

**ORIGINAL**

**IN THE  
SUPREME COURT OF FLORIDA**

**ORIGINAL**

HENRY W. COOK,  
Petitioner,

v.

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

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

Respondents.

**FILED**  
THOMAS D. HALL

OCT 04 2000

CLERK, SUPREME COURT  
BY DJ

ON PETITION FOR REVIEW FROM THE  
FIRST DISTRICT COURT OF APPEAL

**RESPONDENTS' BRIEF ON JURISDICTION**

OFFICE OF GENERAL COUNSEL

RICHARD A. MULLANEY

GENERAL

Florida Bar No. 305723

LOREE L. FRENCH

ASSISTANT GENERAL COUNSEL

Florida Bar No. 962465

City Hall at St. James

117 West Duval Street, Suite 480

Jacksonville, Florida 32202

(904) 630-1700

ATTORNEYS FOR RESPONDENTS

**TABLE OF CONTENTS**

|  | <u>Page</u> |
|--|-------------|
| TABLE OF AUTHORITIES .....   | ii          |
| STATEMENT OF THE CASE .....  | 1           |
| SUMMARY OF THE ARGUMENT .....  | 2           |
| ARGUMENT .....   | 3           |
| I.    The Decision Below Concurs With Well-Established Prior<br>Precedent and Does Not Warrant Discretionary Review .....  | 3           |
| II.   There Is No Express and Direct Conflict Between the First<br>District’s Decision and This Court’s Decision in <i>Times Publishing</i><br><i>Co. v. Ake</i> ..... | 5           |
| CONCLUSION .....   | 8           |
| CERTIFICATE OF SERVICE .....   | 9           |

Note: References to the Jurisdictional Brief and Appendix of the Petitioner, Mr. Cook, will be reflected by the abbreviation “P. Brief” or “P. App.,” respectively, followed by the appropriate page designation. Respondents, the City of Jacksonville and the Supervisor of Elections, Duval County, Florida, will be referred to collectively as the “City.”

**CERTIFICATE OF TYPE SIZE AND STYLE**

The City certifies that the type size and style of this Brief are 14 point Times New Roman.

## TABLE OF AUTHORITIES

### CASES

|  |           |
|--|-----------|
| <i>City of Jacksonville v. Cook</i> , 25 Fla. L. Weekly D2023<br>(Fla. 1st DCA Aug. 22, 2000) .....                                | 2,6       |
| <i>City of Jacksonville v. Slaughter</i> , 334 So. 2d 271 (Fla. 1st DCA)<br><i>cert. denied</i> , 354 So. 2d 985 (Fla. 1977) ..... | 3,4       |
| <i>Financial Federal Savings and Loan Association v. Burleigh Home, Inc.</i> ,<br>336 So. 2d 1145 (Fla. 1976) .....                | 5         |
| <i>Jackson v. Consolidated Government of the City of Jacksonville</i> ,<br>225 So.2d 497 (Fla. 1969) .....                         | 5         |
| <i>Nielsen v. Sarasota</i> , 117 So. 2d 731 (Fla. 1960) .....  | 5         |
| <i>Pinellas County v. Eight Is Enough In Pinellas</i> ,<br>25 Fla. L. Weekly D1201b (Fla. 2d DCA May 19, 2000) .....               | 8         |
| <i>Ray v. Mortham</i> , 742 So. 2d 1276 (Fla.1999) .....   | 4         |
| <i>State ex rel. Askew v. Thomas</i> , 293 So. 2d 40 (Fla. 1974) .....   | 3,7       |
| <i>State v. Grassi</i> , 532 So. 2d 1055 (Fla. 1988) .....   | 3         |
| <i>Times Publishing Co. v. Ake</i> , 660 So. 2d 255 (Fla. 1995) .....  | 2,3,6,7,8 |

**FLORIDA CONSTITUTION AND OTHER AUTHORITIES:**

Art. V, § 3(b)(3), Fla. Const. . . . . 3

Art. V, Fla. Const. . . . . 6,7

Chapter 119, Florida Statutes. . . . . 6

Section 12.11, Charter of the City of Jacksonville. . . . . 1

## STATEMENT OF THE CASE

This cause came before the trial court upon a two-count complaint of Henry W. Cook, (“Mr. Cook”) the current Clerk of the Circuit and County Courts in and for Duval County, seeking a declaration that Section 12.11 of the Charter of the City of Jacksonville, which establishes a two-term limit for the Office of the Clerk of Courts, is unconstitutional. The case was heard by the lower court on September 27, 1999, at which time the parties presented a stipulation of facts and other evidence. The parties stipulated to two issues of law for the trial 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?

The trial court entered a final judgment in favor of Mr. Cook. In its order, the trial court made no findings of fact, but simply listed within the order the parties’ Amended Stipulation of Facts. Although there were two issues before the trial court, the court only ruled on the second issue, holding that Section 12.11, Charter of the City of Jacksonville is unconstitutional because “it prescribes additional qualifications or disqualifications for the Clerk of the Circuit Court.” [P. App. at 3, 8]. Mr. Cook filed

a motion for bypass jurisdiction requesting that the First District certify this case to the Supreme Court; the City of Jacksonville did not object to the filing of this motion. The First District, however, denied the motion for bypass certification and on August 22, 2000, issued a decision reversing the trial court's order. The First District held in pertinent part:

The constitution is silent in both article V, section 16 and article VIII, section 1(d) as to specific qualifications for clerk of the court. The city of Jacksonville is not precluded from adopting and enforcing a two-term limit for the clerk of the court. The two-term limit of section 12 of Jacksonville's charter does not establish an unconstitutional qualification for the office of the clerk.

*City of Jacksonville v. Cook*, 25 Fla. L. Weekly D2023 (Fla. 1st DCA Aug. 22, 2000) [P. App. at 10].

### **SUMMARY OF THE ARGUMENT**

Mr. Cook asks this Court to exercise its discretionary jurisdiction for three different reasons [P. Brief at 1]. In particular, Mr. Cook argues that there is an express and direct conflict between the decision of the First District Court of Appeal and this Court's decision in *Times Publishing Co. v. Ake*. [P. Brief at 3-4, 8]. In order for this Court to accept discretionary jurisdiction based upon a conflict, there must be a showing that the First District's decision "expressly and directly conflict[s] with a decision of another district court of appeal or of the supreme court on the same question

of law.” Art. V, § 3(b)(3), Fla. Const. (emphasis added). As more fully set forth below, the First District’s decision does not expressly and directly conflict with this Court’s decision in *Ake*.

Mr. Cook wants this Court to consider the First District’s decision as a unique question of law requiring this Court’s review. This Court, however, has previously ruled on the validity of qualifications placed upon local constitutional officers at the local level. *See, e.g., State ex rel. Askew v. Thomas*, 293 So. 2d 40 (Fla. 1974); *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988). The First District’s reliance upon this Court’s prior precedent does not warrant discretionary review.

### ARGUMENT

#### I. **The Decision Below Concurs With Well-Established Prior Precedent and Does Not Warrant Discretionary Review.**

Although the First District’s decision construes provisions within the Constitution and obviously affects the clerk, a constitutional officer, the First District relies upon established precedent, making discretionary review herein unwarranted. The First District relied extensively upon this Court’s decision in *State ex rel. Askew v. Thomas*, 293 So.2d 40 (Fla. 1974) to uphold the City’s term limit provision, and there is no reason for this Court to revisit its previous decision relating to qualifications placed upon local constitutional officers. Mr. Cook contends that the First District’s

decision creates “confusion” in the law as to the status of clerks under the Constitution. [P. Brief at 7]. The First District, however, did not deny that the office of clerk is required under Article V; the First District simply rejected Mr. Cook’s theory that the mention of the clerk in Article V prohibits Jacksonville from establishing term limits.

Mr. Cook analogizes this case to this Court’s decision in *Ray v. Mortham*, 742 So. 2d 1246 (Fla. 1999), arguing that there is an issue of great public importance requiring immediate attention. [P. Brief at 4]. Unlike this Court’s decision in *Mortham*, however, the First District’s decision does not address the constitutionality of term limits imposed on federal officers or state officers; the First District addresses only term limits imposed on local county constitutional officers. [P. App. at 9] (“Jacksonville’s charter provisions relating to elections will have local, not statewide application.”).

This is not the first time that the First District Court of Appeal has construed the Florida Constitution and Jacksonville’s Charter, applying both to Jacksonville’s Clerk of the Circuit and County Court. See *City of Jacksonville v. Slaughter*, 334 So. 2d 271 (Fla. 1st DCA), *cert. denied*, 354 So. 2d 985 (Fla. 1977). In 1975, after the 1972 amendment to Article V of the Constitution, Morgan Slaughter, Jacksonville’s Clerk, brought an action for declaratory judgment asking that the deputy clerks be declared exempt from local civil service regulations. *Id.* at 272. Slaughter argued that the Clerk, being a constitutional officer, is immune from regulation by Jacksonville’s Charter. *Id.*



The First District, however, rejected this argument, holding that the consolidated City of Jacksonville's Charter was challenged and upheld in *Jackson v. Consolidated Government of the City of Jacksonville*, 225 So.2d 497 (Fla. 1969), and that the City of Jacksonville can regulate the Clerk's office under the City's civil service system. *Slaughter*, 334 So.2d at 273. *Slaughter* petitioned to this Court, but this Court denied certiorari review. *Slaughter v. City of Jacksonville*, 354 So. 2d 985 (Fla. 1977).

**II. There Is No Express and Direct Conflict Between the First District's Decision and This Court's Decision In *Times Publishing Co. v. Ake*.**

The Court has established through the years the basis upon which it may accept discretionary jurisdiction based upon a conflict. In *Nielsen v. Sarasota*, 117 So. 2d 731 (Fla. 1960), this Court established two bases upon which this Court can invoke conflict jurisdiction:

“[T]he principal situations justifying the invocation of our jurisdiction to review decisions of Court of Appeal because of alleged conflicts are, (1) the announcement of a rule of law which conflicts with a rule previously announced by this Court, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case disposed of by this Court.

*Id.* at 734. In *Financial Federal Savings and Loan Assoc. v. Burleigh Home, Inc.*, 336 So. 2d 1145 (Fla. 1976), this Court further explained the basis upon which conflict jurisdiction is invoked. This Court held that where the district court accepts a decision

of the Supreme Court as controlling precedent but then attributes to that Supreme Court decision a “patently erroneous and unfounded [principle] of law,” a conflict is created, allowing for the Supreme Court to exercise discretionary jurisdiction to resolve such conflict. *Id.* at 1146. No direct and express conflict exists between this Court’s decision in *Times Publishing Co. v. Ake*, 660 So.2d 255 (Fla. 1995) and the First District’s decision in *Cook*.

In *Ake*, this Court addressed the issue of whether the court records, as maintained by the Clerk of the Circuit Court, are subject to the inspection and copying requirements of Chapter 119, Florida Statutes. *Times Publishing Co. v. Ake*, 660 So. 2d at 255. This Court held that Chapter 119 applies only to agencies of the government, and the judicial branch being a co-equal branch of government does not fit within the definition of an “agency.” *Id.* at 257. This Court also held that “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” subject to oversight by the Supreme Court and not the legislative branch. *Id.* (emphasis added). The decision by this Court in *Ake* addresses specifically the application of Chapter 119 to the clerk’s records. *Cook*, on the other hand, addresses qualifications for a county constitutional officer. There is no “express and direct” conflict between this Court’s decision in *Ake* on the same question of law

and the First District's decision in *Cook*.

Mr. Cook contends that the First District's decision "directly and expressly" conflicts with this Court's decision in *Ake* because the First District "directly and expressly rejected Cook's argument that clerks of court are Article V officers under the judicial branch." [P. Brief at 8]. In fact, what the First District rejected was Mr. Cook's argument that the mention of the clerk in Article V precludes state and local governments from establishing qualifications for the office of clerk. [P. App. at 8] The First District found that Mr. Cook's interpretation of Article V would create discord between various constitutional provisions and, therefore, was an unacceptable interpretation of the Constitution. [P. App. at 8 - 9]. The First District did not announce any rule of law which conflicts with this Court's decision in *Ake*, and the First District's decision does not involve a case with substantially the same controlling facts as *Ake*. Instead, the First District relied upon this Court's opinion in *Askew* to determine that because there are no specific provisions in the constitution addressing qualifications for clerk of the court, Jacksonville is not prohibited from amending its Charter to establish a term limit for the Clerk.

Contrary to what Mr. Cook argues, there is no direct conflict with a decision by this Court. There is also no direct conflict with any other district court opinion. In fact, a recent decision by the Second District Court of Appeal is consistent with the First

District's decision. *See Pinellas County v. Eight Is Enough In Pinellas*, 25 Fla. L. Weekly D1201b (Fla. 2d DCA May 19, 2000) (holding that there are no provisions in the Constitution which prohibit the establishment of local term limits for county constitutional officers, including clerk of the court). Although Mr. Cook's argument may reflect his disagreement with the First District's decision, it falls short of evidencing any "conflict" sufficient to invoke this Court's discretionary jurisdiction.

### CONCLUSION

Mr. Cook would have this Court exercise its discretionary jurisdiction to consider a theory raised by Mr. Cook which was not addressed by the trial court in its order and which was rejected by the First District. For the foregoing reasons, the City respectfully submits that Mr. Cook has failed to establish that the First District's decision "expressly and directly" conflicts with *Ake* or any other decisions of this Court and that no other grounds presented by Mr. Cook are sufficient to support this Court's accepting jurisdiction.

Respectfully submitted,

OFFICE OF GENERAL COUNSEL

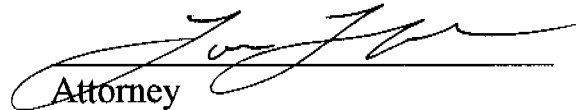
RICHARD A. MULLANEY  
GENERAL COUNSEL



LOREE L. FRENCH  
ASSISTANT GENERAL COUNSEL  
Florida Bar No. 962465  
City Hall at St. James  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202  
(904) 630-1700  
ATTORNEYS FOR RESPONDENTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof has been furnished by U.S. mail to Richard G. Rumrell and W. David Vaughn, RUMRELL, WAGNER & COSTABEL, LLP, 10151 Deerwood Park Blvd., Building 100, Ste. 250, Jacksonville, Florida 32256; and Raymond Ehrlich and Scott D. Makar, HOLLAND & KNIGHT LLP, 50 Laura Street, Suite 3900, Jacksonville, Florida 32202, this 2nd day of October, 2000.



Attorney