

IN THE SUPREME COURT OF FLORIDA

KARLEEN F. DeBLAKER, as Clerk
of the Circuit Court, W. FRED PETTY,
as Tax Collector, EVERETT S. RICE, as
Sheriff,

Petitioners,

v.

Case No. SC00-1908

EIGHT IS ENOUGH IN PINELLAS,
a Political Committee,

Respondent.

**ON APPEAL FROM THE SECOND DISTRICT
COURT OF APPEAL, STATE OF FLORIDA**

RESPONDENT'S ANSWER BRIEF

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March 26, 2001

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STATEMENT OF CASE

This appeal challenges a decision of the District Court of Appeal for the Second District of Florida (the “Second District”) upholding an amendment (the "Amendment") to the Pinellas County, Florida (the "County") Home Rule Charter (the "Charter"). The Amendment imposed term limits on the County’s commissioners (the "County Commissioners") and certain county officers, including the Clerk of the Circuit Court, the Tax Collector, the Sheriff, the Supervisor of Elections, and the Property Appraiser (collectively, the "County Officers"). Respondent Eight is Enough in Pinellas, a Political Committee (the "Committee"), initiated the Amendment. Pursuant to their Initial Brief on the Merits (“Initial Brief”), Petitioners include the Sheriff and the Clerk of the Circuit Court. (Initial Brief, p. 4) The other County Officers and the County Commissioners have declined to pursue this appeal further, apparently accepting the decisions of the lower courts that have considered this matter.

The dispositive issue concerns whether the Amendment constitutes a proper exercise of home rule power. As detailed in this Answer Brief, the Second District correctly ratified the holding of the Pinellas County Circuit Court (the “Circuit Court”) that the Amendment was constitutional. This Court should reject Petitioners’ latest

attempt to invalidate the Amendment and should affirm the Second District's decision.

STATEMENT OF FACTS

The Amendment was launched by the Committee in mid-1994 via the initiative procedures contained in Charter Article VI, Section 6.02 ("Section 6.02").¹ (R. 31) The Committee sought to amend Charter Article III, Section 3.01 ("Section 3.01") and Charter Article IV, Section 4.03 ("Section 4.03") to place term limits on the County Commissioners and the County Officers, respectively. (R. 14) The Committee collected more than 48,705 signatures on its petition to place the Amendment before the electorate. (R. 31-2)

After the Supervisor of Elections certified that the Committee had collected enough signatures, the Amendment was scheduled for referendum at the November 5, 1996, general election (the "1996 Election"). (R. 21-2; 278; 282) Clair Johnson ("Johnson"), a County citizen, initiated this case in the Circuit Court on the very same day as the Supervisor of Elections' certification. (R. 1-22; 31; 278; 281) Johnson immediately sought to enjoin the County from presenting the Amendment to the electorate for a vote of ratification. (R. 1-22; 23-30)

The Circuit Court denied Johnson's request in a September 6, 1996, Order Denying Plaintiff's Motion for Summary Judgment and for Temporary and Permanent Injunction (the "First Order"). (R. 199-206) In rejecting Johnson's claims, the Circuit Court ruled:

Since there is no express or implied prohibition in the Florida Constitution, applicable Florida Statutes, or the Charter itself, the matter of term limitations for County Commissioners and County Officers is

¹ A substantial portion of Petitioners' "statement of the facts" in the Initial Brief appears to constitute legal argument, rather than a reasonably objective factual statement. The Committee thus "restates" the pertinent facts of this case without argument.

one that is within the general grant of home rule powers contained in Article VIII, section 1(g) [of the Constitution]. In addition, the proposed amendment will not, if enacted, create any irreconcilable conflicts within the Charter itself. (R. 205)

Reasoning that the County possesses broad home rule power to impose term limits on “county officers” as defined in the Florida Constitution (the “Constitution”), the Circuit Court held:

The alleged invalidity of the Committee’s proposed amendment to the Charter does not appear on the face of the amendment. Section 2.06 of the Charter does not bar the imposition of term limits. Neither the Florida Constitution nor other general law preempts the imposition of term limits on county elective offices, and such term limits are not inconsistent with general law. (R. 205) (emphasis added).

After entry of the First Order, the County Officers intervened as additional plaintiffs pursuant to an order dated October 18, 1996. (R. 364-65) The Amendment was then put before the electorate at the 1996 Election. (R. 387) The Amendment passed with the approval of approximately 72% of the voters. (R. 387)

After the election, the parties filed competing motions for summary judgment. (R. 447-530; 531-79) Although originally purporting to be neutral, the County joined with plaintiffs’ summary judgment requests to oppose the Amendment. (R. 707-94) Pursuant to an October 2, 1998, Order on Motion for Summary Judgment (the “Second Order”), the Circuit Court ultimately denied plaintiffs’ motion and granted the Committee’s summary judgment motion. (R. 931-32) In so doing, the court once again concluded that home rule power authorized the Amendment, stating:

The [County Officers] have asserted three (3) arguments which were not considered at the time of the original arguments which resulted in the [First Order]. These arguments raise constitutional issues concerning the procedure followed in placing the issue on the ballot, concluding that the ballot initiative process as stated in the charter is invalid While interesting, though somewhat convoluted, this Court is not persuaded that this argument is valid. Article III, Section 11(a)(1) of the Florida Constitution specifically addresses elections in charter counties and appears to counter most of this argument. Further, this Court is not persuaded that there is a preemption issue here nor is there any inconsistency with general or special law. (R. 931)

The Circuit Court also rejected plaintiffs' assertion that only the state legislature (the "Legislature") can amend the Charter:

[The County Officers] also [argue] that the Charter is a special act of the Legislature and only that body can amend it. This argument runs contra to the reason for home rule and is not persuasive. Their argument concerning the need for a statewide voter referendum to amend Article VIII in order to affect all constitutional officers is flawed for the same reason; nor is there a need for a special act of the Legislature to exempt the County out of the election laws before the amendment may be considered. (R. 932)

Unhappy with the Second Order, plaintiffs filed a Joint Motion for Rehearing and Joint Motion for Clarification. (R. 933-38) The Circuit Court entertained a rehearing on December 18, 1998. (R. 939; 969-1043) Notwithstanding this "third bite at the apple," the court again rejected plaintiffs' arguments in a January 26, 1999, Amended Order and Final Judgment on Motion for Summary Judgment (the "Third Order"). (R. 945-47) In this order, the Circuit Court reiterated that the Charter bestows plenary home rule power on the County, and concluded that nothing in the

Charter required the Legislature's prior action or approval for a Charter amendment. (R. 947) The Third Order adopted the identical reasoning as the earlier orders and again granted summary judgment in favor of the Committee. (R. 945-47)

After entry of the Third Order, plaintiffs initiated an appeal to the Second District. (R. 953; 958) Following oral argument, the Second District rendered its decision in favor of the Committee in an opinion dated May 19, 2000. *Pinellas County v. Eight is Enough*, 775 So. 2d 317 (Fla. 2d DCA 2000). Like the Circuit Court, the Second District concluded that the Amendment was constitutional, rejecting appellants' assertion that the County possesses a "limited" home rule charter that cannot be amended to impose term limits without prior authorization from the Legislature:

We find no basis in the law for a classification of "limited" home rule charters. Instead, the language of the charter itself must first be reviewed to determine what limits, if any, are set forth therein. Looking to the charter, we find nothing in the amendment provisions that would require legislative action to propose charter amendments on some issues but not others. 775 So. 2d at 319.

The Second District further observed that the amendment provisions set forth in the Charter expressly authorized the Amendment:

Had the legislature wished to reserve for itself the power to impose charter amendments on certain subjects, it could have drafted article VI to accomplish this purpose. Amendment provisions should be liberally construed to effectuate their purpose. [citation omitted] 775 So. 2d at 319.

The Second District also rejected appellants’ contention that the Amendment was barred by Charter Sections 2.06 and 4.03, which provide that neither the County nor the Charter may change the “status, duties, or responsibilities of the [County Officers]”:

Term limits . . . do not affect the status, duties, or responsibilities of a county officer, only the total length of time in which the officer could maintain status, or perform duties and responsibilities. . . . Term of office, which we agree is not subject to amendment, is different than the length of allowable service for the total number of terms “in office.” The amendments in this case limited the terms in office but did not affect the term of office. [citation omitted] Accordingly, we hold that the term limit amendments were permissible under the charter. 775 So. 2d at 319-20.

Finally, the Second District ruled that the Amendment was constitutional under Article VIII, Section 1(g) of the Constitution:

The supreme court has construed the phrase “not inconsistent with general law” to mean “contradictory in the sense of legislative provisions which cannot coexist.” [citation omitted] There are no provisions in the Florida statutes or the Florida Constitution prohibiting charter counties from establishing local term limits; therefore, the amendments at issue are not inconsistent with general law. 775 So. 2d at 320.

In sum, based on its determination that the Amendment did not conflict with the Charter, the Constitution, or the general laws of Florida, the Second District affirmed the Circuit Court’s decision.

Although not joined by all of the previous appellants, the Sheriff, Tax Collector, and Clerk of the Circuit Court then sought certiorari from this Court. (Initial Brief, p.

3) On February 9, 2001, this Court issued its Order Accepting Jurisdiction and Setting Oral Argument in response to the request. (Initial Brief, p. 4) According to the Initial Brief, the Tax Collector has decided to drop out of this case like several of the other appellants before her. (Initial Brief, p. 4) Accordingly, only the Sheriff and the Clerk of the Circuit Court continue to pursue their previously rejected challenges.

SUMMARY OF ARGUMENT

The Constitution vests charter counties with broad home rule power. Home rule power is the authority to self-govern at the local level, so long as local action is not inconsistent with superior law. Home rule power also flows to a charter county's electorate. Because the County is a charter county, the County and its electorate possess the full range of home rule powers.

Although Petitioners repeatedly have attempted to characterize the County as a unique "limited home rule power" county, this claim finds no support under any applicable law. The Constitution does not recognize a distinction between "broad" and "limited" home rule power counties; it simply provides that counties operating under charters possess home rule power. The County and its electorate acquired the constitutionally authorized home rule power by adopting the Charter. The County thus is a broad home rule power county, not a county possessing only "limited home rule power," as that term has been coined by Petitioners here.

The Amendment properly was enacted in accordance with the County's home rule power and the procedures set forth in the Charter. Because county-level term limits have not been preempted by either the Constitution or other state law and are entirely consistent with superior Florida law, the Amendment is constitutional. All on-point Florida case law supports the County electorate's authority to implement the Amendment via Charter initiative. Petitioners can point to no countervailing case law expressly holding that charter counties lack the authority to impact constitutionally-created county-level offices via local charter amendment.

Contrary to Petitioners' assertions, the County Officers are not "untouchable" by the electorate merely because their offices are created in the Constitution. Indeed, the home rule power conferred under the Constitution authorizes the local imposition of term limits on these "county" offices. Additionally, the Charter can be amended by locally-initiated action notwithstanding that the Charter was proposed via a special act originated by the Legislature. Equally unfounded are Petitioners' arguments that the Amendment creates inconsistencies within the Charter, that the Amendment alters the "status" of the County Officers, and that the entire Amendment must fall if the Court were to conclude that any part of it is invalid. Simply put, Petitioners fail to assert any legally sustainable argument to justify their position that the Amendment is unconstitutional.

ARGUMENT

I. STANDARD OF REVIEW

Because this appeal raises a question of law, the Court’s standard of review is “de novo.” See, e.g., *Armstrong v. Harris*, 773 So.2d 7, 11 (Fla. 2000); *Askew v. Firestone*, 421 So.2d 151, 156 (Fla. 1982). To prevail, Petitioners must overcome a strong and overriding presumption that the Amendment is constitutional. As Florida courts repeatedly have recognized:

In deciding the constitutionality of a charter amendment to a home rule charter, we must presume that it is constitutional and construe it in harmony with the constitution if it is reasonable to do so. (emphasis added)

Charlotte County Board of County Commissioners v. Taylor, 657 So. 2d 146, 148 (Fla. 2d DCA 1995); see also *City of Jacksonville v. Cook*, 765 So. 2d 289, 291 (Fla. 1st DCA 2000) (there is an overriding presumption that an enactment is constitutional).

II. THE HOME RULE POWER DOCTRINE AUTHORIZES THE ELECTORATE TO AMEND THE CHARTER TO IMPOSE TERM LIMITS ON COUNTY OFFICERS.

A. Home Rule Power Confers to the County the Power to Govern Itself.

Charter counties derive their sovereign powers from Constitution Article VIII, Section 1(g), which states:

Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county

operating under a charter may enact county ordinances not inconsistent with general law.

As explained in *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 608 (Fla. 4th DCA), petition denied, 440 So. 2d 352 (Fla. 1983), the foregoing constitutional provision vests charter counties with broad home rule power.

Home rule power is the authority to self-govern at the "local" level to the fullest extent possible, so long as the "local" action is not inconsistent with general or special law. See generally *Speer v. Olson*, 367 So. 2d 207, 211 (Fla. 1978). "General law" operates universally throughout the State and uniformly upon subjects or within a permissible classification. *Department of Bus. Reg. V. Classic Mile, Inc.*, 541 So. 2d 1155, 1157 (Fla. 1989). "Special law" relates to, or is designated to operate upon, particular persons or things, or in a specifically indicated part of the State. *Id.*

The home rule power doctrine is codified in Chapter 125, Florida Statutes. Section 125.01(1)(w), Florida Statutes, provides that a county's governing body has the power to "[p]erform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law." Section 125.01(3) further provides that this statutory enumeration of powers is neither exclusive nor restrictive, but should be "liberally construed" so as "to secure for the counties the broad exercise of home rule powers authorized by the State Constitution." This Court has concluded that the

legislative intent "in enacting the [then] recent amendment to Chapter 125, Florida Statutes, was to enlarge the powers of counties through home rule to govern themselves." *Speer v. Olson*, 367 So. 2d 207, 210 (Fla. 1978) (emphasis added). The express objective of home rule power is thus to give localities greater latitude and discretion in the conduct of their own affairs.

The sole impediment to a broad exercise of home rule power is where the proposed action would contravene superior law. As explained in *Santa Rosa County v. Gulf Power Co.*, 635 So 2d 96, 99-100 (Fla. 1st DCA), rev. denied, 645 So. 2d 452 (Fla. 1994), "[t]he only limitation on a county's implied power to act occurs if there is a general or special law clearly inconsistent with the power delegated." See also *Rowe v. St. Johns Co.*, 668 So. 2d 196, 198 (Fla. 1996); *Jones v. Chiles*, 654 So. 2d 1281, 1284 (Fla. 1st DCA), rev. denied, 662 So. 2d 932 (Fla. 1995). Conversely, if general or special law is silent with respect to a particular subject matter, home rule power can be freely exercised to "fill in the gaps."

The County is a "charter" county possessing broad home rule power. The County electorate conferred home rule power to the County by incorporating the following provision into its Charter:

Sec. 2.01. Powers and Duties.

The county shall have all powers of local self government not inconsistent with general law, with special law approved by vote of the electors, or with this Charter. (R. 16)

Additionally, Charter Section 1.01 specifies that the County "shall have all rights and powers of local self-government which are now or may hereafter be provided by the Constitution and laws of Florida and this Charter" (R. 16) As the Circuit Court aptly stated, "the voters of Pinellas County conferred all of the powers a Florida charter can have" (R. 204) (emphasis added); see, e.g., *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 609 (Fla. 4th DCA), petition denied, 440 So. 2d 352 (Fla. 1983) (holding that virtually identical charter enabling language conferred broad home rule power to the chartered county).

Home rule power flows not only to a county's governing body, but also to its electorate.² In *Charlotte County Board of County Commissioners v. Taylor*, 650 So. 2d 146 (Fla. 2d DCA 1995), the court applied the home rule power doctrine to a charter amendment launched, as here, "through the initiative process contained in the charter" 650 So.2d at 147. Although disallowing the amendment in question under the peculiar facts of that case, the court recognized that the home rule power doctrine governs charter amendments. The court proceeded to apply "classic" home rule analysis to determine the amendment's validity:

In deciding the constitutionality of a charter amendment to a home rule charter, we must presume that it is constitutional and construe it in harmony with the constitution if it is reasonable to do so. [citation omitted]. The amendment to the charter is only invalid if it is inconsistent with general law, i.e., contradictory in the sense of legislative provisions which cannot coexist. [citation omitted]. 650 So. 2d at 148 (emphasis added).

In the present case, Petitioners have sought to characterize the County as a singularly unique governmental entity possessing only "limited" home rule powers. See *Pinellas County*, 775 So. 2d at 319. This rather bizarre claim is premised on the electorate's supposed adoption of a new species of charter that putatively proscribes the County's exercise of home rule powers. Petitioners' self-serving attempt to "manufacture" a new breed of charter creating circumscribed home rule power is logically unsupportable and completely without any legal precedent.

² The authority cited by Petitioners for the proposition that the local electorate's power extends no further than the power of the local governing body merely stands for the unremarkable proposition that neither a local governing body nor the electorate can "legislate" beyond the scope of home rule power. As *Gaines v. City of Orlando*, 450 So. 1174 (Fla. 5th DCA 1984), recognizes, the electorate and the local governing body clearly can legislate if their actions are within home rule power bounds—that is, are not inconsistent with superior Florida law.

The Constitution provides absolutely no support for, and in fact refutes, Petitioners' creation of a limited home rule power charter. Article VIII, Section (1)(g), states that "counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors." No distinction is made between "broad" home rule charters and "limited" home rule charters, or counties possessing "broad" versus limited home rule power. Rather, the Constitution simply provides that charter counties possess home rule power.

Consistent with the Constitution, both the Charter and the operative ballot language utilized in the Charter's adoption designate the Charter as a "home rule charter." The Charter's preamble provides in pertinent part:

Whereas, the only legal method available to the Board of County Commissioners to define its powers, duties, and responsibilities under the Constitution of the State of Florida is the adoption of a home rule charter. (R. 16) (emphasis added).

Similarly, the Charter's ballot question asked:

Shall the Home Rule Charter of Pinellas County contained in Chapter 80-____, Laws of Florida, which defines the role and responsibilities of the Board of County Commissioners, be approved?

For Home Rule Charter.

Against Home Rule Charter. (Initial Brief, p. 5) (emphasis added).

In short, neither the preamble nor the ballot language referred to the Charter as a "limited" home rule charter, even assuming, arguendo, that the Constitution authorizes a limited home rule charter or a limited home rule power county.³

The fallacy of Petitioners' position that the Charter conveyed only "limited" home rule power is further underscored by the Charter itself. Article V, Section 5.02(c), provides that "the powers granted by this Charter shall be construed liberally in favor of the county government," and further that "the powers in this Charter shall not be construed as limiting, in any way, the general or specific powers of the

³ Petitioners erroneously rely on the ballot title to argue that the Charter is a special limited home rule charter. (Initial Brief, pp. 5, 28) However, the ballot title has no legal effect whatsoever on the construction and interpretation of the Charter. As even Petitioners concede, the County's authority is established by the four corners of the Charter document itself. (Initial Brief, p. 21). Also, as a matter of law, the ballot title is not binding as to the enactment's meaning. Carter v. Government Employees Insurance Company, 377 So. 2d 242, 243 (Fla. 1st DCA 1979), cert. denied, 389 So. 2d 1108 (Fla. 1980) (a title's primary purpose is to give notice of the provision's subject matter). Thus, whether labeled as a "limited home rule charter" or a "broad home rule charter," the ballot title has no impact on determining the power granted to the County. The scope of the County's power turns on what the Charter and other Florida law provides.

Ironically, Petitioners' reference to the County's two failed charter efforts before adoption of the Charter may explain the ballot title language, but not in the way Petitioners contend. These prior proposals would have made more sweeping changes in the structure of the County's government than made by the 1980 version of the Charter. (R. 628-706) The reference to "limited" in the 1980 ballot title obviously was for the purpose of advising the voters that the 1980 proposal effected fewer changes in the structure of the County's existing local government than the previous proposals. The title does not indicate that the County was restricting its home rule power in any way.

government." (R. 20) (emphasis added). These provisions are completely inconsistent with any notion that the Charter was somehow "limiting."

Indeed, the specific Charter sections that grant home rule power, including Sections 1.01 and 2.01, are virtually identical to the empowerment provisions contained in the two earlier failed County charter proposals that even Petitioners concede conveyed broad home rule powers. (Initial Brief, p. 4) Section 1.01 of both the first and second failed proposals were identical to Charter Section 1.01, providing that the County would "have all rights and powers of local self-government which are now or may hereafter be provided by the Constitution and the Laws of Florida and this Charter." (R. 16; 629; 645) Section 2.01 of the first failed proposal was substantially the same as the Charter Section 2.01, providing that the "County shall have all general powers and duties not inconsistent with this Charter now or hereafter granted by law." (R. 629) Section 2.01 of the second failed proposal was identical to Charter Section 2.01, providing that the "County shall have all powers of local self-government not inconsistent with general law, with special law approved by vote of the electors, or with this Charter." (R. 16; 646) Petitioners have maintained that these two previous charter proposals would have accorded the County broad home rule power (Initial Brief, p. 4) Because the 1980 Charter contained the same grant of power as was conferred in the previous two proposals, the 1980 Charter necessarily also conveyed broad home rule powers.

The fundamental flaw with Petitioners' position is that they are attempting to equate the County's apparent historical tendency not to fully exercise every conceivable power available under the Constitution with a grant of something less than full home rule power when the Charter was initially adopted. The mere fact that the County has chosen to launch certain Charter amendments via resort to the Charter Review Commission or the Legislature does not mean that those same amendments could not have been undertaken by the electorate via Charter initiative. The Constitution unambiguously provides that the County, as a charter county, possesses home rule power, not "limited" home rule power. The electorate thus can amend the Charter by the initiative process in any manner whatsoever, so long as the amendment does not contravene prior superior law. Simply because the County has not always opted to exercise its power to amend via Charter initiative does not indicate that the power is nonexistent. The Charter does not limit the County's home rule power; the County merely has not historically invoked the full range of home rule powers available to it.

As the District Court correctly held, there is no constitutionally recognized classification of a "limited home rule" charter. Constitution Article VIII and Chapter 125, Florida Statutes, empower charter counties and their electorates to provide themselves with the full range of home rule powers available under Florida law. The only restriction on the home rule power available to a charter county is where a general or special law exists that is clearly inconsistent with the local action. The Charter at issue in the present case confers broad home rule power, and as

discussed below, there are no restrictions outside the Charter precluding the exercise of home rule power as to county term limits.

B. No Preemptive Superior Law Exists Regarding County Term Limits.

Whether a charter provision is unconstitutional under the home rule power doctrine entails a two-prong test. See, e.g., *Hillsborough County v. Florida Restaurant Association, Inc.*, 603 So. 2d 587 (Fla. 2d DCA 1992). The first prong asks whether the provision's subject matter has been preempted by the Constitution or other general law. 603 So. 2d at 588-89. If the subject matter has not been preempted, the second prong is applied to determine whether the county enactment is inconsistent with superior law. 603 So. 2d at 591. If the provision's subject matter has not been preempted and it is otherwise consistent with superior law, the enactment is a constitutional exercise of home rule power.

There is no express preemption under Florida law with respect to county-level term limits. Preemption must be explicit and specific to expressly preempt a subject. *Hillsborough County v. Florida Restaurant Association, Inc.*, 603 So. 2d 587 (Fla. 2d DCA 1992); *Board of Trustees of City of Dunedin v. Dulje* , 453 So. 2d 177, 178 (Fla. 2d DCA 1984). As even the Petitioners must concede, both the Constitution and Florida statutory law are completely silent regarding the subject of term limits on county officers. Because express preemption requires a specific statement of preemption, the absence of any provisions whatsoever dealing with the term limits issue necessarily belies any express preemption.

Similarly, no implied preemption exists concerning county-level term limits. The mere fact that general law tangentially references a topic by no means forecloses a county from acting with respect to that subject. For instance, in *Hillsborough County v. Florida Restaurant Association, Inc.*, 603 So. 2d 587 (Fla. 2d DCA 1992), the court rejected an argument that a county ordinance concerning alcoholic beverage vendors was preempted by state alcoholic beverage provisions, holding that the county was not precluded from enacting its own alcoholic beverage requirements merely because general law dealt with that subject in some fashion. See also *Jordan Chapel Freewill Baptist Church v. Dade County*, 334 So. 2d 661 (Fla. 3d DCA 1976) (existence of state bingo laws did not preempt county from enacting its own supplemental bingo laws).

Accordingly, the Constitution's mere authorization of and reference to certain county officers in subsection (d) of Article VIII, Section 1 ("Section 1(d)") does not preempt county charters from containing provisions regarding the officers. Preemption occurs only if the provisions in question expressly preclude the county from acting or demonstrate an intent to establish an all-encompassing framework. Otherwise, no preemption exists, and a county is free to exercise its home rule power to "fill in the gaps."

Section 1(d) does not purport to cover every detail and nuance of the specified county offices. There are a multitude of issues pertinent to these offices not

addressed in any manner whatsoever by this section. These matters are left to be dealt with either by general law or through the home rule power afforded to chartered counties and their citizens.⁴ See, e.g., *State ex rel. Askew v. Thomas*,

⁴ Section 1(d) not only fails to preempt the field, but demonstrates an intent to empower the County to supplement and modify the basic framework for county government. Specifically, Section 1(d) contains the following provision:

[e]xcept, when provided by county charter or special law approved by a 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.

Pursuant to this clause, the citizens are expressly authorized to adopt or amend charter provisions to govern how the various county officers are chosen and even to abolish some of the county offices. This provision is completely inconsistent with any assertion that Article VIII, Section 1, was intended to effectuate a comprehensive, preemptive scheme for local county government or that these offices must be treated uniformly on a statewide basis.

293 So. 2d 40 (Fla. 1974). For this reason, the Legislature has been able to enact statutory provisions setting forth in detail various duties and responsibilities of the offices, without running afoul of Section 1(d). See, e.g., Chapter 28, Florida Statutes (regarding clerks of the circuit court), and Chapter 30, Florida Statutes (regarding sheriffs).

Subsection (c) of Constitution Article VIII, Section 1 similarly reflects that the Constitution is not intended as a comprehensive statement of the law concerning local county government. Under this provision, the electors of a county are authorized to establish and structure their county government by charter. However, the Constitution does not specify every detail for a county charter. Indeed, most of the requirements and details regarding the permissible types of county charters are contained outside the Constitution. See, e.g., Part IV of Chapter 125, Florida Statutes. Simply put, superior law does not preempt the issue of county-level term limits.

The Amendment at issue in this case also is consistent with superior Florida law. A charter provision is deemed inconsistent only if it is "contradictory in the sense of legislative provisions which cannot coexist." *State v. Sarasota County*, 549 So. 2d 659, 660 (Fla. 1989); see also *Hillsborough County v. Florida Restaurant Association, Inc.*, 603 So. 2d 587, 591 (Fla. 2d DCA 1992); *Misty's Cafe, Inc. v. Leon County*, 640 So. 2d 170 (Fla. 1st DCA), rev. denied, 650 So. 2d 990 (Fla. 1994). Because the Constitution and other law are silent on this issue, local term limits clearly can

"coexist" with the Constitution and other Florida law. In other words, the "silence" of Article VIII with respect to term limits does not mean that the County or its citizenry is prohibited from adopting term limits with respect to local officials. Rather, it is this very muteness that accords localities the constitutional right to act in this area under the home rule power doctrine.

The State has no “universal” interest in how a particular county deals with its local officials. Whether the County implements term limits for its elected county officials has no impact on any other county or the state-level governing bodies.⁵ County citizens are thus neither relatively advantaged nor disadvantaged vis-à-vis the citizens of other Florida counties by limiting the number of terms their elected county officials serve. Petitioners’ protestations notwithstanding, the State does not have a uniform interest in assuring that each county chooses its local officials in the identical manner. Florida's adoption of the broad home rule power doctrine requires precisely the opposite conclusion—that the County and its citizens are free to adopt term limits for their own county officials regardless of whether other counties do so, provided general law remains silent on this issue.

⁵ County officials are not part of any statewide governing body. They are “county officers” pursuant to the express language of the Constitution itself. Specifically, Article VIII, Section 1(d) expressly identifies and refers to the subject officials as “county officers.” See also City of Jacksonville v. Cook, 765 So. 2d 289, 293 (Fla. 1st DCA 2000) (rejecting argument that the county officers listed in Section 1(d) are really statewide officers).

For this reason, any reliance on the United States Supreme Court decision in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) is entirely misplaced. In that case, the United States Supreme Court held that Arkansas was prohibited from imposing term limits on its federal congressional representatives. The Supreme Court reasoned that congressional term limits, which impact the United States Congress, must be provided, if at all, in a uniform manner under the Federal Constitution, rather than on a state-by-state basis. Significantly, the Supreme Court did not prohibit a state from imposing term limits on its own legislature. In other words, *Thornton* did not decide whether a state (or in this case, a county) could impose term limits with respect to its local "officials" (i.e., state legislature or county elective offices). Rather, the Supreme Court only considered whether a state could place term limits on representatives it sends to a governing body outside the state (i.e., the United States Congress). Pursuant to the *Thornton* decision, the County probably could not impose term limits on individuals elected in the County to serve in the Florida Senate or House of Representatives. However, *Thornton* does not prohibit the County from limiting the terms of the "representatives" it supplies for its own "county" offices. In short, *Thornton* addressed issues and policy considerations totally inapplicable to this case.

The Committee submits that the lack of any statewide interest in uniform term limits at the local (i.e., county) governmental level is precisely why such term limits are not addressed in any manner in the Constitution or other general law. Again, this is a

matter of purely local concern left exclusively to each chartered county and its citizenry pursuant to the home rule power doctrine. To the extent that the State has any interest in how local government operates, that interest is expressly spelled out in the Constitution and other general law. The Constitution's and general law's silence regarding term limits relinquishes this matter exclusively to the County and its citizens. Because the home rule power doctrine authorizes the County and its electorate to act autonomously absent preexisting superior law and because there is no such preexisting or preemptive law relating to county-level term limits, the Amendment passes constitutional muster.

C. Existing Case Law Confirms that the Electorate Possesses the Authority to Impose Term Limits Via the Amendment.

Florida case law also refutes Petitioners' contention that the Amendment is unconstitutional. In *City of Jacksonville v. Cook*, 765 So. 2d 289 (Fla. 1st DCA 2000), the First District Court of Appeal recently upheld the constitutionality of a charter amendment approved by the electors of Duval County that imposed term limits on the constitutionally-created office of clerk of the circuit court. In reversing the trial court decision finding the amendment unconstitutional, the First District relied on this Court's decision in *State ex rel. Askew v. Thomas*, 293 So. 2d 40 (Fla. 1974), to validate the amendment. In *Askew*, this Court approved a statutory provision

imposing a residency requirement on a constitutionally-created school board office, finding that the Constitution's silence on this issue afforded the Legislature the right to act. 293 So. 2d at 42-3. See also *Holley v. Adams*, 238 So. 2d 401 (Fla. 1970).

The facts in *Cook* were similar to the facts of this case. The charter amendment there, as here, placed term limits on a constitutionally-created office. Also, the charter under consideration in *Cook* was initiated, as in this case, as a special law. Acknowledging that an enactment is presumed to be constitutional and that courts must adopt a construction that will uphold that constitutionality if possible, the First District ruled that the charter provision in question was constitutional because it could coexist with the Constitution. 765 So. 2d at 293. The First District expressly rejected the argument that the clerk of the court is part of a uniform statewide court system and further disagreed that the county officers listed in Section 1(d) are immune from local management:

Jacksonville's home rule powers authorize it to establish a governmental framework within its government boundaries which may affect all county officers enumerated in the constitution, which would include establishing term limit qualifications for the clerk of the circuit and county court. . . . 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. 765 So. 2d at 293.

The First District thus concluded that the home rule power accorded to charter counties authorizes the imposition of a term limit on the subject “constitutional” office.

Similarly, in *County of Volusia v. Quinn*, 700 So. 2d 474 (Fla. 5th DCA 1997), the Fifth District addressed whether Volusia County, another charter county created by special law, could enact a charter amendment to impose local election requirements on constitutionally-prescribed school board offices. Affirming the constitutionality of the amendment, the court held that Volusia County had the power to require via charter amendment that constitutionally-created school board offices be chosen on a non-partisan basis. *Quinn* thus directly addressed the authority of a special law charter county to impact "constitutional" offices via charter and concluded that such power exists and is constitutional.⁶

School Board of Palm Beach County v. Winchester, 565 So. 2d 1350 (Fla. 1990), further underscores that chartered counties possess the power and authority to impact constitutionally-created offices through their charters. In *Winchester*, this Court considered the validity of a special act subjecting school board members in Palm Beach County to non-partisan elections. Although the county was not chartered at the time the special act was approved, the county adopted a charter several years later. Noting that the exception contained in Constitution Article III, Section 11(a)(1) ("Section 11(a)(1)"), clearly allows special laws relating to the election of charter county constitutional officers, and further reasoning that this exception is now available to the county as a charter county (even though it was not chartered at the time the special act was adopted), the Supreme Court upheld the constitutionality of the legislation. Disagreeing only with the portion of the majority opinion holding that the special act was "retroactively" valid as a result of the change in status of the county from a non-chartered to a chartered county, Justice Ehrlich articulated the pertinent principle as follows:

⁶ Quinn is virtually identical to the present case. Volusia County, like the County, is a charter county. Additionally, as the Petitioners have acknowledged, the Volusia County charter, like the Charter, was adopted through the special law procedure. (Initial Brief, p. 4) Like the Amendment, the Quinn enactment was a locally-initiated charter amendment, not a state-initiated proposal. Moreover, the school board offices involved in Quinn, like the positions involved here, were created by the Constitution.

[N]ow that the county is chartered it no longer needs to rely on special acts of the legislature to bring about non-partisan election of members of the school board. The county itself has the authority to enact such a provision as the one at issue. 565 So. 2d at 1352 (emphasis added).

In other words, Justice Ehrlich recognized that the county could have amended its charter to impose the non-partisan election requirement and eliminate the retroactivity issue altogether.

In sum, Petitioners' brief is devoid of any relevant authority to support their contention that a chartered county is prohibited from imposing local election requirements on its constitutionally-created officers. Indeed, the only on-point authority holds expressly to the contrary--that chartered counties possess home rule power to enact charter amendments impacting the election of "county officers."

III. THE SECOND DISTRICT CORRECTLY DETERMINED THAT THE AMENDMENT WAS A PROPER EXERCISE OF HOME RULE POWER.

A. The County Officers Are Not "Untouchable" By the Electorate.

One of the fundamental underpinnings of Petitioners' appeal in this case is that the so-called "constitutional officers" are beyond the reach of the county or the local electorate. (Initial Brief, pp. 34-35) As the argument goes, the "constitutionals" are untouchable because their offices were created by the Constitution, rendering them superior to county-level offices and exempt from any local management or control. This argument not only ignores the home rule power doctrine, but misinterprets the Constitution itself.⁷

⁷ Petitioners' contention also is refuted by the Charter, which references certain County Officers and imposes duties on them. See, e.g., Charter Section 6.02. (R. 20) Petitioners have never contended that these references are invalid. If the officers

Petitioners premise their argument on a decidedly narrow construction of Section 1(d), which provides:

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.

As a threshold matter, Petitioners conveniently ignore that the Constitution does not label the officers in question as “state officers” or “constitutional” officers. Section 1(d) expressly refers to the officers in question as “county officers.”⁸ Section 1(d) does not impose any limitation concerning the number of terms that an individual can hold office. Rather, it merely specifies that each term of office shall last four years. As the Second District observed below, “term of office” is different from the total number of terms “in office.” 775 So. 2d at 320.

were "off limits", the Charter would not have included these provisions.

⁸ In a strained effort to distance themselves from county-level identification, Petitioners have employed in their Initial Brief almost every appellation imaginable for the officers in question, except the one expressly used in Section 1(d). Petitioners alternatively label themselves “constitutional officers,” “non-charter officers,” and even “sovereign state constitutional officers.” (Initial Brief, pp. 2, 13, 31) But never once do the Petitioners call themselves what they are called in the Constitution—“county officers.” (emphasis added)

Indeed, Section 1(d) does not even purport to set forth an exhaustive treatment of the specified offices. This section simply requires that each county have in place certain offices to perform functions for the county. A county has the option of utilizing the offices provided by the Constitution or, alternatively, creating new offices to perform the required functions. Counties also are given the option of electing the officers or authorizing their selection in another manner. Regardless of which options are chosen, the officers remain county officers pursuant to the express language of the Constitution. Section 1(d) thus does not in any manner "preempt the field" with respect to every conceivable facet of these constitutionally-created offices.⁹ Because term limits do not contravene and are not preempted by any superior law, the electorate is free to use its home rule power to enact the Amendment.

Section 11(a)(1), Article III of the Constitution, relied on by the trial court in this case, further negates Petitioners' assertion that constitutionally-created positions are "off limits" to the chartered counties. Section 11(a)(1), which generally prohibits any special laws regarding the election of local governmental officials, contains an express exception for officers of chartered counties:

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

⁹ Cases like Cook, Quinn and Winchester, supra, also belie Petitioners' contention that the County electorate lacks the authority to "act" with respect to the County Officers. As detailed above, these cases expressly recognize that charter counties can impose local election requirements on constitutionally-created offices.

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

The First District in Cook recognized that Section 11(a)(1) expressly authorizes a charter county to impose term limits on the constitutionally-created offices, stating:

The constitution clearly contemplates that [the subject charter] provisions relating to elections will have local, not statewide application. Where this court to accept the appellee's position that the clerk is . . . protected from state and local legislation, and the county officers listed in [Section 1(d)] are really statewide officers, then [Section 11(a)(1)], allowing for local changes to the election process would have no meaning. 763 So. 2d at 293.

See also Winchester, 565 So. 2d 1350, 1352 (Fla. 1990).

Petitioners have insisted in this case that the Charter is "a special law approved by vote of the electors." (Initial Brief, p. 18) But if the Charter is, as Petitioners contend, a special law, it does not "lose" its status as a special law simply because it has been amended in accordance with the Charter's amendment provisions.¹⁰ As noted, under Section 11(a)(1), a special law can contain election-related requirements for charter county officers. The Charter, construed as a special law, thus can impose election-related requirements on the County Officers pursuant to Section 11(a)(1). If, as Petitioners maintain, the term limits provision is contained in a validly enacted and

¹⁰ In fact, Petitioners note in the Initial Brief that the Charter has been amended on at least three other occasion without "advance legislative approval." (Initial Brief, p. 8) Nevertheless, Petitioners continue to contend that the Charter is a special law.

amended special law, the Amendment also necessarily constitutes a “special law” authorized under Section 11(a)(1).¹¹

B. The Charter Can Be Amended Through Action Initiated at the County Level Even Though It Was Originated by a Legislative Special Act.

Petitioners also mistakenly assert that the imposition of local term limits via charter amendment must be initiated by the Legislature because the Charter is a "special act." Under their view, because the Legislature initiated the Charter via a special law, only the Legislature can amend the Charter to impose term limits.

This contention conveniently ignores that the citizenry, not the Legislature, has the final and conclusive power with respect to the Charter. Although proposed via a special act, the Charter was not (and could not have been) consummated as a special law until and unless it was approved by the electorate. Petitioners conveniently omit to point out that the legislative act (Chapter 80-590) proposing the Charter expressly provided as much:

[T]his act shall take effect only upon approval by a majority vote of the electors of Pinellas County voting in a referendum election called by the Board of County Commissioners of Pinellas County. Said election shall be conducted in accordance with the applicable provisions of Florida law and may be called in conjunction with any other election. [The substantive provisions of the Charter] shall take effect 30 days after being approved by a majority of those electors voting on the question. Section 3 of Chapter 80-590, Laws of Florida. (emphasis added).

¹¹ Additionally, Section 11(a)(1)'s authorization of special requirements pertaining to the election of a chartered county's officers again refutes any argument that there is a special or uniform state interest concerning how various counties must elect their local officials. If such a uniform interest existed or if the matter was intended to be preempted from the counties, the Constitution would have uniformly prohibited, rather than permitted, such issues to be handled on a county-by-county basis.

In short, although the Charter was initiated by the Legislature, it did not become "law" or obtain legal effect until it was approved by the electorate. The electorate, not the Legislature, thus were the "enactors" of, and the final "decision makers" regarding, the Charter.

Moreover, as the Constitution expressly provides, only the electorate is authorized to adopt, amend, or repeal the Charter. The electorate's "power" with respect to the Charter derives from Article VIII, Section 1(c):

Pursuant to general or special law, a county government may be established by a charter which shall be adopted, amended, or repealed only upon vote of the electors of the county at a special election called for that purpose. (emphasis added).

The Legislature could not (and did not purport to) adopt the Charter for the County. Similarly, the Legislature cannot amend or repeal the Charter, even if it desires to do so. Op. Att’y. Gen. Fla. 85-41 (1985) (Article VIII, Section 1(g) is a limitation of the Legislature’s power to enact special laws regulating a county after the county adopts a charter). Accordingly, the electorate did not somehow usurp legislative power simply by virtue of adopting the Amendment.

Pursuant to the Constitution and Chapter 125, the Charter contains express amendment procedures requiring that all amendments be approved by the electorate. Significantly, as both the Circuit Court and Second District recognized, the Charter contains no requirement whatsoever that legislative approval be sought in advance of

a Charter amendment. As also acknowledged by the Second District, Charter Article VI is devoid of any limitation whatsoever on what provisions of the Charter can be amended. Absent such limitations, the Charter can be amended in any respect whatsoever, so long as the amendment procedures are followed and the amendment is not inconsistent with preexisting superior law.

Taken to the logical extreme, Petitioners' argument ironically would prohibit any amendment to the Charter unless initiated by the Legislature. Petitioners essentially contend that the electorate is prohibited from changing certain portions of the Charter because these provisions supposedly constitute an expression of superior legislative intent. What this argument blithely ignores is that, as a special act-initiated Charter, every single one of its provisions was originally proposed by the Legislature. If, as Petitioners contend, every sentence in the Charter constitutes an expression of superior legislative intent, no provision of the Charter could be amended except at the behest of the Legislature. Any locally initiated amendment to the Charter would alter the Legislature's expressed intent, and thus any amendment pertaining to any subject matter necessarily would contravene superior law and be invalid.

This nonsensical construction obviously would render nugatory the Charter's amendment provisions in their entirety, contravening long-standing rules of construction. *State v. Keller*, 191 So. 542, 545 (Fla. 1939) (presumption is against construction that would nullify a clause or render it meaningless). Moreover, this

construction is not only logically flawed, but historically contradicted. As the Second District pointed out, even Petitioners concede that the Charter previously has been amended without prior legislative action. 775 So. 2d at 319; (Initial Brief, pp. 8, 25) If the Charter could have been amended in the past without legislative participation, why is such participation required now? ¹²

The only way Petitioners can find to answer this question is to devise a nonexistent distinction between “ministerial” versus “non-ministerial” amendments. According to Petitioners, if the proposed amendment is merely "ministerial," the Amendment can proceed directly to the electorate without the Legislature’s involvement. (Initial Brief, pp. 8, 25) However, if the Amendment is something Petitioners deem more substantial, this "non-ministerial" amendment must receive legislative preapproval. (Initial Brief, pp. 25-6)

¹² Petitioners’ contention might be correct if the facts were different. For instance, if the Charter did not contain amendment procedures, the County probably would have to go back to the Legislature to amend the Charter. Similarly, the County would have to obtain the Legislature's consent if the Charter amendment procedures contained a provision requiring advance legislative approval. Moreover, the Legislature could have mandated advance approval by inserting a provision elsewhere in Chapter 80-590 requiring that the County obtain "advance approval" from the Legislature before undertaking certain types of amendments. However, none of these "limitations" exist in the Charter or the special act passed by the Legislature proposing the Charter to the electorate. Thus, advance legislative approval is not required before the Charter can be amended. Petitioners simply are advocating a non-existent limitation.

The problems with this explanation are legion. Where is there any guidance in either the Charter or the Constitution regarding what constitutes a merely

“ministerial,” versus a “non-ministerial” amendment? Where in the Charter does it say that the citizenry’s initiative powers under Charter Article VI are restricted to merely “ministerial”-type amendments? And who gets to decide what is ministerial versus what is substantive?

The fact is that the “ministerial-non-ministerial” distinction finds no support in the Charter, the Constitution, or other governing law. As the Second District correctly held, the Charter's amendment provisions simply do not limit the types of amendments that can be initiated at the local level. The only limitation on the power to amend the Charter is the general home rule power limitation that applies to any attempt by a charter county to amend its charter. So long as the amendment does not violate superior Florida law, the topic is fair game for amendment. Thus, if the Charter amendment procedures are followed and the subject of the amendment otherwise is proper, there is no requirement that the Legislature place its "stamp of approval" on the amendment before it is submitted to the electorate.

Ironically, one of the Attorney General Opinions relied on by Petitioners also supports the conclusion that no advance legislative approval was required to validate the Amendment. In AGO 75-259, the Attorney General considered whether a charter that was initiated via a special law could be "repealed" through a charter initiative even though the charter itself lacked a repeal provision. Although the Attorney General concluded that the charter could not properly be repealed through the initiative process

because there was no provision in the charter authorizing such a repeal, the Attorney General recognized that the charter could have been amended, versus repealed, without the necessity of seeking prior legislative approval, because the charter did contain an amendment provision:

The Volusia County Home Rule Charter was not adopted pursuant to the provisions of [Chapter 125] but as a special act of the Legislature [citation omitted], approved by vote of the electors as required by Art. VIII, S. 1(c), supra. [The] charter provides for the amendment of the charter by initiative and referendum (amendments may be proposed either by the counsel whereby a petition of the electors) and for a periodic review of the charter and ordinances by a chartered review commission. It does not, however, provide a method for the repeal of the charter. So the real question here is whether the authority to amend the charter by initiative and referendum was intended to authorize the repeal thereof by the process. *Op. Att’y. Gen. Fla. 75-259 (1975)* (emphasis added).

In other words, because the charter itself expressly authorized amendments to (if not repeals of) the charter, Volusia County possessed the authority to amend its charter without seeking advance legislative approval, even though the charter was adopted, as here, via a special law.

In the present case, there is no dispute that (1) the Charter contained an amendment provision, Article VI; (2) this amendment provision did not preclude by its terms an amendment to impose term limits on County officers; and (3) the procedures set forth in this amendment provision were strictly complied with by the Committee in proposing and ultimately obtaining passage of the Amendment. It is also

undeniable that there is no pre-existing, superior law disallowing term limits on “county officers” as defined in Section 1(d). Accordingly, the express terms of the Charter itself allowed the Amendment, and the County’s home rule powers authorized it.

Whether the Legislature previously has proposed amendments to the Charter is irrelevant to whether the Legislature must do so before the electorate can adopt an amendment. Petitioners contend that the Legislature has defined its exclusive province regarding Charter amendments by having proposed Charter amendments in the past. (Initial Brief, p. 26) However, recent legislative action conclusively refutes this claim. In Chapter 99-472, Laws of Florida, which was passed while the present litigation was pending, the Legislature clearly took a decidedly "hands-off" approach regarding the validity of the Amendment, stating:

It is the intent of the Legislature by this act to propose amendments to Section 3.01 of Article III of the home rule charter for Pinellas County, Florida, as it was created by Section 1 of Chapter 80-590, Laws of Florida. It is not the intent of the legislature in any way to effectuate or to interfere with the effectuation of any amendment that has previously occurred outside the legislative process to the extent that such amendment is ultimately deemed effective or not effective. 1999 Fl. H.B. 1577, Section 4 (emphasis added).

The Legislature conspicuously refrained from stating in the foregoing bill that the Amendment was invalid or that the Legislature possessed exclusive authority over its subject matter. If the Legislature thought that it possessed exclusive authority over the Amendment’s subject matter, the Legislature could (and likely would) have so

stated in its act. Instead, the Legislature declined to take a position on the validity of the Amendment, effectively expressing its apparent belief that it lacks any exclusive authority regarding this subject.¹³

In summary, the Charter, although proposed by the Legislature, expressly authorizes the electorate to amend anything contained within the Charter, so long as the specified amendment procedures are followed. The only limitation on the power to amend is that, under home rule power, the amendment must not contravene superior law. The Amendment here was neither outside the scope of the Charter's amendment authority, nor in contravention of preexisting law.

C. The Second District Properly Found That the Amendment Creates No Inconsistencies Within the Charter.

Petitioners' contention that the Amendment effects internal inconsistencies within the Charter is equally specious. Petitioners argue that the Amendment creates a Charter that is impermissibly inconsistent with a "special act" (i.e., itself) in violation of Article VIII, Section (1)(g). (Initial Brief, pp. 18, 35) This circular argument has several readily apparent flaws.

¹³ A second recent legislative act further underscores the illegitimacy of Petitioners' position. In Chapter 99-451, Laws of Florida (1999 Florida House Bill 1139), the Legislature proposed previously non-existent limitations on the County's and the electorate's authority to amend certain portions of the Charter. See Chapter 99-451, Laws of Florida (A. 8). This act proposed to change the Charter to limit the power to amend at the local level provisions relating to such things as the county budget, capital improvement programs, county officers' and employees' salaries, and certain tax and zoning matters. Additionally, the act proposed a limitation on locally-initiated amendments affecting the status, duties, and responsibilities of the County Officers. If, as Petitioners claim, such limitations previously existed, an amendment of the Charter to add these limitations obviously would have been redundant and superfluous.

As a threshold matter, Section 2.06 applies only to the "county" as defined in the Charter, rather than to the electorate. Charter Section 1.02 provides:

The corporate name shall be Pinellas County, hereinafter referred to as the county. Said name shall be so designated in all legal actions or proceedings involving the county. (R. 16) (emphasis supplied)

Charter Section 1.01 further explains that the County shall be a "body corporate and politic, and . . . may contract and be contracted with, and may sue and be sued and be included in all the courts of this state" (R. 16) The Charter thus clearly identifies and defines the "county" as a discrete governmental entity possessing cognizable legal powers and maintaining a separate legal existence.

This definition of "county" is entirely consistent with case law construing counties as cognizable legal entities. In *Whitney v. Hillsborough County*, 127 So. 486, 492 (Fla. 1930), this Court noted that counties are recognized by the Constitution as "legal political divisions of the State"; that is, as governmental agencies." The Court further explained that counties are "quasi-municipal corporations recognized by the Constitution as proper repositories of local government powers" 127 So. at 492. As the Court noted, the Constitution also recognizes the existence of county commissioners in each county, who constitute an "administrative board" for county affairs. *Id.*

Chapter 125, Florida Statutes, identifies the administrative board referenced in *Whitney* as the "board of county commissioners." Indeed, Section 125.011(1) defines "county" to include the board of county commissioners of that county. The Florida

Attorney General has confirmed that, pursuant to Constitution Article VIII and Chapter 125, "the conducting of the business of a county in this state is vested in the board of county commissioners." Op. Att'y Gen. Fla. 071-193 (1971).

Consistent with this authority, Charter Section 3.01 expressly designates the County Commissioners as the County's legislative body. (R. 18) Charter Section 2.03 further states that all powers of the County shall be exercised in accordance with the Charter or, if the Charter is silent, by County Commission action. (R. 17) Accordingly, the County, which is defined as a corporate body in Charter Section 1.01, acts through its quasi-corporate board—the County Commissioners.

In view of the Charter provisions and case law defining a "county" as a quasi-corporate body operating through its board, any limitation of powers set forth in Section 2.06 is clearly on the governmental entity constituting the "county." Pursuant to Section 2.06, the County, as a separate legal entity, cannot alter the duties or status of the designated County Officers. In effect, Section 2.06 bars the County Commissioners from convening and deciding to modify in some fashion the responsibilities or status of the County Officers.

The electorate is separate and distinct from the "body corporate" that constitutes the County. Proof that the County is not coterminous with the electorate or citizenry is found in the Charter itself. Not only does the Charter lack any reference to the citizens within its definition of "county," the Charter also expressly distinguishes

between the "county" and "citizens" or "electors." Pursuant to Charter Article VI, a Charter amendment can be proposed either by the "county" pursuant to Section 6.01 or by the "electors" pursuant to Section 6.02. (R. 20) With respect to the former, Section 6.01 prescribes that any amendment "proposed by county" be initiated by vote of the County Commissioners. (R. 20) In contrast, Section 6.02 sets forth a separate and independent procedure by which the electorate, versus the "county," can initiate an amendment. (R. 20) In other words, when the Charter refers to the "county," it means the quasi-corporate entity that is run by the County Commissioners. For purposes of the Charter, "county" does not mean the citizens or electorate.¹⁴

Any construction of "county" to include the citizenry or electorate would contravene well-established rules of construction. Where a provision can bear two constructions, one consistent and the other inconsistent, the former construction should be adopted so that both provisions may stand and have effect. *Gray v. Bryant*,

¹⁴ The distinction between the "county" and the "electorate" also can be found in other Charter provisions. For instance, in Section 2.02, the Charter differentiates between the citizens and the county in the same provision: "In order to secure protection to the citizens of the county against abuses and encroachments, the county shall use its powers, whenever appropriate, to provide by ordinance or to seek remedy . . ." (R. 17) (emphasis added). Similarly, Section 6.03(d) states: "the Charter review commission shall review, on behalf of the citizens of Pinellas County, the operation of county government in order to recommend amendments to this Charter . . ." (R. 21) (emphasis added). Section 6.03(e) also separately refers to the "citizens of Pinellas County." (R. 21)

125 So. 2d 846 (Fla. 1960); see also *Askew v. Game and Fresh Water Commission*, 336 So. 2d 556 (Fla. 1976). Petitioners' interpretation of Section 2.06 might create a conflict with Section 4.03, as amended. However, the Committee's construction of Section 2.06 clearly would create none. Because Petitioners' construction might create a conflict and the Committee's construction clearly will not, the Committee's construction must be adopted as a matter of law.¹⁵

In short, any "limitation" contained in Section 2.06 applies only to the County, acting through its County Commissioners, not to the separate and distinct County electorate. Because Section 2.06 is directed to the County versus the electorate, the electorate is free to enact the Amendment without creating any conflict with Section 2.06.

Similarly, there is not any "irreconcilable conflict" between Charter Sections 2.06 and 4.03, as amended. Because the Committee did not seek recourse to Section 2.06, any amendment to Section 4.03 to impose term limits cannot cause a conflict with Section 2.06. The only way to create such a conflict is to interpret the term

¹⁵ Moreover, if Section 2.06 meant what Petitioners contend, the supposed "prohibition" language of Charter Section 4.03 would have been unnecessary. Specifically, if Section 2.06 barred both the County and its electorate from affecting the County Officers, the similar language contained in Section 4.03 would have been superfluous. All provisions in the Charter were put there for a reason and must be construed so as to give them effect. See e.g., *In re Advisory-Appointment of County Commissioners, Dade County*, 313 So. 2d 697, 701 (Fla. 1975). The Charter cannot be given a construction that renders a portion of it merely redundant. See, e.g., *State v. Keller*, 191 So. 542 (Fla. 1939) (a construction that nullifies a clause is disfavored).

"county" as used in Section 2.06 as including the citizenry or electorate. As noted, this construction is inconsistent with the Charter's express definition of "county," the incongruity between the "county" and the "citizens" or "electors" contained in the Charter, and case law recognizing counties as separate, cognizable legal entities.

Moreover, original Section 4.03 was not intended to be a permanent prohibition against the Charter ever impacting the County Officers as apparently contended by Petitioners. As enacted in 1980, Section 4.03 simply stated that the Charter, as adopted, did not change the status, duties or responsibilities of the County Officers. This construction makes perfect sense in light of the two previous failed efforts to adopt charters that would have made more substantial changes in the structure of the County's local government. (R. 628-706) However, Section 4.03 did not permanently restrict the electorate from ever adopting an amendment that impacted the County Officers so long as the amendment is consistent with superior Florida law.¹⁶

Neither a legislative body nor an electorate can forever prohibit a future legislature or electorate from acting regarding a particular subject. See, e.g., *Neu v. Miami Herald Publishing*, 462 So. 2d 821, 824 (Fla. 1985). Petitioners' assertion that the 1980 electorate purportedly entered into some sort of "social contract" with the Legislature to permanently bar certain types of Charter amendments thus is mistaken.

¹⁶ Similarly, Section 4.03 is not "inconsistent" with itself after the Amendment as asserted by Petitioners. The provision, as amended, simply states that the Charter does not impact the officers except as indicated. There is no "inconsistency" in this.

As a matter of law, the 1980 electorate could not (and did not) bar the 1996 electorate from amending the Charter.

Additionally, a county clearly possesses the authority to amend its charter to eliminate a limitation on the county's power. See, e.g., *City of Miami v. Metropolitan Dade County*, 407 So. 2d 243, 244-45 (Fla. 3rd DCA 1981), pet. dismissed, 418 So. 2d 1278 (Fla.), pet. dismissed, 418 So. 2d 1278 (Fla.), and appeal dismissed, 418 So. 2d 1278 (Fla. 1982) (county validly amended its charter to remove a limitation on its power to regulate taxi cabs contained in the original charter). Accordingly, even if Section 4.03 was deemed to "limit" the County's power as originally enacted, the electorate can amend the Charter pursuant to Article VI to modify or remove that limitation.¹⁷

D. The Amendment Does Not Alter the County Officers' Status.

Another reason that the prohibition contained in Section 2.06 is inapplicable to the present action is that the County is barred, under that section, from changing only

¹⁷ For the same reasons, Petitioners' assertion that the Amendment is invalid because it engrafts an "exception" to an existing limitation with respect to both the County Officers and the County Commissioners also is meritless. (Initial Brief, pp. 10, 35, 40) Again, to the extent any "limitation" was imposed by the original Charter, the limitation was adopted and imposed by the electorate, rather than the Legislature. Thus, even if some portion of the Charter, as originally adopted, is construed as a limit, it is an electorate-imposed limitation that can be removed by the electorate via amendment of the Charter. See, e.g., *City of Miami*, 407 So. 2d at 244-45.

the "status, duties, or responsibilities" of the designated officers. Contrary to Petitioners' argument, the imposition of term limits does not effect a change in the Officers' "status." Black's Law Dictionary defines "status" as "standing, state, or condition." Similarly, Webster's Unabridged Dictionary defines status as "condition or position with regard to law" or "position, rank, or standing." Webster's Deluxe Unabridged Dictionary, 2d ed. (1983). In short, status basically refers to a person's standing or position.

As the Second District succinctly stated, "term limits . . . do not affect the status, duties or responsibilities of the county officers. . . ." Ironically, even Petitioners concede that they agree with the Second District's statement! (Initial Brief, p. 31) The officers enjoy the same position, rank, and standing. The only difference is that an officer's position or rank might be of shorter duration. Put differently, the imposition of term limits will not alter the officer's qualitative "status" as a governmental official, but rather, merely the quantitative number of years he or she enjoys that qualitative status. Because the imposition of term limits will not impact the designated officers' "status," and because Section 2.06 proscribes only a change in "status," the imposition of term limits on County Officers does not trigger application of Section 2.06.

- E. A Portion of the Amendment Remains Valid Even if a Part of it is Deemed Invalid.

An enactment is not completely void merely because some portion of it might be defective. Courts uphold the valid portion of a provision if it is "severable" from any invalid section. *Schmitt v. State*, 590 So. 2d 404, 415 (Fla. 1991), cert. denied, 503 U.S. 964 (1992). When a provision is challenged on constitutional grounds, it will be "severed" and the valid portion enforced if (i) the unconstitutional portion can be separated from the remaining valid provisions, (ii) the purpose expressed in the valid portion can be accomplished independently of those which are void, (iii) the valid and invalid features are not so inseparable that it can be said one part would not have been passed without the other, and (iv) an enactment complete in itself remains after the invalid provision is stricken. See, e.g., *Cramp v. Board of Public Instruction*, 137 So. 2d 838, 830 (Fla. 1962). Thus, if an enactment contains a part that is valid and a part that is void, the court must determine whether the valid and void parts are "severable." If so, the court can strike the defective portion, but must enforce the valid section.

The portion of the Amendment imposing term limits on the County Officers is severable from the section imposing term limits on the County Commissioners. Although contained in the same Amendment, the two portions impact different Charter sections. In fact, the portion relating to the County Officers is contained in a completely different paragraph of the Amendment than the section pertaining to the

County Commissioners. (R. 14) Accordingly, these different paragraphs easily can be "separated" from each other.

Additionally, the purpose expressed in the County Commissioners' paragraph can be accomplished independently of the purpose of the County Officers' paragraph. The paragraph pertaining to the County Commissioners amends Charter Section 3.01. In contrast, the County Officers' paragraph imposes term limits on different offices and amends a different Charter section (i.e., Section 4.03). One paragraph expresses the intent to impose term limits on specific offices by amending a specific Charter section, while the other section imposes term limits on different offices and amends another Charter section. The deletion of one paragraph has no effect on the other.

Moreover, these sections are not so inseparable that the electorate likely would have rejected one change without the other. Nothing in the record suggests that the Amendment would have been rejected if only one of the paragraphs had been included. Similarly, the Amendment remains a "complete act" even if one of the paragraphs is deleted. The Amendment thus can stand as a complete enactment with only one of the operative amendment paragraphs.

In short, all four requirements for severability of the Amendment exist in this case.¹⁸ Of course, this Court need not even address this issue because, for the

¹⁸ Petitioners' assertion that the existence of a "severability" clause in the Amendment is essential to severability is incorrect. As cases like Ray v. Mortham, 742 So. 2d 1276 (Fla. 1999) reflect, a variety of factors bear on the severability of an

reasons articulated above, the Amendment is valid in its entirety. However, if the Court determines that one portion of the Amendment is invalid, it should sever that section from the Amendment and uphold the balance of the Amendment.

CONCLUSION

For the foregoing reasons, this Court should affirm the Second District's opinion below. The Second District correctly held that the Amendment constituted a proper exercise of the County's home rule power.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Respondent's Answer Brief has been served by U.S. Mail on March 26, 2001, to Sarah Richardson, Senior Assistant County Attorney, Pinellas County Attorney's Office, 315 Court Street, Clearwater, FL 33756; Kenza van Assenderp, Young van Assenderp & Varnadoe, P.O. Box 1833, Tallahassee, FL 32302-1833; Marion Hale, Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A., 911 Chestnut Street, Clearwater, FL 33756; Bernie McCabe, State Attorney for the Sixth Judicial Circuit, 14250 49th Street North, Room 100, Clearwater, FL 33760; Raymond Ehrlich, Holland & Knight, P.O. Box 52687 Jacksonville, FL 32201-2687; Loree Lea French, Office of the General Counsel, 117 W. Duval Street, Suite 480, Jacksonville, FL 32202-3700; and Richard G. Rumrell, Rumrell Wagner & Costabel LLP, P.O. Box 550668, Jacksonville, FL 32255-0668.

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enactment. Although the Court noted the existence of a severability clause in Ray, that clause was not determinative of the Court's decision to sever the subject provision in that case. If severability depended on the existence of such a clause, as apparently contended by Petitioners, the Court would not have needed to address any of the other factors discussed in Ray.

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CERTIFICATE OF COMPLIANCE

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

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