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' REPLY BRIEF ON THE MERITS

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

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III. ARGUMENT

A. HOME RULE POWER CONFERS ONLY SUCH POWER OF SELF-GOVERNANCE AS DELEGATED BY THE CONSTITUTION AND THE LEGISLATURE AND NOT RESTRICTED BY THE CONSTITUTION, GENERAL LAW, AND IN THE CASE OF A CHARTER COUNTY, SPECIAL LAW APPROVED BY VOTE OF THE ELECTORATE

Throughout its brief, Respondent Eight is Enough in Pinellas (hereinafter the "Committee") repeats the truism that Florida counties are vested with broad home rule powers. Nevertheless, the Committee acknowledges, that such powers shall not be "inconsistent with general law, or with special law approved by vote of the electors," Art. VIII, § 1(g), Fla. Const. [emphasis added], but fails to understand the significance of the potential limitations on home rule powers embodied in this Constitutional language. The thrust of Petitioners' appeal can be reduced to a few simple concepts. First, the Pinellas County Home Rule Charter is a charter. Second, the Pinellas County Home Rule Charter is also a special law approved by vote of the electors. Third, this language in section 1(g) has to mean something.

What the language in section 1(g) means is explained in the official Commentary to the Constitution:

> 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.

D'Alemberte, Commentary on Art. VIII, § 1, 26A Fla. Stat. Annot. 157 [emphasis added]. The Committee completely fails to understand the fact and importance of proscription of powers in a charter conceived by a special law, whether it is Pinellas County's, Volusia County's, Jacksonville's, or any other county that may have adopted such a charter or may adopt such a charter in the future.

Petitioners have never advocated that there is a new breed of "limited home rule charter" in Pinellas County, as argued by the Committee, and apparently misapprehended by the Second District. While there is no "limited home rule charter" separate and apart from a "home rule charter," the quantum and configuration of home rule powers in each and every charter is capable of being limited. See, e.g., State v. Sarasota County, 549 So. 2d 659 (Fla. 1989) (Chapter 125 County charter with limitations on bonding level); Alachua County v. Powers, 351 So. 2d 32, 38 (Fla. 1977) (County Board of Commissioners could not interfere with sovereign Clerk of Circuit Court's duties). See, also, Holzendorf v. Bell, 606 So. 2d 645 (Fla. 1st DCA 1992), there the Court held as "constitutionally infirm" a citizen-initiated proposed amendment to the Jacksonville special law-created charter, attempting to impose a referendum requirement on the adoption of any garbage fee assessment, where "the specific authority granted to the council by the legislative act of 1978 to amend the charter without referendum must be construed as a limitation upon the general grant

of referendum authority to the citizens to amend the charter." Id. at 648, 649 [emphasis added]. On this point the Court concluded "that because the proposed amendment sought to usurp the legislature's authority to grant the right of referendum, the amendment was properly found defective by the trial court, ..." Id. at 649.

The Committee is correct in that "the language of the title [to an act] is not binding as to the meaning and application of the act," Carter v. Government Employees Insurance Co., 377 So. 2d 242, 243 (Fla. 1st DCA 1979), disapproved on other grounds in Hartford Accident and Indemnity Co. v. Lackore, 408 So. 2d 1040 (Fla. 1982). However, the Carter Court also stated: "[w]e recognize that courts may look to an act's title in interpreting the intent of the Legislature. . . . However, the title's primary purpose is to give notice of the subject matter contained in the act." Id. While the Charter ballot question title, "Limited Home Rule Charter," Ch. 80-590, § 4, Laws of Fla., may not dispositively govern the application of the Charter terms, it emphatically demonstrates both the Legislature's intent and the description of the act's subject matter as conveyed to and approved by the voters in the 1980 election.

The charter as a special law is critical to understanding the Pinellas County Charter. The Committee envisions a mythical miracle occurring between the adoption of the special law in the spring session of 1980, and the final tally of the votes in October 1980, when a majority of the electors approved the charter by referendum.

What was adopted as a special law peppered with discrete limitations, became, the Committee seems to say, an unlimited charter replicating a locally adopted charter under Chapter 125. Additionally, the Committee urges, all those limitations with respect to the constitutional officers, special acts, and the exercise of certain powers over municipalities suddenly became susceptible to local amendment, rendering them utterly meaningless. The Committee offers no support for its position, because it has never been true that a special law may be locally amended, unless the power to so amend has been delegated and has not otherwise been limited by general law or the special law instrument itself.

B. WHETHER THERE IS PREEMPTIVE SUPERIOR LAW REGARDING TERM LIMITS IS IRRELEVANT TO THIS CASE BECAUSE THE TRUE ISSUE IS WHETHER THE COMMITTEE' AMENDMENT VIOLATES THE LEGISLATURE'S LIMITATIONS ON LOCAL POWERS

While the Committee has pursued this case in an effort to establish and attempt to preserve the imposition of term limits on the members of the Board of County Commissioners and the five constitutional officers, the Clerk of Circuit Court, Property Appraiser, Sheriff, Supervisor of Elections, and Tax Collector, Petitioners continue to vigorously defend this case because it impacts all aspects of their sovereign representative capacities. The Clerk and the Sheriff may or may not care about term limits, per se; they are, however, committed to preserving the original and proper legal status of their Offices. An illegally-adopted provision imposing term limits

or any other duty or limitation on their Offices, impermissibly impinges on their sovereign, non-charter-officer status.

For that reason, it does not matter whether the Constitution or general law preempts the local imposition of term limits on Petitioners' Offices. Although Petitioners do not concede the truth of the Committee's premise that there is no preemptive superior law regarding term limits, for the purposes of this appeal, Petitioners need not defend that point. In contradistinction, the Constitution preempts the local imposition, through a charter amendment, of limitations or duties on these constitutional county officers who are not charter officers. Holzendorf v. Bell, 606 So. 2d at 648.

Pinellas County's Charter, as presently constituted, cannot alter the status, duties or responsibilities of these Petitioners, nor of the other three Constitutional officers. This preemption was an integral part of the Charter as adopted in 1980:

> The County shall not have the power, under any circumstances, to . . . change the status, duties, or responsibilities of the County Officers specified in s. 1(d), Art. VIII of the State Constitution. . .. 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.

§§ 2.06, 4.03, Pinellas County Charter, Chapter 80-590, Laws of Florida, pp. 316, 318. Despite the Committee's baseless assertion that such limitations did not exist in the Charter prior to the Legislature's adoption of expanded powers for the Board of

County Commissioners, § 6.04 was added to the Pinellas County Charter by the Legislature, stating in pertinent part:

> Any other section of the Pinellas County Charter, chapter 80-590, Laws of Florida, notwithstanding, <u>except for any proposed amendment affecting the status, duties, or responsibilities of the county officers referenced in ss. 2.06 and 4.03</u> of this Charter, charter amendments . . . shall be placed directly on the ballot for approval or rejection by the voters and it shall not be a requirement that any such proposed amendments need to be referred to or approved by the Legislature prior to any such placement on the ballot.

Ch. 99-451, Laws of Fla. [emphasis added]. The Legislature's language in this amendment both mirrors and incorporates by reference the pre-existing limitations on altering the status of the constitutional officers, which Petitioners have been asserting for years. Accordingly, the Committee's amendment must fail.

While not addressing herein the impact that inclusion in their charter may have on the constitutional offices in the consolidated government of the City of Jacksonville and Duval County, those officers are without question charter officers. <u>See</u> Jacksonville City Code, Arts. 8, 9, 10, 11, and 12. The Constitutional Officers in Pinellas County are not Charter Officers. The Jacksonville/Duval consolidated government charter was itself adopted by special law, Chapter 92-341, Laws of Florida, readopting and amending Chapter 67-1320, Laws of Florida. In its amended version (as had been true in the 1967 special law), the Legislature proposed, and the voters approved, the establishment of its section 1(d), Article VIII constitutional

officers as Charter officers. See Ch. 92-341, Laws of Fla., Arts. 8 (Sheriff), 9 (Supervisor of Elections), 10 (Property Appraiser), 11 (Tax Collector), 12 & § 12.02 (Clerk as judicial officer). Therefore, the ordinance-adopted, referendum-approved amendment imposing term limits on Jacksonville's pure charter officers suggests a legitimacy for and purity of the delegated limitations not found in the Committee's attempted Pinellas Charter amendment. See Annotated Ordinance Code, City of Jacksonville, § 8.04. Therefore, the Committee's reliance on City of Jacksonville v. Cook, 765 So. 2d 289, 293 (Fla. 1st DCA 2000), is misplaced.

The Committee misconstrues Petitioner's reliance on the case of U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995). That decision is relevant in that the Supreme Court found that a state constitution was not permitted to impose qualifications on a federal, non-state officer. Petitioners maintain that in precisely the same way, a county charter is not permitted to impose qualifications on a state, non-charter officer. The analogy is apt. And where a special law proposes a County Charter, unless the Legislature has established the Constitutional Officers as Charter Officers, there is no question that unilateral local qualifications may not be imposed on those non-charter officers.

C. THE COMMITTEE MISAPPLIES EXISTING CASE LAW TO SUPPORT THE ERRONEOUS PROPOSITION THAT A CHARTER AMENDMENT MAY IMPOSE LIMITATIONS ON NON-CHARTER OFFICERS

The Committee misapplies the cases of School Board of Palm Beach County v. Winchester, 565 So. 2d 1350 (Fla. 1990) (hereinafter " Winchester"), and County of Volusia v. Quinn, 700 So. 2d 474 (Fla. 5th DCA 1997) (hereinafter "Quinn"), to posit that Florida law allows the imposition of duties, responsibilities, or restrictions by a charter on non-charter officials. This interpretation flouts the expressly narrow rulings of these cases, and completely ignores the intervening curative legislation relied on by both this Court and Fifth District, respectively.

The Committee erroneously applies Winchester to support the proposition that the powers in the Pinellas County Charter may be extended by vote of the electorate without legislative intervention. Winchester involved a 1971 special law affecting the election of School Board members, which under Article III, § 11(a)(1), Fla. Const., was technically unconstitutional because at the time Palm Beach was a non-charter County. Five years before the case reached this Court in 1990, the County adopted a charter (R.328, A.5). The Supreme Court held "[u]nder the special circumstances of this case," having earlier noted that the County had "elected school board members under this act for almost eighteen years," "we find that it is reasonable to uphold that statute because it was not challenged prior to the Palm Beach County's becoming a chartered county and because its provisions are presently constitutional under article III, section 11, Florida Constitution." Id. at 1352 [emphasis added]. It was then-

presently constitutional because the legislature acted, and the voters approved the act by referendum vote. None of the curative factors in Winchester are found in the case at bar.[1]

Similarly, Appellants also misapply Quinn. The issue involved whether the Volusia County electorate could mandate that school board elections be non-partisan by a locally initiated amendment to its special law-created charter. The amendment was challenged, and the Fifth District, relying on Winchester, answered the question, "whether charter counties can elect their school board members on a nonpartisan basis," in the affirmative. Significantly, however, the Court stated: "In doing so, we note that after the trial court entered its ruling, the Florida Legislature enacted two special acts directing that school board elections in Volusia County be conducted on a nonpartisan basis.[FN] [FN: *See* Ch. 97-338 [2]; 97-357[sic][3], Laws of Florida.]" Id. at

[1] Supporting Petitioners' position that Winchester was a case this Court intended to be used in Palm Beach County's limited and unique circumstance, one dissenting opinion characterized the decision as potential "bad law:" "While such a ruling may not be harmful in this case, and may in fact be highly desirable from the point of view of the school board, it carries with it the potential for doing harm under other factual circumstances, and this is what makes 'bad law.'" Id. at 1353, Ehrlich, J., dissenting.

[2] The first law established the Volusia County school board offices as nonpartisan, the qualifications for candidacy, and expressly ratified the 1994 charter amendment challenged in Quinn. Ch. 97-338, § 2 at 34, Laws of Fla.

[3] The second law proposed an amendment to the Volusia County Charter establishing school board elections to be held as nonpartisan, subject to voter approval by referendum. Ch. 97-353, Laws of Fla. (A. 13)

475 [emphasis added]. Again, the legislative intervention, not found in Pinellas County, was essential to effect changes to the charter beyond the scope of delegated powers.[4]

D. THE SECOND DISTRICT FAILED TO CONSIDER THE SIGNIFICANCE OF THE SPECIAL LAW SOURCE OF THE PINELLAS COUNTY CHARTER, AS WELL AS THE PREEMPTION OF THE CLERK, THE SHERIFF, AND OTHER CONSTITUTIONAL OFFICERS FROM CHARTER OFFICER STATUS

The Committee mistakenly attributes to Petitioners an argument that the constitutional officers are "untouchable" by local charter amendment, (Answer Brief at 28). This stems from its, and the Second District's, failure to consider the special law-nature of the Charter. Petitioners instead support the important distinction between a locally generated charter, under Chapter 125, and the special law-generated charter that requires legislative intervention to remove legislatively imposed proscriptions.

Furthermore, the Committee argues that references to the Clerk of the Circuit Court and the Supervisor of Elections in section 6.02 of the Charter constitutes

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[4] Although neither the Quinn nor the Winchester cases cited authority for an intervening "fix" of a defect, there is authority for doing so. See, e.g., County of Orange v. Webster, 546 So. 2d 1033 (Fla. 1989) (holding that a general law acting as curative legislation ratified the adoption of Orange County's home rule charter adopted under section 125.82, notwithstanding failure to comply with certain statutory requirements). See also Sullivan v. Volusia County Canvassing Board, 679 So. 2d 1206, 1207 (Fla. 5th DCA 1996) ("After-the-fact validating legislation is perfectly proper to cure procedural defects").

charter-imposed duties. (Answer Brief at 28 n.7) The Committee clearly does not understand the already-established duties of these offices. All constitutional officer Clerks of the Court serve as Clerk of the Board pursuant to the Constitution and the described duties are within the ambit of that role. Art. VIII, § 1(d), Fla. Const. Additionally, all Supervisors of Elections are charged with the statutory responsibility of screening signatures collected by citizen initiative. § 99.097, Fla. Stat. The Charter provision merely restates existing law.

The Committee accuses Petitioners of "conveniently omitting to point out that special law proposing the Charter did not become effective until approved by vote of the electorate." (Answer Brief at 32) This is at best disingenuous. Petitioners repeated throughout their Initial Brief the fact of the required voter approval. See, e.g. pages 5, 12, 17, 18, 21, and 38. Nevertheless, the role of the electorate in the adoption of Ch. 80-590 was not as "enactors" of the law, as claimed by the Committee (Answer Brief at 33). Instead, as required by section 1(g) of Article VIII of the Constitution, for any charter adopted under either Chapter 125 or by special law, a vote of the electors is a constitutional procedural mandate.[5] It does not make the electors a Super-legislative body, nor does such vote convert a special law into some other

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[5] In fact, the validity of any special law is conditioned on either publication of notice of intent to enact the law, or approval by referendum vote of the electors affected by the law. Art. III, § 10, Fla. Const.

creature. Nor does it change or ameliorate legislatively enacted limitations.

The Committee also completely misapprehends the notion of delegated powers, and chastises the County for prior amendments to the Charter, which were locally initiated. As fully discussed in the Initial Brief (at 8 and 25), these amendments were ministerial and patently within the proscribed powers delegated by the Legislature in the Charter document. All substantive amendments expanding those powers have been initiated by the Legislature (Initial Brief at 6, 8-10, 25-26). In stark contrast, the Committee attempted to impermissibly expand the County's powers by imposing additional qualifications on the non-charter constitutional officers.

The Second District's conclusion, and the Committee's contention, that absent limitations actually stated in the amendment provisions Article of this special law charter, there are no limitations on the power to locally amend, renders meaningless all other limitations sprinkled throughout the Charter. The Pinellas County Home Rule Charter is a charter, but it is also, unless repealed by the Legislature, a special law that must be read in its entirety to ascertain the delegated powers and limitations. Holzendorf v. Bell, 606 So. 2d 645.

Additionally, the Committee misreads what the Legislature did in Ch. 99-451, Laws of Fla., by adopting § 6.04 of the Charter, claiming it "proposed a limitation on locally-initiated amendments affecting the status, duties and responsibilities of the

County Officers," and concluding that if such limitations existed they would not have to be repeated. It is precisely because 99-451 intended to remove certain limits in the powers earlier delegated by the Charter, that the Legislature restated with specificity other established limitations which it intended to preserve over the newly delegated power. Ch. 99-451, §1, at 231, Laws of Fla. See Initial Brief at 10-11 for further discussion; A-8 for text of Law.

E. THE COMMITTEE FAILS TO RECOGNIZE THE INCONSISTENCIES CREATED BY ITS AMENDMENT TO THE CHARTER

To the Committee, sections 2.06 and 4.03 of the Charter are two different expressions of legislative limitations. (Reply Brief at 40-44) The Committee argues that, pursuant to section 2.06 of the Charter, the Board as the "County" [6] is prohibited from affecting the Constitutional Officers in any manner. However, the Committee also argues that the electorate is permitted to act as a Super-legislative body with more power than the Board or the Legislature, by appending an exception to section 4.03. This reasoning is wildly inconsistent with the fact that as a matter of law, the electorate's power is derivative from the same source as the

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[6] The Committee cites the definition of "county" in § 125.011(1), Fla. Stat., to include the board of county commissioners. While not very different from the Charter's definition, § 1.02, Charter, that statute applies only to "ss. 125.011-125.019," and states, "'county' means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, ..." Pinellas County was not one of those three constitutional chartered counties.

power of its governing body; the electorate's power cannot surpass the power of its governing body, in this case the Legislature. See discussion, Initial Brief at 27-28.

The Committee's reliance on Neu v. Miami Herald Publishing Co., 462 So. 2d 821 (Fla. 1985) is completely misplaced. While this Court stated that the "legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law," id. at 824, this Court did not say that the Legislature may not bind the hands of future political subdivisions to whom it has delegated some but not all of its power. In line with Neu's real message, Petitioners maintain that the 1980 Legislature barred the 1996 electorate from unilaterally amending the Charter in certain areas where powers were not delegated, or were expressly withheld.

F. THE COMMITTEE'S AMENDMENT NECESSARILY AFFECTS THE SHERIFF'S AND CLERK'S STATUS, WHICH IS TO SAY "STANDING OR POSITION," AS NON-CHARTER CONSTITUTIONAL OFFICERS

For Petitioner's response to the Committee's discussion at 46-47, Answer Brief, see Initial Brief at 30-31. One statement of Committee's requires clarification: Petitioners did agree with the statement that terms limits per se do not alter the status of an officer, but the Committee failed to complete Petitioners' argument that the attempt to impose any limits on a non-charter officer through the charter is an attempt to change the status of that officer. It is not an issue of quantity of years of service, as the Committee suggests, but of quality of sovereignty as Petitioners have argued.

G. BECAUSE A PORTION OF THE BALLOT QUESTION IS INVALID, THE ENTIRE QUESTION, AND BOTH AMENDMENTS TO THE CHARTER, MUST BE STRICKEN

The Committee erroneously relies on law addressing statutory construction (Answer Brief at 47-48) to argue that a ballot question, which should be governed by election law, may be severed and saved in part. The cases relied upon by Petitioners (Initial Brief at 41-46) govern this issue in this case because the critical answer must come from the body of election law, not statutory law. The Committee's one foray into election law, Ray v. Mortham, 742 So. 2d 1276 (Fla. 1999), Answer Brief at 49 n.18, suggests that this Court arguably might have considered severing the unconstitutional provisions of the Constitutional amendment in the absence of the severance provision in the ballot petition. However, if this Court engages in a statutory analysis as it did in the Ray case, rather than a ballot question analysis as Petitioners urge is required in this case, then the absence of a severance provision in the Committee's ballot question should be as instructive of voter intent as the presence of a severance provision was in Ray. Nevertheless, Petitioners maintain that under established law, this Court may not rewrite a partially unconstitutional ballot question after the proponents of the question have presented it for placement on the ballot.

IV. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioners' Reply Brief on the Merits has been served by U.S. Mail on Michael S. Hooker, Esquire and Guy P. McConnell, Esquire, Glenn, Rasmussen & Fogarty, P.A., 100 South Ashley Drive, Suite 1300, Tampa, FL 33601; 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 April, 2001.

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V. CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Reply 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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