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THOMAS D. HALL

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IN THE SUPREME COURT  
STATE OF FLORIDA

CLERK, SUPREME COURT  
BY Dy

KARLEEN F. DE BLAKER AS CLERK )  
OF THE CIRCUIT COURT, W. FRED )  
PETTY AS TAX COLLECTOR, and )  
EVERETT S. RICE AS SHERIFF, )  
Intervenor Plaintiffs/Petitioners, )  
v. )  
EIGHT IS ENOUGH IN PINELLAS, )  
Intervenor Defendant/Respondent. )

Case No. SC00-1908

APPLICATION FOR DISCRETIONARY REVIEW OF THE  
DISTRICT COURT OF APPEAL, SECOND DISTRICT  
DISTRICT COURT CASE NUMBER 99-00846

BRIEF OF PETITIONERS ON JURISDICTION

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W. Fred Petty as Tax  
Collector, and Everett S.  
Rice as Sheriff, all of  
Pinellas County, Florida

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	iii
STATEMENT OF THE CASE AND OF THE FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
1.    The Decision Below Expressly Construes a Provision of the State Constitution	3
2.    The Decision Below Expressly Affects a Class of Constitutional Officers	6
CONCLUSION	10
CERTIFICATE OF SERVICE	11

TABLE OF CITATIONS

Cases

	<u>Page</u>
<u>Behr v. Bell</u> , 665 So. 2d 1055 (Fla. 1996)	9
<u>City of Ocala v. Nye</u> , 608 So. 2d 15 (Fla. 1992)	5
<u>City of Waldo v. Alachua County</u> , 249 So. 2d 419 (Fla. 1971)	9
<u>Florida Association of Counties v. Dept. of Administration</u> , 595 So. 2d 42 (Fla. 1992)	5, 6
<u>Florida State Board of Health v. Lewis</u> , 149 So. 2d 41 (Fla. 1963)	7
<u>Heath v. Beckett</u> , 327 So. 2d 3 (Fla. 1976)	8
<u>In Re Certification of Conflict in Motions to Withdraw Filed by Public Defender of the Tenth Judicial Circuit</u> , 636 So. 2d 18 (Fla. 1994)	9
<u>In Re Order on Prosecution of Criminal Appeals By the Tenth Judicial Circuit Pubic Defender</u> , 561 So. 2d 1130 (Fla. 1990)	9
<u>Locke v Hawkes</u> , 595 So. 2d 32 (Fla. 1992)	9
<u>Satz v. Perlmutter</u> , 379 So. 2d 359 (Fla. 1980)	9
<u>Spradley v. State</u> , 293 So. 2d 697 (Fla. 1974)	8
<u>State v. Laiser</u> , 322 So. 2d 490 (Fla. 1975)	8-9
<u>State ex Rel. Volusia County v. Dickinson</u> , 269 So. 2d 9 (Fla. 1972)	6
<u>Taylor v. Tampa Electric Co.</u> , 356 So. 2d 260 (Fla. 1978)	8
<u>Times Publishing Co. v. Ake</u> , 645 So. 2d 1003 (Fla. 2d DCA 1994); aff'd 660 So. 2d 255 (Fla. 1995)	7

## Florida Constitutional Provisions

	<u>Page</u>
Article V, § 3(b) (3)	3, 5, 6, 9, 10
Article V, § 3(b) (4)	7
Article V, § 16	1, 7
Article VIII, § 1(d)	1, 2, 5, 6, 7
Article VIII, § 1(e)	5, 7
Article VIII, § 1(g)	4, 5
Article VIII, § 2(b)	5
Article X, § 14	6

### Special Laws

Chapter 80-590, Laws of Florida	4
---------------------------------	---

### Rules of Court

Rule 9.030(a) (2) (A) (ii), Fla. R. App. P.	3
Rule 9.030(a) (2) (A) (iii), Fla. R. App. P.	3

## STATEMENT OF THE CASE AND OF THE FACTS

The Petitioners, Karleen F. De Blaker as Clerk of the Circuit Court, W. Fred Petty as Tax Collector, and Everett S. Rice as Sheriff, all of Pinellas County, Florida, seek review of a decision of the District Court of Appeal, Second District [A-1].<sup>1</sup> A Petition for Rehearing [A-2] and Petition for Rehearing en Banc [A-3] were timely filed, and subsequently denied on August 8, 2000 [A-4]. Petitioners then timely filed their Notice to Invoke Discretionary Jurisdiction on September 7, 2000. The Petitioners are State Constitutional Officers established under Article VIII, § 1(d), Florida Constitution, and the Office of the Clerk of the Circuit Court is additionally established under Article V, § 16, Florida Constitution.

Petitioners were three of five Intervenor Plaintiffs and three of seven Appellants below; Respondent was the Intervenor Defendant and Appellee. The District Court case was an appeal by the Petitioners from a final judgment in a declaratory action challenging the constitutionality of a referendum question purporting to amend the Pinellas County Limited Home Rule Charter [A-5] by imposing term limits on the charter officers,

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<sup>1</sup> References to documents in the accompanying Appendix are styled A-\_\_, and A-\_\_ at \_\_. Parties will be referred to by their names and by the positions they occupy before this Court.

the members of the Board of County Commissioners, as well as on the non-charter officers, the five Constitutional County Officers established by Article VIII, § 1(d), Florida Constitution. In granting summary judgment for the Respondent, the trial court expressly found no constitutional defect and determined that the Legislatively-established limitations did not preclude locally-initiated amendments to the Charter; further, the trial court determined that the amendments were not precluded by the Special Act-created Charter, general law, or the Constitution [A-1 at 2]. On the same bases, the District Court affirmed with an opinion [A-1 at 6].

#### SUMMARY OF THE ARGUMENT

The Petitioners urge this Court to exercise its discretionary jurisdiction on two grounds. First, in determining that the Charter amendments "were not in conflict with the Charter, the general laws of Florida, or the Florida Constitution," [A-1 at 2], the district court expressly construed the Florida Constitution.

Second, the Petitioners are each Constitutional County Officers whose offices are specifically established by the Florida Constitution. By upholding the locally-initiated Charter amendments which imposed term limits on these non-charter, Constitutional County Officers, and thus amending a

Legislatively-created Charter with express limitations on the delegations of local powers, the decision of the district court expressly affects five classes of Constitutional Officers, three of whom are Petitioners.

Each of these grounds permits this Court to exercise its power of discretionary review pursuant to Article V, § 3(b)(3), Florida Constitution. Because of the impact on both the exercise of home rule powers throughout Florida, and on Constitutional County Officers statewide, Petitioners urge this Court to accept jurisdiction and review the case on the merits.

#### ARGUMENT

This Court "[m]ay review any decision of a district court of appeal that . . . expressly construes a provision of the state . . . constitution, or that expressly affects a class of constitutional . . . officers, . . . ." Art. V, § 3(b)(3), Fla. Const. See also, Rule 9.030(a)(2)(A)(ii) and (iii), Fla. R. App. P. In this case, the Supreme Court may, and Petitioners argue should, exercise its jurisdiction to review the district court's decision on both of the cited grounds.

#### **1. The Decision Below Expressly Construes A Provision of the State Constitution**

Petitioners argued below that because the Pinellas County Charter was a Special Act-created charter, its stated

limitations had the effect of limiting certain of the home rule powers [A-1 at 3, A-2, A-3]. The specific limitations on changing the status, duties, or responsibilities of the Constitutional Officers, Ch. 80-590, §§ 2.06 and 4.03, at 316 and 318, Laws of Fla. [A-5 at 5 and 7], prohibited certain locally-initiated amendments to the Charter [A-1 at 2]. Respondents argued below that such limitations, once the Special Law was approved by vote of the electors, were no longer a bar to the local exercise of non-delegated powers.

Nevertheless, limitations included in the Charter include that recited in Chapter 80-590, § 2.01, at 314, Laws of Florida [A-5 at 3], stating "that Pinellas County has all powers of local self-government that are not inconsistent with general law, with special law approved by the electors, or with the charter itself." [A-1 at 2] That language mirrors the Constitutional limitation on available home rule powers in chartered counties: "[c]ounties 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. Although the district court did not articulate that the Charter itself was a "special law approved by vote of the electors," that fact is apparent in the decision [A-1 at 2].



In holding that "[t]here are no provisions in . . . the Florida Constitution prohibiting charter counties from establishing local term limits" and that the amendments to the Charter which Petitioners have challenged "were not in conflict with the charter, the general laws of Florida or the Florida Constitution," [A-1 at 6], the district court expressly construed the Florida Constitution, thus providing a basis for this Court's exercise of jurisdiction.

Whether the citizen initiative amendment was constitutionally permissible directly stems from the scope of home rule power available under the Florida Constitution and then delegated to the County by the Legislature through the special law approved by the voters. A similar matter was addressed in City of Ocala v. Nye, 608 So. 2d 15, 16 (Fla. 1992), where this court reviewed the city's "home rule powers, article VIII, section 2(b), Florida Constitution." The Court accepted review precisely because the "Fifth District Court of Appeal construed article VIII, section 2(b) of the Florida Constitution." Id. In the instant case, the Second District Court of Appeal construed at least Article VIII, sections 1(d), 1(e), and 1(g) of the Florida Constitution. See A-1 at 4-5.

In Florida Association of Counties v. Dept. of Administration, 595 So. 2d 42 (Fla. 1992), this Court accepted jurisdiction where the district court upheld the

constitutionality of a statute, and in doing so, "construed article X, section 14, of the Florida Constitution, . . . ." Accordingly, the Supreme Court had jurisdiction pursuant to article V, section 3(B)(3). Id. at 42-43. Where the Second District in the instant case reviewed at least three subsections of the Constitution, and expressly ruled on the constitutionality of the amendments to the Pinellas County Charter, this Court likewise has jurisdiction to review the lower court's decision. See also, State ex Rel. Volusia County v. Dickinson, 269 So. 2d 9, 10 (Fla. 1972) (in case testing whether special law created charter had power to levy excise tax, this Court said "[w]e have accepted jurisdiction because this cause clearly raises questions of constitutional construction and is an important public controversy").<sup>2</sup>

**2. The Decision Below Expressly Affects  
A Class of Constitutional Officers**

In considering whether the County had the authority to affect the official offices of the Petitioners, as well as the Property Appraiser and Supervisor of Elections, the district court quoted the limitations in sections 2.06 and 4.03 of the Charter [A-5 at 5 and 7], which in turn cited Article VIII, § 1(d), Florida Constitution; the district court also quoted that

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<sup>2</sup> The Volusia case was decided prior to the 1980 amendment to Article V, § 3(b)(3), so that the Supreme Court review, while discretionary in this area even then, was by writ of certiorari.

constitutional provision [A-1 at 4-5]. This provision of the Constitution creates in every county office of "a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of circuit court."<sup>3</sup> The district court also addressed the general limitations on the offices of the County Commissioners, also noted by the Court to be Constitutionally-created under Article VIII, § 1(e) [A-1 at 5]. Clearly the decision of the district court affects these Constitutional Officers. Further, by ruling upon the powers of local votes in charter counties to alter or limit offices of the Constitutional County Officers, the district court's decision expressly affects six classes of constitutional officers statewide: clerks of the circuit court, property appraisers, sheriffs, supervisors of elections, tax collectors, and members of the boards of county commissioners.

This Court has exercised its jurisdiction in cases involving classes of Constitutional Officers. The standards for determining a "class" include multiple members of a class: for example, all of the justices of the peace are a class, but the

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<sup>3</sup> "The office of the clerk of the circuit court derives its powers and authority from two articles of the Florida Constitution," specifically Article VIII, § 1(d), and Article V, § 16, Florida Constitution. Times Publishing Co. v. Ake, 645 So. 2d 1003, 1004-05 (Fla. 2d DCA 1994); rev. gr. 651 So. 2d 1197; Second District Court of Appeal decision approved 660 So. 2d 255 (Fla. 1995) (jurisdiction under Article V, § 3(b)(4), certified question).

State Treasurer cannot constitute a class. Florida State Board of Health v. Lewis, 149 So. 2d 41 (Fla. 1963). Additionally, a decision which "affects a class of constitutional or state officers"

must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state. Such cases naturally affect all classes of constitutional or state officers, in that the members of these classes are bound by the law the same as any other citizen.

Spradley v. State, 293 So. 2d 697, 701 (Fla. 1974). In the instant case, any ruling directly impacting the ability to continue to serve as a Constitutional County Officer (e.g. term limits) by construction of home rule power statewide necessarily impacts multiple Constitutional Officers statewide.

There is compelling precedent for this Court to accept jurisdiction of a case involving these classes of Constitutional Officers. This Court accepted certiorari petitions for two cases involving clerks of court, where the Second and Fourth Districts' respective decisions affected a class of constitutional officers. See Taylor v. Tampa Electric Co., 356 So. 2d 260, 261, (Fla. 1978), and Heath v. Beckett, 327 So. 2d 3 (Fla. 1976). Similarly, a Fourth District decision was reviewed and later quashed where the decision affected sheriffs, a class of constitutional officers in State v. Laiser, 322 So.


2d 490 (Fla. 1975). Additionally, members of the board of county commissioners in Alachua County were the affected class in the case of City of Waldo v. Alachua County, 249 So. 2d 419 (Fla. 1971), under the since-renumbered section 4 (now section 3) of Article V; although not parties to this request for review, the offices of the board of county commissioners constituted an affected class of Constitutional Officers in the Second District's decision.<sup>4</sup>

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<sup>4</sup> The Supreme Court has accepted both certiorari and discretionary jurisdiction review of decisions affecting other classes of State and Constitutional Officers, e.g. Locke v. Hawkes, 595 So. 2d 32 (Fla. 1992) (State Representatives); Satz v. Perlmutter, 379 So. 2d 359 (Fla. 1980) (State Attorneys); and Behr v. Bell, 665 So. 2d 1055 (Fla. 1996), In Re Certification of Conflict in Motions to Withdraw Filed by Public Defender of the Tenth Judicial Circuit, 636 So. 2d 18 (Fla. 1994), and In Re Order on Prosecution of Criminal Appeals By the Tenth Judicial Circuit Public Defender, 561 So. 2d 1130 (Fla. 1990) (Public Defenders).

## CONCLUSION

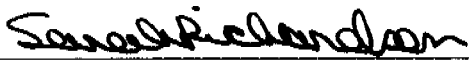
The decision of the District Court of Appeal, Second District, construes Article VIII of the Constitution as it affects the delegations of home rule powers and retained powers of non-charter Constitutional Officers. The decision also directly affects not one, but six classes of constitutional officers, specifically the sovereign constitutional status of clerks of the circuit court, property appraisers, sheriffs, supervisors of election, tax collectors, and the breadth of home rule power of these offices as well as members of boards of county commissioners through Florida. For these reasons, Petitioners respectfully urge this Court to accept jurisdiction of this cause under Article V, § 3(b)(3), Florida Constitution.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Application For Discretionary Review of the District Court of Appeal, Second District, and accompanying Appendix, have been served by U.S. Mail on Michael S. Hooker, Esquire, Glenn, Rasmussen & Fogarty, P.A., 100 South Ashley Drive, Suite 1300, Tampa, FL 33602, Kenza van Assenderp, Esquire, Young, van Assenderp & Varnadoe, P.O. Box 1833, Tallahassee, FL 32302-1833, Marion Hale, Esquire, Johnson, Blakely, et al., 911 Chestnut Street, Clearwater, FL 33756, and Bernie McCabe, State Attorney for the Sixth Judicial Circuit, 14250 49<sup>th</sup> Street North, Room 100, Clearwater FL 33760, this 18<sup>th</sup> day of September, 2000.

  
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