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IN THE  
SUPREME COURT OF FLORIDA  
Case No. SC00-1745

HENRY W. COOK,  
Petitioner,

v.

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

Respondents.

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ON PETITION FOR REVIEW FROM THE  
FIRST DISTRICT COURT OF APPEAL

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**BRIEF ON JURISDICTION  
OF PETITIONER, HENRY W. COOK**

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## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	4
I.    THE DECISION EXPRESSLY CONSTRUES PROVISIONS OF THE FLORIDA CONSTITUTION.....	5
II.   THE DECISION AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS.....	6
III.  THE DECISION CREATES AN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISION IN <u>TIMES</u> <u>PUBLISHING v. AKE</u> .....	8
CONCLUSION .....	9
CERTIFICATE OF SERVICE.....	10
NOTE:    The following references are used in this Brief: [A* #] for the Appendix (* = Tab No.; # = Page No.)  This Brief is set in Times New Roman 14 point type.	

# TABLE OF AUTHORITIES

## CASES

<u>City of Jacksonville, et. al., v. Henry W. Cook,</u> Case No. 1D99-4593 (Fla. 1st DCA August 22, 2000).....	passim
<u>Ludlow v. Brinker,</u> 403 So. 2d 969 (Fla. 1981) .....	3, 6
<u>Pinellas County v. Eight Is Enough,</u> 25 Fla. L. Weekly D1201 (Fla. 2d DCA May 19, 2000).....	5
<u>Ray v. Mortham,</u> 742 So. 2d 1246 (Fla. 1999) .....	4
<u>State ex rel. Askew v. Thomas,</u> 293 So. 2d 40 (Fla. 1974) .....	6
<u>State ex rel. Attorney General v. George,</u> 23 Fla. 585, 3 So. 81 (1887) .....	6
<u>State v. Grassi,</u> 532 So. 2d 1055 (Fla. 1988) .....	6
<u>Thomas v. State ex rel. Cobb,</u> 58 So. 2d 173 (Fla. 1952) .....	6
<u>Times Publishing Company v. Ake,</u> 660 So. 2d 255 (Fla. 1995) .....	3-4, 8

## FLORIDA CONSTITUTION & OTHER AUTHORITIES

Art. V, § 3(b)(3), Fla. Const.....	5-7
Article V, section 16, Fla. Const.....	2-4, 5, 7-8
Article VI, section 4, Fla. Const. ....	3, 5
Article VIII, section 1(d), Fla. Const. ....	3, 5, 8
Article VIII, section 1(e), Fla. Const. ....	3, 5
Section 12.11, City Charter of Jacksonville.....	1-2

## STATEMENT OF THE CASE AND FACTS

Petitioner, Henry W. Cook ("Cook"), requests this Court to review the decision of the First District Court of Appeal ("Decision") in City of Jacksonville and John Stafford, Supervisor of Elections For Duval County, Florida v. Henry W. Cook, Case No. 1D99-4593 (Fla. 1<sup>st</sup> DCA August 22, 2000). [A1] The Decision is within the discretionary jurisdiction of this Court because it expressly construes provisions of the Florida Constitution, expressly affects a class of constitutional officers, and expressly and directly conflicts with a recent decision of this Court.

The issue is the constitutionality of a 1992 amendment to the Charter of the City of Jacksonville, which established a two-term limit for the office of Clerk of the Courts ("Term Limits Amendment"). The electors of Duval County adopted this limitation by enacting Section 12.11, City Charter of Jacksonville, which provides that:

**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.

Cook, who was initially appointed as Clerk of the Court in 1988, was subsequently elected later in 1988 and reelected in 1992 and 1996. If effective, the Term Limits Amendment would preclude Cook from seeking reelection during the Fall 2000 elections.

Cook presented his "Statement of Candidate" form to the Supervisor of Elections for Duval County, who refused to accept the form due to the Term Limits Amendment. Cook then sued the City and the Supervisor of Elections for a declaration that the provisions of the Term Limits Amendment, Section 12.11, were unconstitutional. He also sought an order requiring the Supervisor to accept his "Statement of Candidate."

A factual record was established by stipulated facts and evidence presented at trial, which established the judicial nature of the position of clerk of the courts. The trial court addressed two issues of law: (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?; and (2) "If Section 12.11, Charter of the City of Jacksonville, is an additional qualification for election of the Clerk, is it constitutional?"

In its written order, the trial court held that the City's Term Limits Amendment was unconstitutional because it prescribed qualifications for a constitutional officer beyond those set forth in the Florida Constitution. As such, the trial court declared the Term Limits Amendment invalid and instructed the Supervisor of Elections to accept Cook's application.

The City appealed and the parties sought to bypass the First District based upon the importance of the questions presented. The First District, however,

denied by-pass certification and ultimately issued its Decision on August 22, 2000, reversing the trial court as to the constitutional claims at issue. [A1] The Court held that the Term Limits Amendment does not violate the Florida Constitution, and rejected the argument that Clerk of the Courts, as an Article V constitutional officer, is shielded from term limits imposed by local governments. Cook timely sought this Court's review of the First District's Decision.

### **SUMMARY OF THE ARGUMENT**

A local government's attempt to impose term limits on a state constitutional officer raises questions important enough to warrant this Court's review. Discretionary jurisdiction exists because the Decision expressly construes a number of provisions of the Florida Constitution, including Article VIII, section 1(d); Article VIII, section 1(e); Article V, section 16; and Article VI, section 4. The Decision expressly concludes that each of these constitutional provisions does not preclude the Term Limits Amendment.

Jurisdiction exists for the separate reason that the Decision expressly affects a class of constitutional officers: clerks of court. This Court has confirmed in Times Publishing Company v. Ake, 660 So. 2d 255, 257 (Fla. 1995), that a clerk of court is a judicial officer under Article V. As this Court recognized in Ludlow v. Brinker, 403 So. 2d 969 (Fla. 1981), a case that affects the office of clerk of court vests this Court with discretionary jurisdiction. The Decision below, however,

rejected Cook's contention that clerks of court are under the judiciary as quasi-judicial officers. [A1 8] Accordingly, the Decision expressly and directly conflicts with Ake on this point.

### ARGUMENT

This Court's review of the First District's Decision is important because it involves the controversial and weighty issue of whether a local government may impose term limitations on a constitutional officer, here the clerk of the courts, who is an Article V officer. Term limits issues, such as the ones presented, have become of pressing legal and political importance thereby justifying review by this Court. Only a year ago, this Court – via by-pass certification – issued a term limits decision in Ray v. Mortham, 742 So. 2d 1246 (Fla. 1999). The primary issue in that case, which was deemed of great public importance requiring immediate resolution – was the constitutionality of the term limits imposed on state offices by Florida voters in the 1992 elections.

As in Mortham, the issues presented in this case are of great importance to the constitutional officers affected statewide as well as to local governments and citizens generally. The proper limits of governmental authority, the constitutional restraints on local governments, and the liberties of individuals to seek office are all at stake. As discussed below, this Court has three independent grounds to exercise jurisdiction to review the Decision below. Petitioner respectfully requests

that the Court exercise such jurisdiction to review the important questions presented.<sup>1</sup>

**I. THE DECISION EXPRESSLY CONSTRUES PROVISIONS OF THE FLORIDA CONSTITUTION.**

Jurisdiction exists because the Decision below expressly construes a number of provisions of the Florida Constitution. Art. V, § 3(b)(3), Fla. Const. (1999). For instance, the Decision expressly construes the following provisions of the Florida Constitution:

- *Article V, section 16* (relating to the establishment of clerks of court under the judicial branch); and
- *Article VI, section 4* (relating to “Suffrage and Elections” stating the grounds for “disqualification” of state offices such as term limits);
- *Article VIII, section 1(d)* (establishing terms for a limited class of statewide constitutional officers – sheriffs, tax collectors, property appraisers, supervisors of elections, and clerks of the circuit courts – as "County officers" who are charged with administering and enforcing state laws and programs on a local level); and
- *Article VIII, section 1(e)* (relating to county commissioners and the composition and terms of its governing body).

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<sup>1</sup> Petitioner is aware of another term limits case involving related issues in which this Court’s discretionary review may be sought. Pinellas County v. Eight Is Enough, 25 Fla. L. Weekly D1201 (Fla. 2d DCA May 19, 2000) (motions for rehearing and rehearing en banc pending). Unlike that case, the instant case involves only the constitutionality of local term limits imposed on the clerk of the court as an Article V officer.



The Decision expressly construed each of these provisions and applied various principles of constitutional construction to reach its conclusion that the Term Limits Amendment was constitutional.

In doing so, the Decision makes evident that jurisdiction is available in this Court. The Decision does not merely apply constitutional principles; instead, it directly and expressly construes these provisions. Notably, the First District interprets many of this Court's decisions that construed a number of sections of the Florida Constitution.<sup>2</sup> For this reason, jurisdiction is available to review the Decision on this basis.

## **II. THE DECISION AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS.**

The Decision also directly affects a class of constitutional officers, clerks of court. Art. III, § 3(b)(3), Fla. Const. (1999). This Court has explicitly held that clerks of court are "constitutional or state officers" within the meaning of Article III, section 3(b)(3). In Ludlow v. Brinker, 403 So. 2d 969 (Fla. 1981), the issue was whether an indigent may record without charge a post-judgment costs judgment. In exercising jurisdiction, this Court stated that because "the district

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<sup>2</sup> State v. Grassi, 532 So. 2d 1055 (Fla. 1988); State ex rel. Askew v. Thomas, 293 So. 2d 40, 42 (Fla. 1974); Thomas v. State ex rel. Cobb, 58 So. 2d 173 (Fla. 1952). State ex rel. Attorney General v. George, 23 Fla. 585, 3 So. 81 (1887).

court's decision expressly affects all court clerks, a class of constitutional officers, we have accepted this case for discretionary review.” Id. at 970.

Here, the Decision affects clerks of court statewide by rejecting the contention that clerks are Article V officers. As discussed in more detail in the next section, the Decision creates confusion in the law as to the status of clerks of court under the Florida Constitution. Clerks are established under Article V and this Court has held that clerks of court are “an arm of the judicial branch” that exercise Article V powers.<sup>3</sup> Despite the apparent uniform statewide nature of clerks of court as constitutional officers under Article V, the Decision affects this class of constitutional officers adversely by subjecting them to qualifications (or, as in this case, disqualifications) from seeking office on a non-uniform, local basis. Although the specific locally-imposed term limit at issue here involves only the Duval County Clerk of the Court, the issue of whether any local government may impose term limits on clerks of court affects the entire class of court clerks, and justifies this Court’s review.

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<sup>3</sup> As the Decision notes, former “Florida Supreme Court Justice Alan Sundberg, testified by deposition about the judicial nature of the office of clerk of court” below. [A1 3] The judicial nature of the clerk of the court is unrebutted on the record.

**III. THE DECISION CREATES AN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISION IN *TIMES PUBLISHING v. AKE*.**

Finally, the Decision directly and expressly rejected Cook's argument that clerks of court are Article V officers under the judicial branch. The Decision is thus irreconcilable with this Court's recent decision on the same issue:

**We conclude that the clerks of the circuit courts, when acting under the authority of their Article V powers concerning judicial records and other matters relating to the administrative operation of the courts, are an arm of the judicial branch and are subject to the oversight and control of the Supreme Court of Florida, rather than the legislative branch.** We should emphasize that this Court has exercised its authority and directly addressed its responsibility in this area.

Times Pub. Co. v. Ake, 660 So. 2d 255, 257 (Fla. 1995) (emphasis added). As the highlighted language makes clear, this Court left little doubt that the clerks of court exercise judicial functions and are arms of the state's judicial branch.

The First District, however, rejected the argument that clerks of court are part of the judicial branch under Article V. The court specifically rejected Cook's "position that the clerk is an article V officer protected from state and local legislation" in upholding the Term Limits Amendment. [A1 9]. The Court also rejected Cook's argument that the clerk of the court is "under the judiciary as a quasi judicial officer." [A1 8]. The court held that such a position would render a portion of article VIII "useless." [A1 8] The decisions in Ake and Cook cannot stand together, and the Court should accept jurisdiction to reconfirm Ake and disapprove of Cook on this point.

**CONCLUSION**

For all the foregoing reasons, this Court should accept jurisdiction over this case and address the important constitutional issues presented.

Respectfully Submitted,



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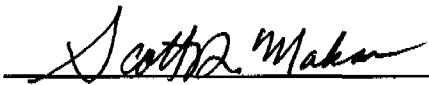
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: Richard A. Mullaney, General Counsel, and Loree L. French, Assistant General Counsel, City Hall at St. James, 117 W. Duval Street, Suite 480, Jacksonville, FL 32202, by U.S. Mail this 5<sup>th</sup> day of September, 2000.

  
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Attorney

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