IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-1908

LOWER TRIBUNAL CASE NO. 2D99-836

KARLEEN F. DE BLAKER AS CLERK OF THE CIRCUIT COURT, W. FRED PETTY AS TAX COLLECTOR, and EVERETT S. RICE AS SHERIFF,

Petitioners,

-vs-

EIGHT IS ENOUGH IN PINELLAS,

Respondent.

PETITIONERS' INITIAL BRIEF ON THE MERITS

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

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A. STATEMENT OF THE CASE

This appeal originated from an appeal of a final order of summary judgment entered by the Pinellas County Circuit Court, which held that the Pinellas County Limited Home Rule Charter (hereinafter the "Charter") could be amended by local governmental action (initiative and referendum) to impose term limits on the County Commissioners and the five Constitutional Officers. The case has its roots in Eight is Enough in Pinellas v. Ruggles, 678 So. 2d 898 (Fla. 2d DCA 1996), in which the Second District Court of Appeal (hereinafter the "Second District") upheld the Supervisor of Election's rejection of "expired" petition signatures.

While the 1996 appeal was pending, Eight is Enough in Pinellas, a Political Committee (herein "Respondent" and hereinafter the "Committee") recirculated the petition (R. 14, A. 6)[1] proposing amendments to the Charter, and upon collecting sufficient signatures, submitted them to the Supervisor of Elections (hereinafter the "Supervisor") for certification, pursuant to section 6.02 of the Charter. (R. 31) On or about July 19, 1996, the Supervisor duly certified and verified that the requisite number of signatures of registered electors of Pinellas County had been collected (R. 31), and subsequently, the Board of County Commissioners (hereinafter the "BCC") followed the provisions of section 6.02 of the Charter and placed the question on the ballot at the general election of November 1996; the electorate approved the amendment. (R. 375)

An action was filed by Plaintiff/Appellant-below Clair Johnson (hereinafter

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[1] All Record references shall be in the form "(R. ____)," and all documents included in the Appendix accompanying this Brief shall be referenced in the form "(A. ___)."

"Johnson") on July 19, 1996, seeking to enjoin the BCC from placing the proposed Charter amendments on the ballot. (R. 1, 23) On July 31, 1996, the Committee moved to intervene (R. 31). Upon stipulation of the parties, (R. 45), the Court granted the motion on August 28, 1996 (R. 51). After a hearing, the then-officiating Circuit Judge entered a non-final Order dated September 6, 1996, denying Plaintiff's Motion for Summary Judgment and denying her request for a temporary and a permanent injunction. (R. 199, A. 1)

On September 24 and 30, 1996, the Clerk of the Circuit Court, Property Appraiser, Sheriff, Supervisor of Elections, and Tax Collector (hereinafter collectively the "Constitutional Officers" and "Intervenor Plaintiffs") filed respective Motions to Intervene, (R. 278, 281), which were granted after hearing on October 16, 1996. (R. 364) The Constitutional Officers filed an amended Intervenor Plaintiffs' Complaint on March 21, 1997 (R. 386). Motions for Summary Judgment and Final Judgment were filed by the respective parties in September 1997 (R. 447), and January 1998 (R. 531); a hearing on these Motions was held before the successor Circuit Court Judge on March 13, 1998. (R. 849)

On October 2, 1998, the Circuit Judge denied the Plaintiff's, Intervenor Plaintiffs', and Defendant Pinellas County's Motion for Summary Judgment (R. 931).

These parties then filed a Joint Motion for Rehearing and Joint Motion for Clarification on October 14, 1998(R. 933), which was granted on October 27, 1998 (R. 939). The hearing on the rehearing and clarification issues was held on December 18, 1998 (R. 969).

The parties submitted proposed Final Judgments, (R. 941, 942, 944), and on January 26, 1999, the Court entered the Order which was appealed to the Second District. (R. 945, A. 2) The BCC and the five Constitutional Officers filed their Notice of Appeal and Appellant Johnson also filed hers on February 24, 1999. (R. 953, 958) Upon stipulated motion, the Second District consolidated the appeals.

The parties to the appeal below timely submitted briefs. The Second District issued its opinion affirming the Trial Court. Pinellas County v. Eight is Enough in Pinellas, 25 Fla. L. Weekly D1201 (Fla. 2d DCA May 19, 2000). (A. 16) On June 1, 2000, Appellant Clair Johnson and the Constitutional Officers filed respective Motions for Rehearing and Motions for Rehearing En Banc. These four motions were denied without opinion by the Second District on August 8, 2000.

On September 7, 2000, three of the Constitutional Officers filed their Notice to Invoke Discretionary Jurisdiction with this Court, followed by their Application for Discretionary Review which was served on September 18, 2000, under Rules 9.030(a)(2)(A)(ii) and (iii) and 9.120, Florida Rules of Appellate Procedure. This Court granted the application by Order Accepting Jurisdiction and Setting Oral

Argument dated February 9, 2001. This Initial Brief is filed by two of those Constitutional Officers, specifically the Clerk of the Circuit Court and the Sheriff (also collectively referred to as "Petitioners"), in response to that Order. The third Constitutional Officer, W. Fred Petty, as Tax Collector, was succeeded in office by Diane G. Nelson on January 2, 2001. Concurrently with this Brief, Ms. Nelson is filing a Motion to Withdraw as party to this appeal.

B. STATEMENT OF THE FACTS

By way of background, the Pinellas County electorate tried twice unsuccessfully to adopt a broad form home rule charter under Chapter 125, in 1973 and 1976. (R. 628-706) In 1980, the Legislature adopted Chapter 80-590, which was approved by the electorate, Code, at CHT:1, editor's note (R. 15), delegating certain powers to the county not contained in Chapter 125, and withholding others inherent in the general law for non-charter and other charter counties. The adoption of this Special Law-created Charter made Pinellas County only the second County with a Charter delegated directly from the Legislature under its constitutional authority; the only other County was and remains Volusia County. All other Florida County charters have been adopted pursuant to Chapter 125 or the Constitution. See Volusia County v. Dickinson, 269 So. 2d 9, 10 (Fla. 1972), Ch. 70-966, Laws of Fla., and Florida Charter Counties Chart (R. 328, A. 5).

The Pinellas County Charter was proposed by a special law of the Legislature, Chapter 80-590, Laws of Florida (R. 719, A. 3), and was approved by a majority of the Pinellas County voters at the

October 7, 1980 referendum election (R. 15, A. 4). Pinellas County Code [hereinafter the "Code"], at CHT:1, editor's note. The question on the ballot clearly notified the voters that the Charter granted Pinellas County only limited home rule powers:

> Limited Home Rule Charter
>
> 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

Ch. 80-590, § 4, at 322, Laws of Fla. (R. 728, A. 3) [emphasis added].

The Legislature, through the Charter, established the Commissioners as the only Charter Officers. The preamble to the original special law discusses the legal authority, powers, duties, and responsibilities of the Board of County Commissioners only, Ch. 80-590, § 1, at 313, Laws of Fla. (A. 3), which Board was then comprised of five elected Officers,[2] as defined in Article VIII, section 1(e) of the Florida Constitution.

In contrast, by express exclusion in sections 2.06 and 4.03 of the Charter, the Legislature, rejected the inclusion of the Constitutional Officers as Charter Officers.

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[2] The composition of the Board was changed by Charter amendment proposed by the Legislature, Ch. 99-472, Laws of Florida (A. 9), and approved by vote of the electorate at a special election on November 2, 1999. As of the November 2000 election, there are seven members of the Board, three elected at large, four members representing single member districts. (A. 15)

Instead, they preserved their Constitutional autonomy described in Article VIII, section 1(d), Florida Constitution. While many counties' charters govern the offices of some or all of the Constitutional Officers (R. 328, A. 5), this Charter deliberately left the Clerk of the Circuit Court, Property Appraiser, Sheriff, Supervisor of Elections, and Tax Collector to be governed directly by the Constitution and state law. (R. 617-621.)

Additionally, the Charter language as proposed by the Legislature and approved by the voters in 1980, prohibited the exercise of certain powers available to other counties operating under Chapter 125 home rule charters, or in some instances available to non-charter counties operating under Chapter 125. Those Charter limitations include, but are not limited to: § 2.01 (granting the County all "powers of local self-government not inconsistent with general law, with special law approved by vote of the electors, or with this Charter"); § 2.06 (denying the County the power "under any circumstances, to abolish any municipality or in any manner to change the status, duties, or responsibilities of the County Officers specified in s. 1(d), Art. VIII of the State Constitution"); § 3.01 (requiring that the "[t]he composition, election, term of office and compensation of members" of the Board of County Commissioners shall be governed by general law); § 4.03 (preserving the autonomy of the Constitutional Officers as follows: "This document shall in no manner change the status, duties, or responsibilities of the County Officers of Pinellas County: the Clerk of the Circuit Court, Property Appraiser, Tax Collector, Sheriff, and Supervisor of Elections") [emphasis added]. (R. 978-82, A. 4) Thus, the Charter was

"limited" in many respects by the Legislature, which retained these powers.

Amendments to the Charter may be proposed in four different ways, but in all cases the proposed amendments are subject to the approval of a referendum vote of the electorate. Code at CHT:7-9 (R. 21-23, A. 4), and Art. VIII, § 1(g), Fla. Const. The Committee's petition, titled "Pinellas County Charter Amendment Petition Form" (R. 14, A. 6) was promulgated as a citizens' Charter Initiative, the first of its kind under the Charter. Code at CHT:7-8 (A. 4). Section 6.02 of the Charter states that upon the collection of the requisite number of signatures of registered voters, a proposed amendment to the Charter shall be submitted to the BCC, and "shall be subject to referendum at the next scheduled countywide election," unless a special election is called for that purpose. Code at CHT:8.

A second method of amendment proposal is found under section 6.01 of the Charter, by the adoption of an ordinance by the BCC, Code at CHT:7 (A. 4). To date, no amendments to the Charter have been proposed by this method (R. 984-89).

A third method of amendment proposal, by the Charter Review Commission which convenes every six years, is found in section 6.03 of the Charter. Code at CHT:8-9. To date, three amendments have been proposed and two others recommended by the Charter Review Commission ("CRC"). The first amendment was proposed by the CRC in 1984, at its first post-Charter adoption session. It was placed directly on the ballot pursuant to section 6.03(e) of the Charter. Once approved by the voters in November 1984, it revised certain ministerial matters involving reconvening the CRC. Code, at CHT:8-9 & editor's note at 9. (R. 22-23) Two others were proposed by the CRC meeting in 1998, one revising the composition of the CRC under section 6.03(a), and one clarifying the provisions of section 6.02

regarding the life span of petition signatures. (R. 987) These were placed directly on the ballot in November 1998, and were passed by the electorate. (R. 988)

The remaining two amendments recommended by the Charter Review Commission were submitted to the State Legislature after adjournment of the CRC in the summer of 1998. (R. 986-89, A. 4) The resulting special laws, Chapters 99-451 (A. 8) and 99-472 (A. 9), Laws of Florida, demonstrated that those amendments could only be proposed by the fourth method: by the State Legislature as amendments to the original Special Law because they went beyond the home rule powers delegated to Pinellas County (A. 15). In 1988, the Legislature had established the precedent for this action when it proposed the addition of section 2.04(s) to the Charter by a Special Law. Code, at CHT:5, Editor's note (A. 4), referencing Res. 88-496 and Ch. 88-458, Laws of Fla. (A. 7)

Chapter 99-451, Laws of Florida (A. 8), was approved by vote of the electorate at a special election in November 1999, while the appeal was pending below. (A. 15) Through that amendment, a new section 6.04 was added to the Charter, greatly expanding the powers of the County by eliminating the need to return to the Legislature for future amendments, "except for any proposed amendments affecting the status, duties, or responsibilities of the county officers referenced in §§ 2.06 and 4.03 of this Charter. . . ." [emphasis added] By this amendment, the Legislature and the electorate again articulated their intention to preserve the County Constitutional Officers as sovereign, non-Charter officers. This special act highlighted the powers the County lacked prior to this amendment. Accordingly, because this powerful amendment (A. 15) in fact has had and will have no impact with respect to the Appellants, and retroactively none on the amendment to section 3.01 of the Charter, except where noted, this brief discusses the Charter

in the textual form as of the time the Committee's amendments were presented to the electorate. (See A. 4)

The Committee's petition (R. 14, A. 6), titled the "Pinellas County Charter Amendment Petition Form," contained, *inter alia*, (1) the Ballot Question title and Ballot Question language prescribed by section 101.161, Florida Statutes, and (2) the full text of the Proposed Amendments to two articles of the Charter. The amendment to Article IV, § 4.03, proposed to engraft an exception

> except that no person may appear on the ballot for re-election to the office of clerk of the court, property appraiser, tax collector, sheriff, or supervisor of elections if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years

(R. 14, A. 6) to the preexisting limitation,

> [t]his document shall in no manner change the status, duties, or responsibilities of the county officers of Pinellas County: The clerk of the circuit court, property appraiser, tax collector, sheriff, and supervisor of elections. (R. 19-20, A. 4)

Similarly, the amendment to Article III, § 3.01, proposed to engraft the following exception,

> except that no person may appear on the ballot for re-election to the office of county commissioner if, by the end of the current term of office the person will have served (or, but for resignation, would have served) in that office for eight consecutive years

(R. 14, A. 6) to the preexisting limitation,

> [t]he composition, election, term of office and compensation of members shall all be in accordance with general law. (R. 18, A. 4)

General law does not impose term limits on the office of County Commissioner. Thus, these amendments attempt to exercise powers preempted to the Legislature, by amending an exception to an act expressly prohibited by the Legislature.

Significantly, both proposed amendments were contained in a single ballot question, as set forth in the Committee's petition form. (R. 14, A. 6) In addition, absent from the petition form was any severability or savings language which would have alerted voters of the intent to preserve the balance of the charter changes if any portion of those changes was found to be defective.

IV. SUMMARY OF THE ARGUMENT

The Pinellas County Home Rule Charter is a limited home rule charter, proposed for adoption by the State Legislature, Ch. 80-590, Laws of Fla., amended by referendum votes in 1984 and in 1998, and by Chs. 88-458, 99-451, and 99-472, Laws of Fla., and approved by respective votes of the electorate. Amendments to the Charter within the bounds of the home rule powers as delegated or limited by the Legislature may be proposed by any of the BCC, citizen initiative, and the CRC, but any other amendments or revisions require additional Legislative delegation of power, as contemplated by Article VIII, section 1(g) of the Florida Constitution.

Specific limitations and exclusions imposed by the Legislature within the Charter require the Legislature's intervention before certain powers may be exercised by the County. The plain language of several sections of the Special Law-created Charter bars the County, whether acting through the BCC, a citizen political committee, or the CRC, from amending the Charter so as to expand the County's power (for example, relating to some matters affecting municipalities and all matters affecting the Constitutional Officers and enumerated boards, authorities, districts, and councils) without prior Legislative action.

The Second District erroneously affirmed the final judgment of the Circuit Court on two fundamental grounds. First, the Court failed to consider the significance of the source of the Charter, specifically a special law approved by vote of the electorate.

Failure to include that fact in its analysis, meant that the Court misconstrued the nature of the powers delegated to the County by that special law, and therefore misapplied the standards in Article VIII, section 1(g), Florida Constitution which require setting aside the Committee's amendments to the Charter. Additionally, the Legislature's failure to include any limitations on the range of amendments under Article VI of the Charter, which the Second District deemed significant, is irrelevant because limitations on locally initiated amendments were inherent in the express limitations on the Legislature's delegation of Charter powers, and were reserved powers.

Second, the District Court misapprehends that this particular attempted imposition of term limits upon Constitutional Office in Pinellas County, by amendment to the Charter, when none of the Constitutional Officers are Charter Officers, in fact attempts to change the status of the Officers. The Clerk, the Sheriff, and the other Constitutional Officers are not Charter Officers, and it is this status -- the status of Charter versus non-Charter Officers -- that a portion of the Committee's amendment seeks to affect.

The Committee sought to amend section 4.03 of the Charter, ("[t]his document shall in no manner change the status, duties, or responsibilities of the county officers of Pinellas County," specifically the Constitutional Officers), but failed to overcome the remaining limitation in section 2.06 of the Charter, which states in pertinent part that "[t]he county shall not have the power, . . . in any manner to change the status, duties, or responsibilities of the county officers specified in section 1(d), art. VIII of the state constitution."

However, the real error is that section 4.03 of the Charter could not be so amended; the power to establish the Constitutional Officers as Charter Officers was retained by the Legislature, and that limitation was endorsed by voters in 1980 and again in 1999, in sections 2.06 and 4.03.

The Second District's ruling did not reach a third and dispositive issue involving the ballot language. Because the underlying ballot question is defective in at least one respect, and because there was no severability language in either the petition or the question itself, the entire question fails and the amendments to both sections 3.01 and 4.03 of the Charter must fail.

Based on the errors committed by the Trail Court and the District Court, Appellants ask this Court to recognize both the statewide principals posed by county charters and their interplay with the sovereignty of Constitutional Officers, as well as the rather esoteric nature of this case and the limited home rule powers of this unique County Charter. Appellants urge this Court to reverse the Circuit Court's ruling, hold that the Charter amendments were void ab initio, and uphold Appellants' interpretation of the Charter.

V. ARGUMENT

A. APPLICABLE APPELLATE STANDARD OF REVIEW

The matter on appeal is a pure question of law. Therefore, this Court's "standard of review for a pure question of law is de novo." Armstrong v. Harris, 773 So. 2d 7, 11 (Fla. 2000), citing Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982) (applying de novo standard of review to trial court finding that ballot language was so misleading the question was stricken), and quoting Philip J. Padovano, *Florida Appellate Practice* 148 (2nd ed. 1997) ("Summary judgments present a classic example of the type of decisions that are subject to the *de novo* standard of review.").

B. THE LEGISLATURE, WHICH ENACTED THE PINELLAS COUNTY CHARTER EXCLUDED, PROHIBITED, OR LIMITED THE EXERCISE OF CERTAIN HOME RULE POWERS AS THEY PERTAIN TO THE CONSTITUTIONAL OFFICERS AND THE COUNTY COMMISSIONERS AND RETAINED THOSE POWERS

1. The Florida Constitution Confers Home Rule Power upon Counties, Whether Charter or Non-charter; Constitutional Charter Home Rule Power May Be Implemented by General Law or by Special Law Approved by the Voters

All local governmental power in the State of Florida not reserved to the Federal government derives from its Constitution. Art. I, § 1, Fla. Const. Both charter and non-charter counties "as political subdivisions of the state,[3] derive their sovereign powers exclusively from the state." Hollywood, Inc. v. Broward County, 431 So. 2d 606, 609 (Fla. 4th DCA 1983). The direct grant of power is found in

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[3] A "political subdivision" "includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts of this state." § 1.01(8), Fla. Stat.

Article VIII of the Florida Constitution. That grant is not without limits.

It is generally recognized that "[u]nless the Legislature has pre-empted a particular subject relating to county government by either general or special law, the county governing body, by reason of this [first] sentence [of § 125.01(1), Fla. Stat. (1975)], has full authority to act through the exercise of home rule power." Speer v. Olson, 367 So. 2d 207, 211 (Fla. 1978) (upholding the validation of general obligations bonds by a non-charter county). The case of Cross Key Waterways v. Askew, 351 So. 2d 1062 (Fla. 1st DCA 1977), aff'd 372 So. 2d 913 (Fla. 1978), described the limitations imposed on the exercise of local governmental powers through the Constitutional provisions of section 1(g):

> Yet it is clear that counties and municipalities, supported by those who have enjoyed fruitful access to those governments, have no constitutionally vested jurisdiction in the regulation of the "earth, water, and air" within their confines. The power exercised or withheld by those governments is the state's power, appropriately delegated. [fn. omitted] By law all but a few charter counties may be changed or entirely abolished. Article VIII, Section 1(a), Florida Constitution. The jurisdiction of every county, charter or non-charter, is subject to qualification by law. [fn. to D'Alemberte Commentary, quoted infra, at 20-21].

Id. at 1065 [emphasis added]. In the case of Pinellas County, the limitations, prohibitions, and exclusions of the special law-Charter limit the exercise of home rule in many respects, among them imposition of the term limits at issue.

All counties, charter and non-charter, generally enjoy broad home rule powers under the Constitution and general law, including Chapter 125. Most counties have the authority to adopt a self-styled home rule charter: "Any county not having a chartered form of consolidated government may, pursuant to the provisions of ss. 125.60-125.64, locally initiate and adopt by a majority

vote of the qualified electors of the county in a county home rule charter." § 125.60, Fla. Stat.[4] Now vested with its own Charter, Pinellas County is preempted from adopting a Chapter 125 Charter, unless and until the Legislature gives it that power by another special act.

The delegation of home rule in charter counties is not unbounded. It is unquestionably limited by Federal law and State law preempted to those governments, by inconsistencies with general law, special law, and special law approved by vote of the electors. Art. VIII, § 1(g), Fla. Const. After approval by the electors in 1980, Chapter 80-590, Laws of Florida, meets this constitutional language. It is generally recognized that the local government charter itself, however enacted, establishes the limits of local governmental powers:

> Home rule local governments frequently have charters even in constitutional (or "self-executing") states where the constitutional home rule clause is the primary source of power. At times the charter provisions are expressed in the language of grants of power and at other times, the people of a local government use charters to impose limitations upon the activities of their local officers. Consequently, courts frequently must rely upon the charter in interpreting local power of constitutional home rule entities.

1 Antineau on Local Government Law, § 23.01 at 23-3 (2d ed.) [emphasis added]. Therefore, the District Court's conclusion that there is no such creature as a limited charter is clear error.

2. The Pinellas County Charter Is a Legislative Special Law Approved by the Voters Within the Meaning of Article VIII, § 1(g), Florida Constitution

Because the Pinellas County Home Rule Charter was adopted by the Florida Legislature in a special law, and was approved by a vote of the electorate on October 7, 1980, see Code, CHT:1, editor's

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[4] Alternatively, "any county desiring to adopt a county charter shall provide for one," § 125.84, Fla. Stat., in the forms defined, under the Optional County Charter Law, §§ 125.80-125.87, Fla. Stat.

note (R. 15, A. 4),[5] it should be obvious that the Charter is actually a "special law approved by a vote of the electors." The Constitution sets forth the breadth of power of a Charter Government, specifically: "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." Art. VIII, § 1(g), Fla. Const. [emphasis added].

That provision for charter counties is in marked contrast to the grant of power to a non-charter counties, specifically: "Counties not operating under county charters shall have such powers of self-government as is provided by general or special law." Art. VIII, § 1(f), Fla. Const. See, e.g., Fillingim v. State, 446 So. 2d 1099, 1102 (Fla. 1st DCA 1984). Where non-charter counties are dependent on an express grant of power, charter counties exercise a quantum of powers based on an "are not inconsistent with" standard. The "not inconsistent with" standard may actually yield fewer powers than a non-charter county if a special law approved by vote of the electors so imposes limitations. Such is the case with the Pinellas County Charter.

The District Court erred in stating that the County and the Constitutional Officers argued for "a classification of 'limited' home rule charters." Pinellas County v. Eight is Enough, 25 Fla. L. Weekly D1201 (Fla. 2d DCA May 19, 2000). (A. 14) Appellants below argued, as do Petitioners herein, that the Charter powers, by its very terms, are limited by proscriptions within the Charter itself. Further, the

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[5] Between the original adoption of the Charter and its codification in 1995, the Charter was amended in two respects. See notes to Code § 6.03. (R. 21-22, A. 4) See also text supra, at 8-9, Ch. 88-458, Laws of Fla. (R. 737, A. 7), and Code, at CHT:5 (R. 19, A. 4).

very title on the ballot question on which the voters relied, carried the word "limited." (R. 728, A. 3) Appellants argued not for a separate limited charter classification, but argued that all charters are capable of limitation. Unlike charters adopted under Chapter 125 which may be self-limiting and then locally amended to remove those limitations, the uniqueness of Pinellas County's Charter is that it was Legislatively limited.

It is patent that the Constitution did not grant charter counties carte blanche, complete autonomy, or plenary powers by virtue of charter status. A "special law approved by vote of the electors" which might create an inconsistency with a given charter's grant of power may be an independent special law, or may be the charter itself in the case of Volusia and Pinellas Counties. See generally Op. Att'y Gen. Fla. 75-259 (1975), finding that home rule power to amend the charter did not confer power to repeal charter, and concluding that "the Volusia County Charter may be repealed only by action initiated by the Legislature itself and not by the initiative and referendum process prescribed in the charter for amendments thereto." Id. at 454.

The history of Section 1(g) of Article VIII as preserved by the Official Commentary to the Constitution demonstrates that the Framers of the Constitution anticipated that there would be differences between and among Charters, and those differences would come from the limitations imposed or powers conferred "by the special law adopting the Charter." The Commentary states in pertinent part:

> Counties operating under a charter are presumptively considered to have the broad powers of self-government (within the exception of precedence over municipal ordinances which must be provided in the charter) unless provided otherwise by general law or by the special law adopting the charter. Thus, charter counties and non-charter counties apparently start from different poles in their relationships with legislative enactments. Both could, conceivably, be the same depending on the legislation adopted.

D'Alemberte, commentary on Art. VIII, § 1(g) Fla. Const., 26A Fla. Stat. Annot. 157 (1995) [emphasis added]. See also Cross Key Waterways v. Askew, 351 So. 2d at 1065; and Op. Att'y Gen. Fla. 81-7 (1981), which reviewed the Hillsborough County Charter and concluded, *inter alia*, that the "special law[s] approved by the vote of the electors," Art. VIII, § 1(g), Fla. Const., were "those special laws adopting or amending or adding powers or limitations to county charters, which organic documents contain and prescribe the powers, or limitations on powers, of charter counties." Id. at 18-19. This accurately describes the method of adoption and nature of the Pinellas County Charter. Consequently, the parameters of Pinellas County's delegated authority and limitations of power, as applicable, are established by the four corners of the Charter document, as a special law approved by vote of the electors.

3. The Legislature and the 1980 Voters Imposed Certain Exclusions, Prohibitions, and Limitations on the Governmental Exercise of Power by and Through the Pinellas County Charter; Consequently the Referendum Approving the Challenged Amendments Is Void Absent a Legislatively-proposed, Voter-approved Charter Amendment Removing or Altering the Pertinent Exclusions, Prohibitions, and Limitations and the District Court Erred By Not Honoring the Limitations on Home Rule Inherent in the Charter

Although charter counties may enjoy such plenary powers as not limited by Federal law, the Florida Constitution, general law, or special acts, those powers may likewise be limited pursuant to the terms of their respective charters. State v. Sarasota

County, 549 So. 2d 659 (Fla. 1989) (terms of County charter mandating voter approval of bond issue over $10,000,000 were stricter than terms of general law and controlled bond issue). See also Op. Att'y Gen. Fla. 81-7 (1981)-7 (1981)Article VIII, Section 1(g), Florida Constitution, supra, at 20-21.

Pinellas County is a county whose State Legislature withheld plenary powers. There are multiple instances in which the Charter language as proposed and adopted specifically prohibited the exercise of governmental powers, which might have been available to other counties operating under full home rule charters. Those instances include the following, with explanation:

(a) Section 1.01 states in pertinent part that Pinellas County is granted only "all rights and powers of local self-government which are now or may hereafter be provided" by three bodies of law read in concert: "the Constitution and Law of Florida and this Charter." Significantly, the language of "this Charter," a special law itself, limits the delegation of authority in areas described below, which in some instances would not have been so limited for non-charter counties.

(b) In Section 2.01, mirroring the language in Section 1.01 as well as section 1(g), Article VIII, Florida Constitution, the County is granted all "powers of local self-government not inconsistent with general law, with special law approved by vote of the electors, or with this Charter." This provision permanently, until intervention by the Legislature, fixes the parameters of Pinellas County's home rule power, including the power to amend to increase the scope of these

powers.

(c) Section 2.06, titled "Limitation of Powers" states in pertinent part, that "[t]he County shall not have the power, under any circumstances, to abolish any municipality or in any manner to change the status, duties, or responsibilities of the County Officers specified in s. 1(d), Art. VIII of the State Constitution." Section 1(d) of Article VIII names County Offices, to of which are represented by the Petitioners hereunder. Pinellas County possessed home rule power under Chapter 125 to adopt a charter designating the Constitutional Officers as Charter Officers, reconfiguring the offices of the Constitutional Officers, and reassigning their duties as permitted under section 1(d), Article VIII (quoted infra,at 29 n.7), but only until the adoption of the present Charter. In this Charter, the Legislature expressly withheld the power from the County to reconstitute the offices of the Constitutional Officers.

(d) Section 3.01, titled "Board of County Commissioners" states, in pertinent part that "[t]he composition, election, term of office and compensation of members shall all be in accordance with general law." As will be discussed more fully under section D. infra at 38 et seq., the County may exercise no power impacting the composition, election, term of office and compensation of the Board members in any way not specifically conforming to general law, unless and until the Legislature removes the "general law" limitation.

(e) Section 4.03, titled "County Officers" states in full: "This document shall in no manner change the status, duties, or responsibilities of the County Officers of Pinellas County: the Clerk of the Circuit Court, Property Appraiser, Tax Collector, Sheriff, and Supervisor of

Elections." More emphatic even than section 2.06, the Legislature withheld the power to amend the Charter by restricting the "document," specifically the Charter itself, from impacting the Constitutional Officers. As will be discussed further under section C.1. infra, at 30, engrafting an exception to this prohibition, as the Committee attempted to do, without the required Legislative delegation of authority, renders the exception void ab initio.

(f) Subsection (b) of Section 5.02 titled "Special Laws" states that "[t]his document shall in no manner change the status, duties or responsibilities of the following boards, authorities, districts and councils," and then names 16 boards, authorities, districts, and councils.[6]

While Pinellas County's Charter is unique, the fact of limitations imposed on the County within the four corners of the Charter is not unique. See, e.g., State v. Sarasota County, 549 So. 2d at 661 ("In short the proposed bond issue is invalid because Sarasota County should have submitted the issue to referendum, as required by section 4.3.E of the Sarasota County Charter").

This particular Charter could be characterized as a social contract between the Legislature and Pinellas County. For more than twenty years, the parties to this contract have acted in accordance with its terms for each proposed amendment to the Charter. When there have been amendments of a mere ministerial nature, for instance

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[6] These entities had been established by special laws of the Legislature and while other special laws were subsumed under section 5.01 of the Charter, jurisdiction over these special laws was withheld to the Legislature.

the revision of the schedule for the Charter Review Commission to convene in 1984 (see text supra, at 8), they have been placed directly on the ballot without the Legislature's involvement. In contrast, when there have been amendments attempting to expand the County's home rule power, specifically, the addition of Countywide planning authority in 1988 (see text supra, at 9), the reconfiguration of the Board of County Commissioners as a seven-member board, three at large, four single district members in 1999 (see text supra, at 9), and the addition of locally initiated amendments, under Article VI amendments in 1999 (see text supra, at 9), have been submitted to the Legislature for action, and the Legislature has asserted and continues to affirm its exclusive jurisdiction over such subjects by acting to adopt Special Laws. See also Ch. 99-440, Laws of Fla., amending Ch. 70-907, Laws of Fla., the law adopting the Pinellas Suncoast Transit Authority, a special district exempted from local home rule under section 5.02 of the Charter (A. 13); Ch. 99-441, Laws of Fla., amending Ch. 89-504, Laws of Fla., the law adopting the Pinellas County Construction Licensing Board, a special district exempted from local home rule under section 5.02 of the Charter (A. 10); and Ch. 98-485, Laws of Fla., repealing the special law which created the Pinellas County Industry Council, a special district exempted from local home rule under section 5.02 of the Charter. (R. 982, A. 11)

The District Court erred when it found there were no limitations on amending the Charter because the procedural amendment provisions of Article VI failed to so

state. The Charter as a whole establishes the boundaries of delegated powers. The District Court's statement that "[h]ad the legislature wished to reserve for itself the power to propose charter amendments on certain subjects, it could have drafted article VI to accomplish this purpose," overlooks the fact that there is no legal necessity for the legislature to ever reserve the right to amend a special law, even one establishing a local government. Sullivan v. Volusia County Canvassing Board, 679 So. 2d 1206, 1207 (Fla. 5th DCA 1996) ("what the legislature could have authorized, it can ratify"). Furthermore, all of the provisions, including sections 2.06 and 4.03 retaining the Constitutional Officers as non-charter officers, must be read in concert with Article VI. This view is consistent with established law.

It is generally held that the powers of the local electorate extend no further than the power of the local governing body, for both derive from the same source, i.e., the Constitution. See, e.g., Scott v. City of Orlando, 173 So. 2d 501, 504 (Fla. 2d DCA 1965), quoting 1 Antineau Municipal Corporation Law §§ 4-11 (1964): "Local law-making by popular initiative is frequently permitted, and the power is customarily as broad, but only so broad, as the power of the municipality's governing to legislate." See also, Gaines v. City of Orlando, 450 So. 2d 1174, 1178, 1182 (Fla. 5th DCA 1984) ("We think the electors' powers to legislate by initiative or referendum is co-extensive with the City's power to act on the proposals in this case. . . . It follows that if the City could not by ordinance or charter amendment command the [subject action] . . . the voters acting through the initiative or referendum process cannot do so either.") Therefore, because of limitations on delegated power, none of the BCC, the CRC, or the Committee could

amend additional powers into the Charter without Legislative intervention.

Consequently, the referendum approving the amendments to the Charter proposed by local initiative was a void attempt to exercise local governmental power in contravention to the Charter's exclusions, prohibitions, and limitations. Therefore, the District Court committed reversible error by allowing such amendments to stand. That holding flouts the intent of both the Legislature and the electors who voted the Charter into existence in 1980 (and restated the constitutional officer exemption in 1999), as set out in the plain language of the Charter itself.

C. THE CHARTER PRESERVES THE AUTONOMOUS STATUS OF THE CONSTITUTIONAL OFFICERS BY EXPRESSLY EXCLUDING THOSE OFFICERS FROM BEING SUBJECT TO THE EXERCISE OF HOME RULE POWER PURSUANT TO § 2.06 OF THE CHARTER, AND BY PROHIBITING ANY LOCALLY INITIATED CHANGES IN THE CHARTER WHICH WOULD CAUSE A CHANGE IN THE STATUS OF THE CONSTITUTIONAL OFFICERS PURSUANT TO § 4.03 OF THE CHARTER

Although only two of the Constitutional Officers join in this appeal, the argument applies equally to all five Constitutional Officers. Section 4 of Chapter 80-590 is completely dispositive of the limiting nature of Pinellas County's Charter. (R. 728, A. 3) The ballot question contained in that section described the "Limited Home Rule Charter" as one "which defines the role and responsibilities of the Board of County Commissioners." Patently absent from the ballot question is any suggestion that the five Constitutional Officers defined in Article VIII, section 1(d), would be governed or affected by the Charter. Therefore, the Commissioners are the only Charter officers. This deliberate exclusion by the Legislature means that each Constitutional Officer retains his or her status as a sovereign and autonomous Constitutional Officer.

The Constitutional Officers are defined and described in section 1(d), Article VIII, Florida

Constitution. The method of selection and duties of these offices are assigned by the Constitution, unless reassigned as set forth in Article VIII.[7] This has not occurred in Pinellas County.

The District Court apparently first determined that there were no limits on citizens' ability to amend the charter without legislative intervention, because the article governing amendments did not limit what could be amended in the amendment provisions of Article VI of the Charter. As discussed hereinabove, this conclusion was error; the Charter must be read as a whole to ascertain if there are limitations on local amendment powers. Nevertheless, the District Court then correctly concluded that "the charter does prohibit certain amendments," after reviewing the language of sections 2.06 and 4.03 of the Charter. With this conclusion, any holding short of setting aside the Committee's amendments to the Charter is reversible error.

1. The Committee's Amendment to § 4.03 of the Charter Is an Attempted Exercise of Home Rule Power Which, If Allowed to Stand, Would Effectively Change the Autonomous Status of the Constitutional Officers

The Legislature explicitly restricted the Charter's jurisdiction to the body corporate and politic,

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[7] "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 matter therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office." Art. VIII, § 1(d), Fla. Const. [emphasis added].

known as Pinellas County, section 1.01 of the Charter, whose legislative body is the Board of County Commissioners. Code at CHT:3 (A. 4). Twice the Legislature expressed its intention to exclude the exercise of any governmental power over the five Constitutional officers and preserve their autonomous status, specifically in section 2.06 (quoted supra, at 23) and in section 4.03 (quoted supra, at 24). The District Court seemed to recognize these as limitations on amendments to the Charter.

The Constitution supports the exclusion of some of all of the Constitutional Officers from inclusion as County Officers under section 1(c), Article VIII, Florida Constitution., The Attorney General has opined that a charter county may exclude constitutional officers in its configuration:

> I therefore conclude that a chartered form of county government may be validly established for Hillsborough County under s. 1(c), Art. VIII, State Const., and part IV of ch. 125, F.S., if the constitutional officers denominated in s. 1(d), Art. VIII, are not included as charter officers but retain their present status as constitutional officers. The Constitution does not require such constitutional officers to be intrinsically included in a county home rule charter as charter officers or to be designated as such therein.

Op. Att'y Gen. Fla. 81-7 (1981) [emphasis added]. One key provision in the Attorney General's Opinion is the concept that the Constitutional Officers who are not Charter Officers are vested with the "status as constitutional officers." In the context of the Pinellas County Charter, to attempt to impose any requirements or limitations on the Constitutional Officers either attempts to change their status as constitutional officers, clashing with the prohibitions contained in the Charter itself under sections 2.06 and 4.03, or is simply void ab initio.

The District Court misconstrues the notion of "status." Appellants' status is that of sovereign state constitutional officers. Appellants agree that, as the District Court said, "[t]erm limits . . . do not affect the status," per se, of the constitutional officers. However, the District Court failed to recognize that the mere act of attempting to impose term limits on these Constitutional Officers by a Charter amendment, really is an effort to change their status to Charter Officers. It is just as unconstitutional as the State of Arkansas and the State of Florida attempting to impose term limits on federal legislators, who were not state officers. See U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 115 S. Ct. 1842 (1995); Ray v. Mortham, 742 So. 2d 1276, 1282-83 (Fla. 1999). Therefore, the District Court again erred in failing to set aside the Charter amendments.

The Committee's purported amendments are actually revisions outside the scope of the delegated governmental power, and were therefore not lawful amendments permitted under Article VI and other provisions of the Charter. See e.g., Alachua County v. Powers, 351 So. 2d 32, 38 (Fla. 1977) (demonstrating a limitation upon the exercise of power assigned exclusively to a specific constitutional officer, by holding county board of commissioners could not interfere with sovereign Clerk of Circuit Court's duties).

The Committee attempted to engraft an exception to the text of section 4.03 of the Charter, characterizing it as an amendment. An "amendment" has been defined as "'an addition or change *within the lines of the original instrument* as will effect an improvement or better carry out the purposes for which it was framed.' (Italics supplied.)" Rivera-Cruz v. Gray, 104 So. 2d 501, 504 (Fla. 1958) (striking purported amendment to the Constitution of 1885, which was really a revision), quoting McFadden v.

Jordan, 196 P.2d 787, 789 (Cal. 1948). See also Adams v. Gunter, 238 So. 2d 824, 831 (Fla. 1970). The Committee's amendments,[8] more accurately "revisions," contain provisions beyond the jurisdiction of the Charter, outside the "lines of the original instrument," Rivera-Cruz v. Gray, 104 So. 2d at 504, and are therefore outside the authority of the citizens initiative and later vote of the electors as proscribed by the electors in 1980 and 1999. (A. 15) An amendment imposing term limits on the Constitutional Officers, non-charter officers, reaching outside the lines of the original instrument, is void.

In the case of U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 115 S. Ct. 1842 (1995), concluding that Arkansas lacked authority to imposed new qualifications for federal officials, the United States Supreme Court impliedly voided the term limits which the State attempted to place on the United States Representatives and Senators from Florida by the 1992 amendment to the Constitution. Appellants assert that there are direct parallels between the Committee's attempted Charter amendments *vis-à-vis* the Constitutional Officers and Arkansas' void imposition of term limits on federal officers. While the States enjoy original powers reserved to them under the Tenth Amendment to the Constitution, where age, citizenship and residency requirement qualifications were already expressed in the Constitution, the ability to add qualifications was not an original power. "In the absence of any constitutional delegation to the States of power to add qualifications to those enumerated in the Constitution, such a power does not exist." 514 U.S. at 805, 115 S. Ct. at 1856. The Court concluded:

> [t]erm limits, like any other qualification for office, unquestionably restrict the ability of voters to

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[8] The law governing the "amendment" and "revision" distinction applies equally to the purported amendment to § 3.01 governing the County Commissioners.

> vote for whom they wish. . . . [A]llowing the several States to adopt term limits for congressional service would effect a fundamental change in the constitutional framework. Any such change must come not by legislation adopted either by Congress or by an individual State, but rather -- as have other important changes in the electoral process [fn. omitted] -- through the Amendment procedures set forth in Article V [of the U.S. Constitution].

514 U.S. at 837, 115 S. Ct. at 1871 [emphasis added].

In short, Congressmen and Senators are federal Constitutional Officers and the States lack the jurisdiction to impose additional requirements or limitations on those Offices. This Court considered the impact of the Thornton case in Ray v. Mortham, 742 So. 2d 1276 (Fla. 1999). Several citizens sought to prevent the enforcement of Article VI, § 4(b) of the Florida Constitution. Adopted in 1992, that section imposed term limits on state legislators, federal legislators, the Lieutenant Governor, and members of the Florida Cabinet. Id. at 1277-78. Based on Thornton, this Court found "two uncontroverted facts:"

> First, there is no question but that, based on the United States Supreme Court's opinion in *Thornton*, section 4(b)(5) and (6) of article VI, placing limits on the terms of the U.S. Representatives and U.S. Senators, are unenforceable as violative of the United States Constitution's Qualifications Clause. [citations omitted] Second, there is no question but that nearly 77% of those voting on the amendment approved it.

Id. at 1280. Therefore, and despite the overwhelming support for the amendment, Florida could not impose term limits on the federal officials though a state constitutional amendment.

Identically, to impose term limits, or any other qualifications or limitations on

the State Constitutional Officers, is presently not within the jurisdiction of the electors of Pinellas County. Petitioners assert that no one in Pinellas County, none of the Charter Review Commission, the Board of County Commissioners, or the electorate may act in any way purporting to affect the offices of the Clerk of the Circuit Court, Sheriff, Tax Collector, Property Appraiser, and Supervisor of Elections, without a direct legislative grant. Cf. Op. Att'y Gen. Fla. 75-259 (1975) (more fully discussed supra, at 20). Only the Legislature can do that, and its action must be supported by referendum. Art. VIII, § 1(c), Fla. Const.

2. The Inconsistencies Created by the Committee's Amendment to Section 4.03, Pinellas County Charter, Violate Art. VIII, § 1(g), Fla. Const.

The Committee's attempted amendment creates three inconsistencies on the face of the Charter. The first inconsistency is within § 4.03, which original language was adopted by special law approved by the voters. The amendment to section 4.03 of the Charter, by adding an exception to the limitation of Charter powers, is an attempt to expand a limitation of powers by engrafting an exception to that limitation of powers. That is logically and legally impossible, and accordingly, it must fail.

The second inconsistency is between § 4.03 and § 2.06. This internal inconsistency is itself a violation of § 2.01 which grants the County all "powers of local self-government not inconsistent with general law, with special law approved by vote of the electors, or with this Charter." This limitation is similar to section 2.01 of the Hillsborough County Charter as discussed in Op. Att'y Gen. Fla. 85-41 at

117 (1985). Twice the Charter expressly limits the power of the County and through the Charter to exercise authority over the Constitutional Officers. Sections 2.06 and 4.03, supra, at 23-24, prohibit "the county," "under any circumstances," and "this document," "in any manner," from "chang[ing] the status, duties, or responsibilities of the [Article VIII, § 1(d), Fla. Const.] County Officers." With such a prohibition, how could the County, through either a Board-proposed or citizen initiative-proposed amendment adopted by a vote of the electors, possibly dictate who can run, for instance, for the Office of the Pinellas County Sheriff?[9] For that matter, under the Committee's theory, why would the Pinellas County electorate not have the authority to impose term limits on other state officers, for example its County Court Judges through a charter amendment?

The third inconsistency impacts the interpretation of the terms of § 5.02. The language in section 4.03 ("[t]his document shall in no manner change the status, duties, or responsibilities of the county officers of Pinellas County:" listing the Constitutional Officers) is identical to the language in section 5.02(b) ("[t]his document shall in no manner change the status, duties, or responsibilities of the following boards, authorities, districts and councils:" listing the 16 entities). Because the limitations imposed in § 5.02 in part employed the identical language contained in § 4.03, Section 5.02(a), CharterSection 5.02(b), Charter which limitations it reiterated in the new section 6.04. See discussion supra, at 9-10.

The Legislature's adoption of Chapter 99-451, Laws of Florida, serves to emphasize its original intention in the adoption of

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[9] See discussion pertaining to U.S. Term Limits, Inc. v. Thornton, supra, at 33-34.

the charter in Chapter 80-590, as submitted to the electorate. The amendments in Chapter 99-451 both eliminated certain limitations and repeated the limitations on charter powers vis-à-vis the Constitutional Officers. Therefore, the Committee's attempt to unilaterally propose an amendment to § 4.03 must fail.

D. WHILE THE MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS ARE CHARTER OFFICERS FOR CERTAIN PURPOSES, ANY ATTEMPTED EXERCISE OF HOME RULE POWERS WHICH WOULD CHANGE THE COMPOSITION, ELECTION, TERM OF OFFICE AND COMPENSATION OF MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS WOULD FAIL TO BE IN ACCORDANCE WITH GENERAL LAW, PURSUANT TO § 3.01 OF THE CHARTER

The members of the Board of County Commissioners were at the time of the initiateve five elected Constitutional Officers, as defined in Art. VIII, § 1(e), Fla. Const. Although not parties to this appeal, Petitioners are compelled to cite additional error by the District Court involving the Commissioners.

Among the express limitations on the exercise of local government power in the Charter is the language in section 3.01, as originally approved by the voters: "The legislative body of county government shall be the board of county commissioners in accordance with general law. The composition, election, term of office and compensation of members shall all be in accordance with general law." Code, at CHT:5 [emphasis added]

The phrase "in accordance with general law," in this instance, is a limitation on the powers of the County, and a reservation of those powers to the Legislature. Without such limitation, it is arguable that an amendment imposing a limitation on the number of terms board members may serve would be permitted, if such provision did not conflict with an existing general or special law, or special law approved by the voters. But under the unique terms of this unique Charter, the election and the term of office of board members must conform to those elements presently prescribed under general law. "Accordance" as used in the phrase "in accordance with" is generally defined as "agreement: conformity." Webster's II New Riverside University Dictionary, at 71 (1984 ed.). In short, the election of the Commissioners must be pursuant to the provisions of general law, which do not include term limits.

The Legislature and the Florida electorate are familiar with the concept of limiting the number of terms of their elected officials, as demonstrated by the 1992 amendment to the Constitution imposing term limits on Florida representatives, Florida senators, Florida Lieutenant governor, any office of the Florida cabinet, U.S. Representatives from Florida, and U.S. Senators from Florida.[10] Art. VI, § 4(b), Fla. Const. No elected official from any political subdivision in the State was included in the statewide citizen initiative. Therefore, general law does not provide for term limits for Commissioners.

The Committee's amendment to § 3.01 of the Charter, effectively engrafting an exception to the

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[10] After the decision in U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 115 S. Ct. 1842 (1995), the limitation on terms of U.S. Officers is void, as discussed further supra, at 33-34.

"in accordance with general law" limitation on the election of County Commissioners, is an attempted exercise of home rule power which does not presently exist for Pinellas County. (See text discussing "amendments" supra, at 32-33.) If the amendment is allowed to stand, it changes the qualifications for the office of the Board of County Commissioners, which changes the election of the Commissioners, and accordingly is no longer in accordance with general law which allows for election of Commissioners for unlimited four-year terms.

Accordingly, the District court erred by stating "that the length of time a county commissioner may remain in the position is subject to the amendment process. Absent an amendment to the Constitution or the adoption of a general law limiting the number of terms a member of the Board of County Commissioners may serve, only a Legislatively-proposed amendment to the Pinellas County Charter deleting the provision that elections and terms of office are to be "in accordance with general law," the Committee's amendment engrafting an exception to the limitation is ineffective, and therefore void ab initio. The District Court erred, and the ruling upholding the amendment to section 3.01 of the Charter should be reversed.

E. UNLESS BOTH AMENDMENTS SET FORTH IN THE COMMITTEE'S BALLOT QUESTION SURVIVE THIS CHALLENGE, THE ENTIRE BALLOT QUESTION MUST BE FOUND TO BE VOID AB INITIO

The Committee drafted the ballot question, which intended to amend two sections of the Charter, and circulated it on the Petition Form (R. 14, A. 6). The Second District reviewed that Petition Form in an earlier action on different grounds than those explored in this appeal, in the case of Eight is Enough in Pinellas v. Ruggles, 678 So. 2d 898 (Fla. 2d DCA 1996). Appellants maintain that the instant review of

the Petition Form will persuade this Court to find the ballot question to be incurably void ab initio based on one or more defects.

The Committee's Ballot Title and Summary treated the amendments in a single-subject fashion, and the voters cast a single vote on the full proposal. Nevertheless, as enunciated under the "full text of proposed amendment" portion of the Petition, the proposed amendment was really an amendment to each of two Charter provisions. (A. 6) Following the procedures set forth in section 6.02 of the Charter and section 101.161, Florida Statutes, the Committee presented the Petition to the Board of County Commissioners, which in turn directed the Supervisor to place the verbatim language on the November 1996 ballot, which of course she did.

While Appellants assert that both amendments to the Charter must fail, as an alternative position, if this Court were to determine that the amendment to section 3.01 could independently survive, the ballot question in its entirety must still be ruled invalid. To attempt to save one of the amendments to the Charter would require a rewording of the language of the amendments as set forth in the single Petition and described on the single ballot question.

Florida Courts have consistently held that courts lack jurisdiction to rewrite ballot language once presented to the electors by petitioners. In the case of Smith v. American Airlines, Inc., 606 So. 2d 618 (Fla. 1992), the Supreme Court concluded that the ballot summary language contained in a petition proposing a constitutional amendment involving the ad

valorem taxation of leaseholds was defective, and reluctantly found that the Supreme Court itself had "no authority" to "rewrite the ballot summary to conform to the statute." Id. at 621. See also, McGahey v. McLeod, 135 So. 2d 446, 447 (Fla. 3d DCA 1961) (County commissioners had no authority to add clarifying titles to initiative petition title notwithstanding the fact that it was "apparent that the commission may have acted entirely in accord with the best interests of the public"). See also Iorio v. Citizens for a Fair Tampa, 661 So. 2d 32 (Fla. 2d DCA 1995), affirming Citizens for a Fair Tampa v. Iorio, No. 95-806 (Fla. 13th Jud. Cir. March 3, 1995) at 15 (there "appears to be no legal authority to support the proposition that one individual, acting either as or for the committee chairman, is empowered to permit changes to the wording of an initiative measure after it has been circulated and signed by the requisite number of voters"). (R. 997, A. 12) Based on the prevailing law, the Committee's ballot question was simply invalid, in its separate parts and *in toto*, from its inception.

A review of the petition form demonstrates that the two amendments went to the voters as a unitary ballot question, as the amendment to the Florida Constitution did in 1992. Ray v. Mortham, 742 So. 2d at 1278. In contrast to the Ray case, however, the Committee's ballot question contained no severability clause. This Court found the severability clause in the Ray case to be significant:

> it is clear from the initiative petition that severability was anticipated by the voters. The initiative petition in his case specifically contained a severability clause, which is persuasive of the fact that the framers intended severability to save the amendment in case portions of it were declared invalid. [citations omitted] The full text of the amendment, including the severability clause, was disseminated throughout the state

> prior to the election and was posted conspicuously in every precinct on the day of the election [citing to § 101.171, Fla. Stat. (1991)], thus providing voters with clear notice of severability.

Id. at 1283. Therefore, the Committee's ballot question must fail by virtue of its erroneous impact on the Constitutional Officers, and no ability to save the remaining portion of the question impacting the Commissioners.

As an ancillary issue, the post-election challenge is valid and appropriate. The law is clear that a post-election challenge to a charter amendment is not untimely. In the case of Wadhams v. Board of County Commissioners of Sarasota County, 567 So. 2d 414 (Fla. 1990), where the proposed amendment appeared on the ballot without the required explanatory statement under section 101.161(1), Florida Statutes, this Court rejected "the board's argument that the . . . petitioners should be foreclosed from relief because the present action was not instituted until after the special election." Id. at 417. The Court further explained: "The Board in effect argues that hoodwinking the public is permissible unless the action is challenged prior to the election." Id.

More recently, this Court approved the results in the Wadhams case and supported a post-election invalidation, in Armstrong v. Harris, 773 So. 2d at 18-21. This Court stated as follows:

> The Secretary [of State] in her supplemental brief claims that Armstrong cannot proceed with this suit because the election already has taken place and voters have approved the amendment. The favorable vote of the

> electors, she contends, cleansed the amendment of any defect. We disagree.

Id. at 18. This Court then explained that there is a profound difference between a proposed constitutional amendment which "contains a defect in form" which is "technical and minor," which might be cured by a vote of the electorate, and a proposed constitutional amendment where a "defect goes to the heart of the amendment." In the latter case, the defect "may be fatal," as it was in Armstrong, id. at 18-19, and as it is in the instant case.

In exactly the same way Appellants' challenge to the charter amendment, commenced by the Plaintiff and Intervenor Plaintiffs/Constitutional officers, prior to the November 1996 election, is timely, even though it was ruled on only after the election. Equally significant is the Wadhams Court's conclusion that "it is untenable to state that the defect was cured because a majority of voters voted in the affirmative on the proposed amendment . . .." 567 So. 2d at 417. No number of votes can breathe life into a fatally defective ballot question.

Additionally, the Wadhams challenge went to a mere procedural defect under section 101.161, Florida Statutes, and yet the Supreme Court found that sufficient a ground to strike the amendments to two sections of that county charter. The instant amendment affecting two sections of the Pinellas County Charter constitute at least one substantive (and substantial) defect with respect to the

Constitutional Officers. Cf. Armstrong v. Harris, 773 So. 2d at 20-21. If Petitioners are correct in that the Constitutional Officers may not be governed by the County Charter through a bootstrap amendment to the Charter, as the Petitioners have demonstrated, then the entire ballot question must fail.

As a result of the Committee's attempted amendments, the integrity of the Charter document is at stake. It is contradictory on its face "In the absence of preemptive federal or state statutory or constitutional law, the paramount law of a charter county is its charter. . . . In essence, the charter acts as the county's constitution . . .." Hollywood Inc. v. Broward County, 431 So. 2d at 609. While the Petitioners respect the sentiment of the electors in supporting the amendments to the Charter, Petitioners suggest that this Court's prior rulings must render the instant amendments void, *in toto,* ab initio.

VI. CONCLUSION

Petitioners are asking this Court to uphold the integrity of the Pinellas County Charter. The Second District has before been forced to be the bearer of bad tidings with respect to a voter referendum, and should have assumed that role again in this case. In Charlotte County Board of County Commissioners v. Taylor, 650 So. 2d 146 (Fla. 2d DCA 1995), the Court was compelled to find that a voter-approved amendment to the county's charter was inconsistent with general law provisions, and therefore was unconstitutional under Article VIII, section 1(g). Id. at 148. Petitioners ask this Court to do no less here with respect to both amendments challenged hereunder, for the various reasons stated hereinabove. Petitioners respectfully request that this Court reverse the District Court's Ruling, set aside the Trial Court's ruling, hold that the Charter amendments were void ab initio, and uphold Petitioners' interpretation of the limited home rule nature of Pinellas County's unique special law Charter.

VII. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioners' Initial Brief on the Merits has been served by Hand Delivery on Michael S. Hooker, Esquire and Guy P. McConnell, Esquire, Glenn, Rasmussen & Fogarty, P.A., 100 South Ashley Drive, Suite 1300, Tampa, FL 33601; and has been served by U.S. Mail on Kenza van Assenderp, Esquire, Young, van Assenderp & Varnadoe, P.O. Box 1833, Tallahassee, FL 32302-1833 Marion Hale, Esquire, Johnson, Blakley, et al., 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, Esquire, Holland & Knight, P.O. Box 52687, Jacksonville, FL 32201-2687, Loree Lea French, Esquire, Office of the General Counsel, 117 W. Duval St., Suite 480, Jacksonville, FL 32202-3700, Richard G. Rumrell, Rumrell, Wagner & Costabel LLP, P.O. Box 550668, Jacksonville, FL 32255-0668, this _____ day of March, 2001.

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VIII. CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Brief was prepared and printed in Times New Roman 14-point font, comporting with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure, as recently amended.

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