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**IN THE SUPREME COURT**
**STATE OF FLORIDA**



KARLEEN F. DeBLAKER,
as Clerk of The Circuit Court;
and EVERETT S. RICE, as Sheriff,

Petitioners,

CASE NO. SC00-1908

vs.

EIGHT IS ENOUGH IN
PINELLAS, a Political Committee,

Respondent.

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

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# RESPONDENT'S SUPPLEMENTAL BRIEF

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September 19, 2001

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## STATEMENT OF CASE AND FACTS

Pursuant to an Order issued after oral argument on August 29, 2001, the Court has requested Respondent Eight is Enough in Pinellas County (the "Committee") and Petitioners DeBlaker and Rice ("Petitioners") to file supplemental briefs regarding the cases cited by the First District Court of Appeal in *City of Jacksonville v. Cook*, 765 So. 2d 289 (Fla. 1st DCA 2000) ("*Cook*"). This supplemental brief responds to the Court's request. The Committee's March 26, 2001, Answer Brief contains a detailed Statement of Case and Statement of Facts. The Committee hereby adopts its prior Statement of Case and Statement of Facts and incorporates those statements by reference into this supplemental brief.

## STANDARD OF REVIEW

The Committee's Answer Brief contains a statement regarding the Court's standard of review. The Committee hereby adopts and incorporates its prior statement regarding the appropriate review standard into this supplemental brief.

## SUMMARY OF ARGUMENT

Petitioners have not previously pursued the arguments advanced by the Petitioner in the *Cook* case. In fact, Petitioners have taken positions that are inconsistent with the arguments presented in the other case. Petitioners should not be allowed to assert new, previously unasserted contentions at this late juncture.

Even if the Petitioners are permitted to pursue new arguments for the first time now, the same result obtains. Term limits relate to matters of eligibility for office, rather than to qualifications or disqualifications from office. Pursuant to prior decisions of this Court and the commonly accepted definitions of these terms, eligibility best describes and characterizes term limits. Because term limits constitute a matter of eligibility, no constitutional preemption of term limits exists.

Moreover, no constitutional preemption exists even if term limits are characterized as a qualification or disqualification, rather than a matter of eligibility. To determine whether any preemption of qualifications exists, the Court historically has looked to the specific office in question to determine whether any specific qualifications for that office already have been specified by the Constitution. No preemption exists if the Constitution fails to specify qualifications for the specific office. The Constitution is silent as to specific qualifications for the subject county officers. Thus, no preemption of qualifications exists for these offices even if the Court deems term limits to be a qualification.

Similarly, no constitutional preemption exists if the Court opts to characterize term limits as a disqualification. As with qualifications, unless the Constitution contains specific disqualifications for the particular office in question, no disqualifications preemption exists. Again, the constitutional provision creating the

subject offices is silent as to any disqualifications for the offices. Thus, even if term limits are viewed as disqualifications, no constitutional preemption exists because the Constitution is silent regarding this matter as to these offices.

Moreover, Constitution Article III, Section 11(a)(1) authorizes the term limits amendment enacted by the Pinellas County electorate even if qualifications or disqualifications for the county offices otherwise are deemed to exist in the Constitution. This section authorizes chartered counties to enact provisions relating to the election of their county officers so long as the enactment is not inconsistent with a specific provision of the Constitution. The Constitution is silent as to term limits for the county officers. Thus, the county is empowered pursuant to Article III, Section 11(a)(1) to enact term limits as to their county officers.

Finally, the *Cook* Petitioner's assertion that the clerk of the circuit court is an Article V officer that is untouchable by the county electorate misinterprets the Constitution. Although referenced in Article V, the clerk of the circuit court actually is a "county officer" under Article VIII, Section 1(d). Because the clerk of the circuit court is a county officer, the county electorate is entitled to act with respect to the clerk of the circuit court. For these reasons and the reasons detailed in the Committee's previous brief, the Court should affirm the decision of the Second District Court of Appeal in this case.

## ARGUMENT

### Introduction

The Court's August 29, 2001, Order authorizing the Committee and Petitioners to file supplemental briefs addressing cases cited in the *Cook* decision puts the Committee in the unusual position of responding to arguments that were not raised by Petitioners or addressed by the lower courts in this case. The Petitioner in *Cook* (the "*Cook* Petitioner") based his challenge to the Jacksonville term limits provision primarily on a preemption argument premised on Article VI, Section 4 of the Florida Constitution (the "Constitution") and this Court's half century-old decision in *Thomas v. State ex rel. Cobb*, 58 So. 2d 173 (Fla. 1952). Perhaps recognizing the problems with that argument, Petitioners have not even deigned to address this argument until now, focusing instead on the supposedly unique Pinellas County Home Rule Charter. Because Petitioners did not raise the *Cook* Petitioner's argument either in the lower courts or before this Court, Petitioners have forfeited these arguments and should be foreclosed from asserting them for the first time in what will be the third brief submitted before the third court to hear this matter.[1]

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[1] This Court repeatedly has stated that it will decline to consider for the first time on appeal points that were not raised in the courts below. *See, e.g., Morales v. Sperry Rand Corporation*, 601 So. 2d 538, 540 (Fla. 1992) (the Court declines to

Ironically, some of the positions previously taken by Petitioners are even flatly contradictory to the arguments pursued by the *Cook* Petitioner. For instance, rather than assert that the Constitution absolutely bars term limits at the local level, as the *Cook* Petitioner apparently contends, Petitioners have asserted that the Pinellas County electorate simply used the wrong method to adopt term limits. Petitioners have argued repeatedly that, although the electorate could not have initiated the terms limits provision because of the supposedly "limited" nature of the Pinellas County Charter, the State Legislature could have undertaken a term

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address claim that had not been raised at trial court level or discussed by the District Court of Appeal); *In re Beverly*, 342 So. 2d 481, 489 (Fla. 1977) (the Court should decline to review questions that the trial court did not have a full and adequate opportunity to consider); *Stein v. Brown Properties, Inc.*, 104 So. 2d 495, 500 (Fla. 1958) (the Court declined to consider a contention that was not raised in the lower court). Under this well established principle, new issues should not be injected into a case after it reaches the Supreme Court.

Significantly, the Court routinely has applied this principle even in cases involving constitutional issues and arguments. *See, e.g., Silver v. State*, 188 So. 2d 300, 301 (Fla. 1966) (the Court declined to consider a constitutional argument raised for the first time on appeal). The mere assertion of a constitutional argument at the trial court level does not "open the door" to other previously unasserted constitutional arguments in a later appeal. *See, e.g., Thrushin v. State*, 425 So. 2d 1126, 1129 (Fla. 1982) (the Court declined to consider additional constitutional arguments not raised in the courts below, notwithstanding that other constitutional arguments had been made); *Whitted v. State*, 362 So. 2d 668, 671 (Fla. 1978). Thus, in accordance with this long-established precedent, the Court should decline to consider for the first time in this appeal any specific constitutional argument that was not raised by Petitioners and addressed by the courts below.

limits amendment to the Charter.[2] Of course, as highlighted by Justice Pariente at the August 29, 2001, oral argument, Petitioners' position in this regard is diametrically opposed to the *Cook* Petitioner's argument that local term limits, whether initiated locally or at the state level, are constitutionally preempted. The inescapable conclusion is that Petitioners heretofore have not put much stock in the arguments asserted in *Cook*. Accordingly, any "about face" position adopted by Petitioners at this "eleventh hour" supplemental briefing should be viewed with a healthy dose of skepticism.

Moreover, even if Petitioners are allowed to reverse field and assert now for the first time the *Cook* arguments, the decisions of the Second District Court of Appeal in *Eight is Enough* and the First District Court of Appeal in *Cook* still should be affirmed. For the reasons detailed in this supplemental brief and the

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[2] For instance, Petitioners asserted at page 15 of their Memorandum of Law in Support of Intervenor Plaintiffs' Motion for Summary Judgment and in Opposition to Intervenor Defendant "Eight is Enough" Political Committee's Motion for Summary Judgment ("Petitioners' Summary Judgment Memorandum") that "[i]f the Legislature provided by general law that counties might place additional conditions of eligibility or qualifications to run for election to state constitutional county office, a charter county delegated such authority could then (and only then), regulate . . . ." (R 594); *See also* Petitioners' Summary Judgment Memorandum, pp. 28-29 (Petitioners again acknowledge that the Legislature possesses the authority to authorize the county electorate to act regarding term limits). (R 607-8) Petitioners also reiterated this position and affirmed their belief that the Legislature could act in this area at the August 29, 2001, oral argument.

briefs of the City of Jacksonville and the Solicitor General's *Amicus Curiae* brief filed in *Cook*, the *Cook* Petitioner's constitutional arguments are meritless and should be rejected by this Court.

## I. BECAUSE TERM LIMITS RELATE TO "ELIGIBILITY" FOR OFFICE, RATHER THAN A "QUALIFICATION" OR "DISQUALIFICATION," NO CONSTITUTIONAL PREEMPTION EXISTS HERE.

Substantial disagreement plainly exists among the parties in *Cook* regarding the appropriate nomenclature that should be used to characterize term limits. On the one hand, the *Cook* Petitioner vehemently argues that term limits constitute a "disqualification" from office. Cook obviously adopts the "disqualification" moniker because he believes it bolsters his argument that term limits are preempted by a similarly titled section of the Constitution. Conversely, the City of Jacksonville strenuously asserts that term limits properly should be characterized as a "qualification" for office based on this Court's last pronouncement on the subject. Under this approach, preemption nevertheless does not exist because the Constitution is silent regarding any qualifications for the pertinent county offices.

In contrast to the positions adopted by the parties in *Cook*, the approach urged by the Committee in the present case is that term limits are best described by use of the term "eligibility." The Committee adopts the "eligibility" description not just because it enjoys support in the case law, but also because this label offers the

"best fit" with what term limits really are and accomplish. Indeed, undertaking a substantive analysis of the real meanings of the various labels that have been alternatively used to characterize term limits, leads inescapably to the conclusion that "eligibility" most accurately describes the true nature of term limits.

To understand better why term limits have been the subject of various and sometimes divergent labels, it is instructive to review the appellations that have been used in the past to describe term limits and to consider the contexts in which these labels arose. The United States Supreme Court's only apparent pronouncement on the subject came in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), where the Court wrestled with whether Arkansas legislation imposing term limits on federal legislators passed muster under the United States Constitution. In addressing whether the power to impose such term limits was reserved to the states, the Supreme Court referred to term limits at one point as "qualifications," but also spoke of such limits in terms of eligibility to hold office, stating that term limits prohibit "the name of an otherwise-eligible candidate for Congress from appearing on the general election ballot. . . ." (emphasis added) 514 U.S. at 783.

Closer to home, this Court has in recent years alternatively referred to term limits as both "qualifications" and "disqualifications." In *Advisory Opinion to the*

*Attorney General—Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225 (Fla. 1991), the Court analyzed whether the 1992 amendment to the Constitution imposing term limits on certain state and federal officers satisfied the "single-subject" and "ballot title" requirements. In upholding the amendment, the Court commented that the term limits provision would add a "disqualification on holding office." 592 So. 2d at 228. Eight years later, in *Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999), the Court addressed the identical term limits amendment in the context of assessing whether the limits placed on Florida's federal legislators could be severed from the balance of the amendment. Reciting its prior decision in *Limited Political Terms*, the Court this time referred to the state term limits amendment as a "qualification on holding office." 742 So. 2d at 1285.

Further, this Court also has previously referred to term limits as relating to "eligibility" to hold office. In *Ervin v. Collins*, 85 So. 2d 852 (Fla. 1956), the Court construed a provision of the old Constitution that effectively imposed a term limit on the governor, prohibiting him from being reelected after holding office for a full four-year term, and stated, "It is pertinent to point out that the makers of the Constitution impose ineligibility for reelection only on those elected under Section 2, Article VI. . . ." 85 So. 2d at 855 (emphasis added).

A review of the Constitution concerning usage of these terms further

muddies the water. The Constitution alternatively has referred to term limits and related requirements for office as "qualifications," "disqualifications," and "eligibility." For instance, in Article IV, Section 5, the "term limit" for governor is included in a section with the term "qualifications" in the title. However, the term limits provision for legislators, the lieutenant governor, and the cabinet in Article VI, Section 4 displays the heading "Disqualifications." Further, Article V, Section 8, which relates to the judiciary, sets forth what are clearly "qualifications" and "disqualifications" for judges, but under a heading labeled "Eligibility."

Simply put, the terms "qualification," "disqualification," and "eligibility" have been used alternatively, and sometimes interchangeably, by the courts and even the Constitution in reference to term limits. However, the Committee submits that the constitutional issue in this case should not turn on how either the courts or the Constitution may have incidentally or casually referred to term limits in the past. The imprecise use of mere labels that were originally conceived in different contexts and invoked for other purposes, provides no real guidance concerning how term limits should be properly characterized for purposes of the present constitutional preemption analysis.

Rather, to reach the correct result, the Court must look beyond the non-technical or informal use of terms in the past and determine what term limits really are

for purposes of the constitutional issue at stake. To do so, the Court should examine how these terms actually have been defined and assess anew the proper characterization of term limits based on these definitions. Such an approach avoids the semantical "word games" that are possible based on the prior rather haphazard usage of labels like "qualification," "disqualification," and "eligibility."

The most precise and, indeed, probably the only definitions provided by this Court for any of these terms is found in *Holley v. Adams*, 238 So. 2d 401 (Fla. 1970). In *Holley*, the Court stated that "the word 'qualified' is defined as 'fitted (as by endowments or accomplishments) for a given purpose: competent, fit.'" 238 So. 2d at 405. The Court further noted that "qualification" relates "to the academic, professional, or mental requirements" for holding an office. *Id.* Simply put, a qualification relates to "the performance of the acts which the person chosen is required to perform before he can enter into office." *Id.*[3]

*Holley* also provides this Court's only clear-cut definition of the term "eligibility." The Court differentiated "eligibility" from "qualification," stating:

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[3] Traditionally, "qualifications" include such things as age, residency, academic, professional, or mental requirements. *See, e.g., State v. Grassi*, 532 So. 2d 1055 (Fla. 1988) (residency requirement is a qualification); *Thomas v. State ex rel Cobb*, 58 So. 2d 173 (Fla. 1952) (graduate teacher's certificate is an added qualification); *Holley v. Adams*, 238 So. 2d 401, 405 (Fla. 1970) ("the requirement in [*Cobb*] related to the academic, professional or mental requirements as a

> The word "eligible," when used in speaking of a candidate for office as being eligible, means capable of being chosen, while qualified means the performance of the acts which the person chosen is required to perform before he can enter into office. 238 So. 2d at 405. (emphasis added) (citation omitted)

In short, pursuant to *Holley*, "eligibility" relates to the capability of being chosen for an office, whereas "qualification" refers to the performance of acts that a person is required to perform before entering into office, and encompasses such requirements as academic, professional, and mental credentials.

As recognized by the Solicitor General in his *Amicus Curiae* brief, the Court in *Holley* relied on the foregoing distinction between "eligibility" and "qualification" to uphold the "resign-to-run" law that had been passed by the Florida Legislature. In *Holley*, the Court concluded that the "resign-to-run" law was an eligibility requirement rather than a qualification, because it related to a candidate's capability of being chosen for office. In reaching that conclusion, the Court expressly discussed and distinguished the old *Cobb* decision, noting that the teacher's certificate requirement at issue in *Cobb* was substantially different from a statute pertaining to eligibility for office:

> The requirement of the Florida Graduate Teacher's Certificate was clearly a qualification for office and quite

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qualification for holding office."); *see also* Article III, Section 15, "Terms and qualifications of legislators."

> different from a statute pertaining to eligibility as a candidate for election. The requirement in the [*Cobb*] case related to the academic, professional, or mental requirements as a qualification for holding office. [The eligibility statute at issue in *Holley*] is not a legislative determination that a person who currently holds the office of Circuit Judge is not fit to be a Supreme Court Justice. 238 So. 2d at 405.[4]

Although this Court has not previously undertaken to precisely define the term "disqualification" in an election-related context, this term generally is defined to mean "anything that disqualifies; that which renders unfit, unsuitable, or inadequate." Webster's Deluxe Unabridged Dictionary, 2[d] Ed. As commonly used, a "disqualification" thus is something that makes a person unfit, unsuitable, or inadequate for office. For instance, mental incompetency "disqualifies" a person from voting or holding office because it renders the person unfit, unsuitable, or inadequate for office. *See, e.g.*, Article VI, Section 4(a), Constitution. Similarly, attainment of a maximum age "disqualifies" a person from entering or any longer holding an office. *See, e.g.*, Article V, Section 8, Constitution.

Although at first blush, "disqualification" might appear to be similar to or the same as "eligibility," there is actually a difference. Eligibility goes to one's

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[4] The Court in *Holley* also expressly distinguished its prior decision in *Wilson v. Newell*, 223 So. 2d 734 (Fla. 1969), discussed below. Specifically, the Court noted that the residency requirement at issue in *Wilson* clearly constituted an

capability to be *chosen* for office or, as *Holley* put it, to become "a candidate for election." 238 So. 2d at 405 (emphasis added). For this reason, eligibility always applies before the office is attained and impacts a person's threshold ability to seek or become a candidate for a prospective office. Conversely, a "disqualification" relates to the inherent disabilities that may render a person "unfit" to hold an office that he or she may seek or has already attained. A disqualification thus can force a person who was initially capable of being chosen for the office to step down during the term of office based on some disability. Whereas a disqualification could disable a person from office either before or after reaching the office, eligibility always impacts a mere candidate for the office and thus disallows him or her from even becoming a "candidate" for office.[5]

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additional "qualification" for office, whereas the provision at issue in *Holley* related to the "eligibility of those who may become candidates." 238 So. 2d at 406.

[5] Stated differently, a matter of "eligibility" relates solely to one's capability to be chosen for an office before an election, whereas "disqualification" has application both before and after an election. For instance, a person who is "ineligible" is prevented from even running for or serving as a candidate for a forthcoming office. Conversely, a disqualification both can prevent a person from running for office or alternatively force a person who was otherwise "eligible" (and thus capable of being initially chosen for the office) to relinquish the office before the office term even expires. For instance, a person who is a felon or mentally incompetent is precluded or "disqualified" from even seeking election to an office. Additionally, a person who was otherwise "eligible" and thus capable of being initially chosen for the office can be forced to step down while holding office if he is later adjudged a felon or determined to be mentally incompetent. Put simply, "disqualifications" relate to the inherent qualities of the person and can apply both

A "qualification" for office is thus different from "eligibility" to hold office, both of which are different from a "disqualification" from office.[6] As *Holley* made clear, a person can be eminently "qualified" in terms of an academic or a professional requirement, but simply be "ineligible" or incapable of being chosen for a forthcoming office because, for instance, he or she already holds another office. 238 So. 2d at 405. Alternatively, a person may possess all of the academic or professional requirements for office, but be "disqualified" from seeking or retaining the office because, for instance, he is adjudged a felon, either before or after entering office.

Application of the foregoing definitions to the term limits analysis leads to the inescapable conclusion that term limits relate to "eligibility" to run for office, rather than a "qualification" for or even a "disqualification" from office. As discussed in *Holley*, eligibility means the capability of being chosen for office. If a county officer already has served two full terms in Pinellas County, that person is

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before and after the pertinent election, whereas "eligibility" relates not to the person's qualities *per se*, but rather to the person's threshold capability of becoming a candidate for election to the office.

[6] In this respect, it is perhaps instructive to note that a person who lacks the necessary "qualifications" for office is not actually "disqualified" from seeking or holding the office. Rather, this person would be "unqualified" to hold that office. "Disqualification" refers to a classification of disability based on fitness or suitability for office, not a failure to have attained the academic or professional credentials necessary to qualify for the office.

simply not "capable of being chosen" or serving as a candidate for a third term. The term-limited person is, in effect, "ineligible" to run for office again—even though the person otherwise may be well "qualified" to run in the sense of having attained the necessary academic or professional requirements, and even though not otherwise "disqualified" by reason of inherent unfitness or unsuitability for office.

In short, term limits do not relate to the attainment of academic or professional credentials or "the performance of acts" required to be performed before entering office and thus are not "qualifications" for office. Similarly, term limits do not render a person inherently unfit or inadequate for a particular office and thus do not constitute a "disqualification" pertaining to that office. Rather, like the "resign-to-run" law at issue in *Holley*, term limits relate to whether a person is capable of being chosen for office and thus whether he or she is "eligible" to become a candidate for the office in question.

For readily apparent reasons, the *Cook* Petitioner has latched onto the "disqualification" label to describe term limits, whether apparently imposed at the national, state, or county level. Of course, the obvious motive for invoking this identifying label is that "Disqualifications" is the title given to a section of the Constitution containing term limits for other officers. The *Cook* Petitioner clearly hopes that the "title" reference in the Constitution to term limits as

"disqualifications" will convince this Court that the Constitution has thus preempted the field as to all other conceivable disqualifications from holding office, including term limits construed as "disqualifications."

The foregoing argument conveniently overlooks the fact that the "Disqualifications" heading given to Article VI, Section 4 of the Constitution has no legal or interpretative impact whatsoever. Indeed, under the Constitution's express terms, "titles and subtitles shall not be used in construction" of the Constitution. Article X, Section 12(h); *see also Carter v. Government Employees Insurance Company*, 377 So. 2d 242, 243 (Fla. 1st DCA 1979), *cert. denied*, 389 So. 2d 1108 (Fla. 1980) (language of a title is not binding as to a provision's meaning and application); *Agner v. Smith*, 167 So. 2d 86, 89 (Fla. 1st DCA 1964), *cert. denied*, 172 So. 2d 598 (Fla. 1965) (unless otherwise specified in the provision itself, title generally is nothing more than a catch phrase inserted as an aid or convenience to research and does not have legal effect). Because the word "disqualification" does not otherwise appear in Article VI, Section 4, and because the mere use of that word in the title of that section cannot alone properly form a basis for characterizing term limits, the *Cook* Petitioner's reliance on the

supposedly preemptive exclusions set forth in Article VI, Section 4 is clearly misplaced.[7]

Another problem with the *Cook* Petitioner's argument that Constitution Article VI Section 4 preempts the field with respect to "disqualifications" from office, is that the majority in *Holley* heard and rejected precisely that argument in upholding the "resign-to-run" law. Specifically, Chief Justice Ervin argued in his *Holley* dissent that Section 4, Article VI sets forth all of the constitutional "disqualifications" to hold public office and thus necessarily preempts the field as to any additional "disqualifications," including the "resign-to-run" law. 238 So. 2d at 408-09. However, the *Holley* majority brushed aside this argument, concluding that the "resign-to-run" law related to "eligibility" to run for office, rather than fitness ("qualification") or unfitness ("disqualification") to hold office.[8]

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[7] Similarly, the mere fact that the 1992 state-level term limits amendment was placed in Article VI, Section 4(b) does not indicate that term limits are "disqualifications." Indeed, term limits alternatively appear in another section of the Constitution expressly labeled "qualifications." *See* Article IV, Section 5(c), Constitution. Again, "titles" are not authoritative and certainly not determinative of constitutional interpretation questions. Rather, the Court should examine the technical definitions of these labels and apply the one that most completely and accurately encompasses term limits.

[8] The *Cook* Petitioner's insistence that the plaintiff in *Holley* had a "choice" to seek another office is a distinction without a difference. The term limits provision at issue in this case also provides candidates with "choices." For instance, a candidate who is ineligible for election to a specific office because of term limits can simply choose to seek election to another office. Moreover, the

Accordingly, the precedent that most closely mirrors the issues raised in *Cook* and, in fact, that resolves these issues is *Holley*. Term limits, like the "resign-to-run" law in *Holley*, relate to eligibility to run for office. Moreover, as the *Holley* majority correctly reasoned, matters of eligibility are not preempted by the "disqualifications" provision in Article VI or any other Constitution section that deals generally or specifically with elective office. Thus, like the "resign-to-run" law, term limits fall outside any area preempted by the Constitution and are thus an appropriate subject for the exercise of the Pinellas County electorate's home rule power. In short, the "disqualifications" preemption argument advocated by the *Cook* Petitioner fails here for the same reason it failed in *Holley*.

## II. EVEN IF TERM LIMITS ARE DEEMED TO BE A "QUALIFICATION" OR "DISQUALIFICATION," RATHER THAN A MATTER OF "ELIGIBILITY," THE PINELLAS COUNTY TERM LIMITS AMENDMENT IS STILL CONSISTENT WITH THE CONSTITUTION.

Although the Committee believes that term limits constitute a matter of "eligibility" for the reasons detailed above, the outcome of this case ironically would be the same even if the Court disagreed and opted to characterize term limits as either a "qualification" or a "disqualification." As noted, both the Constitution

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discussion of "choice" in *Holley* is nothing more that dicta. The fundamental holding of the case is that the resign-to-run law is a matter of eligibility, rather than a qualification, and thus is not preempted by the Constitution.

and this Court have employed the terms "eligibility," "qualification," and "disqualification" almost synonymously, and sometimes interchangeably, when referring to term limits. Whereas a distinction does exist among these terms and a reasoned application of this Court's definitions of these terms necessarily casts term limits as an eligibility issue, this characterization is nevertheless not critical to the outcome of this appeal. Rather, the critical issue is whether the Constitution preempts the subject of term limits, regardless of how they are ultimately labeled by the Court or even referred to in the Constitution. Because no constitutional preemption exists with respect to term limits, whether construed as either a qualification or a disqualification, the Pinellas County term limits initiative at issue here passes constitutional muster.

### A. Because the Constitution Specifies No "Qualifications" for the County Offices, No Preemption Exists Even if Term Limits Are Treated as a "Qualification."

The preemption argument advanced by the *Cook* Petitioner is premised almost entirely on this Court's opinion in *Thomas v. State ex rel Cobb*, 58 So. 2d 173 (Fla. 1952), a decision rendered nearly 50 years ago under a now-outdated

version of the Constitution.[9] In *Cobb*, the Court struck down a statute requiring that a candidate for superintendent of public instruction possess a graduate teacher's certificate. In reaching this result, the Court relied on Article VI, Section 5, of the 1885 Constitution, which directed the Legislature to impose certain limitations on the ability of persons to hold office. Under that section, the Legislature was expressly required to enact laws excluding from office persons who had fought duels, bet on elections, and been convicted of bribery, perjury, or larceny. Relying on old Article VI, Section 5, the Court concluded that exclusions contained therein constituted the exclusive list of disabilities or qualifications for office possible under the old Constitution, thus preempting the legislatively-imposed additional teacher's certificate qualification. 58 So. 2d at 183.

As a threshold matter, it should be noted that *Cobb* is no longer authoritative because it was decided under a different version of the Constitution. The pertinent section of the 1885 Constitution that formed the underpinning of *Cobb* holding is no longer even contained in the Constitution. Although the *Cook* Petitioner seeks

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[9] Although the *Cook* Petitioner has artfully drafted his brief to lend the appearance that considerable authority supports his position, a careful examination of that brief reveals that it relies almost exclusively on a single case, *Cobb.* In contrast, as discussed below, the Committee's position here is supported by literally every on-point decision handed down by this Court since *Cobb*, including *Wilson v. Newell*, 223 So. 2d 734 (Fla. 1969); *Holley v. Adams*, 238 So. 2d 401 (Fla.

to equate Article VI, Section 4 of the Constitution with old Article VI, Section 5, a cursory review of these two sections reveals that they are substantially different.[10] Accordingly, any reliance on *Cobb* is misplaced in light of the enactment of a new and significantly different Constitution since the *Cobb* decision.

More importantly, the decisions of this Court handed down since 1952 reflect a substantial departure from the approach followed in *Cobb*. The first decision in this line of cases was *Wilson v. Newell*, 223 So. 2d 734 (Fla. 1969). In *Wilson*, the Court considered whether a legislative provision that prescribed qualifications for a county-level office was constitutional. Significantly, rather

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1970); *State ex rel. Askew v. Thomas*, 293 So. 2d 40 (Fla. 1974), and *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988).

[10] Article VI, Section 5 of the 1885 Constitution in effect at the time *Cobb* was decided bore the heading "Power to Exclude Criminals from Holding Office and Right to Vote," and provided as follows:

> Section 5. The Legislature shall have power to, and shall, enact the necessary laws to exclude from every office of honor, power, trust or profit, civil or military, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, larceny or of infamous crime, or who shall make, or become directly or indirectly interested in, any bet or wager, the result of which shall depend upon any election; or that shall hereafter fight a duel or send or accept a challenge to fight, or that shall be second to either party, or that shall be the bearer of such challenge or acceptance; but the legal disability shall not accrue until after trial and conviction by due form of law.

In contrast, Article VI, Section 4(a) currently states:

> (a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

than follow the *Cobb* approach of looking for generalized qualifications or disqualifications in the Constitution, the Court looked to the specific provision creating the pertinent office to determine whether the Constitution contained any particularized qualifications for the office. 223 So. 2d at 735. Because the Court determined that the specific provision creating the office in question set forth specific constitutional qualifications for that office, the Court concluded that the Constitution barred the Legislature from adding any additional qualifications for the office. In short, *Wilson* did not find preemption of qualifications for public offices based on the generalized "disqualifications" section relied on in *Cobb*, but rather only by resort to particularized qualifications found in the Constitution that pertained to the offices in question.

The Court followed the identical office-specific approach almost twenty years later in *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988). As in *Wilson*, the Court again examined the provision creating the pertinent office to ascertain whether the Constitution set forth any specific qualifications for that office. Because the pertinent constitutional provision contained a qualification for the subject office, the Court ruled that the Legislature was barred from adding any additional qualifications for that office. 532 So. 2d at 1056. As in *Wilson*, the Court found a preemption of qualifications for the subject office only because the office-specific

constitutional provision prescribed qualifications for that office, not because the generalized exclusions set forth in Article VI, Section 4 were deemed to be preemptive.

In short, both *Wilson* and *Grassi* scrutinized the specific constitutional provisions relating to the specific office in question to determine whether the Constitution contained sufficiently precise qualifications for the office to preempt the Legislature from imposing any additional qualifications. Obviously, if the *Cobb* approach were still "good law" as of the time *Wilson* and *Grassi* were decided, the Court would not have been obliged to undertake a search for office-specific qualifications in the Constitution. Instead, the Court simply could have cited to the old *Cobb* decision for the putative proposition that the generalized exclusions contained in Article VI, Section 4 preempt all qualifications for literally all offices throughout the State. The Court's office-specific search for preemptive qualifications in *Wilson* and *Grassi* thus evidenced a palpable change in how the Court has undertaken to decide "qualifications" preemption issues since *Cobb*.

However, the evisceration of the *Cobb* approach is best illustrated by the Court's decision in *State ex rel Askew v. Thomas*, 293 So. 2d 40 (Fla. 1974). In *Askew*, the Court again addressed the validity of a legislative provision imposing an additional qualification on a constitutionally-created office. Specifically, the

legislation provided that the office of school board member shall be vacated when the member relocates from the residence area from which he was elected. 293 So. 2d at 41. The officeholder contended that this requirement created an additional qualification for the office in contravention of the Constitution. *Id.* As in *Wilson* and *Grassi*, the Court looked to the specific constitutional provision creating the school board office to determine whether that section contained any qualifications:

> We have consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements. This "constitutional voice" is the direct voice of the people which controls and cannot be changed by their representatives—the legislators. [footnoted omitted] First, however, we must look to the constitutional provision to see if indeed this basic predicate for invoking the rule is present in our case. It does not appear to be. 293 So. 2d at 42 (emphasis added).

The Court then specifically reviewed Constitution Article IX, Section 4(a), which established the school board office, to determine the existence of any constitutionally-prescribed qualifications for that office. Concluding that this section lacked any preemptive qualifications for this constitutional office, the *Askew* Court upheld the statute creating a new qualification for the office, stating:

> Respondent reads [this section of the Constitution] as setting forth the qualifications of the school board members whereas we see it as simply saying that such school board members shall be "chosen . . . as provided

> by law." No qualifications are mentioned; therefore, the constitutional principle urged by respondent and mentioned above is not invoked. 293 So. 2d at 42 (emphasis in original).

Perhaps even more demonstrably than *Wilson* and *Grassi*, the *Askew* decision signified a marked departure from the half-century old *Cobb* approach advocated here by the *Cook* Petitioner. *Cobb* held that the generalized disabilities set forth in old Article VI, Section 5 "preempted" the field as to all qualifications for all offices. However, unlike *Cobb*, the Court in *Askew* did not utilize any general disability language to find a qualifications preemption for public offices. Rather, in *Askew*, as in *Wilson* before and *Grassi* after, the Court looked to the specific constitutional section creating the office to determine whether that section contained any specific qualifications for the office. Because the provision creating the school board office contained no qualifications, the Court concluded the Constitution did not preempt the field as to qualifications for that office and the Legislature was thus free to act.

Although the parties to the *Cook* case have sought (perhaps judiciously) to skirt this issue, there frankly is no way to reconcile this Court's ruling in *Askew* with a continued adherence to the old *Cobb* formula. If the exclusions found in new Article VI, Section 4 had the same expansive preclusive force as the generalized disabilities found in old Article VI, Section 5, the Court simply could

not have decided *Askew* as it did. Any finding that new Article VI, Section 4 preempts the field as to all qualifications for all offices necessarily would have required the Court to strike down the new legislatively-imposed school board qualification that was expressly upheld in *Askew*. Simply put, if the Court still followed the *Cobb* approach, the Court could not have reached the result it did in *Askew*.[11] *Cobb* thus can no longer be good law.

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[11] The *Cook* Petitioner's attempt to distinguish *Askew* on the basis of the "as provided for" language contained in Article IX, Section 4(a) is completely unpersuasive. Specifically, the *Cook* Petitioner maintains that this language expressly authorized the Legislature to enact qualifications for the school board office, effectively creating an "exception" to the preemption of such qualifications that otherwise supposedly existed. However, before even addressing the "as provided by law" argument, the *Askew* Court determined that the relevant constitutional section containing the language simply did not deal with "qualifications." The Court reasoned that, because the Constitution did not prescribe qualifications for the office of school board member, the field was open for legislative imposition of such qualifications in the form of a residency requirement.

Ironically, the *Cook* Petitioner's attempt to distinguish *Askew* based on the "as provided by law" language is also completely undermined by this Court's subsequent decision in *Grassi*. In the latter case, the Court expressly rejected an almost identical "as provided by law" argument, stating:

> [T]he voters of the State of Florida amended article VIII, section 1(e), of the Florida Constitution to read in pertinent part:
>
> (e) Commissioners. . . . One commissioner residing in each district shall be elected *as provided by law* [emphasis in original]
>
> . . . The state contends that the 1984 amendment makes it clear that article VIII, section 1(e), "delegates the establishment of specific county commissioner qualifications to the legislature." [citation omitted] We

In sum, the Court's decisions since *Cobb* demonstrate that the Court has adopted a different approach when considering the validity of provisions relating to qualifications for office. In literally all of the decisions handed down since adoption of the new Constitution, the Court has examined the constitutional provisions relating to the offices in question to determine whether those precise sections contain any qualifications for the offices. If the Constitution prescribes specific qualifications for the relevant office, the field is preempted and neither the Legislature nor a home rule charter county can impose additional qualifications with respect to that office. *See, e.g., Wilson* and *Grassi.* Conversely, if the constitutional provisions relating to the specific office are silent regarding qualifications, no preemption exists, and the Legislature or a home rule charter county is free to act to impose qualifications on the pertinent office. *See, e.g., Askew.*

In the present case, if term limits are deemed to constitute a "qualification" for the subject county offices, the electorate is empowered under the home rule powers doctrine to impose term limits as to these offices, because the Constitution

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> disagree. This new language modifies "shall be elected," not the residency requirement. 532 So. 2d at 1056.

In other words, the Court in *Grassi* held that the "as provided by law" language is not an authorization to impose qualifications, but rather a statement of how the subject elections will be regulated. The identical language as contained in *Askew* necessarily must be construed the same way.

simply prescribes no qualifications for these offices.[12] The specific constitutional section relating to the county offices is Article VIII, Section 1(d). As explained by the City of Jacksonville and the Solicitor General in their respective briefs, that section simply does not purport to set forth any qualifications for the county officers. Just as Article IX, Section 4(a) was silent regarding qualifications for the school board officers at issue in *Askew*, Article VIII, Section 1(d) is silent regarding the "county officers" at issue in this case.[13] Because the Constitution thus does not create any qualifications for these county offices, no constitutional preemption of qualifications as to these offices exists. In short, pursuant to the approach adopted by this Court in literally every on-point case since *Cobb*, the Pinellas County electorate is free to enact term limits as to these county officers, even if the Court concludes that term limits constitute a "qualification," rather than a matter of "eligibility." *See, e.g., Wilson*; *Grassi*; and *Askew*.

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[12] Of course, a home rule power county's authority to impose qualifications on an office is limited to offices of local concern. Accordingly, the Committee does not contend that the Pinellas County electorate could validly impose qualifications for non-county officers or officials or the statewide judiciary.

[13] The portion of Article VIII, Section 1(d) providing that "any county officer may be chosen in another manner" is not a statement of either "qualifications" or "disqualifications." This language is similar to the "as provided by law" language discussed in footnote 11 above. For the same reasons the Court decided in *Grassi* that the "as provided by law" language was unrelated to qualifications, the Court must construe the foregoing portion of Article VIII, Section 1(d) to relate to how the officers are selected, rather than to their qualifications or disqualifications.

B. Even if Viewed as a "Disqualification" from County Offices, Term Limits Are Not Preempted by the Constitution.

A threshold problem with the Cook Petitioner's argument that the Constitution preempts the field regarding all "disqualifications" from office is that Article VI, Section 4 exclusions were in no way intended to preempt the field with respect to all possible "disqualifications." Indeed, both qualifications for and disqualifications from particular offices are literally strewn throughout the Constitution. *See, e.g.*, Article III, Section 15(c) (imposing age and residency requirements for legislators); Article IV, Section 5(b) (imposing requirements for the governor, lieutenant governor, and cabinet members, and term limits on the governor); Article V, Section 8 (imposing, among other things, an age disqualification on judges); Article V, Section 17 (imposing residency and other requirements for state attorneys); Article V, Section 18 (imposing, among other things, a residency requirement for public defenders); Article X, Section 2(d) (imposing qualifications for personnel and officers of the national guard). Obviously, if the exclusions contained in Article VI, Section 4 were intended to be preclusive, there would not be the litany of other qualifications and disqualifications interspersed elsewhere in the Constitution.

Again, the only apparent case in the history of Florida jurisprudence that even conceivably supports the *Cook* Petitioner's "disqualifications" preemption

argument is the half-century-old *Cobb* decision. However, even if *Cobb* were still good law, the case is distinguishable both legally and factually. As noted, *Cobb* was decided under a 19th Century version of the Constitution that obviously is no longer in effect. The general disability language contained in old Constitution Article VI, Section 5 is again facially different from the disability language set forth in new Constitution Article VI, Section 4.

By the same token, the new language in Article VI, Section 4 reflects no design or intent to set forth an exclusive list of disqualifications from office. Any argument to the contrary is belied by other particularized qualifications and disqualifications for office found elsewhere in the Constitution. Moreover, the courts repeatedly have approved legislation imposing additional qualifications or disqualifications on various offices. *See, e.g., Askew*; *Bodner v. Gray*, 129 So. 2d 419 (Fla. 1961); *Advisory Opinion to the Governor*, 23 So. 2d 158 (Fla. 1945); *State v. Ocean Shore Improvement Dist.*, 156 So. 433 (Fla. 1934).

Further, it is important to note that *Cobb* was a "qualifications" case, not a "disqualifications" case as contended by the *Cook* Petitioner. Specifically, *Cobb* found a constitutional preemption of what clearly was a "qualification" for office—

the acquisition of a graduate teacher's certificate.[14] *See Holley*, 238 So. 2d at 406. In other words, *Cobb* did not find an exclusion of a disqualification for office, but rather an exclusion of a qualification for office. Accordingly, if term limits constitute disqualifications from office, as argued by the *Cook* Petitioner, a strict reading of *Cobb* does not even mandate their preemption in this case.[15]

Finally, and perhaps most importantly, even if term limits are construed as disqualifications from office, the same preemption analysis utilized by this Court in every case since *Cobb* necessarily would have to govern the preemption of term limits *qua* disqualifications. Specifically, before the Court could find a preemption of all disqualifications from office, the Court would have to look for provisions in the Constitution dealing with the specific office in question. As with qualifications,

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[14] *State ex rel. Attorney General v. George*, 3 So. 81 (Fla. 1887), which was also cited by the *Cook* Petitioner, is distinguishable for the same reasons as *Cobb*. Like *Cobb*, the 19th Century *George* case was a "qualifications" case decided under a long outdated version of the Florida Constitution.

[15] The Petitioners in both this case and *Cook* may attempt to circumvent this readily apparent distinction of *Cobb* by arguing that *Cobb* nevertheless controls because disqualifications and qualifications are merely flip sides of the same coin and thus the preemption of qualifications in *Cobb* also necessarily preempts all disqualifications. However, beyond the distinction between qualifications and disqualifications discussed in footnote 6 above, if disqualifications were really the same thing as qualifications, the title "Disqualifications" used in Article VI, Section 4 may as well read "Qualifications." But no one can argue with a straight face that Article VI, Section 4 purports to set forth a list, exclusive or otherwise, of "qualifications" for office. It follows that, if Article VI, Section 4 does not contain

the Court could not find preemption of all disqualifications or exclusions from an office unless there were specific disqualifications as to that office already contained in the Constitution.

*Holley v. Adams*, 238 So. 2d 401 (Fla. 1970), underscores that any preemption analysis that addresses disqualifications necessarily must follow the same approach utilized by this Court with respect to preemption of qualifications. Again, in *Holley*, the issue was whether a "resign-to-run" law forbidding office-seekers from running for new office without first resigning from a current office was constitutional. Whereas the Court construed the "resign-to-run" law as an "eligibility" requirement, the *Cook* Petitioner appears to acknowledge here that the law alternatively could be construed as a "disqualification" from office. [16] Specifically, because the law excluded a current officeholder from running for new

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a preclusive array of qualifications for office, there could not possibly be any preemption of qualifications for all offices pursuant to that section.

[16] As the Solicitor General correctly noted in his *Amicus Curiae* brief, pp. 17-18, the *Cook* Petitioner maintains that a "disqualification" renders a person "unfit or otherwise incapable of holding office." *See Cook* Petitioner's Initial Brief of Petitioner at page 25, footnote 14 (emphasis added). This definition of "disqualification" is virtually identical to the definition of "eligibility" in *Holley,* which was "capable of being chosen." 238 So. 2d at 405. Because "disqualification" pursuant to the *Cook* Petitioner's definition and "eligibility" pursuant to the *Holley* definition both go to one's capacity to be chosen for or to hold office, the *Cook* Petitioner has tacitly conceded that the "resign-to-run" law at issue in *Holley* alternatively can be construed as a "disqualification" from office.

office, the law could be characterized as rendering the person unfit for the second office, which is consistent with the definition of a "disqualification" discussed above. Just as a person who has been adjudicated mentally incompetent or convicted of a felony is disqualified from seeking office, a person who already holds another office might be deemed "disqualified" from seeking a second office.

If the "resign-to-run" law is alternatively construed in this fashion as a "disqualification" from office, *Holley* demonstrates that the Article VI, Section 4 disqualifications preemption claimed by the *Cook* Petitioner simply cannot obtain. Again, relying exclusively on *Cobb*, the *Cook* Petitioner has asserted that Article VI, Section 4 preempts all disabilities or exclusions pertaining to every office throughout the State. If this were still the Court's formula for preemption, *Holley* could not possibly have reached the result it did. Assuming *arguendo* that the "resign-to-run" law effectively is a "disqualification" (as apparently acknowledged by the *Cook* Petitioner), the constitutional preemption of all disqualifications found in *Cobb* necessarily would have precluded the "resign-to-run" disqualification that *Holley* expressly upheld. By declining to find an across-the-board preemption of an exclusion from office in *Holley*, the Court again necessarily departed from the approach it took almost 50 years ago in *Cobb*.

*Holley* thus illustrates that a general disabilities provision such as set forth in

Article VI, Section 4, applying generically to all offices could not preempt the field as to all disqualifications for office because otherwise the "resign-to-run" law, characterized as a "disqualification," could not have been upheld. Viewed as a "disqualification," versus an "eligibility" case, *Holley* thus stands for the proposition that, as with qualifications, the Court will not find preemption of disqualifications or exclusions from office unless specific disqualifications exist in the Constitution pertaining to the particular office in question. A mere general disabilities provision is insufficient to preempt the field as to all disqualifications for office. Only a particular disqualification set forth in the Constitution as to a particular office can effect preemption of all disqualifications as to that office.

As with qualifications for office, the specific section of the Constitution applicable to the county officers involved in this case is conspicuously silent regarding any disqualifications for these offices. Article VIII, Section 1(d) simply sets forth no exclusions or disabilities that in any way could be construed as a disqualification from these offices. Accordingly, even if term limits constitute a disqualification from office, the disqualification field is not preempted with respect to the "county officers" identified in Article VIII, Section 1(d), and the Pinellas County electorate thus is free to impose term limits on its county officers.

In what amounts to a classic "flood gates" argument, the *Cook* Petitioner

has ominously predicted that allowance of the local term limits at issue in this case will pave the way for the Legislature to impose all manner of ridiculous requirements for office. Indeed, Cook has even warned that, if this Court rules in favor of the electorate here and upholds the term limits measures, the Legislature might even impose term limits on judges. Similarly, the *Cook* Petitioner asserts that an affirmance of these cases might embolden counties to impose various other onerous conditions as a prerequisite to holding office, including financial requirements and criminal-misdemeanor restrictions. The Court should view this argument for what it is – a "scare tactic."

First, any attempted imposition of term limits on the judiciary would be expressly disallowed because, unlike the "county officers" involved in this case, judges are subject to both "qualifications" and "disqualifications" under the explicit terms of the Constitution. Specifically, Article V, Section 8 expressly prescribes qualifications for judgeship, including serving as an elector of the State and as a member of the Florida Bar for a specified duration. Article V, Section 8 similarly prescribes disqualifications precluding judgeship, such as the attainment of a maximum age. Under *Askew*, *Holley*, and the other authorities cited above, the specification in the Constitution of both qualifications and disqualifications relating to judges expressly preempts the field with respect to the judiciary, thus

prohibiting the Legislature or a chartered county from acting to impose any other condition, requirement, or exclusion pertaining to these offices, including term limits. Additionally, neither the Legislature nor a county electorate possesses *carte blanche* authority to impose any unreasonable restriction on the ability to run for office. The principle is well established under Florida law that, although restrictions can be enacted regarding elections, the restrictions ultimately must be reasonable. *See, e.g., Richman v. Shevin*, 354 So. 2d 1200, 1203 (Fla. 1977), *cert. denied*, 439 U.S. 953 (1978); *Vieira v. Slaughter*, 318 So. 2d 490 (Fla. 1st DCA 1975), *cert. denied*, 341 So. 2d 293 (Fla. 1976). Any attempt by the Legislature or a county electorate to impose an unfair or unduly burdensome condition or requirement on an office or candidate undoubtedly would be challenged on the legal grounds discussed here and disposed of summarily by the judiciary.[17]

Finally, if anything, the only flood waters that might conceivably overrun the

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[17] Further, when considering this supposed parade of horribles and catastrophes that might befall an affirmance here, this Court should adhere to the well-worn and time-honored tradition of deciding only the case that it has currently before it. *See, e.g., Fieldhouse v. Public Health Trust of Dade County*, 374 So. 2d 476, 478 (Fla. 1979), *cert. denied*, 444 U.S. 1062 (1980) (the Court's duty is to examine the facts as they exist and to resolve all doubts in favor of constitutionality rather than to envision theoretical combinations of factors that might render an enactment unconstitutional). To properly resolve this particular case, the Court simply does not have to address or worry about every hypothetical, far-fetched adverse consequence that an ingenious advocate might be able to devise.

gates as a result of this case flow precisely in the opposite direction. As this Court is undoubtedly aware and as Petitioners have pointed out, numerous counties and municipalities have enacted term limits for various officials, including county commissioners, county officers, city commissioners, and mayors. *See, e.g.,* Petitioners' Summary Judgment Memorandum, p. 16. (R 595) If the Court were to adopt the position urged by the *Cook* Petitioner, Article VI, Section 4 would preempt the local imposition of term limits as to literally all offices, which would necessarily invalidate each and every existing term limits measure pertaining to every local officer throughout the entire State! Such a result not only would be draconian, but also fundamentally unfair to the electors who repeatedly have expressed their clear desire to place legitimate temporal limits on their elected officials.

In sum the same preemption approach and analysis should be applied by the Court regardless of whether term limits are deemed to be a qualification or a disqualification. Consistent with the approach that it has uniformly and consistently adopted ever since *Cobb*, the Court should look to Article VIII, Section 1(d), the only constitutional provision relating to the county officers positions in question, to determine whether that section specifies qualifications and disqualifications. If Article VIII, Section 1(d) is silent in this regard, the county electorate is free to impose such qualifications or disqualifications under its broad home rule power, so

long as the enactment does not expressly contravene any other superior law. Because Article VIII, Section 1(d) contains absolutely no qualifications or disqualifications as to the county officers at issue, and because, as discussed in the Committee's prior brief, local term limits do not run afoul of any other superior law, the Pinellas County term limits initiative is constitutional and within the proper exercise of home rule powers, whether viewed as a qualification, disqualification, or a matter of eligibility.

## III. ARTICLE III, SECTION 11(a)(1) FURTHER AUTHORIZES THE TERM LIMITS AMENDMENT.

Even if qualifications or disqualifications otherwise were preempted by the Constitution, Article III, Section 11(a)(1) ("Section 11(a)(1)") nevertheless supports the validity of the term limits amendment in this case. *See City of Jacksonville v. Cook*, 765 So. 2d 289, 293 (Fla. 1st DCA 2000). Whereas Section 11(a)(1) generally prohibits any special laws regarding the election of local governmental officials, this section expressly authorizes the enactment of special laws in chartered counties that impact the election of charter county officers:

> (a) There shall be no special law or general law of local application pertaining to:
>
> > (1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies. (emphasis added)

Because the Pinellas County Charter and the term limits amendment constitute a special law, Section 11(a)(1) authorizes the present amendment, even assuming *arguendo* that general qualifications or disqualifications pertaining to the subject county officers are otherwise dealt with in the Constitution.[18]

As a threshold matter, the Pinellas County term limits amendment qualifies as a special law for purposes of Section 11(a)(1). Pursuant to Constitution Article X, Section 12(g), "special law" is defined to include a "special or local law." Petitioners have steadfastly insisted that the Charter is a "special law" because it was initiated via a special act of the Legislature. If the Charter is a special law for this reason, it certainly must remain a special law even after it was amended pursuant to the express initiative provisions found in the Charter itself. *See also* Committee's Answer Brief, p. 31. Also, because the subject term limits amendment was launched at the local level by the electorate via charter initiative and approved by the referendum vote of the electorate, the amendment necessarily constitutes a "local law," in addition to a "special law." Accordingly, whether

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[18] Petitioners in this case have conceded below that term limits are a subject within the purview of Section 11(a)(1). Specifically, Petitioners' Summary Judgment Memorandum acknowledged at page 21 that "the term limits initiative here is within the scope of article III, § 11(1)(a) (sic) of the Constitution. . . ." (R 600) Again, Petitioners should not be permitted to "reverse field" to adopt a contrary position at this late juncture of the case.

construed as a special law initiated by the Legislature (as contended by Petitioners) or as a local law initiated by the electorate via charter amendment, the Pinellas County term limits provision constitutes a Section 11(a)(1) "special law."

Because the term limits amendment constitutes a special law, the electorate is expressly empowered by Section 11(a)(1) to adopt this law to impact the election of its county officers, regardless of any qualifications or disqualifications for these officers otherwise found in the Constitution. As a matter of law, the Court must construe provisions of the Constitution as in harmony with one another. *See, e.g.*, *Askew v. Game and Fresh Water Fish Commission*, 336 So. 2d 556, 560 (Fla. 1976) (Constitution must be construed as a harmonious whole). Similarly, the Court must proceed from the premise that all sections in the Constitution were placed there for a reason and give effect to all provisions of the Constitution. *See, e.g.*, *Chiles v. Phelps*, 714 So. 2d 453, 459 (Fla. 1998) (Court is precluded from construing Constitution in a manner that renders a provision superfluous, meaningless, or inoperative). Consistent with these bedrock constitutional construction principles, the Court must read Section 11(a)(1) and any other section of the Constitution setting forth qualifications or disqualifications for office in such a way as to lend meaning to both sections if it is possible and reasonable to do so.

In the present context, it is certainly possible, and indeed logical, to construe

Section 11(a)(1) as authorizing any local enactment relating to the election of charter county officers that does not expressly contravene any specific requirements or limitations otherwise contained within the Constitution. In other words, Section 11(a)(1) should be read as allowing a charter county to impact via local law the election of its own county offices so long as such local law does not contradict other constitutional prescriptions as to those offices, including the establishment of qualifications or disqualifications as to those offices.[19] Construing Section 11(a)(1) in this manner not only harmonizes this section with the rest of the Constitution, but also accords charter counties local control over the election of their county officers as plainly authorized by Section 11(a)(1). The only question is thus whether term limits on the county officers identified in Article VIII, Section 1(d) would expressly contravene any other constitutional provision.

The simple fact of the matter is that the Constitution does not deal anywhere

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[19] For instance, neither the Legislature nor a county electorate could pass a special law that permitted a mentally incompetent person or a convicted felon from holding office under the guise that Section 11(a)(1) authorized special laws relating to elections. Article VI, Section 4 contains specific provisions regarding these topics, and Section 11(a)(1) is not a license to contradict express terms of the Constitution. Conversely, a special law that imposes a reasonable requirement relating to the election of a charter county officer would be valid under Section 11(a)(1), so long as the measure did not expressly contravene some other provision of the Constitution. For instance, the Legislature or a county electorate could enact a residency requirement pursuant to Section 11(a)(1) relating to a constitutionally-

with term limits as to county officers. The term limits set forth in Article VI, Section 4(b) obviously deal with non-county officers and in no way would be contradicted by local enactments imposing term limits on purely county officers. Similarly, the term limits elsewhere contained in the Constitution, such as in Article IV Section 5(b), relate to different state level officers and thus again would not be impacted by local term limits on county officers. Finally, the exclusions set forth in Article VI, Section 4(a), which bar convicted felons or mental incompetents from holding office, simply relate to a different subject matter and are not contradicted in any manner by term limits, whether set forth elsewhere in the Constitution or in a local county charter. In short, because the imposition via local law of term limits on charter county officers does not contravene any other constitutional qualification or disqualification for those officers, Section 11(a)(1) itself expressly authorizes such local laws.[20]

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created office if there is no specific residency requirement for the office and the provision did not run afoul of other express constitutional sections.

[20] The Court in *Limited Political Terms*, 592 So. 2d 225 (Fla. 1991), previously concluded that term limits were not "inconsistent" with other qualifications or disqualifications contained in the Constitution. In considering whether the ballot summary for the 1992 state-level term limits amendment was sufficient, the Court stated:

> This is not a situation in which the ballot summary conceals a conflict with an existing provision. There is no existing constitutional provision imposing a different

This foregoing analysis of Section 11(a)(1) is also consistent with the approach the Court has adopted with respect to the general qualification-disqualification analysis detailed above. *See, e.g., Wilson, Holley, Askew, Grassi.* Again, under this approach, the Court will find a preemption regarding qualifications or disqualifications only if the constitutional provision relating specifically to the office in question expressly contains either qualifications or disqualifications. Because neither Article VI, Section 4 nor any other provision of the Constitution contains any express prohibition against the imposition of term limits relating to officers of chartered counties, a special law (whether initiated by the Legislature or the county electorate) is a permissible means to impose term limits on a charter county officer.[21]

In sum, term limits impacting the election of the pertinent officers can be enacted pursuant to special law or local law so long as term limits do not run afoul

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limitation on terms of office. In effect, this proposed amendment writes on a clean slate. 592 So. 2d at 228.

Because the Constitution is silent as to limitation of terms for county officers, the Pinellas County charter amendment also is "writing on a clean slate." Thus, the amendment is consistent and can coexist with the Constitution.

[21] This construction also keeps the "flood gates" closed with respect to other non-county officers, including members of the judiciary. Section 11(a)(1), by its terms, authorizes special laws relating only to the election of chartered county officers and other specified local officials. Judges do not constitute "county officers" as referenced in Section 11(a)(1). Simply put, the Court would not be

of any specific provision contained in the Constitution. *See, e.g., Wilson, Grassi, Askew, Holley.* Although the Constitution contains certain general "disabilities" for offices in Article VI, Section 4 and imposes term limits on various other offices in different sections, the Constitution is silent as to term limits for the county officers. Additionally, the Constitution does not set forth any specific qualifications or disqualifications for these offices. Accordingly, pursuant to Section 11(a)(1), Pinellas County, as a chartered county, is free to exercise its home rule power to enact term limits with respect to its county officers.

## IV. THE CLERK OF THE CIRCUIT COURT IS NOT AN "UNTOUCHABLE" ARTICLE V OFFICER.

The *Cook* Petitioner's assertion that the clerk of the circuit court is an Article V officer that cannot be touched by the county electorate is again an argument that has not been asserted by Petitioners or addressed by the courts below in this case. Pursuant to long-standing precedent, this Court thus should decline to consider this argument in the Pinellas County matter. *See, e.g., Morales v. Sperry Rand Corporation,* 601 So.2d 538, 540 (Fla. 1992). However, if the Court nevertheless is inclined to address this argument in this case, the Court must reject the *Cook* Petitioner's contention for the reasons detailed in the briefs filed by the City of

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opening a "Pandora's Box" by construing Section 11(a)(1) in the manner advocated by the Committee.

Jacksonville and the Solicitor General in the *Cook* case.

As a threshold matter, the *Cook* Petitioner's "Article V" argument ignores that the clerk of the circuit court is fundamentally and unmistakably a county officer under Article VIII, Section 1(d) of the Constitution. Although the *Cook* Petitioner relies on Article V, Section 16 to support his argument, that section expressly provides that clerks of the circuit court "shall be selected pursuant to the provisions of Article VIII, Section 1." Article VIII, Section 1(d) provides in pertinent part that "there shall be elected by the electors of each county . . . a clerk of the circuit court." Thus, although Article V, Section 16, specifies that each county shall have a clerk of the circuit court, that section also explicitly refers to and incorporates Article VIII, Section 1(d), for the method of selecting the required clerk of the circuit court. Article VIII, Section 1(d) thus expressly makes the clerk of the circuit court a "county officer" elected by the county electors.

Construing constitutional provisions in harmony with eachother and in such a manner as to give effect to all provisions of the Constitution, leads to the inescapable conclusion that a clerk of the circuit court constitutes a county officer for purposes of Article VIII, Section 1(d). *See, e.g., Game and Freshwater Fish Commission,* 336 So.2d at 560. Although Article V, Section 16, also refers to and requires a clerk of the circuit court, that section expressly defers to Article VIII,

Section 1, for the proper characterization and method of selection for this office. Moreover, Article VIII, Section 1(d), provides that the clerk of the circuit court is one of the "county officers" to be elected in accordance with that section. As the First District held in *Cook*, the only logical and harmonious reading of these two sections is that the clerk of the circuit court must constitute a county officer under Article VIII, Section 1(d). 765 So. 2d at 292-93. Any other reading effectively renders nugatory the reference to Article VIII, Section 1 contained in Article V, Section 16.

This construction also is consistent with existing Florida case law recognizing that a clerk of the circuit court has extra-judiciary functions. For instance, in *Frankenmuth Mutual Insurance Company v. Magaha,* 769 So.2d 1012 (Fla. 2000), the Court recognized that a clerk of the circuit court effectively possesses both judicial and nonjudicial functions and is not exclusively under the control of the judiciary. Additionally, as noted by the City of Jacksonville, various Florida Statutes expressly impose non-judicial functions on the clerks. *See* Respondents' Answer Brief, p. 23. In short, the clerk of the circuit court office is not purely an Article V judicial office as argued by the *Cook* Petitioner.

Finally, Pinellas County's circuit court clerk appears to be even less of a "judicial office" than the clerk's office in Jacksonville. As discussed at the oral

argument in this case, the Jacksonville charter apparently has removed some non-judicial functions from the clerk of the circuit court in Jacksonville. Although the Committee does not believe this renders the Jacksonville clerk of the circuit court a pure Article V judicial office as asserted by the *Cook* Petitioner, the Jacksonville clerk does appear to be more of a judicial officer than a typical clerk of the circuit court, which generally possesses a myriad of nonjudicial functions in addition to its judicial duties. In contrast, no one contends that the Pinellas County Charter has removed any of the typical nonjudicial functions from its clerk of the circuit court. Thus, even if the Court were inclined to agree that the clerk in the *Cook* case is an Article V officer due to the removal of non-judicial functions from that specific office, the Court should not reach the same result with respect to the Pinellas County clerk of the circuit court. Because the Pinellas County clerk retains all of the non-judicial functions typically attendant to a clerk of the circuit court, this office is a "county office" pursuant to the express terms of Article VIII, Section 1(d), and the *Cook* Petitioner's "Article V" argument simply does not apply here.[22]

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[22] Although Pinellas County's county commissioners dropped out of this case before it reached this Court, the Committee anticipates that Petitioners will assert arguments on behalf of the county commissioners in their forthcoming supplemental brief. Any arguments on behalf of the non-party county commissioners should be rejected by the Court. As a threshold matter, as Petitioners expressly acknowledged on page 38 of their Initial Brief on the Merits, the county commissioners simply are not parties to this appeal. Additionally, neither Petitioners

## CONCLUSION

As discussed at oral argument, the term limits amendment at issue in this case is cloaked with a strong presumption of constitutionality. If the amendment can reasonably be construed as constitutional, it is incumbent upon the Court to do so. Moreover, every reasonable doubt must be resolved in favor of upholding the term limits amendment in order to ensure that the will of the people is carried out.

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nor the county commissioners pursued the new "preemption" argument with respect to the county commissioners' term limits provision during this appeal. Because the county commissioners are no longer parties and the preemption argument has not been pursued in the appeal, the Court should decline to even consider any arguments with respect to the county commissioners.

Moreover, the *Cook* Petitioner's preemption argument fails regarding the county commissioners even if the Court is otherwise inclined to consider it. As detailed above, term limits relate to "eligibility" for office and are not preempted by the Constitution. For the same reasons that the amendment is valid as an eligibility requirement pertaining to the county officers, the portion relating to the county commissioners also is constitutional. Moreover, the amendment is likewise valid even if the Court opts to characterize term limits as either a "disqualification" or a "qualification." If term limits are characterized as a "disqualification" as contended by the *Cook* Petitioner, cases like *Grassi* are distinguishable because the Court in that case based its preemption of a "qualification" for office on the existence of a "qualification" in the constitutional provision relating to the pertinent office. In contrast, no "disqualifications" exist in Article VIII, Section 1(d), and thus, the *Grassi* type analysis does not apply to term limits if viewed as a disqualification. In short, the county commissioners' term limits provision is constitutional even if it is viewed as a disqualification, as the *Cook* Petitioner would argue. Finally, if the Court deems term limits to be a "qualification," the county commissioners' term limits provision is nevertheless authorized under Section 11(a)(1) for all the reasons detailed above regarding the county officers. Again, Section 11(a)(1) authorizes a special law relating to the election of local

*Holley*, 238 So. 2d at 404.

Pursuant to the very first sentence of the Constitution set forth in Article 1, Section 1, "[a]ll political power is inherent in the people." Only in the most exceptional circumstances should the judiciary intervene to thwart the will of the people. To do otherwise would have the judicial branch entering a "political thicket studded with constitutional thorns." *Diaz v. Board of County Commissioners of Dade County,* 502 F.Supp. 190, 193 (S.D. Fla. 1980). As evidenced by the decisions of the Second District in this case and the First District in *Cook*, it is not only possible, but also reasonable, to construe the term limits measures at issue in such a way as renders them compatible with both the Constitution and other superior law. Because the lower court decisions in these cases prove that this construction is reasonable and possible, this Court should affirm the decision of the Second District in this case.

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officials. The *Grassi* decision is distinguishable because it involved a general law, rather than a special law authorized by Section 11(a)(1).

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Brief has been served by U.S. Mail on September 19, 2001, to Sarah Richardson, Senior Assistant County Attorney, Pinellas County Attorney's Office, 315 Court Street, Clearwater, FL 33756; Bernie McCabe, State Attorney for the Sixth Judicial Circuit, 14250 49th Street North, Room 100, Clearwater, FL 33760; Raymond Ehrlich, Holland & Knight, P.O. Box 52687 Jacksonville, FL 32201-2687; Loree Lea French, Office of the General Counsel, 117 W. Duval Street, Suite 480, Jacksonville, FL 32202-3700; and Richard G. Rumrell, Rumrell Wagner & Costabel LLP, P.O. Box 550668, Jacksonville, FL 32255-0668.

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## CERTIFICATE OF COMPLIANCE

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

Michael S. Hooker