed the constitutionality of a statutory residency requirement placed upon the office of an Article IX school board member. Section 230.19, Florida Statutes, provided that if a school board member is no longer a resident of the area in which elected, the member’s office shall be considered vacant. *Id.* at 41. Ms. Thomas was a school board member who moved from the area in which elected, resulting in her office being declared vacant. *Id.* Ms. Thomas challenged the constitutionality of the residency requirement, claiming that it “imping[ed] upon the qualifications” for the office of school board member, which she contended were “expressly prescribed by the

Constitution, thereby precluding amplification by statute.”⁵ *Id.* The Supreme Court in *Askew* rejected this argument, holding that the statutory residency requirement was constitutional. In so ruling, this Court held that it must uphold the statutory provision where there was no contrary constitutional provision on the subject. *Id.* at 42.

We have consistently held 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. This “constitutional voice” is the direct voice of the people which controls and cannot be changed by their representatives - the legislators. First, however, we must look to the constitutional provision to see if indeed this basic predicate for invoking the rule is present in our case.

Id. at 42 (citation omitted) (emphasis added).

The *Askew* Court looked to Article IX, Section 4, which created the school board members, and found that it did not address qualifications of school board members. *Id.* Therefore, this Court concluded that a statutory provision addressing residency qualifications was not unconstitutional. *Id.*

In *Askew*, the case involved an Article IX school board member. The case before this Court involves a clerk of the circuit and county court. The clerk of the circuit court is mentioned in two different places in the Florida Constitution -- Article

⁵This was precisely Mr. Cook’s argument to the trial court below, which was subsequently rejected by the First District Court of Appeal.

V and under Article VIII. Article V, Section 16, Florida Constitution provides:

SECTION 16. Clerks of the circuit courts.-- There shall be in each county a clerk of the circuit court, who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. There may be a clerk of the county court if authorized by general or special law.

Art. V, § 16, Fla. Const. (emphasis added). Article VIII, Section 1(d) provides:

(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. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

Art. VIII, § 1(d), Fla. Const. (emphasis added).

There are no more qualifications found in either Article V or Article VIII for

clerk of the circuit court than are found in Article IX for a school board member.⁶ The Florida Supreme Court’s express guidance is that qualifications for an office may not be legislated by the State or charter governments if the Constitution establishes qualifications for that office. Therefore, the holding in *Askew* supports the City’s legislation of term limits.

Mr. Cook relies predominantly on the Supreme Court decision of *Thomas v. State ex rel. Cobb*, 58 So. 2d 173 (Fla. 1952). In *Cobb*, the Court addressed the constitutionality of a statute that prescribed qualifications for office of County Superintendent of Public Instruction, a county office created by the Florida Constitution. *Id.* at 175.

The *Cobb* Court addressed the specific question: “Has the Legislature under our present Constitution the power to prescribe the qualifications for the constitutional office of County Superintendent of Public Instruction?” *Id.* at 175. (emphasis added).

⁶Mr. Cook argues that the mere mention, in Article VIII, Section 1(d), of a four-year term of office for county officers (including the clerk of the circuit court) prohibits Jacksonville from establishing a qualification relating to term limits. [PIB 16, 27] Mr. Cook is impliedly treating the four-year term of office as a qualification. The provision in Article IX, Section 4(a), relating to school board members, includes a term of four years; nevertheless, the *Askew* Court did not find this to be a qualification. There is no support in the case law for this theory, and even Mr. Cook’s own expert witness denied that a term of four years is considered a qualification. *See Sundberg Deposition* at 58. [Pet. App. 7]

In addressing the specific question, the *Cobb* Court recognized that it was not necessary that the Constitution contain specific grants of power to the Legislature because the Constitution is a limitation upon the powers of government. *Id.* at 177. Nevertheless, “when a constitution directs how a thing is to be done, that is in effect a prohibition to its being done in any other way.” *Id.* at 178 (quoting *State ex rel. Murphy v. Barnes*, 24 Fla. 29, 32, 3 So. 433, 434 (1888)).

The *Cobb* Court looked to the 1885 Constitution to see if the qualifications prescribed by the Legislature for the County Superintendent of Public Instruction conflicted with the Constitution; if so, the Court reasoned, statutory qualifications must be declared invalid. *Id.* at 175. The *Cobb* Court then reviewed various provisions of the Florida Constitution to look for a conflict. There being no specific qualifications relating to the office of County Superintendent of Public Instruction, the Court rested upon Article VI, Section 5, as the only section of the Constitution that addressed itself to the qualifications of all officers and which expressly directed the Legislature to enact laws to exclude persons from holding office based upon certain enumerated grounds.

It is important to note that the *Cobb* Court, in 1952, was analyzing Article VI of the 1885 Constitution, as amended, which contained different language than in Article VI of the current Constitution. Article VI, Section 5 of the 1885 Florida

Constitution, as amended (now located in Article VI, Section 4), provided:

The legislature shall have power to, and shall, enact the necessary laws to exclude from every office of honor, power, trust or profit, civil or military, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, larceny or of infamous crime, or who shall make, or become directly or indirectly interested in, and 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.

Article VI, §5, Florida Constitution of 1885 (emphasis added). [Resp. App. 4] By comparison, the *Askew* Court, in 1974, was analyzing the revised 1968 Constitution. [Resp. App. 5] The specific language contained within Article VI, Section 5 of the 1885 Constitution which delineated the legislature's power to enact laws was deleted and is not contained within Article VI, Section 4 of the revised 1968 Constitution. Thus, there is no longer an express limitation on the Legislature's power to enact laws with respect to excluding persons from holding office.

The *Cobb* Court continued its analysis by turning to the opinion in *State ex rel. Attorney General v. George*, 23 Fla. 585, 3 So. 81 (1887). The *Cobb* Court noted that the Supreme Court in *George* was examining prescribed qualifications for the offices of the governor, senators, members of the house of representatives and circuit and supreme court judges. According to the *Cobb* Court, the Constitution's silence as to

qualifications of other officers indicated the framer's intent that any person should be allowed to run for those offices, regardless of qualifications. *Id.* at 181-82.

Despite this seeming inconsistency with current case law, the *Cobb* Court's actual holding is consistent with the holding in *Askew*. The *Cobb* Court held that the Florida statute at issue before it was unconstitutional "because it prescribe[d] qualifications for the office of Superintendent of Public Instruction in addition to those prescribed by the Constitution. *Id.* at 183 (emphasis added). Furthermore, the concurring opinion by Justice Terrell foretold of the future clarification that would be provided in *Askew*. Justice Terrell held:

I do not agree with the general theory of the majority opinion that the legislature can require nothing more in the way of qualification for county superintendent of public instruction than that he be a qualified elector of a prescribed age and such others as are mentioned for county and state offices generally. I think it competent for the legislature to prescribe liberal educational, professional and other qualifications for those who contemplate being appointed or who expect to run for the office of County Superintendent of Public Instruction. There is no prohibition in the constitution against this, and being none, the way is open for the legislature to prescribe such qualifications.

State ex rel. Cobb, 58 So. 2d at 184 (Terrell, J. concurring) (emphasis added).

Mr. Cook argues that *Askew* is distinguishable ⁷ in that there is certain key language contained within Article IX, Section 4(a) for school board members which is not contained within Article VIII, Section 1(d) for the clerk of the circuit court. In 1974, Article IX, Section 4(a), provided, in pertinent part:

In each school district there shall be a school board composed of five or more members chosen by vote of the electors for appropriately staggered terms of four years, as provided by law.

Art. IX, §4(a), Fla. Const.

Mr. Cook argues that the term “as provided by law,” which is not contained within Article VIII, Section 1(d), specifically authorizes the legislature to enact qualifications for school board members.⁸

⁷Notably, the trial court, like Mr. Cook, relied predominantly on *Cobb* and upon *State ex rel. Attorney General v. George*, 23 Fla. 585, 3 So. 81 (1887), but the trial court failed to distinguish *Askew*. In fact, the trial court failed to mention *Askew* at all.

⁸Mr. Cook continues to present the theory that there must be some constitutional grant of express power (such as the “as provided by law”). The Supreme Court has consistently held that the Florida Constitution is only a limitation on the sovereign power of the state. “It is well settled that the state constitution is not a grant of power but a limitation upon power. Unless legislation duly passed be clearly contrary to some express or implied prohibition contained within the Constitution, the courts have no authority to pronounce it invalid.” *In re: Apportionment Laws*, 263 So. 2d 297, 805 (Fla. 1972) (emphasis added). The Constitution only limits the legislature’s power and, if no limitation exists, the legislature is limited only by its own reasonably exercised discretion. *Chiles v. Phelps*, 714 So. 2d 453, 458 (Fla. 1998). Section 12.11 of the Jacksonville Charter is not “clearly contrary” to any express or implied prohibition contained within the Constitution; therefore it is not unconstitutional.

Mr. Cook argues that the *Askew* Court relied upon the specific phrase “as provided by law” as an express authorization for the legislature to enact qualifications for school board members. Contrary to Mr. Cook’s argument, the Supreme Court in *Askew* did not interpret the term “as provided by law” to specifically authorize the enactment of qualifications. In fact, Ms. Thomas, the school board member in *Askew*, tried to make a similar argument. *Id.* at 42. She argued that because the phrase “as provided by law” was not added until 1968, the legislature had no prior authority to establish qualifications; therefore, the statute was “repealed by implication.” *Id.* The *Askew* Court rejected this argument, stating:

But as we have pointed out, that new section of the constitution does NOT address itself to *qualifications* of the school district members, but only to the manner of choosing such members.

Id. Contrary to Mr. Cook’s position, the Supreme Court did not find the phrase “as provided by law” as an authorizing provision for qualifications. Instead, the Supreme Court found Article IX, Section 4 to be silent on the issue of qualifications, leaving the legislature free to set qualifications.

In 1988, the Supreme Court reaffirmed its 1974 decision in *Askew*. In *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988), the Supreme Court again addressed the issue of whether the legislature could establish qualifications for an office created by the Constitution. Unlike *Askew*, which dealt with qualifications for school board

members under Article IX, *Grassi* dealt with qualifications for county commissioners under Article VIII.

In *Grassi*, a candidate for county commissioner challenged the constitutionality of a statute requiring that the candidate must be a resident of the district for which he is qualifying at the time he presents his qualifying papers. *Id.* Article VIII, Section 1(e) of the Florida Constitution provides for county commissioners and, additionally, provides that “[o]ne commissioner residing in each district shall be elected as provided by law.” The lower court agreed with the candidate, holding that the statutory requirement that he be a resident prior to election was a “qualification” in addition to the residency requirement that was already contained within Article VIII, Section 1(e); therefore it was unconstitutional. *Id.* at 1056.

The Supreme Court agreed, holding:

As we stated in *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974):

We have consistently held 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.

Therefore, if article VIII, section 1(e) of the Florida Constitution, provides qualifications for the office of county commissioner, the legislature is prohibited from imposing any additional qualifications.

Grassi, 532 So. 2d at 1056 (emphasis added).

The scope of the *Grassi* Court's preemption analysis is not broad, but very narrow. The *Grassi* Court looked to the specific constitutional office to determine if qualifications were provided.

Because article VIII, section 1(e) provides requirements for office of county commissioner, the legislature may not impose additional requirements. The Florida Constitution requires residency at the time of election. Therefore, section 99.032, Florida Statutes, is unconstitutional, as it imposes the additional qualification for the office of county commissioner of residency at the time of qualifying for election.

Id. at 1056 (emphasis added).

Under both the *Askew* analysis and the *Grassi* analysis, there are no qualifications for the office of the Clerk which would preempt the state or the electorate from adopting term limit qualifications. In fact, Article V, Section 16, and Article VIII, Section 1(d) are completely silent as to any qualifications for the Clerk.

Furthermore, both the *Askew* Court and the *Grassi* Court had available the same arguments espoused by the previous *Cobb* Court, and the same arguments made by Mr. Cook in this case. Nevertheless, neither *Askew*, nor *Grassi* held that a general disqualification -- such as that found in Article VI, Section 4 -- was a qualification for a particular office that preempted the state or counties from establishing other qualifications for that office.

It is important to note that Mr. Cook's argument relies, in part, on the proposition that qualifications and disqualifications are not necessarily the same and that a term limit is a "disqualification" and not a "qualification." Mr. Cook argues that Article VI, Section 4 sets forth the sole grounds for "disqualifications" for "state officers," lumping the clerk of the circuit court in with statewide officers. In addition to being factually incorrect, this argument is flawed. First, the Florida Supreme Court has already labeled term limits as qualifications, making irrelevant the distinction between "disqualifications" and "qualifications." *See Ray v. Mortham*, 742 So. 2d 1276, 1285 (Fla. 1999) (listing such things as age, residency, term limits, mental competency and restoration of civil rights as candidate qualifications). Second, Article VI is not the sole Constitutional provision establishing term limits. There are already term limits for the Governor elsewhere in the Constitution. Notably, those term limits are set forth under a heading which references "qualifications." *See* Art. IV, §5(b), Fla. Const. The real issue is whether the Constitution sets forth a specific qualification for a specific office, which it does not for clerk of the circuit court.

Mr. Cook also attempts to persuade this Court that the clerk of the circuit court, as well as the tax collector, property appraiser, supervisor of elections, and sheriff, are not county officers but are actually "statewide" officers who cannot

be affected on a local level. Mr. Cook even argues in his statement of facts that the Florida Constitution makes a distinction between the Section 1(d) officers and the Section 1(e) officers. [PIB 9]. There is nothing in the record to support this statement of “fact.”

Mr. Cook and the trial court cite to *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), for its holding that states cannot impose term limits on federal officers via state constitutional amendment. By analogy, the trial court determined that Jacksonville cannot impose term limits on county constitutional officers. *See* Final Judgment pp. 7-8; (R:V1:187-88) In *Thornton*, the United States Supreme Court held that the State of Arkansas was prohibited from imposing term limits or qualifications on its federal congressional representatives because states could not impose qualifications for officers of United States Representatives or U.S. Senators in addition to those specifically enumerated by the Constitution (age, citizenship and residency). *Thornton*, 514 U.S. at 796. Significantly, the Supreme Court did not prohibit, but recognized, states imposing term limits for state offices. *Id.* at 825-26, 837. By analogy, Jacksonville could not impose term limits on individuals elected to serve in the Florida House of Representatives or Senate, but is not prohibited from limiting the terms of its own county officers.

II. THE FIRST DISTRICT COURT OF APPEAL CORRECTLY FOUND THAT THE CLERK OF THE CIRCUIT COURT IS

NOT AN ARTICLE V OFFICER WHOSE STATUS PRECLUDES STATE AND LOCAL GOVERNMENTS FROM ESTABLISHING QUALIFICATIONS FOR THAT OFFICE.

A. The Mention of Clerk of the Circuit Court Within Article V Does Not Make the Clerk a Judicial Officer.

Mr. Cook's Statement of the "Facts" contains argument that the clerk of the circuit court is a judicial office created on a statewide basis under Article V. [PIB 7]. This is not fact, but an issue of law being presented to this Court for its determination.

As established by the record below, the Clerk's 338 personnel are City of Jacksonville employees, the majority of which are a part of the City of Jacksonville Civil Service System. *See* Amended Pretrial Stipulation, ¶¶ 13-14 (R1:158) [Pet. App. 3]. The Clerk himself receives a City of Jacksonville paycheck and participates in the City's 1937 general employees pension plan. *Id.* at ¶ 17 (R1:159) [Pet. App. 3]. Furthermore, the Clerk's annual operating budget is a part of the City of Jacksonville's annual operating budget, and the Clerk must submit his budget to the Jacksonville City Council for approval. *Id.* at ¶¶ 17 - 18 (R1:159) [Pet. App. 3]. Finally, the Fourth Judicial Circuit organization and staffing chart, stipulated to by the parties, does not even include Jacksonville's Clerk of the Court. *Id.* (R1:167) [Pet. App. 3] Even Mr. Cook himself, on cross examination, admitted that his functions were only administrative in nature. (R3:14) [Pet. App. 6]

Mr. Cook argues that the Clerk of the Court is an Article V officer, part of the judicial branch of government and, therefore, untouchable by the legislative branch.⁹ [PIB 40 - 42] Mr. Cook, however, fails to account for the many state statutes which place requirements, non-judicial duties and restrictions on the office of the clerk of the circuit court. *See, e.g.*, §145.051, Fla. Stat.(compensation for county officials, including clerk); §177.091(13) Fla. Stat.(recording of plats); §193.102 Fla. Stat. (holding tax deed sales); §382.021 Fla. Stat. (receiving marriage licenses); §99.021 Fla. Stat. (Requiring that a candidate take an oath that the candidate is a qualified elector of the county).

Likewise, Mr. Cook’s argument is not supported by the case law. *See City of Jacksonville v. Slaughter*, 334 So. 2d 271 (Fla 1st DCA), *cert. denied*, 354 So. 2d 985 (Fla. 1977) (finding that deputy clerks employed by the Clerk in Duval County are not exempt from regulation by Jacksonville’s civil service system by virtue of their claimed status as constitutional officers); *see also Frankenmuth Mut. Ins. Co. v. Magaha*, 769 So. 2d 1012, 1019 (Fla. 2000) (determining that the matter

⁹Mr. Cook tries to bolster his “judicial officer” argument by trying to characterize clerks as “apolitical administrators.” [PIB 43]. There is nothing in the record below to support this characterization. Significantly, Section 105.011, Florida Statutes, requires that a judicial office be a nonpartisan office and defines “judicial office” to include Justices of the Supreme Court, Judges of the district courts of appeal, judges of the circuit courts and county court judges. There is no mention of clerk of the circuit court. *See* §105.011, Fla. Stat. (2000).

being litigated involved a situation where the clerk of the circuit court was not acting as an arm of the judiciary and was, therefore, under the control of the legislature).

B. Cook's Interpretation Ignores the Courts' Primary Responsibility In Statutory Construction -- to Harmonize Provisions and to Find Them Constitutional.

This Court set forth the rules by which Florida courts are to determine the constitutionality of a statutory provision:

(1) On its face every act of the Legislature is presumed to be constitutional; (2) every doubt as to its constitutionality must be resolved in its favor; (3) if the act admits of two interpretations, one of which would lead to its constitutionality and the other to its unconstitutionality, the former rather than the latter must be adopted; (4) the constitutionality of a statute should be determined by its practical operation and effect; (5) in determining its constitutional validity, courts should be guided by its substance and manner of operation rather than the form in which the act is cast; and (6) after indulging all presumptions in favor of the act, if it is found to be in positive conflict with some provision of organic law, it becomes the duty of the court to strike it down.

Faircloth v. Mr. Boston Distiller Corp., 245 So. 2d 240, 249 (Fla. 1970) (quoting *Gray v. Central Florida Lumber Co.*, 104 Fla. 446, 140 So. 320, 323 (1932)).

A court's primary responsibility in statutory construction is to harmonize

provisions and find them constitutional. *See District School Board of Lake County v. Talmadge*, 381 So. 2d 698, 703 (Fla. 1980) (legislative provisions must be construed so as to operate in harmony with each other); *see also Villery v. Florida Parole and Probation Commission*, 396 So. 2d 1107, 1111 (Fla. 1980) (where possible, courts must give full effect to all statutory provisions and construe related provisions in harmony with one another). Thus, if the City’s two-term limitation enacted in the City’s Charter can “coexist” with the Florida Constitution, then there is no conflict and the two-term limitation is not unconstitutional. *State v. Sarasota County*, 549 So. 2d 659, 550 (Fla. 1989).

The Constitution addresses the Clerk in Article V and Article VIII. Article V, Section 16 provides:

SECTION 16. Clerks of the circuit courts.-- There shall be in each county a clerk of the circuit court, who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. There may be a clerk of the county court if authorized by general or special law.

Art. V, § 16, Fla. Const. (emphasis added).

Article VIII, Section 1(d) provides:

(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. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

Art. VIII, § 1(d), Fla. Const. (emphasis added).

Mr. Cook argued at trial that the 1972 amendment to Article V, which created a statewide court system and required that there be a clerk of the circuit court, indicated a clear intent to preclude state and local governments from establishing qualifications for this office. The trial court did not rule on this argument, and the First District Court of Appeal expressly rejected it. *City of Jacksonville v. Cook*, 765 So. 2d 289, 292-93 (Fla. 1st DCA 2000).

Giving full effect to all constitutional provisions, however, this Court should consider the fact that Article V, Section 16, expressly references Article VIII, Section 1, which expressly recognizes the clerk of the circuit court as a county officer. “Where the Constitution contains multiple provisions on the same subject, they must be read in *pari materia* to ensure a consistent and logical meaning that

gives effect to each provision.” *Advisory Opinion to the Governor - - 1996 Amendment 5 (Everglade)*, 706 So. 2d 278 (Fla. 1997). “In construing the Constitution every section should be considered so that the Constitution will be given effect as a harmonious whole. A construction which would leave without effect any part of the Constitution should be rejected.” *Askew v. Game and Fresh Water Fish Commission*, 336 So. 2d 556, 560 (Fla. 1976).

Article V does not exist in isolation. Mr. Cook sought first to have the trial court, then the First District, and now this Court to adopt the position that the 1972 amendment to Article V placed the clerk of the court under the protective umbrella of the judiciary, as a “quasi-judicial officer.” Under Mr. Cook’s theory, this Article V umbrella completely precludes the legislature and local governments from establishing qualifications for this office. This position, however, leaves a portion of Article VIII without effect. The trial court’s ruling did not adopt this argument; the First District expressly rejected this argument and so should this Court.

In establishing Article V, the constitutional framers had little difficulty creating express constitutional qualifications for the offices of justice or judge,¹⁰ for

¹⁰Mr. Cook continues to argue that if this Court does not find Section 12.11 of Jacksonville’s Charter unconstitutional, then Jacksonville may next try to establish qualifications for county judges. [PIB 14] This argument is wholly without merit and completely ignores the *Askew* analysis. As Jacksonville explained to the First District Court of Appeal, Mr. Cook ignores the fact that Article V already contains express

the office of State Attorney, or for the office of Public Defender. See §§ 8, 17, 18, Art. V, Fla. Const. In contrast, Article V does not establish any qualifications for the office of the Clerk. If there is a statutory construction which will uphold the constitutionality of a statutory provision, a court must adopt that construction. *Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So. 2d 981, 988 (Fla. 1981). Given that there is a reasonable interpretation of the Florida Constitution that upholds the constitutionality of Section 12.11 of Jacksonville’s Charter, the trial court erred in not adopting that interpretation.

Not only is this Court required to construe provisions in harmony, it is also “precluded from construing one constitutional provision in a manner which would render another provision superfluous, meaningless, or inoperative.” *Chiles v. Phelps*, 714 So.2d 453, 459 (Fla. 1998). Article VIII, Section 1(d), provides for the election of:

. . . 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

qualifications for county judges. Contrary to Mr. Cook’s “slippery slope” argument, there is no direct corollary to Jacksonville’s position. Article V contains no qualifications for clerk of the circuit court, therefore, Jacksonville may establish term limit qualifications for Jacksonville’s Clerk.

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. . . .

Art. VIII, §1(d), Fla. Const. (emphasis added). By comparison, Article V, Section 16, provides that “[t]here shall be in each county a clerk of the circuit court who shall be selected pursuant to the provision of Article VIII, section 1.” Art. V, §16, Fla. Const. (emphasis added). Article V makes no mention of qualifications for clerk. Mr. Cook’s position would render meaningless Article VIII provisions with respect to the clerk of the circuit court; therefore Mr. Cook’s position is not supported by standard rules of statutory construction.¹¹

The First District also found that Mr. Cook’s theory creates discord with Article III, Section 11(a)(1) which provides:

SECTION 11. Prohibited special laws.-

(a) There shall be no special law or general law of local application pertaining to:

(1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies. . . .

¹¹Similarly, to the extent Mr. Cook argues that the “disqualifications” of Article VI, Section 4, prohibit any other “disqualifications,” his interpretation would prohibit the state and local governments from establishing term limits (or other “disqualifications”) for the other county constitutional officers as well, thus, rendering meaningless Article VIII provisions with respect to the other four county officers.

Art. III, §11(a)(1), Fla. Const. (emphasis added). The Constitution clearly contemplates that charter counties may have laws pertaining to elections which will have local, not statewide, application. Were this Court to accept Mr. Cook's position that the Clerk is an Article V officer insulated from state and local legislation, and that county officers listed in Article VIII, Section (1)(d) are really statewide officers, then Article III, Section 11(a)(1), allowing for local changes to the election process, would be rendered meaningless.

III. THE FIRST DISTRICT COURT OF APPEAL CORRECTLY FOUND THAT JACKSONVILLE'S HOME RULE POWERS AUTHORIZE IT TO ESTABLISH TERM LIMIT QUALIFICATIONS FOR THE CLERK.

“Jacksonville’s home rule powers authorize it to establish a governmental framework within its governmental boundaries which may affect all county officers enumerated in the constitution,” including establishing term limit qualifications for the Clerk. *City of Jacksonville v. Cook*, 765 So. 2d 289, 292 (Fla. 1st DCA 2000).

Mr. Cook relies almost exclusively upon *State ex rel. Attorney General v. George*, 23 Fla. 585, 3 So. 81 (1887) and, *Thomas v. State ex rel. Cobb*, 58 So. 2d 173 (Fla. 1952).¹² Significantly, these cases were based upon provisions of the

¹²The Florida Tax Collectors Association, in its Amicus Brief, considers not only *Cobb* to be controlling, but also *Maloney v. Kirk*, 212 So. 2d 609 (Fla. 1968). See Brief of Amicus Curiae at 4. *Maloney*, like *Cobb*, was decided prior to ratification by the electorate of the revised 1968 constitution.

1885 Constitution, as amended, all of which came before county home rule powers. *Compare* Art. VIII, Fla. Const. (1885, as amended) *with* Art. VIII, Fla. Const. (1968, as amended) [Resp. App. 4,5]. Mr. Cook’s reliance on case law prior to 1968 completely ignores county home rule powers.

Home rule power is self government at the local level to the fullest extent possible, provided the actions taken are not inconsistent with general or special laws and are not unconstitutional. “The only limitation on a county’s implied power to act occurs if there is a general or special law clearly inconsistent with the powers delegated.” *Santa Rosa County v. Gulf Power Co.*, 635 So. 2d 96, 99-100 (Fla. 1st DCA) (emphasis added), *review denied*, 645 So. 2d 452 (Fla. 1994). Significantly, even before the revised 1968 Constitution, Jacksonville already had the power to establish its own consolidated government “in the place of any or all boards, bodies and officers, constitutional or statutory, legislative, executive, judicial, or administrative. . .” Art. VIII, §9, Fla. Const. of 1885, as amended (emphasis added). Article VIII, Section 9 also gives the legislature broad power to “amend or extend the law authorizing” the establishment of this municipal corporation *Id.*(emphasis added).

Pursuant to this Constitutional authority, Jacksonville’s Charter provides:

The consolidated government shall have perpetual existence and shall have only such officers, departments,

and other agencies as are provided in this charter or as may be established by the council.

§1.01(a), Charter of the City of Jacksonville (1999) (emphasis added).

Specifically, as to the clerk of the circuit and county court, Jacksonville's

Charter provides:

The office of the clerk of the circuit and county court shall continue, and all general and special laws applicable thereto and not in conflict with this act shall continue in full force and effect except that the clerk of the circuit and county court shall be elected as herein provided . . .

§12.06, Charter (emphasis added). Jacksonville, pursuant to its home rule powers, may establish a governmental framework within its governmental boundaries that sets forth qualifications for county officers enumerated in the Constitution, including the Clerk.

CONCLUSION

The Constitution is silent as to specific qualifications for clerk of the circuit court. As such, the Constitution does not limit the sovereign power of the state with respect to its ability to establish qualifications for clerk of the circuit court. Likewise, the City of Jacksonville, as a chartered county, is not precluded from adopting and enforcing a two-term limit for the Duval County Clerk of the Circuit and County Courts. Affirming the First District would be consistent with both

Supreme Court precedent and with the home rule powers of local governments. Moreover, this construction harmonizes the various state statutes and charter county provisions.

For all of the foregoing reasons, Respondents, City of Jacksonville and the Supervisor of Elections request that this Honorable Court affirm the decision of the First District Court of Appeal to uphold the constitutionality of Jacksonville's two-term limitation on the office of the Clerk.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that this Respondents' Answer Brief is submitted in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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