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## Telli V. Broward County-A Misunderstanding Of County Home Rule And An Abridging Of The Status Of The Constitution's County Officers Who Are Not The Charter's County Officers

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H. Kenza Vanassenderp and Kayla M. Scarpone

## **Abstract**

When a state's court of last resort renders an opinion that abridges, ignores, and renders meaningless an express provision of that state's constitution, then that court shall have itself effectuated an amendment to its constitution erroneously and without the approval and longstanding support of the electors of that state

**KEYWORDS:** countries, broward, officers

**TELLI V. BROWARD COUNTY—A MISUNDERSTANDING OF COUNTY HOME RULE AND AN ABRIDGING OF THE STATUS OF THE CONSTITUTION’S COUNTY OFFICERS WHO ARE NOT THE CHARTER’S COUNTY OFFICERS**

H. KENZA VANASSENDERP\* & KAYLA M. SCARPONE\*\*

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I. INTRODUCTION

When a state’s court of last resort renders an opinion that abridges, ignores, and renders meaningless an express provision of that state’s constitution, then that court shall have itself effectuated an amendment to its constitution erroneously and without the approval and longstanding support of the electors of that state.<sup>1</sup> This is what the Supreme Court of Florida did in 2012 in the case of *Telli v. Broward County*,<sup>2</sup> which held that counties should be allowed “to govern themselves, including [enacting] term limits [for] their officials, in accordance with their home rule authority.”<sup>3</sup> It is being interpreted to opine that charter counties may impose term limits through their charters on any and all county officers—including the Constitution’s County Officers enumerated in article VIII, section 1, subsection (d) of the Florida Constitution, which includes the office of the Tax Collector.<sup>4</sup> This recent Supreme Court of Florida opinion receded from—that is, determined that the Court would no longer abide by—its previous opinion in *Cook v. City of Jacksonville (Cook II)*,<sup>5</sup> issued ten years prior, which expressly and unambiguously held that charter counties could not limit the terms of the Constitution’s five County Officers enumerated in article VIII, section 1, subsection (d) of the Florida Constitution.<sup>6</sup>

1. See *Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (per curiam).

2. 94 So. 3d 504 (Fla. 2012) (per curiam).

3. *Id.* at 513 (emphasis added).

4. FLA. CONST. art. VIII, § 1(d); *Telli*, 94 So. 3d at 513.

5. 823 So. 2d 86, 86 (Fla. 2002).

6. *Telli*, 94 So. 3d at 505; see also FLA. CONST. art. VIII, § 1(d); *Cook v. City of Jacksonville (Cook II)*, 823 So. 2d 86, 86 (Fla. 2002); *City of Jacksonville v. Cook (Cook I)*, 765 So. 2d 289, 293 (Fla. 1st Dist. Ct. App. 2000) (per curiam), *reh’g granted*, *Cook v. City of Jacksonville*, 786 So. 2d 1184 (Fla. 2001), *overruled by Cook II*, 823 So. 2d 86 (Fla. 2002).

The decision in *Telli*, which is supported by scarce legal analysis, is in direct conflict with the Florida Constitution.<sup>7</sup> *Telli* represents a fundamental misunderstanding of charter counties' home rule power—as limited by the Florida Constitution—and also a misunderstanding of the status of the five County Officers created and established by article VIII, section 1, subsection (d) of the Florida Constitution.<sup>8</sup>

Another article has been published regarding this case in 2013 by Daniel S. Weinger, titled *Stare Decisis Takes Another Blow in Telli v. Broward County*.<sup>9</sup> We would like to note that we agree with Mr. Weinger's position regarding the past precedent leading up to *Telli*, and his discussion of stare decisis.<sup>10</sup> We do, however, respectfully disagree with his discussion of operative language of the Constitutional provisions pertaining to “County Officers” and “County Commissioners”—discussed more fully below.<sup>11</sup> Furthermore, we note that Mr. Weinger's article did not address several important issues with the case.<sup>12</sup>

Florida is divided into sixty-seven county political subdivisions, each served by one general purpose government entity—Board of County Commissioners—and five specific purpose one-officer entities, the Constitution's County Officers: Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of Circuit Court.<sup>13</sup> All county governments have home rule power under the Florida Constitution, regardless of whether they take form as a charter county government form of home rule, or non-charter county government form of home rule.<sup>14</sup> Home rule—ever since 1968—is vested inherently in each county.<sup>15</sup> However, the Constitution still provides limitations on county home rule.<sup>16</sup> There are two

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7. FLA. CONST. art. VIII, § 1(d); *Telli*, 94 So. 3d at 506, 512–13; Daniel S. Weinger, *Stare Decisis Takes Another Blow in Telli v. Broward County*, 42 STETSON L. REV. 859, 859–60 (2013).

8. FLA. CONST. art. VIII, § 1(d); *Telli*, 94 So. 3d at 506, 512–13; Weinger, *supra* note 7, at 859, 868–69.

9. Weinger, *supra* note 7, at 859, 868–73.

10. *Id.* at 860–68.

11. *See infra* text accompanying note 119. Interestingly enough, Mr. Weinger served as co-appellate counsel for the Board of County Commissioners challenging the term limit provision in the *Telli* case. *Telli*, 94 So. 3d at 505–06; Weinger, *supra* note 7, at 859.

12. *See Telli*, 94 So. 3d at 505–13; Weinger, *supra* note 7, at 868–73.

13. FLA. CONST. art. VIII, § 1(a), (c)–(d), (f)–(g) (noting unless one or more offices in article VIII, section 1, subsection (d) is abolished under applicable constitutional authority). Although much of this article will focus on duties and provisions of the Tax Collector, the broader implications are applicable to all five of the Constitution's County Officers. *Id.* *See infra* Parts II.C., III.A.–B.

14. FLA. CONST. art. VIII, § 1(a), (f)–(g).

15. *See id.* § 1(a).

16. *See id.* § 1(f)–(g).

categories of such limitations, which include those limits on non-charter counties' home rule in article VIII, section 1, subsection (f), and those limits on charter counties' home rule in article VIII, section 1, subsection (g).<sup>17</sup>

The Constitution's five County Officers<sup>18</sup>—as created by and established under article VIII, section 1, subsection (d) of the Florida Constitution—have been imbued with sovereignty and maintain a status of independence from the county government, the Board of County Commissioners.<sup>19</sup> These officers maintain sovereign plenary power to carry out important state work assigned to them by general law to be performed and carried out at the county level and to exercise reasonable discretion in carrying out that work, not inconsistent with the express duties.<sup>20</sup> These officers *are not* subject to regulation or interference by the local county government—the Board of County Commissioners.<sup>21</sup> Therefore, any charter provisions pertaining to the Constitution's five County Officers will not be enforceable, save for a provision establishing a different manner for their selection—but being selected in a different manner does not change their status as the Constitution's County Officers.<sup>22</sup>

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17. *Id.*

18. *Id.* § 1(d). It is important to understand the terms that we have chosen to describe the five County Officers listed in, and created by, article VIII, section 1, subsection (d) of the Florida Constitution. FLA. CONST. art. VIII, § 1(d). Throughout this article, we refer to these officers as the “Constitution’s County Officers.” *Id.* This is because they are created by the Constitution. *Id.* Some cases have referred to them as “Constitutional County Officers,” “Constitutionally-authorized County Officers,” or some other related title. *See, e.g., Snipes v. Telli*, 67 So. 3d 415, 418–19 (Fla. 4th Dist. Ct. App.), *reh’g granted sub nom. Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff’d per curiam*, 94 So. 3d 504 (Fla. 2012). We believe referring to these officers as either “Constitutional” or “Constitutionally-authorized” is misleading. *See* FLA. CONST. art. VIII, § 1(d); *Snipes*, 67 So. 3d at 418–19. These titles have been used by the courts to distinguish the five article VIII, section 1, subsection (d), county officers from a charter-created officer to whom the duties of the article VIII, section 1, subsection (d) County Officer have been transferred, and which may retain the same name and responsibilities. FLA. CONST. art. VIII, § 1(d). For a more detailed discussion of the abolition of an article VIII, section 1, subsection (d) officer and the transfer of his or her duties, resulting in a *charter officer*, see *infra* Part II.C. However, if a charter county follows the correct procedures laid out in the Constitution under article VIII, section 1, subsection (d) to abolish a Constitution-created “County Office” and transfers its duties to a charter-created office, then the resulting charter office is also *constitutional*. FLA. CONST. art. VIII, § 1(d); see *infra* Part II.C. To avoid confusion, we refer to the article VIII, section 1, subsection (d) “County Officers,” as created by the Constitution, as the “Constitution’s County Officers” or “Constitution County Officer,” and to any charter-created office carrying out the same duties after abolition and transfer as the “charter’s county officer.” FLA. CONST. art. VIII, § 1(d); see *infra* Parts II–V.

19. FLA. CONST. art. VIII, § 1(d)–(e).

20. *See id.* § 1(f).

21. *Id.*

22. *Id.* § 1(d).

A charter county *may* abolish one or more of the Constitution's five County Offices and transfer the duties performed by that office to a charter office—either charter-elected or charter-appointed.<sup>23</sup> For example, in the Miami-Dade, Broward, and Volusia county political subdivisions, the Constitution's County Tax Collector—even though it may be referred to by the same name under the charter—no longer exists.<sup>24</sup> The charter's appointed Tax Collector now exists in its place in these counties, and this charter office may be regulated to its fullest extent by the local government, not inconsistent with the state duties established under Chapter 197 of the Florida Statutes,<sup>25</sup> and other applicable general law.<sup>26</sup>

The recent Supreme Court of Florida decision in *Telli* is in direct contradiction with the above-summarized provisions of the Florida Constitution.<sup>27</sup> First, it fails to acknowledge the important limitations placed on counties' home rule power under the Constitution.<sup>28</sup> Second, it undermines completely the status of the Constitution's five County Officers by holding that charter counties may term limit any and all county officers through their charters—even the Constitution's County Officers—when those offices have not been first abolished under the county charter.<sup>29</sup>

Accordingly, the lower court decision from the Fourth District Court of Appeal in the case should have been affirmed, but on different grounds: (1) because charter counties have broad authority over their Board of County Commissioners and any of their charter-elected or charter-appointed officers under their charters, including the authority to set term limits on the charters' officers—including County Commissioners—and; (2) because counties do not have the authority to regulate or interfere with the Constitution's five County Officers and thus do not have the power to term limit any one of the Constitution's County Officers whose office has not been abolished and duties transferred to a charter-created office.<sup>30</sup> Regardless of what the

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23. *Id.*

24. DADE COUNTY HOME RULE CHARTER art. IX, § 9.01(A) (2012); BROWARD COUNTY CHARTER art. III, § 3.06(a) (2010); VOLUSIA COUNTY CHARTER art. VI, § 601.1(1)(a) (2002); *see also* FLA. CONST. art. VIII, § 1(d).

25. FLA. STAT. § 197.332(2) (2014); *see also* DADE COUNTY HOME RULE CHARTER art. IX, § 9.01; BROWARD COUNTY CHARTER art. III, § 3.06; VOLUSIA COUNTY CHARTER art. VI, § 601.1.

26. Weinger, *supra* note 7, at 862–63.

27. *Compare* FLA. CONST. art. VIII, § 1(d)–(g), with *Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (*per curiam*).

28. *Telli*, 94 So. 3d at 507; *see also* FLA. CONST. art. VIII, § 1(d)–(g).

29. *Telli*, 94 So. 3d at 513; *see also* FLA. CONST. art. VIII, § 1(d)–(g).

30. *See* FLA. CONST. art. VIII, § 1(d); *Telli*, 94 So. 3d at 512–13; *Snipes v. Telli*, 67 So. 3d 415, 419 (Fla. 4th Dist. Ct. App.), *reh'g granted sub nom. Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff'd per curiam*, 94 So. 3d 504 (Fla. 2012).

Supreme Court of Florida held in the *Telli* opinion, county charter term limits are not effective as to the Constitution's County Officers.<sup>31</sup>

The following sections of this article will explore the preceding analysis in depth.<sup>32</sup> Part II will include important background on county governance under the Florida Constitution, including the development of the county home rule in Florida, the difference between charter and non-charter county governance, and the status that our Florida Constitution gives to the five Constitution County Officers enumerated in article VIII, section 1, subsection (d), as well as the relationship between charter and non-charter counties and the Constitution's County Officers in each of their respective counties.<sup>33</sup> Part III will include an in-depth analysis of the Supreme Court of Florida decision in *Telli*, and how that decision misinterprets county home rule and ignores the status of the Constitution's County Officers.<sup>34</sup> Part IV includes a discussion of some possible pathways of review.<sup>35</sup>

## II. BACKGROUND ON COUNTY GOVERNANCE UNDER THE FLORIDA CONSTITUTION

The Florida Constitution provides that the state shall be divided into political subdivisions called counties.<sup>36</sup> The Constitution leaves it up to the Florida Legislature to determine the number and boundaries of such counties.<sup>37</sup> Currently, there are sixty-seven counties in Florida.<sup>38</sup>

The Constitution also establishes that there shall be one county government in each county political subdivision and provides that such county governments exercise home rule power, either in the form of a non-charter county government<sup>39</sup> or charter county government.<sup>40</sup> However, the Constitution also provides that there shall be six more distinct government entities that shall be integral to that county's political subdivision.<sup>41</sup> These include one collegial, general purpose entity in the form of the Board of

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31. *Telli*, 94 So. 3d at 513; *see also* FLA. CONST. art. VIII, § 1(d).

32. *See infra* Parts II–IV.

33. *See* FLA. CONST. art. VIII, § 1(d); *infra* Part II.

34. *See* FLA. CONST. art. VIII, § 1(d); *Telli*, 94 So. 3d at 513; *infra* Part III.

35. *See infra* Part IV.

36. FLA. CONST. art. VIII, § 1(a) (“The state shall be divided by law into political subdivisions called counties.”).

37. *Id.* (“Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.”).

38. *See* FLA. STAT. ch. 7 (2014).

39. FLA. CONST. art. VIII, § 1(c), (f).

40. *Id.* § 1(g).

41. *Id.* § 1(d)–(e).



County Commissioners<sup>42</sup> and each of the five distinct one-officer, special purpose entities, which include: Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of Court.<sup>43</sup> These five, one-officer, special purpose entities are created by the Florida Constitution—labeled “County Officers”—and exist in every county political subdivision in Florida; even in counties that have adopted charters, unless any charter county has by charter provision abolished such an office and transferred its duties to either a charter-elected or charter-appointed office.<sup>44</sup>

A. *1968 Constitution and the Shift in Counties’ Home Rule*

“Home rule” *generally* refers to the “allocati[on] [of] a measure of autonomy to a local government.”<sup>45</sup> In other words, a local government that has home rule power governs its own local affairs and does not have to seek legislative authority for what it does.<sup>46</sup> Prior to the 1968 Constitution, counties in Florida derived home rule authority only as directly granted from the Florida Legislature “through [the] passage of local bills,”<sup>47</sup> and did not have any independent or inherent powers of self-government.<sup>48</sup> This previous form of home rule in Florida was commonly referred to as *Dillon’s Rule*.<sup>49</sup> Based on the increasing population and growth needs of the people

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42. *Id.* § 1(e).

43. *Id.* § 1(d).

44. FLA. CONST. art. VIII, § 1(d). There are certain limited ways, provided by the Constitution, in which a charter county government may alter or abolish one or more of these six county government entities, which will be discussed in Part II.C.1–3. *See* discussion *infra* Part II.C.1–3.

45. BLACK’S LAW DICTIONARY 850 (10th ed. 2014). The verbatim definition in Black’s Law Dictionary is “[a] state legislative provision or action allocating a measure of autonomy to a local government, conditional on its acceptance of certain terms.” *Id.* This definition is somewhat misleading because, as discussed *infra*, in Florida, home rule power is allocated under the State’s constitution, and therefore, is not an allocation of power from the legislature, but an inherent power based on the consent of the people to be governed. *See* discussion *infra* Part III.A.

46. *See* FLA. CONST. art. VIII, § 1(f)–(g); BLACK’S LAW DICTIONARY, *supra* note 45, at 850.

47. C. Wayne Alford & John H. Wolf, Comment, *Constitutional Revision: County Home Rule in Florida—The Need for Expansion*, 19 U. FLA. L. REV. 282, 282–83 (1966).

48. Mark J. Wolff, *Home Rule in Florida: A Critical Appraisal*, 19 STETSON L. REV. 853, 859 (1990).

49. *See* Robert F. Williams, *State Constitutional Law Processes*, 24 WM. & MARY L. REV. 169, 221 (1983) (discussing *Dillon’s Rule*, under which “local government[s] only] consisted of delegated or enumerated powers,” and thus characterizing “local governments as creatures of the state legislature”).

of Florida,<sup>50</sup> and the increasing demands that the passage of local bills were placing on the Legislature,<sup>51</sup> the people of Florida passed the 1968 Constitution which includes express provisions addressing the home rule power of county political subdivisions.<sup>52</sup> The fundamental force of these provisions of the 1968 Constitution meant that counties in Florida have inherent governing power and no longer have to request a specific law from the Florida Legislature to justify or authorize local county action.<sup>53</sup> Broad as this power may be, the Constitution still limits this inherent power with different limitations for non-charter home rule and charter county home rule.<sup>54</sup>

B. *The Difference Between Charter Counties and Non-Charter Counties Under the Florida Constitution*

All sixty-seven county political subdivisions in Florida possess home rule power inherently, regardless of whether they have a charter or not.<sup>55</sup> Under the 1968 Constitution, non-charter counties possess “such *power of self-government* as is provided by general<sup>56</sup> or special law<sup>57</sup> . . . [and] [t]he [B]oard of [C]ounty [C]ommissioners . . . may enact . . . county ordinances not inconsistent with general or special law.”<sup>58</sup> Relatedly, charter county

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50. See Wolff, *supra* note 48, at 854 (“It is a practical response to persistent increases in demand for fundamental services such as water, sewage, transportation, zoning, and police and fire protection, precipitated by steadily increasing populations . . .”).

51. See, e.g., Alford & Wolf, *supra* note 47, at 283 (stating that “[i]n 1965, the Florida Legislature passed 1186 special and local bills,” dwarfing the number of general bills it passed, at a mere 586).

52. See FLA. CONST. art. VIII, § 1(f), (g).

53. See Wolff, *supra* note 48, at 861–62.

54. *Id.* at 881; see also FLA. CONST. art. VIII, § 1(f), (g).

55. Wolff, *supra* note 48, at 880.

56. Dep’t of Bus. Regulation v. Classic Mile, Inc., 541 So. 2d 1155, 1157 (Fla. 1989). A *general law* is one that “operates universally throughout the state, uniformly upon subjects as they may exist throughout the state, or uniformly within a permissible classification.” *Id.* (citing State *ex rel.* Landis v. Harris, 163 So. 237, 240 (Fla. 1934) (en banc)).

57. FLA. CONST. art. X, § 12(g). The Constitution defines a “special law” as a *special or local law*. *Id.*

“[A] special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to, operate only in a specifically indicated part of the State, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal.”

City of Miami v. McGrath, 824 So. 2d 143, 148 (Fla. 2002) (quoting *Landis*, 163 So. at 240 (emphasis omitted)).

58. FLA. CONST. art VIII, § 1(f).

governments possess “all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors,” and the Board of County Commissioners “may enact county ordinances not inconsistent with general law.”<sup>59</sup>

Fundamentally, all counties—whether charter or non-charter—possess inherent home rule power, and the only fundamental difference between the home rule power of charter counties and non-charter counties is the limitations placed upon them.<sup>60</sup> For all counties in Florida, home rule power is limited by both general law enactments of the Florida Legislature and the provisions of the Florida Constitution; but in non-charter counties, home rule is also limited further by special law enactments of the Florida Legislature.<sup>61</sup>

The Florida Legislature has provided broad powers of local self-governance to all counties through general law by enacting the provisions of chapter 125 of the Florida Statutes.<sup>62</sup> Essentially, chapter 125 of the Florida Statutes operates as a quasi-default charter for non-charter counties, but is used in practice by charter counties as well.<sup>63</sup> The provisions that exist for non-charter counties under chapter 125 are very broad and non-restrictive.<sup>64</sup>

In essence, under current law, there are several things that counties can accomplish under the charter county government structure that either cannot be accomplished, or can only be accomplished indirectly, under non-charter county government structure.<sup>65</sup> Examples include:

- 1) Citizen recall enabling voters of the county to vote to remove members of the Board of County Commissioners;<sup>66</sup>
- 2) Citizen initiatives to vote on proposed ordinances;<sup>67</sup>

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59. *Id.* § 1(g) (emphasis added). This distinction between powers of *self-government* and *local self-government* has not been defined. *See id.* However, we would argue that it means that non-charter home rule is limited to self-government, and charter home rule has a further limitation in that it is limited to *local self-government*. *Id.* Therefore, a charter cannot write anything that is not truly *local* in nature. *Id.*

60. FLA. CONST. art. VIII, § 1(f)–(g).

61. *Id.* § 1(g); BLACK’S LAW DICTIONARY, *supra* note 45, at 850; *see also* FLA. STAT. ch. 125 (2014). Those special law enactments passed by the Florida Legislature will only apply to charter counties if the voters in the county also pass it by referendum. FLA. CONST. art. III, § 10. “Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with *special law approved by vote of the electors.*” FLA. CONST. art. VIII, § 1(g) (emphasis added).

62. *See* FLA. STAT. ch. 125.

63. *See id.*

64. *See id.*; 081-7 Fla. Op. Att’y Gen. 24 (1981).

65. *See* FLA. STAT. ch. 125.

66. *See id.* § 100.361(1).

67. *See id.* § 125.66(4)(b)(1).

- 3) Non-partisan elections of the Board of County Commissioners;<sup>68</sup>
- 4) Term limits for the Board of County Commissioners;<sup>69</sup>
- 5) Change in the length of terms for the Board of County Commissioners;<sup>70</sup>
- 6) Change in the districts represented by each County Commissioner, including at-large districts;<sup>71</sup>
- 7) County ordinances to prevail in the event of conflict with and over municipal ordinances on the same subject;<sup>72</sup>
- 8) Exclusive power in the county over community redevelopment authorities with tax increment financing;<sup>73</sup>
- 9) County authority to levy a municipal public service tax outside of a city in the county;<sup>74</sup>
- 10) Levy of a communication service tax at a higher rate;<sup>75</sup>
- 11) Abolish any of the State Constitution's County Officers—Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of Court—and then transfer the duties to a charter-created office in order to put them under the control of the Board of County Commissioners;<sup>76</sup> and/or

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68. See 00-02 Fla. Op. Att'y Gen. 6 (2000).

69. *Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (per curiam). This is in line with the holding of *Telli*, and an interpretation of article VIII, section 1, subsection (e) of the Florida Constitution. FLA. CONST. art. VIII, § 1(e); *Telli*, 94 So. 3d at 513. However, the holding of *Telli*, with respect to term limits of the Constitution's five County Officers enumerated in article VIII, section 1, subsection (d) of the Florida Constitution, is erroneous and in contradiction to the provisions and structure of the Florida Constitution. See FLA. CONST. art. VIII, § 1(d); *Telli*, 94 So. 3d at 513. For full discussion of this issue, see *infra* Part III.B.

70. See FLA. CONST. art. VIII, § 1(e) (“*Except when otherwise provided by county charter*, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years.”) (emphasis added).

71. See FLA. STAT. § 124.01(4).

72. See FLA. CONST. art. VIII, § 1(f) (For non-charter county governments “an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.”); *id.* § 1(g) (For charter county governments: “The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.”).

73. See FLA. STAT. § 163.410.

74. See *id.* § 166.231(1)(c).

75. See *id.* § 202.19(1).

76. See FLA. CONST. art. VIII, § 1(d); *infra* Part II.C.2.

12) Have special acts of the Legislature to be inapplicable within the county unless approved by referendum.<sup>77</sup>

C. *Status of the Constitution's "County Officers" (art. VIII, section 1, subsection (d))*

In *Amos v. Mathews*,<sup>78</sup> a Supreme Court of Florida decision rendered prior to the 1968 Constitution, the Court described the division of power and duties of state and local officers as such:

It is fundamentally true that all local *powers* must have their origin in a grant by the state which is the fountain and source of authority. . . . [I]t is therefore the spirit of the Constitution, that the performance of state functions shall be confided to state officers; the performance of county functions of purely local concern shall be confided to county officers. Save as is otherwise clearly contemplated by the Constitution, there can be no compromise with that principle, the origin of which is more ancient than the Constitution itself.<sup>79</sup>

As noted above, prior to 1968, any and all county officers had the power to govern local affairs only to the extent that home rule power was granted to them by the Legislature.<sup>80</sup>

However, that power structure changed as a result of the 1968 Constitution, which vested in non-charter counties such powers of self-governing by general or special law, and in charter counties "all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors."<sup>81</sup> In essence, this change "denotes a broad empowerment of local authorities to . . . rule[] in matters of *genuine local concern*," and "shift[ed] [to] locus of decision-making power back to those in the best position to assess *those needs*, freeing the state legislature to concentrate on the issues that have a *genuine statewide impact*."<sup>82</sup>

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77. See FLA. CONST. art. III, § 10; FLA. CONST. art. VIII, § 1(g) ("Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with *special law approved by vote of the electors*.") (emphasis added).

78. 126 So. 308 (Fla. 1930).

79. *Id.* at 320.

80. See FLA. CONST. of 1885, art. III, § 27; Louis C. Deal, *Constitutional Home Rule of Unchartered Counties—Fantasy or Fact?*, 56 FLA. B. J. 469, 469 (1982); Wolff, *supra* note 48, at 859–60.

81. See FLA. CONST. art. VIII, § 1(g).

82. Wolff, *supra* note 48, at 854 (emphasis added).

Thus, the division of state and local powers under the 1968 Constitution allows for local regulation of purely local officers, and state regulation of state officers.<sup>83</sup> The Constitution's County Officers listed in and created only by article VIII, section 1, subsection (d), hold an independent status in our state and Constitution.<sup>84</sup> They are not local officers with purely local duties as defined in *Amos*, but rather they are the state Constitution's sovereign County Officers with plenary power to implement important state duties under state law and state rule on the local level.<sup>85</sup>

Although the five officers listed in article VIII, section 1, subsection (d) are labeled County Officers, they are the Constitution's County Officers in and for each county political subdivision and they hold a constitutional sovereign status.<sup>86</sup> This sovereign status is of special consequence and benefit to Floridians because of the important state work that these Constitution County Officers perform on the county level, which is an overriding State interest and—notwithstanding dicta in court and Attorney General opinions—is not county business.<sup>87</sup> The sovereign status of these officers is well explained in *Demings v. Orange County Citizens Review Board*<sup>88</sup> as follows:

[U]nder Florida's [C]onstitution, certain responsibilities of local governance are separately entrusted to *independent constitutional officers* who, at least in non-charter counties [who have not abolished the Constitution's County Officers], are not accountable to the county's governing board, but derive their power directly

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83. *Amos*, 126 So. at 320; Deal, *supra* note 80, at 469; Wolff, *supra* note 48, at 859–60; *see also* FLA. CONST. art. VIII, § 1(d).

84. FLA. CONST. art. VIII, § 1(d).

85. *See id.* § 1(g); *Amos*, 126 So. at 308, 320. The best example of state duties performed by the tax collectors is property tax collection. *See* FLA. STAT. § 197.603 (2014) (“The Legislature finds that the state has a strong interest in ensuring due process and public confidence in a uniform, fair, efficient, and accountable collection of property taxes by county tax collectors. . . . The Legislature intends that the property tax collection authorized by this chapter under [section] 9(a), [a]rt. VII of the State Constitution be *free from the influence or the appearance of influence of the local governments that levy property taxes and receive property tax revenues.*” (emphasis added)). Other state duties include: Title, tag, and driver's license services, sale of hunting and fishing licenses, collection of other taxes on the local level, including those levied by state agencies. FLA. STAT. §§ 320.03, 322.135, 379.352(4).

86. *Demings v. Orange Cnty. Citizens Review Bd.*, 15 So. 3d 604, 606 (Fla. 5th Dist. Ct. App. 2009); *see also* FLA. CONST. art. VIII, § 1(d).

87. *Demings v. Orange Cnty. Citizens Review Bd.*, 15 So. 3d 604, 606 (Fla. 5th Dist. Ct. App. 2009); *see also* FLA. CONST. art. VIII, § 1(d).

88. 15 So. 3d 604 (Fla. 5th Dist. Ct. App. 2009).

from the state. These officers are independently accountable to the electorate unless otherwise provided by law.<sup>89</sup>

In this context, the term *local governance* refers to the important state duties performed locally by the Constitution's County Officers elected in each county's political subdivision.<sup>90</sup> The sovereign independence of the Constitution's County Officers is important and is set up by our Constitution to eliminate even the appearance—much less the reality—of local influence on the important state work performed by these officers on the county level.<sup>91</sup> The independence and election of the Constitution's County Officers maintains service and accountability only to the electorate in the local county political subdivision and not to the interests of the local general purpose collegial governing body that would benefit from exercising undue influence and political control over these offices to the detriment of the people and to the detriment of the people's interest in due process, unfettered even, by the appearance of influence by those who tax and spend.<sup>92</sup>

The Constitution's five County Officers have been imbued with sovereignty.<sup>93</sup> Sovereignty refers to the supreme political authority of an independent state;<sup>94</sup> or, in other words, a state's "authority and . . . right to govern itself."<sup>95</sup> In the United States, the fifty individual states have retained all of their common law sovereign powers, save those that were relinquished to the federal government.<sup>96</sup> In Florida, state officers are imbued with a

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89. *Id.* at 606 (emphasis added) (citations omitted).

90. *See id.*

91. *See* FLA. STAT. § 197.603.

The Legislature finds that the state has a strong interest in ensuring due process and public confidence in a uniform, fair, efficient, and accountable collection of property taxes by county tax collectors. Therefore, tax collections shall be supervised by the Department of Revenue pursuant to [section] 195.002(1). The Legislature intends that the property tax collection authorized by this chapter under [section] 9(a), [article] VII of the State Constitution be free from the influence or the appearance of influence of the local governments that levy property taxes and receive property tax revenues.

*Id.*

92. *See id.*; *Demings*, 15 So. 3d at 606; John B. Anderson et al., *Presidential Elections—The Right to Vote and Access to the Ballot*, 29 NOVA L. REV. 571, 580–81 (2005).

93. *See* FLA. CONST. art. VIII, § 1; *Demings*, 15 So. 3d at 610–11.

94. BLACK'S LAW DICTIONARY 1612 (10th ed. 2014) ("The supreme political authority of an independent state.").

95. *Sovereignty Definition*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/sovereignty> (last visited Dec. 26, 2014) ("[A] country's independent authority and the right to govern itself.").

96. THE FEDERALIST NO. 32, at 169 (Alexander Hamilton) (Am. Bar Ass'n, 2009) ("[T]he State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, *exclusively* delegated to the United States."); Anderson et al., *supra* note 92, at 580–81.

portion of state sovereignty.<sup>97</sup> Similarly, the state Constitution's County Officers, including the County Tax Collectors, are also imbued with state sovereignty.<sup>98</sup> The Supreme Court of Florida has described the relationship between the state and its officers as such:

“The term *office* implies a *delegation of a portion of the sovereign power* to, and possession of it by, the person filling the office; a public office being an agency for the state, and the person whose duty it is to perform the agency being a public officer. *The term embraces the idea of tenure, duration, emolument, and duties, and has respect to a permanent public trust to be exercised [on] behalf of government,* and not to a merely transient, occasional, or incidental employment. A person, in the service of the government, who derives his position from a duly and legally authorized election or appointment, whose duties are continuous in their nature, and defined by rules prescribed by government, and not by contract, consisting of the exercise of important public powers, trusts, or duties, as a part of the regular administration of the government, the place and the duties remaining, though the incumbent dies or is changed, . . . is a public officer . . . every *office*, in the constitutional meaning of the term, impl[ies] an *authority to exercise some portion of the sovereign power*, either in making, executing, or administering the laws.”<sup>99</sup>

Therefore, the Constitution's five County Officers have been imbued with the sovereign authority of the state and, as such, shall carry out their duties on behalf of the people of the State of Florida, free from local influence and interference.<sup>100</sup>

#### 1. No Charter Regulation of, or Interference with, the Florida Constitution's Five Independent County Officers

Because of the sovereign independence of the Constitution's article VIII, section 1, subsection (d) County Officers, and the important public policy reasons for maintaining such independence, the general purpose collegial local county government—made up of the Board of County Commissioners—cannot regulate or interfere with a Constitution's County

97. State *ex rel. Clyatt v. Hocker*, 22 So. 721, 723 (Fla. 1897).

98. See FLA. CONST. art. VIII, § 1(d); *Clyatt*, 22 So. at 722. This state sovereignty is also abolished when the Constitution's County Office is abolished by a county charter. See FLA. CONST. art. VIII, § 1(d). For a more detailed discussion, see *infra* Part II.C.2.

99. *Clyatt*, 22 So. at 723 (emphasis added).

100. See FLA. CONST. art. VIII, § 1(d); *Clyatt*, 22 So. at 722.



Officer in any way, even in a charter county.<sup>101</sup> The Constitution does state one very limited way in which a county charter can regulate the Constitution's County Officers.<sup>102</sup> Under the Constitution, article VIII, section 1, subsection (d), Officers are to be "elected by the electors of each county;" in other words, this is the default manner in which Constitution County Officers are *chosen*.<sup>103</sup> Alternatively, the Constitution also states that "when provided by county charter or special law approved by vote of the electors of the county, any county officer *may be chosen in another manner* therein specified."<sup>104</sup> This limited exception would allow a charter county—under its charter or by special act approved by the voters in the county—to change the *manner* or method in which the Constitution's County Officers are *chosen*.<sup>105</sup> An example is that one or more of these five Constitution County Officers could be chosen by the majority of the local Board of County Commissioners.<sup>106</sup> However, this exception is limited expressly, in that, even if a charter county changes the *manner* in which the Constitution's County Officers are chosen, they still remain the Constitution's County Officers, with plenary power and sovereign authority, and therefore shall not be subject to the control of the county government.<sup>107</sup>

2. In Order to Have Charter Regulation and Control, the Constitution's County Office Must Be Abolished, and Its Duties Transferred to a Charter's County Office, Either Charter-Appointed or Charter-Elected

The Constitution also allows a charter county—through its charter, or through a special act approved by the charter county voters—to abolish completely one or more of the Constitution's article VIII, section 1, subsection (d) County Officers, and transfer the duties of that office to a charter-created office.<sup>108</sup> At that point, the Constitution's office, which was

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101. See FLA. CONST. art. VIII, § 1(d); *Clyatt*, 22 So. at 722; 081-7 Fla. Op. Att'y Gen. 21 (1981) (stating that County Officers retain their status as constitutional County Officers unless abolished by charter).

102. FLA. CONST. art. VIII, § 1(d).

103. *Id.*

104. *Id.* (emphasis added).

105. *Id.*

106. *Id.*; see also *In re Advisory Op. to Governor*, 313 So. 2d 717, 721 (Fla. 1975).

107. See FLA. CONST. art. VIII, § 1(d); *In re Advisory Op. to Governor*, 313 So. 2d at 720–21.

108. FLA. CONST. art. VIII, § 1(d); see also *In re Advisory Op. to Governor*, 313 So. 2d at 720 ("There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, [a property appraiser], a supervisor of elections, and a clerk of the circuit court; *except, when provided by county charter or special law approved by vote of the electors of the county*, any county officer may be chosen in another manner therein

abolished, is no longer the Constitution's County Office—even though the new county charter office may use the same name—and therefore no longer enjoys the same independence and plenary power of a sovereign office to carry out the important state duties delegated by the Legislature with insulation from influence of the local government.<sup>109</sup> The office is thus transformed into a non-sovereign *charter* county office—either elected or appointed—and is open to complete regulation and control by the county government.<sup>110</sup>

It is important to note though, that abolition of one or more of the Constitution's five County Offices and the transfer of each office's duties to a charter-created office are not by any means *mandatory* for counties that possess charters.<sup>111</sup> Rather, it is an option that can be exercised.<sup>112</sup> This concept was well explained by the Fifth District Court of Appeal in *Demings*, when it stated: "In charter counties, *the electorate has an option* of either maintaining these independent constitutional offices or abolishing them and transferring their responsibilities to the board of the charter county or to local offices created by the charter."<sup>113</sup> Thus, as long as the Constitution's County Office is maintained in a charter county and has not been abolished and its duties transferred—using express language of abolition and transfer—the county government is without the power to regulate the office, except to the

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specified, *or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.*") (emphasis added) (quoting FLA. CONST. art. VIII, § 1(d)).

109. See FLA. CONST. art. VIII, § 1(d); *Demings v. Orange Cnty. Citizens Review Bd.*, 15 So. 3d 604, 606 (Fla. 5th Dist. Ct. App. 2009).

110. See FLA. CONST. art. VIII, § 1(d); *Dade Cnty. v. Kelly*, 153 So. 2d 822, 823–24 (Fla. 1963) (holding that "although it may be bad government," Dade County had the power to regulate its charter sheriff under the provisions of its county home rule charter); *State ex rel. Glynn v. McNayr*, 133 So. 2d 312, 316 (Fla. 1961) (stating that charter tax assessor retained all the same duties as a constitutional tax assessor under the charter, the only difference was that "his political life and death depend upon the county commissioners"); *Demings*, 15 So. 3d at 606. Additionally, section 125.63 of the Florida Statutes also indicates that before proposing a charter, a charter commission be formed which "shall conduct a comprehensive study of the operation of county government and of the ways in which the conduct of county government might be improved or reorganized." FLA. STAT. § 125.63 (2014). While there is no similar specific requirement for adoption of proposed charter amendments, this provision does indicate to us that charter governments should only make changes upon a finding that such changes will actually improve the conduct and operation of state and county government on the county level. See *id.*

111. See FLA. CONST. art. VIII, § 1(d).

112. See *id.*

113. *Demings*, 15 So. 3d at 606 (emphasis added); see also FLA. CONST. art. VIII, § 1(d).

limited extent of dictating the manner in which the Constitution's County Officer will be chosen.<sup>114</sup>

It is helpful to understand the terminology used in this discussion and related case law. The Constitution is the organic base jurisdictional authority created by the people.<sup>115</sup> Any officer created by it—for example, Governor, Legislator, or the Tax Collector—is the Constitution's officer.<sup>116</sup> It is a Constitution office, not a charter office.<sup>117</sup> If, in a county charter, the Constitution's County Office of Tax Collector, Sheriff, Property Appraiser, Supervisor of Elections, or Clerk of Court is abolished, and its duties transferred to a charter-elected or charter-appointed office, then the Constitution's office is gone and the replacement office is the charter's office.<sup>118</sup> If the Constitution's substantive procedural requirements are followed, then the charter's office was created *constitutionally*, but nonetheless is no longer the Constitution's County Officer—and thus, no longer enjoys the independence and plenary power of a state sovereign officer.<sup>119</sup>

### 3. Charter Counties Have Broader Power to Regulate Its County Commissioners

Unlike the provisions pertaining to the Constitution's five County Officers enumerated in article VIII, section 1, subsection (d), the provisions pertaining to County Commissioners in article VIII, section 1, subsection (e), are open to broader regulation through county charters.<sup>120</sup> Although the two provisions both contain the same operative language, “[e]xcept when otherwise provided by county charter,” the placement of that language is important.<sup>121</sup> In section 1, subsection (d), the operative language appears

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114. FLA. CONST. art. VIII, § 1(d); *see also Demings*, 15 So. 3d at 606.

115. *See* FLA. CONST. art. I, § 1.

116. FLA. CONST. art. VIII, § 1(d).

117. *See id.*; *Demings*, 15 So. 3d at 606.

118. FLA. CONST. art. VIII, § 1(d); *Demings*, 15 So. 3d at 606.

119. *See* FLA. CONST. art. VIII, § 1(d); *Demings*, 15 So. 3d at 606.

120. *Compare* FLA. CONST. art. VIII, § 1(d), with FLA. CONST. art. VIII, § 1(e). Commissioners. *Except when otherwise provided by county charter*, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

FLA. CONST. art. VIII, § 1(e) (emphasis added).

121. FLA. CONST. art. VIII, § 1(d)–(e); Weinger, *supra* note 7, at 869 (quoting FLA. CONST. art. VII, § 1(d)–(e)). One author, in a recently published article, argued that there is no distinction between the levels of regulation by county charters of Constitution County Officers and County Commissioners because the two Florida constitutional provisions contain

after the language enumerating the Constitution's five different County Officers and their method of election and terms, and before the two specific alteration provisions, discussed above in subsections (a) and (b).<sup>122</sup> In section 1, subsection (e), the operative language is placed at the beginning of the entire provision, signaling a broader power to regulate, because any of the provisions that follow may be altered by a county charter.<sup>123</sup> This wording is in stark contrast to section 1, subsection (d), where the placement of the operative language indicates that only certain specific and limited alterations can be made by a county charter.<sup>124</sup>

### III. LEGAL ANALYSIS OF *TELLI V. BROWARD COUNTY*

#### A. *County Home Rule*

The Supreme Court of Florida in *Telli* held that charter counties had the power to term limit—or *disqualify*—any and all county officers.<sup>125</sup> This holding was founded upon the Court's finding that its prior decision of *City of Jacksonville v. Cook (Cook I)*<sup>126</sup>, “undermines the ability of counties to govern themselves as that broad authority has been granted to them by home rule power through the Florida Constitution.”<sup>127</sup>

Many court opinions and law review articles repeatedly refer to counties' home rule power under the 1968 Constitution as a *grant* of power, but it is more properly characterized as an inherent, but limited power.<sup>128</sup> In *Hollywood, Inc. v. Broward County*,<sup>129</sup> the Fourth District described the origin of county home rule power.<sup>130</sup> First, the court stated that:

[C]harter counties . . . derive their sovereign powers from the state through [a]rticle VIII, [s]ection 1(g) [which states]: “Counties operating under county charters shall have all powers of local self-

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the exact same language “except[] when [otherwise] provided by county charter.” Weinger, *supra* note 7, at 869. However, this argument is incomplete as it failed to analyze placement of the phrase. See Weinger, *supra* note 7, at 869–70.

122. FLA. CONST. art. VIII, § 1(a)–(b), (d).

123. *Id.* § 1(e).

124. *Id.* § 1(d).

125. *Telli v. Broward Cnty.*, 94 So. 3d 504, 505 (Fla. 2012) (per curiam).

126. 765 So. 2d 289 (Fla. 1st Dist. Ct. App. 2000) (per curiam), *reh'g granted*, *Cook v. City of Jacksonville*, 786 So. 2d 1184 (Fla. 2001), *overruled by Cook II*, 823 So. 2d 86 (Fla. 2002).

127. *Telli*, 94 So. 3d at 505; *Cook I*, 765 So. 2d at 293.

128. See FLA. CONST. art. VIII, § 1(g); e.g., *Hollywood, Inc. v. Broward Cnty.*, 431 So. 2d 606, 609 (Fla. 4th Dist. Ct. App. 1983).

129. 431 So. 2d 606 (Fla. 4th Dist. Ct. App. 1983).

130. *Id.* at 609.

government not inconsistent with general law, or with special law approved by the vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law.”<sup>131</sup>

The Court then went on to state that “[t]hrough this provision, the people of Florida have vested broad home rule powers in charter counties such as Broward County,” and that the counties possess all the powers of self-government unless preempted by state general law, and that the power is also limited by the Florida Constitution.<sup>132</sup> The Second District echoed these limitations on county home rule power in *Pinellas County v. City of Largo*.<sup>133</sup>

In one case predating the 1968 Constitution, the Supreme Court of Florida—in describing the power of the Legislature under the Florida Constitution—stated that “it should further be borne in mind that our State Constitution is *not a grant of power* to the Legislature, but is a *limitation voluntarily imposed* by the people themselves upon their inherent lawmaking power.”<sup>134</sup> Prior to the 1968 Constitution, counties only derived home rule authority as directly granted from the Florida Legislature, and did not have any independent powers of government.<sup>135</sup> As such, the pre-1968 home rule power is more properly referred to as a *grant* of home rule power, while the post-1968 home rule is more properly referred to as an inherent power of self-governance, limited by the Florida Constitution and general law.<sup>136</sup>

Therefore, charter counties can exercise all the powers of local self-governance, as long as such exercises are not inconsistent with the Florida Constitution, or general law as passed by the Florida Legislature.<sup>137</sup>

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131. *Id.* (quoting FLA. CONST. art. VIII, § 1(g)).

132. *Id.*; *see also* FLA. CONST. art. VIII, § 1(g).

133. 964 So. 2d 847, 853–54 (Fla. 2d Dist. Ct. App. 2007).

134. *Amos v. Mathews*, 126 So. 308, 315 (Fla. 1930) (emphasis added).

135. *Wolff*, *supra* note 48, at 860; *see also* FLA. CONST. of 1885, art. VIII, §

27.

136. *Compare* FLA. CONST. of 1885, art. III § 27, with FLA. CONST. art. VIII, § 1(g). State constitutions themselves are seen as “limitations on the inherent sovereign power of states created by the people of that state.” Mitchell W. Berger & Candice D. Tobin, *Election 2000: The Law of Tied Presidential Elections*, 26 NOVA L. REV. 647, 691 (2002). A constitutional scheme such as that which exists in Florida, under which there is “a direct constitutional devolution of substantive home rule powers [to a county] dependent only upon the adoption of a home rule charter,” is more properly characterized as a limitation upon inherent power, rather than a grant of power. *Williams*, *supra* note 49, at 222.

137. *Snipes v. Telli*, 67 So. 3d 415, 418 (Fla. 4th Dist. Ct. App.), *reh’g granted sub nom.* *Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff’d per curiam*, 94 So. 3d 504 (Fla. 2012).

B. *Supreme Court of Florida Decision*

Oddly enough, the Supreme Court of Florida based its decision in *Telli* on the fact that it agreed with Justice Anstead's dissent in *Cook II*.<sup>138</sup> However, Justice Anstead's statement regarding county home rule power does not support the Court's conclusion:

I cannot agree with the majority that the Florida Constitution prohibits charter counties from enacting term limits for county officers. To the contrary, the constitution explicitly grants broad authority to charter counties *over charter officers*, and, consistent with that grant, *imposes no restrictions on a county's authority to regulate those officers*.<sup>139</sup>

With the exception of calling county home rule power a *grant*, Justice Anstead's statement is correct.<sup>140</sup> Charter counties have full authority to regulate *charter officers*.<sup>141</sup> Several cases have held so.<sup>142</sup>

The Fourth District Court of Appeal in *Snipes v. Telli*<sup>143</sup>—the lower court decision preceding *Telli*—alluded to this conclusion in its well-reasoned distinction between the Constitution's County Officers, listed in article VIII, section 1, subsection (d), and County Commissioners, listed in article VIII, section 1, subsection (e).<sup>144</sup> However, the Supreme Court of Florida in *Telli* completely steamrolled this distinction, paying little attention or granting any lip service at all to the Fourth District Court of Appeal's analysis, simply noting that it was *unworkable* without much more discussion.<sup>145</sup> Accordingly, we must disagree firmly, but respectfully, with the Supreme Court's conclusion, as the distinction and holding of the Fourth District Court of Appeal in *Snipes*—which is well thought-out and supported—correctly reflects the status of the Constitution's County Officers, as opposed to a local charter's county officers, namely County

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138. *Telli v. Broward Cnty.*, 94 So. 3d 504, 512 (Fla. 2012) (per curiam); *see also Cook II*, 823 So. 2d 86, 95–96 (Fla. 2002) (Anstead, J., dissenting).

139. *Cook II*, 823 So. 2d at 95 (Anstead, J., dissenting) (emphasis added).

140. *See id.*

141. *See Dade Cnty. v. Kelly*, 153 So. 2d 822, 823–24 (Fla. 1963).

142. *See Cook II*, 823 So. 2d at 95; *Snipes*, 67 So. 3d at 418; *Demings v. Orange Cnty. Citizens Review Bd.*, 15 So. 3d 604, 611 (Fla. 5th Dist. Ct. App. 2009).

143. 67 So. 3d 415 (Fla. 4th Dist. Ct. App.), *reh'g granted sub nom.* *Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff'd per curiam*, 94 So. 3d 504 (Fla. 2012).

144. *Id.* at 417–19; *see also* FLA. CONST. art. VIII § 1(d)–(e).

145. *Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (per curiam); *see also Snipes*, 67 So. 3d at 417–19; *Cook II*, 823 So. 2d at 94–96.

Commissioners, and logically aligns the procedural and substantive history leading up to the Court's previous decision in *Cook II*.<sup>146</sup>

1. The *Telli* Decision is in Direct Contradiction to the Provisions of Article VIII, Section 1, Subsection (d) of the Florida Constitution

As the constitutional provision currently stands, charter counties can take no action to interfere with any of the Constitution's County Officers under article VIII, section 1, subsection (d), except as discussed above that a county may choose a different *manner* in which such officers will be chosen.<sup>147</sup> This provision simply means that a charter county may use a different procedure for choosing the Constitution's County Officers.<sup>148</sup> However, the option exists whereby the electors of the county may—either by charter or special law—abolish the Constitution's County Office when all of the duties are transferred to another charter-created office, the charter's office.<sup>149</sup> The county could then regulate the charter-created office however it so pleases, as stated above by Justice Anstead because it is that charter's office, and not the Constitution's Office.<sup>150</sup> However, until such time as the Constitution's County Office is abolished and all of its duties transferred, a charter county cannot interfere with the Constitution's County Office and therefore, any provisions in the county charter pertaining to the Constitution's County Officer would be unenforceable.<sup>151</sup>

The *Cook II* and *Telli* opinions—and their predecessors—analyze and argue extensively over whether or not article VI, section 4, subsection (b)<sup>152</sup>—which establishes that certain offices under the Constitution are term

146. See *Cook II*, 823 So. 2d at 94–95; *Snipes*, 67 So. 3d at 417–19.

147. 081-7 Fla. Op. Att'y Gen. 21 (1981); see also discussion *supra* Part II.C.1.

148. See FLA. CONST. art. VIII, § 1(d).

149. *Id.*

150. *Cook II*, 823 So. 2d at 95–96 (Anstead, J., dissenting); see also *supra* Part

III.B.

151. See FLA. CONST. art. VIII, § 1(d).

152. FLA. CONST. art. VI, § 4(b).

Section 4. Disqualifications.—

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(b) No person may appear on the ballot for re-election to any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida Lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. Representative from Florida, or
- (6) U.S. Senator from Florida

if, by the end of the current term of office, the person will have served—or, but for resignation, would have served—in that office for eight consecutive years.

limited—expressly establishes that all other offices within the Constitution may not be term limited, by virtue of not being included in the article VI, section 4, subsection (b) list.<sup>153</sup> However, article VI, section 4, subsection (b) is actually a moot point on this issue.<sup>154</sup> Even assuming that this provision did not exist in the Florida Constitution, or assuming that its adverse implication does not apply to article VIII, section 1, subsection (d) officers, a term limit provision within a county charter could not be enforceable against any one of the Constitution's article VIII, section 1, subsection (d) County Officers if that office has not been abolished and its duties transferred to a charter office, simply based on the fact that county charters cannot regulate or interfere with the Constitution's County Officers.<sup>155</sup>

A contrary holding, such as that established in *Telli*, completely undermines the distinction in the Florida Constitution between the Constitution's County Officers and a charter-created officer—the charter's office—that performs the same duties previously carried out by the Constitution's County Officers.<sup>156</sup> The holding also completely undermines and breaks down the status of the Constitution's County Officers as officers who perform important state work locally, and, because imbued with sovereignty, are shielded from undue influence and control of the county, and only accountable to the electorate.<sup>157</sup>

Placing term limits on any of the five Constitution County Officers would be an interference with, and control over the Constitution's County Officer, in direct derogation of the Constitution.<sup>158</sup> Although the Second District Court of Appeal in *Pinellas County v. Eight is Enough in Pinellas*<sup>159</sup>—one of the lower court consolidated cases preceding *Cook II*—found that the charter term limit at issue in that case would not affect the *status, duties, or responsibilities* of the Constitution's County Officers,<sup>160</sup> a term limit would actually affect the status of the Constitution's County

*Id.*

153. *Id.*; *Telli v. Broward Cnty.*, 94 So. 3d 504, 512–513 (Fla. 2012) (per curiam); *Cook II*, 823 So. 2d at 90, 94–95; *Snipes v. Telli*, 67 So. 3d 415, 416–17 (Fla. 4th Dist. Ct. App.), *reh'g granted sub nom Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff'd per curiam*, 94 So. 3d 504 (Fla. 2012); *Cook I*, 765 So. 2d 289, 290, 293 (Fla. 1st Dist. Ct. App. 2000) (per curiam), *reh'g granted*, *Cook v. City of Jacksonville*, 786 So. 2d 1184 (Fla. 2001), *overruled by Cook II*, 823 So. 2d 86 (Fla. 2002).

154. *See* FLA. CONST. art. VI, § 4(b).

155. *See* FLA. CONST. art. VIII, § 1(d); *supra* Part II.C.2.

156. *See* FLA. CONST. art. VIII, § 1(d); *Telli*, 94 So. 3d at 512–13.

157. *See* FLA. CONST. art. VIII, § 1(d); *Telli*, 94 So. 3d at 512–13.

158. *Telli*, 94 So. 3d at 512.

159. 775 So. 2d 317 (Fla. 2d Dist. Ct. App.), *reh'g granted*, 786 So. 2d 1188 (Fla. 2001), *overruled by Cook II*, 823 So. 2d 86 (Fla. 2002).

160. *Id.* at 319; *see also Cook II*, 823 So. 2d 86, 90 (Fla. 2002).



Officers, who enjoy sovereign authority and plenary power, separate from the control of the county governing board.<sup>161</sup> Allowing charter counties to term limit the Constitution's County Officers, gives the charter county's governing board a source of leverage and control over the Constitution's County Officers.<sup>162</sup> For example, if a charter county's governing board does not agree with the actions of an incumbent Tax Collector, the charter county's governing board might attempt to pass a term limit provision in the county's charter, which would prohibit the incumbent Tax Collector from being able to run for reelection the following term and remain in office.<sup>163</sup> Additionally, the governing board might be able to maintain leverage over the Constitution's County Tax Collector by simply threatening to pass a charter term limit if the Constitution's County Tax Collector does not take actions in its favor.<sup>164</sup> This kind of interference and control is exactly what was intended to be avoided by having the Constitution's County Officers maintain an independence and sovereignty separate from any possible influence or control of the local county governing body.<sup>165</sup>

Furthermore, the holding in *Cook II* also renders the language in article VIII, section 1, subsection (d) that "any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office," as mere surplusage.<sup>166</sup> If counties, under their charters, had full authority to regulate and control the Constitution's County Officers, there would be no need for the language regarding abolition and transfer.<sup>167</sup> Although charter counties have the power to impose term limits on county officers once they have become the charter's officers, and no longer the Constitution's sovereign County Officers, it is improper to conclude, as Justice Anstead did, that this procedure can be side-stepped:

I can find no legal justification for concluding that charter counties should not be allowed to ask their citizens to vote on eligibility requirements of local elected officials, including term-limits, since they could abolish the offices completely or decide to select the officers in any manner of their choosing.<sup>168</sup>

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161. See FLA. CONST. art. VIII, § 1(d).

162. See *id.*

163. See *id.*

164. See *id.*

165. See *id.*

166. *Cook II*, 823 So. 2d 86, 90 (Fla. 2002) (quoting FLA. CONST. art. VIII, §

1(d)).

167. See FLA. CONST. art. VIII, § 1(d); *Cook II*, 823 So. 2d at 90.

168. *Cook II*, 823 So. 2d at 96 (Anstead, J., dissenting); see also FLA. CONST. art. VIII, § 1(d).

Allowing charter counties to term limit the Constitution's County Officers *before* their offices have been abolished and transferred to a charter's office is an illegal means of achieving a result that would be legal under different means, and allowing such regulation and control will upset the balance of power struck by the Constitution.<sup>169</sup> In a word, the *Telli* decision is alarming in ignoring base provisions of the Florida Constitution.<sup>170</sup>

a. *Additional Critiques of Reliance on Justice Anstead's Dissent in Cook II*

The Supreme Court of Florida in *Telli* based its holding on its agreement with Justice Anstead's dissent in *Cook II*.<sup>171</sup> Part of Justice Anstead's reason for finding that article VI, section 4, subsection (b) did not prohibit charter counties from implementing term limits on any and all of its county officers—the Constitution's County Officers and County Commissioners—was that the offices in that section for which term limits are listed expressly are offices of *statewide* importance.<sup>172</sup> As such, he concluded that the provision should have no bearing whatsoever on local officers.<sup>173</sup> However, this statement fails to acknowledge the distinction between the status of the Constitution's five County Officers listed in and created by article VIII, section 1, subsection (d), and that of other local officers who perform exclusively local duties—namely County Commissioners—and the fact that the work that the Constitution's five County Officers perform is in fact work of *statewide* importance implemented and carried out on the county level.<sup>174</sup>

Additionally, this distinction also undermines Justice Anstead's second reason for finding that article VI, section 4, subsection (b) cannot prohibit the implementation of term limits in charter counties for all county officers whether it be the Constitution's County Officers, the charter's

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169. *Cook II*, 823 So. 2d at 94–95; *see also* FLA. CONST. art. VIII, § 1(d).

170. *See* FLA. CONST. art. VIII, § 1(d); *Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (*per curiam*).

171. *See Telli*, 94 So. 3d at 512; *Cook II*, 823 So. 2d at 95–96 (Anstead, J., dissenting).

172. *Cook II*, 823 So. 2d at 96 (Anstead, J., dissenting); *see also* FLA. CONST. art. VI, § 4(b).

173. *Cook II*, 823 So. 2d at 96 (Anstead, J., dissenting); *see also* FLA. CONST. art. VI, § 4(b).

174. *See* FLA. CONST. art. VIII, § 1(d); *Snipes v. Telli*, 67 So. 3d 415, 418 (Fla. 4th Dist. Ct. App.), *reh'g granted sub nom.* *Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff'd per curiam*, 94 So. 3d 504 (Fla. 2012).

county officers, or County Commissioners.<sup>175</sup> Justice Anstead noted that “there is no wording in article VI, section 4, [subsection] (b)—or anywhere else in the Florida Constitution or the Florida Statutes—that indicates that the named officers in article VI, section 4, [subsection] (b) are subject to term limits *to the exclusion of all other government officers, state or local*, in the State of Florida.”<sup>176</sup> However, there is also no wording in article VI, section 4, subsection (b) to indicate that the specific disqualifications and election provisions should apply *exclusively* to those offices of specific *statewide* importance.<sup>177</sup> In fact, sections 6 and 7 of article VI contain wording indicating that the provisions in those sections expressly apply only to municipal or district elections and statewide elections, respectively.<sup>178</sup> This wording is evidence that the Constitution drafters know how to write provisions expressly applicable to only certain offices and or elections, and if they so intended for article VI, section 4, subsection (b) to apply only to *offices of statewide importance* as defined by Justice Anstead, they would have expressly noted that restriction.<sup>179</sup>

Furthermore, the Supreme Court of Florida’s opinion in *Telli*, and its reliance on Justice Anstead’s dissent in *Cook II*, fails to acknowledge and undermines the Constitution’s specific distinction that exists between the Constitution’s five County Officers listed in article VIII, section 1, subsection (d), and the County Commissioners listed in article VIII, section 1, subsection (e).<sup>180</sup> The Florida Fourth District Court of Appeal made a

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175. *Cook II*, 823 So. 2d at 96 (Anstead, J., dissenting); *see also* FLA. CONST. art. VI, § 4(b)(1)–(6); *Snipes*, 67 So. 3d at 418.

176. *Cook II*, 823 So. 2d at 96 (Anstead, J., dissenting); *see also* FLA. CONST. art. VI, § 4(b).

177. *See* FLA. CONST. art. VI, § 4(b); *Telli v. Broward Cnty.*, 94 So. 3d 504, 512 (Fla. 2012) (per curiam); *Cook II*, 823 So. 2d at 96 (Anstead, J., dissenting).

178. *See* FLA. CONST. art. VI, §§ 6–7.

Section 6. Municipal and district elections.—Registration and elections in *municipalities* shall, and in other governmental entities created by statute may, be provided by law.

Section 7. Campaign spending limits and funding of campaigns for elective state-wide office.—It is the policy of this state to provide for *state-wide elections* in which all qualified candidates may compete effectively. A method of public financing for campaigns for *state-wide office* shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998.

*Id.* (emphasis added).

179. *Cook II*, 823 So. 2d at 96 (Anstead, J., dissenting); *see also* FLA. CONST. art. VI, § 4(b)(1)–(6).

180. FLA. CONST. art. VIII, § 1(d)–(e); *Telli*, 94 So. 3d at 512–13; *Cook II*, 823 So. 2d at 95–96 (Anstead, J., dissenting).

detailed analysis of these two sets of offices in the lower court decision of *Snipes*.<sup>181</sup> First, the court noted that the structure of the two sets of offices is distinctly different under article VIII, section 1 of the Florida Constitution, specifically with regards to changes to be made by a county charter.<sup>182</sup> The court noted that “[t]he section 1, [subsection] (d) officers are established with precise language . . . . [The section] establishe[d] that a county government shall have certain named officers, and grants the county limited powers to change the manner of electing those officers, or to abolish an office altogether and transfer its duties to another county office.”<sup>183</sup> In contrast, “the section 1, [subsection] (e) *commissioners* are described as a default option when a county charter does not provide otherwise.”<sup>184</sup> Section 1, subsection (d) *requires* each county to have the five Constitution County Officers, and is followed by language that authorizes a limited way in which a county by charter may abolish the Constitution’s County Office and transfer its duties to a charter-created office, the charter’s office.<sup>185</sup> Conversely, section 1, subsection (e) does not require that the composition of the Board of County Commissioners be set up in the way enumerated in the Constitution; it is simply a default.<sup>186</sup> By beginning section 1, subsection (e) with the words “[e]xcept when otherwise provided by county charter, . . . .” [t]he language of the Constitution expressly cedes power to a county charter when it comes to the creation of a county’s collegial governing body.”<sup>187</sup>

Additionally, the court went on to discuss the practicality of the Constitution preferring statewide uniformity for section 1, subsection (d) officers.<sup>188</sup> This *practicality* argument is further bolstered by the fact that the Constitution’s five County Officers perform important statewide work on the county level, which is intended to be free of interference or influence of the

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181. *Snipes v. Telli*, 67 So. 3d 415, 417–19 (Fla. 4th Dist. Ct. App.), *reh’g granted sub nom. Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff’d per curiam*, 94 So. 3d 504 (Fla. 2012); *see also* FLA. CONST. art. VIII, § 1(d)–(e).

182. *Snipes*, 67 So. 3d at 417; *see also* FLA. CONST. art. VIII, § 1.

183. *Snipes*, 67 So. 3d at 417; *see also* FLA. CONST. art. VIII, § 1(d).

184. *Snipes*, 67 So. 3d at 417; *see also* FLA. CONST. art. VIII, § 1(e).

185. FLA. CONST. art. VIII, § 1(d); *Snipes*, 67 So. 3d at 417.

186. FLA. CONST. art. VIII, § 1(e); *see also Snipes*, 67 So. 3d at 417.

187. *Snipes*, 67 So. 3d at 417 (emphasis added) (quoting FLA. CONST. art. VIII, § 1(e)).

188. *Id.* at 418 (“Persons traveling and doing business between counties should deal with a common set of section 1, [subsection] (d) county officers, i.e., sheriff, tax collector, property appraiser, supervisor of elections, clerk of the circuit court, and should not be forced to navigate byzantine bureaucracies to accomplish similar tasks. Likewise, legislators seeking to regulate section 1, [subsection] (d) county officers should not be forced to take a variety of different titles and job descriptions into account in order to achieve a single legislative objective.”); *see also* FLA. CONST. art. VIII, § 1(d).

local county governing board.<sup>189</sup> Conversely, the court notes that “these reasons for statewide uniformity are less applicable to the county’s [collegial] governing body,” whose duties “need not be kept uniform by the Constitution, but may rather be fashioned to suit the particular wants and needs of the voters of the county they serve.”<sup>190</sup> The difference in status in the Florida Constitution between these two groups of officers “reflects the common sense conclusion that, as a matter of policy, the balance of state and local interests favors statewide uniformity for the [Constitution’s five County Officers], and local flexibility for the [governing Board of County Commissioners].”<sup>191</sup>

The precise language in article VIII, section 1, subsection (e), “[e]xcept when otherwise provided by county charter,” represents the shift in power and authority that resulted from the 1968 Constitution denoting broad county home rule powers.<sup>192</sup> Accordingly, prior to this change, even County Commissioners were considered *constitution officers*,<sup>193</sup> the election and qualifications of whom could not be changed.<sup>194</sup> However, this consideration is no longer true under the 1968 Constitution in charter counties that have established the form of its governing Board of County Commissioners under its charter, rather than utilizing the fallback option listed in article VIII, section 1, subsection (e).<sup>195</sup> Once a charter county decides to establish and to regulate its governing board under its charter, the County Commissioners are local charter county officers, who—as Justice Anstead pointed out in his dissent in *Cook II*—the charter county has the power and authority to regulate.<sup>196</sup> It is under this distinction and analysis that the Fourth District Court of Appeal in *Snipes* held that the holding of *Cook II* did not extend to County Commissioners, and that charter term limits for those offices are permissible under the Florida Constitution.<sup>197</sup>

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189. See *supra* Part II.C.

190. *Snipes*, 67 So. 3d at 418; see also FLA. CONST. art. VIII, § 1(d)–(e).

191. *Snipes*, 67 So. 3d at 418; see also FLA. CONST. art. VIII, § 1(d)–(e).

192. Compare FLA. CONST. art. VIII, § 1(e) (emphasis added), with FLA. CONST., art. VIII, § 1(e) (amended 1973).

193. *State v. Walton Cnty.*, 112 So. 630, 632 (Fla. 1927) (“[T]he board of county commissioners of each county are constitutional officers, and under the terms of the Constitution their powers and duties shall be fixed and prescribed by the Legislature.”).

194. See *Wilson v. Newell*, 223 So. 2d 734, 735 n.2 (Fla. 1969) (quoting FLA. CONST. of 1885, art. VIII, § 5 (1943)).

195. FLA. CONST. art. VIII, § 1(c), (e), (g).

196. *Cook II*, 823 So. 2d 86, 95–96 (Fla. 2002) (Anstead, J., dissenting); see also FLA. CONST. art. VIII, § 1(e), (g).

197. *Snipes v. Telli*, 67 So. 3d 415, 419 (Fla. 4th Dist. Ct. App.), *reh’g granted sub nom.* *Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff’d per curiam*, 94 So. 3d 504 (Fla. 2012); see also FLA. CONST. art. VIII, § 1(c), (e); *Cook II*, 823 So. 2d at 94–95.

However, the Supreme Court of Florida in its review of the Fourth District Court of Appeal's decision failed to even analyze this distinction.<sup>198</sup> In its decision, the Court simply recapped the two lower court consolidated decisions and its previous decision in *Cook II*, then simply noted that it no longer agreed with its previous decision, and would recede from it because it now agreed with Justice Anstead's dissent.<sup>199</sup> Rather than analyzing specifically why the distinction drawn by the Fourth District Court of Appeal was erroneous, the Court simply noted that it was unworkable and "would undermine the ability to predict what offices may be included within the scope of [*Cook II*'s] prohibition on term-limits and would result in apparent inconsistencies between county officials."<sup>200</sup> However, we firmly and respectfully disagree with the Court's hasty, careless, unreasoned, and alarming conclusion about the Fourth District Court of Appeal's holding.<sup>201</sup> Based on the procedural and substantive history of the previous decisions involved in the *Cook II* case, the Fourth District Court of Appeal's holding is clear and logically aligns the past precedent.<sup>202</sup>

As correctly noted by the Fourth District Court of Appeal, the holding of *Cook II* only expressly applied to the Constitution's five County Officers enumerated in article VIII, section 1, subsection (d).<sup>203</sup> The first case that *Cook II* reviewed was *Cook I*.<sup>204</sup> This case was a challenge by the Clerk of Court for Duval County to a City of Jacksonville charter term limit provision.<sup>205</sup> The second case was *Eight is Enough in Pinellas*.<sup>206</sup> This case

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198. See *Telli v. Broward Cnty.*, 94 So. 3d 504, 512–13 (Fla. 2012) (per curiam); *Snipes*, 67 So. 3d at 419.

199. *Telli*, 94 So. 3d at 512–13; see also *Cook II*, 823 So. 2d at 95–96 (Arnstead, J., dissenting).

200. *Telli*, 94 So. 3d at 513; see also *Cook II*, 823 So. 2d at 94–95; *Snipes*, 67 So. 3d at 419.

201. See *Telli*, 94 So. 3d at 513; *Snipes*, 67 So. 3d at 419.

202. See *Cook II*, 823 So. 2d at 87–90; *Snipes*, 67 So. 3d at 416, 419.

203. *Snipes*, 67 So. 3d at 416; see also FLA. CONST. art. VIII, § 1(d); *Cook II*, 823 So. 2d at 94–95.

204. *Cook II*, 823 So. 2d at 87; *Snipes*, 67 So. 3d at 416; see also *Cook I*, 765 So. 2d 289, 289 (Fla. 1st Dist. Ct. App. 2000) (per curiam), *reh'g granted*, *Cook v. City of Jacksonville*, 786 So. 2d 1184 (Fla. 2001), *overruled by Cook II*, 823 So. 2d 86 (Fla. 2002).

205. *Cook II*, 823 So. 2d at 88; *Cook I*, 765 So. 2d at 290. The challenge was to the City of Jacksonville Charter, rather than a county charter because under the Florida Constitution, the City of Jacksonville currently operates "in the place of any or all county . . . government[]." FLA. CONST. art. VIII, § 6(e) n.1; *Cook II*, 823 So. 2d at 88. This section also contains a similar provision as article VIII, section 1, subsection (d), regarding abolition of the Constitution's County Officers, which states: "No county office shall be abolished or consolidated with another office without making provision for the performance of all state duties now or hereafter prescribed by law to be performed by such county officer." Compare FLA. CONST. art. VIII, § 6(e) n.1, with FLA. CONST. art. VIII, § 1(d). Contrary to the belief of many—Duval County is not a charter county. See FLA. CONST. art. VIII § 6 n. 1. There is no

began with a resident of the county seeking declaratory judgment that a charter provision implementing term limits for the Constitution's five County Officers as well as the County Commissioners was invalid.<sup>207</sup> The trial court found the provisions valid and, thereafter, the Constitution's five County Officers intervened as plaintiffs.<sup>208</sup> The trial court upheld the provision and the resident, the Constitution County Officers, and the county itself, appealed.<sup>209</sup> The Second District affirmed the trial court.<sup>210</sup> "The incumbent [C]lerk of . . . [C]ourt, [T]ax [C]ollector, and [S]heriff petitioned [the Supreme Court of Florida] for review, but the [B]oard of [C]ounty [C]ommissioners did not."<sup>211</sup> The Fourth District in *Snipes* correctly noted that the failure of the County Commissioners to petition for review of the Second District's decision was significant "because it had the effect of removing that office from the holding of [*Cook II*]."<sup>212</sup> Interestingly enough, the Supreme Court of Florida conveniently failed to include this fact in its opinion in *Telli*.<sup>213</sup>

Furthermore, the Supreme Court of Florida in *Cook II* could not have been more clear and express about the fact that it was only reviewing the validity of term limit provisions on the Constitution's five County Officers enumerated in article VIII, section 1, subsection (d).<sup>214</sup> The Court phrased the issue in the case as such from the very outset of the opinion.<sup>215</sup> Given the foregoing analysis, we would firmly and respectfully disagree with the careless and irresponsible conclusion of the Court in *Telli*, that unworkable

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Duval County government. *See id.* There is no consolidated government, and if and when the electors of Duval County vote in, or have an election to approve a county charter, the city of Jacksonville, by operation of law, will no longer act in operation and in place of the county government. *See id.*

206. *Pinellas Cnty. v. Eight is Enough in Pinellas*, 775 So. 2d 317, 317 (Fla. 2d Dist. Ct. App.), *reh'g granted*, 786 So. 2d 1188 (Fla. 2001), *overruled by Cook II*, 823 So. 2d 86 (Fla. 2002).

207. *Telli v. Broward Cnty.*, 94 So. 3d 504, 510 (Fla. 2012) (per curiam).

208. *Id.* at 510–11; *Eight is Enough in Pinellas*, 775 So. 2d at 318.

209. *Telli*, 94 So. 3d at 510–11.

210. *Id.* at 511.

211. *Snipes v. Telli*, 67 So. 3d 415, 416 (Fla. 4th Dist. Ct. App.), *reh'g granted sub nom. Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff'd per curiam*, 94 So. 3d 504 (Fla. 2012).

212. *Id.*; *see also Cook II*, 823 So. 2d 86, 94–95 (Fla. 2002).

213. *Telli*, 94 So. 3d at 506–13.

214. *Cook II*, 823 So. 2d at 90–91; *see also* FLA. CONST. art. VIII § 1(d).

215. *Cook II*, 823 So. 2d at 90.

The issue we address in these consolidated cases is whether a charter county may in its charter impose a "term limit" provision upon those county officer positions which are authorized by article VIII, section 1, [subsection] (d), Florida Constitution, where the charter county through its charter has not abolished those county officer positions.

*Id.*

confusion will result as to which officers the *Cook II* decision would apply.<sup>216</sup>

This is not to say that even under *Cook II*, charter counties have no power whatsoever to term limit its officers.<sup>217</sup> Charter counties still have the ability to abolish any of the Constitution's five County Officers listed in article VIII, section 1, subsection (d), and transfer the duties to a separate charter-created office, which it could then term limit in the same manner that it can term limit its charter governing board and any other charter officers.<sup>218</sup> The officers would then be the *charter's* non-sovereign county officers, and no longer the Constitution's sovereign County Officers.<sup>219</sup> This distinction was also made in *Cook II*, as the issue posed specifically addressed the section 1, subsection (d), County Officers, "where the charter county through its charter *has not abolished* those county officer positions."<sup>220</sup> The Court in *Cook II* held that term limits could only be imposed on *constitutional*—that is, not-yet-abolished—County Officers through an amendment to the Constitution.<sup>221</sup>

#### IV. PATHWAYS TO REVIEW: WHERE CAN WE GO FROM HERE?<sup>222</sup>

While the pathway for review in attempting to correct the *Telli* decision is rather limited and bleak, there are some methods available by which one could attempt to get the decision revisited and hopefully overturned by the Supreme Court of Florida.<sup>223</sup> It is important to note that a state's supreme court is the final and ultimate arbiter on issues of state law.<sup>224</sup> Therefore, the Supreme Court of Florida is the final arbiter of the state constitutional law issues involved in *Telli*, and the trial courts and district courts of appeal are bound to follow the *Telli* decision until such time as it is overruled by a subsequent decision of the Supreme Court.<sup>225</sup> However, this does not mean that one could not argue a case on the same issue back up to the Supreme Court of Florida, on the premise that the *Telli* decision was

216. *Telli*, 94 So. 3d at 513; *see also Cook II*, 823 So. 2d at 94–95.

217. *See Cook II*, 823 So. 2d at 90.

218. FLA. CONST. art. VIII, § 1(d)–(e), (g); *Cook II*, 823 So. 2d at 90, 94–95.

219. *See Cook II*, 823 So. 2d at 94–95.

220. *Id.* at 90 (emphasis added).

221. *Id.* at 94–95.

222. This list of pathways to review is by no means all-inclusive.

223. *See* FLA. CONST. art. V, § 3(b); FLA. R. APP. P. 9.030(a); *Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (per curiam).

224. *E.g.*, *Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 116 F.3d 1406, 1413 (11th Cir. 1997).

225. *See Nielsen*, 116 F.3d at 1413; *Telli*, 94 So. 3d at 513.



decided erroneously and in direct derogation of the Florida Constitution.<sup>226</sup> There are several different options for getting the issue back to the Supreme Court of Florida.<sup>227</sup>

#### A. *Constitutional Amendment*

One option would be for a constitutional amendment to be passed which would clarify the status of the Constitution's County Officers, and make it explicit that no actions could be taken to interfere with—including placing term limits on—the Constitution's County Officers, until and unless their offices have been abolished and duties transferred to a charter-created office.<sup>228</sup> The Florida Constitution sets out several different ways to propose and pass amendments to the Florida Constitution.<sup>229</sup> However, we believe that a constitutional amendment is unnecessary. The Florida Constitution does not need to be amended in this situation; its plain language simply needs to be followed.<sup>230</sup> We believe that the limited powers and authority of charter counties to regulate or control the Constitution's County Officers is clear from the plain language of the Florida Constitution as it stands.<sup>231</sup>

#### B. *Review of District Court of Appeal Decision*

The second option for getting back to the Supreme Court of Florida would be through review of a district court of appeal decision.<sup>232</sup> Under this option, one would have to bring a case in a Florida circuit court.<sup>233</sup> As noted above, the Florida circuit courts are bound by Supreme Court precedence, and so any circuit court would be bound to rule that charter term limits for any or all of the Constitution's County Officers are constitutionally permissible based on *Telli*.<sup>234</sup> However, an appeal could then be taken and heard by a district court of appeal.<sup>235</sup> The district court of appeal would also be bound to follow *Telli*, and therefore would affirm the trial court's

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226. See Weinger, *supra* note 7, at 868–71; see also *Telli*, 94 So. 3d at 513.

227. See FLA. CONST. art. V, § 3(b)(3); FLA. R. APP. P. 9.030(a)(1)(A)(ii), (a)(2)(A)–(B).

228. See FLA. CONST. art. VIII, § 1(d), (g).

229. FLA. CONST. art. XI.

230. See FLA. CONST. art. VI, § 4(b); FLA. CONST. art. VIII, § 1(g).

231. See FLA. CONST. art. VIII, § 1(d).

232. FLA. CONST. art. V, § 3(b)(3).

233. *Id.* § 4(b)(3); FLA. R. APP. P. 9.030(b)(1)(A).

234. See FLA. CONST. art. V, § 3(b); *Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (per curiam).

235. FLA. CONST. art. V, § 4(b)(1) (“District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts . . .”).

judgment.<sup>236</sup> The party could then petition the Supreme Court of Florida for review; however, the case would fall into the category of cases for which the Supreme Court of Florida only has discretionary review,<sup>237</sup> so there is no guarantee that the Court would hear the case.<sup>238</sup> It could just as easily decide not to, based on the fact that it has just recently issued the *Telli* opinion.<sup>239</sup>

Alternatively, the Supreme Court of Florida would have discretion to review the case if a district court of appeal certifies a question to be of great public importance that it has passed upon.<sup>240</sup> The Supreme Court of Florida could also immediately hear a review of the trial court judgment—of which appeal is pending—if a district court of appeal certifies the case “to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the [S]upreme [C]ourt.”<sup>241</sup>

### C. *Writ of Quo Warranto*

A writ of quo warranto is “used to test the right of a person either to hold an office . . . or to exercise some right or privilege.”<sup>242</sup> Under the Florida Statutes, a person who claims the right to hold public office may bring a petition for writ of quo warranto if the Attorney General refuses to bring the petition.<sup>243</sup> The Supreme Court of Florida has jurisdiction to hear petitions for writs of quo warranto, challenging the right of a person to hold state office.<sup>244</sup> The Supreme Court of Florida has previously held that the title *state officer* under this provision “contemplates possession or use[] of a certain portion of sovereignty for the benefit of the people.”<sup>245</sup> Because the Constitution’s County Officers are sovereign officers, they are also subject to

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236. *See id.*; *Telli*, 94 So. 3d at 513.

237. FLA. CONST. art. V, § 3(b)(3). Under this option, the Supreme Court of Florida could review the District Court’s decision based on the fact that it “expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers.” *Id.* Because of the constitutional issues involved in the case, conflict between more than one district is not necessary for discretionary Supreme Court review. *See id.*

238. *See id.*

239. *See Telli*, 94 So. 3d at 513.

240. FLA. CONST. art. V, § 3(b)(4).

241. *Id.* § 3(b)(5).

242. Tracy Raffles Gunn, *Original Proceedings in Florida’s Appellate Courts*, 32 STETSON L. REV. 347, 354 (2003).

243. FLA. STAT. § 80.01 (2014).

244. FLA. CONST. art. V, § 3(b)(8) (The Supreme Court of Florida “[m]ay issue writs of mandamus and quo warranto to state officers and state agencies.”).

245. *Ex parte Smith*, 118 So. 306, 307 (Fla. 1928).

a writ of quo warranto from the Supreme Court of Florida.<sup>246</sup> Therefore, this would be a viable method for getting this issue back to the Supreme Court of Florida directly, but one would have to wait for several things to occur before bringing such a petition.<sup>247</sup>

First, a charter county would have to pass a charter term limit applicable to one or more of the Constitution's County Officers.<sup>248</sup> Second, an incumbent Constitution County Officer would have to be denied the ability to run in the next election following the passage of the charter term limit.<sup>249</sup> Third, and related, a new Constitution County Officer would be elected and would take office.<sup>250</sup> At this point, the incumbent Constitution County Officer—who was denied the ability to run for office again—would have the right to petition the Supreme Court of Florida for a writ of quo warranto, challenging the newly-elected Constitution County Officer's right to hold that office.<sup>251</sup> The incumbent Constitution County Officer would have a claim to that office because had the charter term limit provision not been enacted—in derogation of the Florida Constitution—he or she would have been able to run again, and possibly would have been reelected.<sup>252</sup> However, the Supreme Court of Florida's jurisdiction for hearing a petition for a writ of quo warranto is discretionary as well, so again, there is no guarantee that the Court would hear the petition.<sup>253</sup>

Similarly, because a writ of quo warranto can also be used to challenge an exercise of authority derived from a public office,<sup>254</sup> the writ could also possibly be used to challenge the authority of a charter review committee to consider and propose charter term limits for the Constitution's County Officers.<sup>255</sup> However, the jurisdiction for this particular writ would fall in the circuit court,<sup>256</sup> the decision of which would then have to be appealed up to a Florida district court of appeal—just like any other case—and would not be guaranteed review by the Supreme Court of Florida.<sup>257</sup>

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246. *See id.*

247. *See id.*

248. *See, e.g.,* Telli v. Broward Cnty., 94 So. 3d 504, 505–06 (Fla. 2012) (per curiam).

249. *Id.* at 506.

250. FLA. CONST. art. VIII, § 1(d); *Telli*, 74 So. 3d at 506.

251. FLA. CONST. art. V, § 3(b)(8); FLA. STAT. § 80.01 (2014); *see also Ex parte Smith*, 118 So. at 307.

252. *See Cook II*, 823 So. 2d 86, 96 (Fla. 2002) (Anstead, J., dissenting).

253. FLA. CONST. art. V, § 3(b)(8).

254. *See Martinez v. Martinez*, 545 So. 2d 1338, 1338–39 (Fla. 1989).

255. *See Weinger, supra* note 7, at 868.

256. *See* FLA. R. APP. P. 9.030(c)(3).

257. *See* FLA. CONST. art. V, §§ 3(b)(3), 4(b)(3); *supra* Parts II–IV.

## V. CONCLUSION

For all of the foregoing reasons, the Fourth District Court of Appeal's decision and reasoning in *Snipes* should have been affirmed in *Telli*.<sup>258</sup> Under the Florida Constitution, charter counties have broad authority to regulate their County Commissioners fully, and therefore, the authority exists to set term limits for them within the county charter.<sup>259</sup> Conversely, there is only very limited and specific authority for counties to regulate the Constitution's five County Officers under their charters.<sup>260</sup> That is, specifically, a county may only establish a different manner in which these officers shall be *chosen* under the county charter; and as long as a charter county has not abolished the Constitution's County Office and transferred its duties to a charter-created office—the charter's office—it remains the Constitution's County Officer's, and charter counties possess no more power than non-charter counties to regulate them.<sup>261</sup> This point of law means that charter counties possess no more power than non-charter counties to set term limits for the Constitution's five County Officers.<sup>262</sup>

The Supreme Court of Florida's decision in *Telli* failed to take into account the status of the Constitution's five County Officers, completely abridging the distinction drawn by the Constitution between a Constitution's County Officer and a *charter's* county officer, and therefore, illegally and without authority or jurisdiction, has effectuated an amendment to the Florida Constitution, which it does not possess the power to effectuate.<sup>263</sup> Only the people of Florida can effectuate an amendment to the Florida Constitution through an amendment election vote.<sup>264</sup> The *Telli* opinion unconstitutionally abridges the rights of both incumbent holders of the Constitution's County Offices and of the voters who may wish to vote for those incumbent Constitution County Officers.<sup>265</sup> For this reason, the opinion is untenable, disconcerting, not judicially cognizant, devoid of constitutional integrity, and, if enforced, precipitates needlessly an

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258. See *Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (per curiam); *Snipes v. Telli*, 67 So. 3d 415, 419 (Fla. 4th Dist. Ct. App.), *reh'g granted sub nom.* *Telli v. Broward Cnty.*, 74 So. 3d 1084 (Fla. 2011), *aff'd per curiam*, 94 So. 3d 504 (Fla. 2012); Weinger, *supra* note 7, at 860, 870.

259. See FLA. CONST. art. VIII, § 1(e), (g).

260. *Id.* § 1(g).

261. See *id.* § 1(e)–(g).

262. See *id.* § 1(f)–(g).

263. See FLA. CONST. art. I, § 1; *Telli*, 94 So. 3d at 512–13; Weinger, *supra* note 7, at 869–70.

264. FLA. CONST. art. XI, § 5(b), (e).

265. See FLA. CONST. art. I, § 1; *Telli*, 94 So. 3d at 512–13; Weinger, *supra* note 7, at 868–70.

unnervingly serious constitutional problem, which must be solved.<sup>266</sup> There is a dire need for the issue to make its way back to the Supreme Court of Florida for reconsideration of the constitutional implications of the *Telli* decision. If not revisited, there will soon be officers elected and sworn into sovereign state office in derogation of the Florida Constitution. If the issue does in fact make its way back to the discretionary jurisdiction of the Supreme Court of Florida, one would hope that the Court would exercise its discretion in favor of hearing the issue, if only to correct the dire constitutional issues placed before it; and then, also to correct a careless and unsupported opinion that is entirely inconsistent with the Court's well-earned respect as one of the best state supreme courts in the United States of America.

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266. See *Telli*, 94 So. 3d at 512–13.