

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSE TO PLEAD
DRAW NEAR, GIVE ATTENTION AND
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
THE FIRST CASE ON OUR DOCKET
TODAY IS TELLI VERSUS BROWARD
COUNTY.

>> MR. ^CHIEF JUSTICE, AND MAY IT
PLEASE THE COURT.

BRUCE ROGOW, DANIEL WEINGER,
ERIC RAYMAN FOR THE
PETITIONERS IN THIS CASE.

THE COURT BELOW SAID IT IS NOT
A STRETCH OF CONSTITUTIONAL
LOGIC TO CONCLUDE THAT A
COUNTY CHARTER MAY LIMIT THE
TERMS OF THOSE COMMISSIONERS IT
CHOOSES TO HAVE.

OUR POSITION IS THAT THIS
COURT'S DECISION IN COOK VERSUS
CITY OF JACKSONVILLE RENDERS A
DECISION BELOW INCONSISTENT
WITH COOK AND INCONSISTENT WITH
THE FLORIDA CONSTITUTION.

THERE IS NO QUESTION THAT A
TERM LIMIT IS A
DISQUALIFICATION FROM OFFICE
AND THE COURT HELD THAT IN
COOK.

THERE ARE ALSO IS NO QUESTION
THAT COUNTY COMMISSIONERS ARE,
AND THIS IS THE LANGUAGE FROM
COOK, OFFICES AUTHORIZED BY THE
CONSTITUTION, POSITIONS
AUTHORIZED BY THE CONSTITUTION,
AND CONSTITUTIONALLY-AUTHORIZED
OFFICES.

>> I JUST WANT TO GO BACK TO
COOK AND I WAS IN THE MAJORITY
IN COOK.

WHAT WE APPEARED TO BE DOING
WAS INTERPRET WHAT THE VOTERS
MEANT TO DO WHEN THEY PASSED
THE TERM LIMITS FOR THE

LEGISLATURE.

AS TO THE, WHETHER THEY INTENDED THAT THE TERM LIMITS WOULD APPLY ONLY TO THOSE STATEWIDE OFFICES AND WHETHER, THEREFORE, NO OTHER OFFICES COULD BE TERM LIMITED UNLESS THE CONSTITUTION WAS CHANGED.

>> CORRECT.

>> OKAY.

IF THE, AND THAT WAS A VOTER INITIATIVE, THE TERM LIMITS, CORRECT?

>> YES.

>> IF THE VOTERS HAD PUT INTO THE AMENDMENT, THE HOUSE, THE SENATE, AND HAD ADDED COUNTY COMMISSIONER, WOULD THAT HAVE BEEN A SINGLE SUBJECT VIOLATION IF THEY HAD DONE THAT?

I MEAN, WHAT I'M TRYING TO FIGURE OUT IS HOW THE INTENT OF THE VOTERS TO HAVE TERM-LIMITED THE LEGISLATURE COULD POSSIBLY MEAN THAT THEY DIDN'T INTEND TO LET THE VOTERS OF HOME RULE CHARTER COUNTIES TERM LIMIT COUNTY COMMISSIONERS?

BECAUSE, AND YOU SAY, WELL, IT'S THE SAME ISSUE IT WAS FOR CLERKS OF COURT OR SHERIFFS OR SUPERVISOR OF ELECTIONS BUT THOSE, WE ALWAYS REFER TO LIKE THE CLERKS OF COURT, THEY REFER TO THEMSELVES AS CONSTITUTIONAL OFFICERS.

>> YES.

>> WE NEVER REFER TO COUNTY COMMISSIONERS AS, THEY'RE NOT CONSTITUTIONAL OFFICERS IN THE SAME SENSE.

SO GIVE ME THE-- I UNDERSTAND WHAT YOU'RE SAYING ABOUT COOK. I THINK THIS IS SOMETHING THAT COULD GO EITHER WAY IN TERMS OF HOW WE ARE LOOKING AT THE CONSTITUTION BUT WHY WE'RE COMPELLED BY COOK TO REACH THE SAME EXACT RESULT?

>> WELL, IN RESPONSE TO THE FIRST PART OF YOUR QUESTION I DON'T THINK THAT THE FACT THAT THE INITIATIVE DID NOT ADDRESS COUNTY COMMISSIONERS CAN LEAD ONE TO CONCLUDE THAT THEREFORE

COUNTY COMMISSIONERS ARE FAIR GAME FOR COUNTY LIMITS AT THE COUNTY LEVEL.

I THINK YOU CAN JUST LOOK AT THE INITIATIVE AND SAY THIS IS WHAT IT FOCUSED ON AND THEN YOU HAVE TO COME BACK TO WHAT THE CONSTITUTION SAYS WITH REGARD TO COUNTY COMMISSIONERS AND COUNTY OFFICERS.

I MEAN THE TWO SECTIONS THAT ARE IN PLAY HERE ARE SECTION 1-D, WHICH WAS THE COOK SECTION, AND SECTION 1-E WHICH DEALS WITH COUNTY COMMISSIONERS.

BUT IN RESPONSE TO THE QUESTION THAT YOU'RE POSING THIS IS WHAT THE COURT SAID IN COOK.

BY TERM LIMIT, BY THE CONSTITUTION IDENTIFYING THE OFFICES TO WHICH TERM LIMIT DISQUALIFICATION APPLIES, THE POINT THAT YOU WERE MAKING JUSTICE PARIENTE, WE FIND THAT IT NECESSARILY FOLLOWS THAT THE CONSTITUTIONALLY AUTHORIZED OFFICES NOT INCLUDED IN ARTICLE VI, SECTION 4 MAY NOT HAVE A TERM LIMIT DISQUALIFICATIONS IMPOSED.

IF THESE OTHER CONSTITUTIONALLY AUTHORIZED OFFICES ARE TO BE SUBJECT TO A TERM LIMIT QUALIFICATION THE FLORIDA CONSTITUTION WILL HAVE TO BE AMENDED TO INCLUDE THOSE OFFICES.

I THINK THE COURT ADDRESSED THAT IN COOK.

>> LET ME ASK YOU THIS. WERE THE VOTERS TOLD THAT WOULD BE CONSEQUENCE OF ADOPTING THAT PROVISION?

>> WERE THEY TOLD --

>> AS PART OF THE BALLOT SUMMARY?

>> NO.

>> OKAY.

THAT SEEMS TO ME TO BE SOMEWHAT PROBLEMATIC TO HAVE THE VOTERS ADOPTING AN IMPLIED PROHIBITION OF WHICH THEY ARE NOT TOLD.

NOW, AM I WRONG?

>> WELL, I --
>> LET ME ASK YOU THIS.
>> YES, JUSTICE.
>> I'M NOT SURE IT MATTERS
BECAUSE ISN'T IT TRUE THAT IN,
THAT COOK REALLY RESTED ON TWO
INDEPENDENT GROUNDS?
>> YES.
>> AND THE FIRST BEING, THAT
GOES BACK TO THOMAS WHERE WE
SAID YOU CAN NOT ADD
DISQUALIFICATIONS OR
QUALIFICATIONS FOR AN OFFICE
WHERE THE CONSTITUTION HAS
SPECIFIED WHAT THE
QUALIFICATIONS AND
DISQUALIFICATIONS ARE?
>> CORRECT.
>> SO THOMAS RESTS ON THAT.
COOK COULD HAVE RESTED ON THAT,
THOUGH THIS WHOLE BUSINESS
ABOUT THE TERM LIMITS
INITIATIVE AND IMPACT OF THAT
IS REALLY NOT NECESSARY TO THE
RESULT IN COOK, IS IT?
>> NO.
WELL, LET ME SAY THIS.
THOMAS, THOMAS VERSUS COBB, DID
LAY THE GROUNDWORK FOR COOK AND
COOK SPOKE VERY SPECIFICALLY.
>> THAT'S WHAT I'M SAYING.
THAT'S THE OTHER BASIS FOR
COOK.
>> YES. THE TWO BASES.
ONE IS, THAT THE
DISQUALIFICATIONS HAVE BEEN SET
FORTH IN TERMS OF TERM LIMITS.
THOSE ARE THE ONLY OFFICERS
THAT ARE TERM-LIMITED AND SO
THEREFORE, IF THE CONSTITUTION
DOESN'T SAY ANYTHING ABOUT THE
OTHER OFFICES WE TAKE A LOOK AT
THE LANGUAGE OF 1-D AND 1-E.
AND THE LANGUAGE OF 1-E THERE
IS IN 1-E, A DISQUALIFICATION.
LAST SENTENCE OF 1-E.
ONE COMMISSIONER RESIDING IN EACH
DISTRICT SHALL BE ELECTED BY
LAW.
IT ADDED A ADDITIONAL
DISQUALIFICATION IN 1-E.
>> WHEN YOU LOOK AT 1-E, IT
STARTS OUT WITH THE LANGUAGE,
EXCEPT WHEN OTHERWISE PROVIDED
BY COUNTY CHARTER.

AND IT SEEMS TO ME THAT BY YOUR INTERPRETATION OF THIS THAT THAT LANGUAGE HAS NO REAL MEANING?

>> NO, JUSTICE QUINCE, BECAUSE IN 1-D IT SAYS, EXCEPT WHEN PROVIDED BY COUNTY CHARTER OR SPECIAL LAW.

THE TWO OF THEM, BOTH HAVE THESE EXCEPTIONS.

>> MR. ^ROGOW, BUT THEY'RE USED IN A DIFFERENT CONTEXT. ONE IS REGARD TO EVEN THE POSITION.

1-E REFERS TO THAT YOU SHALL HAVE THAT POSITION. UNDER, UNDER D IT SEEMS TO ME IS TALKING ABOUT HOW THEY'RE CHOSEN.

SO THEY'RE REALLY TOTALLY DIFFERENT IN D AND E.

WHY IS THAT NOT TRUE?

>> WELL, THEY ARE DIFFERENT IN TERMS OF WHERE THEY'RE PLACED BUT I THINK THE DIFFERENCE CUTS IN FAVOR OF US BECAUSE I THINK THAT IN 1-D, IT GIVES THE VOTERS THE CHANCE TO ABOLISH THE OFFICE ALL TOGETHER.

IN 1-E THERE IS NO ABOLISHMENT OF THE OFFICE.

>> BUT YOU CAN IF IT IS UNDER COUNTY CHARTER.

>> WELL --

>> ISN'T THAT WHAT THAT LANGUAGE MEANS, THAT YOU CAN, WHEN IT COMES TO COUNTY COMMISSIONERS, THAT'S WHAT E IS ABOUT? THAT WHEN IT COMES TO THESE COUNTY COMMISSIONERS, REALLY, THE COUNTY CHARTER SEEMS TO BE TAKING PRECEDENT OVER EVEN THIS STATEMENT ABOUT, THAT FOLLOWS IN THE REST OF SUBSECTION E?

>> BUT, JUSTICE QUINCE, THERE'S NO QUESTION THIS FOCUSES ON 1-G, THE COUNTY, THE POWERS OF A COUNTY CHARTER GOVERNMENT. OF COURSE YOU DISSENTED IN COOK AND FOCUSED EXACTLY ON THAT, BUT OUR POSITION IS THAT WHILE THE COUNTY CHARTER GIVES CERTAINLY POWERS TO THE COUNTY TO DO MANY THINGS IT DOESN'T

GIVE THEM THE POWER TO ADD A DISQUALIFICATION WHEN THE CONSTITUTION HAS NOT SET FORTH THAT DISQUALIFICATION.

>> WHEN YOU LOOK AT THE CONSTITUTION, UNLIKE STATEWIDE OFFICES, EVEN UNDER THIS SECTION, ARTICLE, UNDER THIS ARTICLE, ARTICLE VIII, THERE REALLY IS NO QUALIFICATIONS SET AS IT IS FOR THE LEGISLATURE, FOR THE GOVERNOR, FOR JUDGES OR TRULY CONSTITUTIONAL OFFICERS.

SO HOW, IT BOTHERS ME WE'RE TRYING TO INTERPRET QUALIFICATIONS AND DISQUALIFICATIONS IN THE SAME MANNER THAT WE ARE FOR STATEWIDE OFFICERS WHEN THOSE QUALIFICATIONS ARE IN FACT SET OUT IN THE CONSTITUTION.

>> I THINK THE ANSWER, AND MY BEST ANSWER REALLY COMES FROM THE MAJORITY OPINION IN COOK WITH WITCH DOES NOT DRAW THE DISTINCTION YOU ARE DRAWING IN THIS DISCUSSION AND COOK --

>> MAYBE THAT LANGUAGE IS A LITTLE BROAD THERE BECAUSE I THINK IT'S A REAL DISTINCTION THAT WHEN IT COMES TO STATEWIDE OFFICERS THAT WE HAVE THE CONSTITUTION REALLY LAYING OUT A LOT MORE ABOUT THEIR QUALIFICATIONS THAN WE HAVE IN ARTICLE VIII.

>> IN ARTICLE VIII, 1-E IT HAS A QUALIFICATION REQUIRING PEOPLE TO RUN FOR COMMISSIONERS.

>> I WOULD SAY THAT THE CHARTER WOULD TRUMP THAT. EXCEPT IF IT'S OTHERWISE PROVIDED BY THE COUNTY CHARTER. AND THAT'S OF COURSE WHAT THE COURT BELOW HELD AND OF COURSE I TURN BACK TO THE D DISCUSSION WHICH ALSO HAS THAT EXCEPT LANGUAGE.

SO --

>> HERE'S THE PROBLEM I'M HAVING, AND I APPRECIATE THAT COOK CAN BE READ VERY BROADLY BUT THERE YOU MUST HAVE UNDER THE CONSTITUTION, A CLERK OF

COURT.

SECTION, ARTICLE V, SECTION 16 SAYS, THERE SHALL BE IN EACH COUNTY A CLERK OF THE CIRCUIT COURT WHO SHALL BE SELECTED. THERE IS NO REQUIREMENT THAT YOU ELECT THAT CLERK.

I THINK MIAMI-DADE DOESN'T HAVE AN ELECTED CLERK.

SO YOU CAN, BUT YOU MUST HAVE THOSE OFFICES.

THEY JUST CAN BE CHOSEN IN ANY OTHER MANNER UNLESS IT'S SPECIFIED.

THAT'S AT LEAST, NOW, THAT IS HOW I'M READING IT.

WELL, LET ME ASK YOU STRAIGHT UP. COULD YOU, UNDER THE CONSTITUTION, COULD A CHARTER COUNTY ELIMINATE THE CLERK OF CIRCUIT COURT?

>> WELL LOOKING AT THE PLAIN LANGUAGE OF SECTION 1-D I THINK THE ANSWER IS YES --

>> HOW DO YOU TAKE THEN ARTICLE V, SECTION 16 THAT SAYS IN EACH COUNTY THERE SHALL BE A CLERK OF THE CIRCUIT COURT?

>> TO DO SO WOULD POSE A CONFLICT WITH THAT ASPECT OF THE CONSTITUTION BUT LOOKING AT THIS LANGUAGE IT DOES ALLOW THE ABOLISHMENT.

THAT GETS YOU TO THE IRONY HOW CAN YOU ABOLISH IT UNDER THIS SECTION WHEN ANOTHER SECTION PROVIDES IT SHOULD BE THERE? THE CLERK'S OFFICE SAY THEY'RE ALMOST ABOLISHED NOW BECAUSE THEY'RE NOT GETTING ENOUGH MONEY.

BUT THE POINT IS, WHEN YOU LOOK AT THE LANGUAGE OF THE CONSTITUTION AND THAT'S WHAT WE'RE TALKING ABOUT IN COOK, AND I UNDERSTAND THAT COOK DEALT WITH D AND NOT WITH E.

BUT THERE IS, I THINK THIS IS IMPORTANT.

THERE IS A DISQUALIFICATION ALREADY IN 1-E THAT YOU CAN NOT RUN COUNTYWIDE.

YOU HAVE TO RUN IN THE DISTRICT THAT YOU'RE IN.

AND I THINK THAT IS VERY, VERY HELPFUL IN THE ANALYSIS THAT I'M USING AND CERTAINLY I'M RELYING UPON COOK.

THERE IS NO QUESTION COOK AND AS THE COURT BELOW SAID COOK IS THE WHOLE CASE.

EVERYTHING HERE DEPENDS UPON COOK AND HOW YOU READ COOK.

I THINK IT ALSO DEPENDS HOW BROAD THE POWERS ARE UNDER 1-G. IN COOK BY THE WAY, THIS COURT SAID THAT WE DO NOT AGREE WITH THE FIRST DISTRICT'S RELIANCE ON A CHARTER COUNTY'S HOME RULE POWERS.

SO THEY DISCOUNTED THAT HOME RULE CHARTER, THAT HOME RULE POWER ASPECT.

>> BUT THEY DISCOUNTED IT WHEN THERE WAS AN EXPLICIT PROVISION THAT THERE ONLY COULD BE DISQUALIFICATIONS FOR, AND THIS IS AGAIN, WHAT WE, WHAT WE'RE LOOKING AT IS WE USE THE WORD CONSTITUTIONALLY AUTHORIZED OFFICERS.

AND THAT'S NOT A TERM OF ART. THAT WAS A TERM THAT WAS USED BY THE MAJORITY OPINION.

SO THAT'S WHERE, WHY I'M HAVING -- I UNDERSTAND THAT WE, WE DIDN'T SAY THE HOME RULE CHARTER POWERS WERE SO BROAD AS TO TRUMP A DISQUALIFICATION BUT WE SEEM TO BE RESTING IT ON THE FACT THAT THERE WERE, THEY WERE CONSTITUTIONALLY AUTHORIZED OFFICERS.

AND I GUESS, AND MAYBE I'M FALLING INTO THE JUDGE GROSS TRAP THAT I'VE ALWAYS SEEN, LIKE, SUPERVISOR OF ELECTIONS, THEY HAVE STATEWIDE DUTIES AS DOES THE CLERK OF COURT.

YOU KNOW, WE CAN'T FUNCTION, THE STATE COULDN'T FUNCTION IN THEIR ELECTIONS WITHOUT A SUPERVISOR OF ELECTIONS.

NOW YOU COULD CALL IT SOMETHING ELSE BUT THEY HAVE, THEY HAVE GOT TO BE THERE.

SO THAT'S, AND YOU'RE SAYING NO, THAT IS NOT A DISTINCTION BUT THAT'S HOW I GUESS THE

FOURTH DISTRICT WAS MAKING THAT DISTINCTION.

THE QUESTION IS, IS IT AN HONEST DISTINCTION OR IS IT JUST REALLY, WE'RE JUST REALLY TALKING AROUND AN ISSUE THAT COOK IS BROAD AND THEREFORE IT HAS TO APPLY?

>> WELL I THINK IT IS AN HONEST DISTINCTION BUT I DON'T THINK IT IS A PERSUASIVE DISTINCTION AND I THINK WHEN YOU LOOK, AND THE REASONS THAT THE FOURTH DISTRICT GAVE, POLICY REASONS, I THINK ACTUALLY CUT IN FAVOR OF THE ARGUMENT THAT I'M MAKING.

ONE OF THE THINGS THE FOURTH DISTRICT SAID THERE WOULD BE A BYZANTINE BUREAUCRACY THAT ONE WOULD HAVE TO TRAVAIL IF YOU HAD DIFFERENT OFFICES IN DIFFERENT COUNTIES.

QUITE HONESTLY I THINK THAT IT'S A MORE BYZANTINE BUREAUCRACY IF YOU HAVE DIFFERENT COUNTIES HAVING DIFFERENT TERM LIMITS AND DIFFERENT UNDERSTANDING OF THE LENGTH OF THE TERM OF THEIR COUNTY COMMISSIONERS.

MORE BUSINESS IS DONE, BECAUSE THEY WERE FOCUSING ON BUSINESS IN THE FOURTH DCA OPINION, MORE BUSINESS IS DONE INTERCOUNTY THAN IT IS IN YOU'RE DEALING WITH THE SHERIFF OR DEALING WITH THE TAX COLLECTOR OR DEALING WITH THE SUPERVISOR OF ELECTIONS.

WHEN ONE LOOKS AT THIS THAT WAY IN COUNTY COMMISSIONER TERM LIMITS IS MORE CONSISTENT WITH THE NOTION THAT EVERYONE KNOWS WHAT THE RULES OF THE GAME ARE, PEOPLE DEALING WITH THE COUNTY COMMISSION AND COUNTY COMMISSIONERS THEMSELVES.

SO I THINK IN A SITUATION LIKE THIS, AGAIN, OBVIOUSLY THE COUNTY HOME RULE CHARTERS DO NOT TRUMP THE CONSTITUTION. ARTICLE IV, SECTION 6 TALKS ABOUT WHAT THE DISQUALIFICATION FOR OFFICE ARE.

THIS IS CLEARLY
DISQUALIFICATION FOR OFFICE.
IN COOK THE LANGUAGE THAT WAS
USED CERTAINLY COVERS WHAT
WE'RE TALKING ABOUT HERE.
I UNDERSTAND THE NOMENCLATURE
WHEN WE TALK ABOUT
CONSTITUTIONAL OFFICERS.
WE THINK OF CERTAIN KINDS OF
OFFICES BUT IN 1-D AND 1-E IT
TALKS ABOUT COUNTY OFFICES.
DOESN'T TALK ABOUT STATE
OFFICES.
TALKS ABOUT COUNTY OFFICES AND
THEN IT TALKS ABOUT COUNTY
OFFICERS.
BOTH OF THEM PROVIDE FOR AN
EXCEPTION BUT THE EXCEPTION
DOES NOT PROVIDE IN THIS
SITUATION FOR COUNTY, FOR A
COUNTY TO IMPOSE TERM LIMITS AS
AN ADDITIONAL DISQUALIFICATION
WHERE THERE IS NOTHING IN THE
CONSTITUTION THAT ALLOWS IT.
SO FOR THOSE REASONS WE THINK
THAT THE DECISION BELOW --
>> COULD A COUNTY, THROUGH
THEIR CHARTER, ESTABLISH A
12-YEAR TERM OF OFFICE?
>> I THINK NOT.
WHEN ONE LOOKS AT THIS,
STAGGERED TERMS OF FOUR YEARS
COMPOSED OF FIVE OR SEVEN
MEMBERS, SERVING STAGGERED
TERMS OF FOUR YEARS, I
THINK SAYING 12 YEARS AND
NOTHING MORE, IS THAT WHAT
YOU'RE SAYING?
>> I AM SAYING IT WOULD
ESTABLISH THAT IT WOULD BE 12
YEARS.
>> I THINK THAT WOULD BE
INCONSISTENT WITH THE LANGUAGE.
>> SO THAT COULD NOT BE DONE
CONSTITUTIONALLY?
>> SERVING STAGGERED TERMS OF
FOUR YEARS IS WHAT THE
CONSTITUTION CALLS FOR.
TO SAY 12 YEARS I THINK WOULD
FLY IN THE FACE OF THAT.
>> OKAY.
COULD A LARGE COUNTY, EITHER
GEOGRAPHICALLY OR THROUGH
POPULATION HAVE MORE THAN FIVE OR
SEVEN?

CAN THEY ESTABLISH 11 OR 15?
>> THEN WE GO TO EXCEPT WHEN OTHERWISE PROVIDED.
>> THAT'S WHERE I'M GOING.
>> RIGHT.
>> BUT AGAIN THAT WOULD NOT IMPOSE A DISQUALIFICATION. IN FACT IF ANYTHING IT WOULD ENLARGE THE FIELD.
>> SO WHAT YOU'RE SAYING BUT A 12-YEAR WOULD NOT?
A 12-YEAR WOULD REDUCE THE NUMBER OF PEOPLE INVOLVED. SO THIS REALLY THEN WHEN WE START CUTTING AND SLICING THIS ANALYSIS, THAT IT REALLY COMES DOWN TO THE CONCEPT OF DISQUALIFICATION AS OPPOSED TO THE ACTUAL WORDS CONTAINED IN THE CONSTITUTION ITSELF?
>> WELL I AGREE, JUSTICE LEWIS, THIS IS DISQUALIFICATION.
>> I MEAN, IS THAT THE ANALYSIS THAT HAS TO FOLLOW THEN?
IF NOT WE'RE READING OUT THE FIRST PHRASE.
>> WE'RE NOT READING OUT THE FIRST PHRASE EXCEPT FOR THE DISQUALIFICATION ASPECT OF IT.
>> OKAY.
THAT'S WHAT I'M SAYING.
SO IT THEN DOES TURN ON DISQUALIFICATION?
>> IT DOES TURN.
>> AND WHICH CLAUSE IN THE CONSTITUTION ADDRESSES SPECIFICALLY, IN YOUR VIEW, THIS PROHIBITION AGAINST DISQUALIFICATION?
>> THE FACT THAT THERE IS ANOTHER CLAUSE IN THE CONSTITUTION THAT SETS FORTH WHAT THE DISQUALIFICATIONS FROM OFFICE CAN BE WITH REGARD TO TERM LIMITS.
I'LL SAVE THE REST OF MY TIME FOR REBUTTAL.
>> WHAT'S THAT?
>> THAT'S SECTION 4, IN THE INITIATIVE.
>> TALKING ABOUT THE SECTION THAT TALKS ABOUT --
>> ARTICLE VI.
>> ARTICLE VI, RIGHT.
>> LEGISLATURE HAVING TERM

LIMITS, IS THAT THE SECTION
YOU'RE --

>> YES. YES.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

I'M JONI ARMSTRONG COFFEY ON
BEHALF OF BROWARD COUNTY.

WITH ME CHIEF APPELLATE COUNSEL
ANDREW MEYERS AND COUNSEL FOR
SUPERVISORS OF ELECTIONS,
BERNADETTE NORRIS-WEEKS.

IN ARTICLE VIII, SECTION 1-E THE
FLORIDA CONSTITUTION THE PEOPLE
OF FLORIDA RESERVE FOR
THEMSELVES BY DIRECT VOICE IN
THE CHARTER TO ESTABLISH A
GOVERNING BODY THAT INVOKES OR
ASSUMES THE ENTIRE HOME RULE
AUTHORITY THAT WAS GRANTED BY
THE 1968 CONSTITUTION.

>> COULD YOU GO BACK TO HIS
VERY LAST COMMENT, BECAUSE IT
DOES APPEAR NOW THAT HE'S,
WE'RE STARTING TO GET DOWN TO
WHAT THE REAL ESSENCE IS AND
WE, WHEN WE START SEPARATING
ALL THE OTHER WORDS, WE TALK
ABOUT HOW LONG, THAT'S NOT
GOING TO BE A PROBLEM.

NUMBERS, THAT DOESN'T APPEAR TO
BE A PROBLEM.

BUT GETS TO BE A PROBLEM, ONLY,
ONLY FOR THE DISQUALIFICATION.

WOULD YOU RESPOND TO HIS
POSITION THAT THE

DISQUALIFICATION OR
QUALIFICATIONS ARE FOUND IN THE
CONSTITUTION SEPARATE AND APART
FROM THESE TWO PROVISIONS AND
THAT'S WHAT'S CONTROLLING IN
THIS CASE.

>> JUSTICE, I THINK THAT IS,
WHY COOK IS SOMETHING OF AN
ANOMALY.

COOK WAS THE FIRST TIME THIS
COURT EVER RULED THAT THE
DIRECT VOICE OF THE PEOPLE
CAN'T ESTABLISH DISQUALIFICATIONS.
IN ALL THE PRIOR PRECEDENT THAT
PETITIONER --

>> THAT'S A PREDICATE STATEMENT
THAT I DON'T KNOW I CAN EVEN
ACCEPT BECAUSE THE VOICE OF THE
PEOPLE IS CONTAINED IN THE
CONSTITUTION.

>> YES. YES, SIR.
>> SO WHEN YOU'RE SAYING ONE MUST LOOK AT THIS TO SEE WHAT WE BELIEVE IT MEANS BECAUSE IT'S NOT ALWAYS CRYSTAL CLEAR. THIS PREDICATE, I'M NOT SURE, I'M LOOKING FOR THE CONSTITUTION.
NOT, I HEAR LOTS OF VOICES OF THE PEOPLE BUT THEY HAVE WRITTEN HERE IN THIS CONSTITUTION.
>> WELL, LET ME SEE IF I CAN RESPOND AS CAREFULLY AS I CAN. ARTICLE VI, SECTION 4, ARTICULATES A NUMBER OF DISQUALIFICATIONS FROM OFFICE. UP UNTIL COOK THIS COURT HAD RULED THAT THE LEGISLATURE MAY NEVER ADD TO THOSE DISQUALIFICATIONS. ALL THE CASES UP TO COOK DEAL WITH THE LEGISLATIVE DISQUALIFICATIONS. THERE IS A REASON THAT THE LEGISLATURE CAN'T ESTABLISH THOSE DISQUALIFICATIONS OTHERWISE THEY COULD INSULATE THEMSELVES AND THWART THE WILL OF THE PEOPLE. BUT WHEN WE LOOK AT SECTION, ARTICLE VIII, SECTION 1-E, EXCEPT AS OTHERWISE PROVIDED BY COUNTY CHARTER WE SEE SOMETHING THAT SUGGEST THAT ARTICLE VI, SECTION 4 IS NOT THE BE-ALL-END-ALL OF DISQUALIFICATIONS. THAT THE CONSTITUTION ITSELF ESTABLISH AS BASIS ON WHICH THE PEOPLE, NOT THE LEGISLATURE, CAN ESTABLISH A DISQUALIFICATION. IF AFTER ALL THEY CAN ESTABLISH THE GOVERNING BODY THAT WILL, THAT WILL EXERCISE THE HOME RULE POWER THAT WAS GRANTED UNDER THE CONSTITUTION AS TO LOCAL AFFAIRS ONLY, THEY'RE ESTABLISHING THESE OFFICES. THEY DON'T EVEN HAVE TO BE COUNTY COMMISSIONERS. 1-C SAYS THEY CAN BE A GOVERNING BODY. IF THEY HAVE ALL THAT POWER,

WHY NOT THE POWER TO ESTABLISH
DISQUALIFICATIONS SUCH AS TERM
LIMITS?
AND JUSTICE PARIENTE, WHEN YOU
TALKED ABOUT THE SINGLE SUBJECT
RULE AND THE RISK, AND JUSTICE
CANADY, AS WELL, THAT THE
STATEWIDE VOTERS MAY NOT HAVE
UNDERSTOOD THEY WERE
FORECLOSING TERM LIMITS WHEN
THEY ADOPTED THE STATEWIDE TERM
LIMITS IN 4-B, I THINK THAT IS
A DISTINCT POSSIBILITY BECAUSE IF
YOU HAVE AT A LOCAL LEVEL THE
ABILITY TO HAVE ANY LENGTH OF
TERM LIMIT WHICH THE
CONSTITUTION PLAINLY SAYS CAN
BE DONE, THEN I THINK IF
THERE'S AN EIGHT-YEAR
LIMITATION, IF THE PEOPLE
UNDERSTOOD THAT THEY COULDN'T
DO THAT, THEN THERE WOULD BE AN
IMPACT ON MULTIPLE FUNCTIONS OF
GOVERNMENT AND --
>> AND PROBABLY WOULD HAVE HAD
IT GO INTO A SEPARATE
CONSTITUTIONAL PROVISION.
SEEMS THAT YOUR REAL ARGUMENT
IS THAT COOK WAS WRONGLY DECIDED.
AND SO ARE YOU ASKING US
TO RECEDE FROM COOK BECAUSE IT
WAS WRONGLY DECIDED?
>> NO.
BUT WHAT WE ARE ASKING IS THAT
COOK NOT BE EXTENDED.
PETITIONER ACTUALLY ASKED THE
COURT TO EXTEND COOK.
ALL WE ARE SAYING 1-D IS
DIFFERENT FROM 1-E.
>> BUT LET'S -- I GUESS THE
ISSUE BECAUSE YOU WERE TALKING
ABOUT THE WILL OF THE VOTERS
AND THE WILL OF THE PEOPLE.
WE HAVE HOW MANY CHARTER
COUNTIES?
>> APPROXIMATELY 20.
>> AND HOW MANY HAVE ENACTED
TERM LIMITS FOR THEIR COUNTY
COMMISSIONERS?
>> COMMISSIONER, A NUMBER OF
THEM, AND I DON'T WANT TO BE,
MY ESTIMATE IS SIX TO EIGHT. A
SIGNIFICANT NUMBER OF THEM HAVE
ADOPTED TERM LIMITS AND THEY
ARE DIFFERENT.

SOME ARE TWO TERMS.

BROWARD IS AT THREE TERMS.

>> I GUESS THE QUESTION IS
SINCE COOK CAME OUT IN 2002 AND
IT'S 2012, SINCE IT WAS, IT WAS
CLEAR AT LEAST THAT IT EXTENDED
TO EVERYBODY IN D.

>> YES.

>> WOULDN'T IT BE THE
APPROPRIATE PATH HAVE BEEN TO
HAVE AMENDED OR SOUGHT TO AMEND
THE CONSTITUTION TO MAKE IT
CLEAR TO, I MEAN, BECAUSE COOK
IS AN INTERPRETATION OF THE
CONSTITUTION.

THE VOTERS CAN OVERRULE THAT BY
CHANGING THE CONSTITUTION.

NOW I MEAN, THAT, BECAUSE IT
JUST, I'M STRUGGLING WITH HOW
INTELLECTUALLY WE CAN SEPARATE
ARTICLE VIII, 1-D FROM E.

SO I GUESS THE FIRST QUESTION
IS, WOULDN'T THE EASIEST THING
HAVE BEEN TO AMEND THE
CONSTITUTION TO MAKE THAT
CLEAR?

>> THE DIFFICULTY WITH AMENDING
THE CONSTITUTION IS THAT YOU
ENTER INTO A NEW EXPRESSIO UNIUS
PROBLEM.

IF YOU AMEND THE CONSTITUTION
TO ALLOW GOVERNING TERM LIMITS
FOR THAT LOCAL BODY YOU HAVE TO
AMEND THE CONSTITUTION FOR
OTHER QUALIFICATIONS SUCH AS
BEING AN ELECTOR.

NOTHING ON THE FACE OF THE
CONSTITUTION THAT ALLOWS THE
COUNTY COMMISSION TO BE AN
ELECTOR AS ALL OTHER
CONSTITUTIONAL OFFICERS TO
APPEAR ON THE FACE OF THE
CONSTITUTION.

>> IS THERE SOME LEGAL
REQUIREMENT THAT COUNTY
COMMISSIONERS BE AN ELECTOR OR
RESIDENT OF THE COUNTY IN WHICH
THEY SERVE?

>> THERE IS A RESIDENCY
REQUIREMENT WHICH APPEARS AT
THE END OF 1-E.

>> THAT'S IN THE CONSTITUTION?

>> THAT'S CORRECT.

>> IS THERE A RESIDENCY
REQUIREMENT FOR THE OTHER

COUNTY OFFICERS?

>> NO, THERE IS NOT.

AND THAT IS ONE DISTINCTION
BETWEEN 1-D AND 1-E.

BUT RETURNING TO JUSTICE
PARIENTE'S QUESTION ON THE
DIFFERENCE BETWEEN 1-D AND 1-E,
IF YOU LOOK AT 1-D CAREFULLY,
BOTH NONCHARTER COUNTIES AND
CHARTER COUNTIES CAN EXERCISE
THE TWO POWERS GRANTED THERE
WHICH ARE TO ABOLISH OR CHANGE
THE MANNER OF SELECTION.

1-E BREAKS APART HOME RULE
COUNTY COMMISSIONERS OR
GOVERNING BODIES FROM THE
OTHER, THE OTHER NONCHARTER
COUNTY COMMISSIONERS AND IT IS,
I BELIEVE, AS THE FOURTH
DISTRICT SAID, A DEFAULT
PROVISION THAT THE GOVERNING
BODY WILL BE FIVE OR SEVEN
COMMISSIONERS WITH TERMS OF
FOUR YEARS.

SO CONTINUING --

>> WOULD YOU AGREE THERE HAS TO
BE A COUNTY COMMISSION?

>> I AGREE THERE HAS TO BE A
GOVERNING BODY.

AS THE COURT IS AWARE --

>> STATUTE SAYS THERE HAS TO BE
A COUNTY COMMISSION, RIGHT?
BECAUSE THEY GIVE, THERE'S A
STATUTE THAT GIVES, I THINK
THREE OR FOUR DIFFERENT OPTIONS
FOR CHARTER COUNTY GOVERNMENT?

>> THAT'S CORRECT.

AND NOT --

>> IS THAT CONSTITUTIONAL?

>> I BELIEVE IT IS BECAUSE 1-C
SAYS AS PROVIDED BY GENERAL OR
SPECIAL LAW THERE SHALL BE A
GOVERNING BODY.

BUT THE AS THE COURT WELL
KNOWS, JACKSONVILLE HAS A CITY
COUNCIL, CONSOLIDATED
CITY-COUNTY GOVERNMENT.

THAT OPTION IS PROVIDED UNDER
SECTION 3 OF ARTICLE VIII.

THE STATUTE YOU REFER TO,
JUSTICE CANADY, INCLUDES AN
ELECTED EXECUTIVE WHO WOULD SIT
AT SAME DAIS, CAN VOTE IN EVENT
OF A TIE OR VETO.

THAT THEY ARE PART OF THE

GOVERNING BODY.

>> YOU THINK THAT STATUTE IS CONSTITUTIONAL BECAUSE OF WHAT SECTION?

>> 1-C. 1-C IS THE CORE SECTION THAT ESTABLISHES THIS ABILITY OF THE HOME RULE ELECTORATE TO ASSUME, TO ACCESS THAT HOME RULE POWER THAT IS GRANTED BY THE --

>> WOULD YOU ARTICULATE THE LOGICAL BASIS FOR CARVING OUT THE 1-E POSITION FROM THE OTHERS.

>> JUSTICE, TO ME IT'S THIS. BEFORE 1968 THE LEGISLATURE EXERCISED ALL AUTHORITY OVER LOCAL AFFAIRS.

IN 1968 THERE HAD BEEN SOMETHING LIKE 2,000 SPECIAL BILLS FILED IN THE 1967 SESSION.

AND THE PEOPLE OF FLORIDA SAID, WE'RE TIRED OF THAT.

WE WANT TO HAVE A LOCAL LEGISLATURE THAT, THAT EXERCISES HOME RULE AUTHORITY OVER EXCLUSIVELY LOCAL AFFAIRS TO THE ACTUAL EXCLUSION OF THE LEGISLATURE.

THIS COURT HAS SAID THAT THE LEGISLATURE IS DIVESTED OF POWER OVER EXCLUSIVELY LOCAL AFFAIRS.

THEY BECOME IN EFFECT THE PEOPLE'S LEGISLATORS OVER THOSE THINGS AND IT'S BEEN SO MANY YEARS SOMETIMES WE FORGET THE POWER THAT THESE, THIS GOVERNING BODY EXERCISES. THEY ISSUE --

>> I DON'T UNDERSTAND THAT BECAUSE, WHAT YOU'RE SAYING THERE, THAT A LEGISLATURE CAN'T, LIKE A LEGISLATURE DOESN'T HAVE ANYTHING TO DO WITH THAT BUT THE SINCE THE COUNTY IS OPERATING UNDER COUNTY POWER AND HAVE ALL POWERS OF LOCAL SELF-GOVERNMENT NOT INCONSISTENT WITH GENERAL LAW SO I DON'T UNDERSTAND.

>> WHAT I'M SAYING IF THE LEGISLATURE FINDS A STATEWIDE

INTEREST OR FINDS A BASIS FOR
GENERAL LAW THEY CAN CERTAINLY
APPLY THAT.

OF COURSE SPECIAL BILLS ARE
AVAILABLE TOO AFTER REFERENDUM
OF THE PEOPLE.

MY POINT IS JUSTICE LEWIS'S
QUESTION THESE OFFICERS ARE
DIFFERENT FROM 1-D.

1-D OFFICERS HAVE TO EXIST.
THEY HAVE TO EXIST IN SOME
FORM.

THEY CAN BE BROUGHT IN UNDER
THE GOVERNING BODY WHICH
HAPPENED IN MIAMI-DADE BUT
THEY'RE QUALITATIVELY
DIFFERENT.

>> I GUESS, HERE YOU WERE
SAYING SOMETHING ABOUT COUNTY
COMMISSIONERS DON'T HAVE TO BE
ELECTORS.

IS THAT WHAT YOU SAID?

>> IT IS NOT EXPRESSLY REQUIRED
ON THE FACE OF THE CONSTITUTION
IS WHAT I SAY.

>> AND DO OTHER, DOES THE OTHER
TAX COLLECTOR, PROPERTY
APPRAISER DO THEY HAVE TO BE
ELECTORS?

>> THAT IS NOT REQUIRED IN THE
CONSTITUTION.

>> SO THAT IS NOT A
DISTINCTION.

DO THEY UNDER SECTION 4
DISQUALIFICATIONS, SECTION 4-A,
NO PERSON CONVICTED OF A FELONY
OR AJUDICATED IN THIS OR OTHER
STATE TO BE MENTALLY
INCOMPETENT SHALL BE QUALIFIED
TO HOLD, TO VOTE OR HOLD OFFICE
UNTIL RESTORATION OF CIVIL
RIGHTS OR REMOVAL OF
DISABILITY.

CAN COUNTY COMMISSIONERS BE
FELONS WITHOUT HAVING THEIR
CIVIL RIGHTS RESTORED?

>> CERTAINLY NOT.

WE BELIEVE THAT 4-A APPLIES TO
ALL OFFICERS.

>> THAT'S WHERE THE PROBLEM IS
IS BECAUSE WE'VE TAKEN IN COOK,
SECTION 4 OF ARTICLE VI AND
SAID DISQUALIFICATION IS
BECAUSE B, COULD HAVE BEEN PUT
IN A DIFFERENT PART OF THE

CONSTITUTION, TERM LIMITS BUT
IT WASN'T.
AND SO IT'S THERE AND SO IF A
APPLIES WE SAID, WELL B APPLIES
ALSO AS A DISQUALIFICATION.
AND THEREFORE IT APPLIES AND I
GUESS THAT MUST HAVE BEEN WHAT
CONVINCED ME BACK A DECADE AGO
THAT WAS CONSTITUTIONALLY SOUND
BASIS FOR THE DECISION.
IF THAT'S CONSTITUTIONALLY
SOUND THEN I THINK THE
DISTINCTIONS YOU'RE MAKING
BETWEEN D AND E ARE, THEY'RE
GOOD DISTINCTIONS BUT THEY'RE
NOT CONSTITUTIONALLY VALID
DISTINCTIONS BASED ON OUR
REASONING IN COOK.
YOU SEE WHERE I'M --
>> I DO. I THINK THERE IS
A PROBLEM WITH COOK.
>> WELL THERE AGAIN I THINK
THAT'S WHAT YOU'VE BEEN TRYING,
THAT'S WHAT YOU WANT.
YOU REALLY WANT TO TELL US THAT
COOK IS BAD JURISPRUDENCE AND
WE SHOULD RECEDE FROM COOK,
ISN'T THAT WHAT YOU'RE REALLY
TELLING US?
>> IS ENTIRELY COOK -- THE
COURT'S CHOICE BUT IT IS A
DIFFICULT CASE BECAUSE IT IS
DIFFERENT FROM ALL THE OTHER
PRECEDENT WHICH PETITIONER
RELIES, THAT'S CORRECT.
AND I THINK THERE IS A PROBLEM
WITH ASSUMING THAT THE
STATEWIDE ELECTORATE UNDERSTOOD
THEY WERE FORECLOSING LOCAL
TERM LIMITS WHEN THEY VOTED FOR
TERM LIMITS.
WE'VE SEEN THAT THE TREND AS
THE COURT HAS SEEN IN THE FAIR
DISTRICT AMENDMENT CASES IS NOT
TOWARD, IT IS VERY POSITIVE FOR
ALL THESE ADVANTAGES AND ALL
THE ADVANTAGES THAT THE
PROponents OF TERM LIMITS
PRESENT.
>> WHAT WE ALSO HAVE TO, KIND
OF DANCING AROUND THIS BUT YOU
REALLY THINK WE NEED TO RECEDE
FROM COOK?
THAT'S, THAT WOULD BE THE
CLEAREST, MOST INTELLECTUALLY

COHERENT WAY TO GET TO YOUR POSITION, WOULDN'T IT?
>> IF THAT'S THE WILL OF THE COURT WE WOULD CERTAINLY BE DELIGHTED WITH IT.
>> YOU NEED TO EXPLAIN TO US A WAY WE CAN MAKE A COHERENT INTELLECTUALLY DEFENSIBLE POSITION.
IT IS NOT, NOT JUST OUR WILL. IT NEEDS TO BE COHERENT AND INTELLECTUALLY DEFENSIBLE.
SO --
>> WELL --
>> WHAT'S YOUR POSITION?
>> WELL, JUSTICE, IT'S THIS. I THINK THAT THERE IS EVEN LESS OF A REASON TO APPLY EXPRESSIO UNIUS AND LOCAL OFFICERS BECAUSE THEY HAVE LEGISLATIVE AUTHORITY.
THERE IS EVEN LESS OF A REASON.
>> THE PROBLEM IS IF THE COOK PART, I THINK JUSTICE CANADY WERE TALKING ABOUT TWO BASES FOR COOK.
TWO ME THE TWO BASES WERE DISQUALIFICATIONS ARE EXCLUSIVE AND YOU CAN NOT ADD DISQUALIFICATIONS TO IT UNLESS THERE'S A CONSTITUTIONAL AMENDMENT.
THAT, AS I REREAD IT, THAT'S REALLY THE UNDERPINNINGS OF IT.

AND YOU SAID SOMETHING ABOUT, I ASKED YOU WHY COULDN'T, ABOUT A DECADE SINCE COOK AND IF THE COUNTIES AND CITIZENS OF THE COUNTIES THINK THAT THIS WAS, YOU KNOW, THAT THEY WANT THE ABILITY TO, TO ENACT TERM LIMITS, CONSTITUTIONAL PROVISION THAT SAYS THAT COUNTY CHARTER GOVERNMENT CAN ALSO HAVE TERM LIMITS FOR ANY COUNTY OFFICER, WOULD BE THE WAY IT DO IT.
AND YOU WERE SAYING NO, WE COULDN'T DO THAT?
THEN YOU WOULD HAVE TO DO OTHER THINGS.
I WASN'T REALLY UNDERSTANDING WHAT THAT RESPONSE WAS WHY THAT WOULD BE SO DIFFICULT?

>> WELL, LET ME CLARIFY THAT.
ONCE YOU SAY THERE HAVE TO BE TERM LIMITS THIS GOES TO THE CORE OF SELECTION OF OFFICERS FOR THIS POSITION.

ONCE YOU SAY YOU NEED A CONSTITUTIONAL AMENDMENT FOR TERM LIMITS WHAT ELSE DO YOU NEED A CONSTITUTIONAL AMENDMENT FOR?

>> ONLY FOR DISQUALIFICATION AND THERE IS ONLY, SO FEW DISQUALIFICATIONS IT IS ALMOST STARTLING THAT YOU, AS LONG AS YOU CAN WALK AND CHEW GUM, YOU'RE NOT A CONVICTED FELON OR MENTALLY INCOMPETENT, YOU CAN, AND OVER 18 YOU CAN HOLD ANY OF THESE OFFICES.

>> LET ME UNWIND JUST FOR A LITTLE BIT.

I REALLY WANT --

>> I DON'T MEAN, WHAT I'M SAYING IS THERE ARE VERY FEW DISQUALIFICATIONS.

I'M NOT MEANING, OBVIOUSLY THE ELECTORS PICK PEOPLE BASED ON QUALIFICATIONS FOR OFFICE BUT THERE ARE VERY FEW DISQUALIFICATIONS IN THIS STATE IN THE DEMOCRACY WHICH ALLOWS PEOPLE TO RUN FOR OFFICE.

>> LET ME EMPHASIZE THIS.

THERE REALLY ISN'T, THE FOURTH DISTRICT SAID A STATEWIDE INTEREST IN HOW BROWARD COUNTY TREATS ITS ELECTED OFFICIALS IN ITS POSITION. PALM BEACH AND --

>> THAT'S A VERY, THAT'S A NICE POLICY ARGUMENT BUT WE'RE TRYING TO DEAL WITH THE CONSTITUTION.

>> THAT IS INTEGRAL TO THE EXPRESSIO UNIUS IN THE THEORY. THAT THE FIRST PRONG, THE FIRST PRONG IS THEIR PERVASIVE SCHEME.

I WOULD SUGGEST TO YOU THAT THERE IS NO PERVASIVE SCHEME FOR THE REASONS WE TALKED ABOUT ALREADY.

THESE ARE DIFFERENT OFFICES. IN ADDITION TO THAT THERE HAS TO BE STRONG PUBLIC POLICY

REASON.

THESE ARE THE GOVERNING
OFFICIALS THAT DEAL EXCLUSIVELY
WITH THESE LOCAL AFFAIRS.

>> YOUR ARGUMENT REALLY ISN'T A
BETTER ARGUMENT, REALLY IS,
WHEN YOU LOOK AT D AND E AND
LOOK AT PLACEMENT OF WHAT THE
EXCEPTION IS, EXCEPT WHEN
OTHERWISE PROVIDED BY THE
COUNTY CHARTER, THAT E, THAT E,
THAT EXCEPTION, IS MORE
PERVASIVE THAN IT IS IN D WHICH
ACTUALLY THE LANGUAGE MODIFIES
A PARTICULAR PORTION.
WHEN YOU LOOK AT D, YOU SEE
THAT YOU CAN DO ANOTHER MANNER,
ELECTING THESE PEOPLE.
THAT'S WHAT THE EXCEPTION SEEMS
IT SAY.

AND I THINK THAT MIGHT BE A
BETTER ARGUMENT FOR YOU THAN
YOUR POLICY KIND OF ARGUMENT.
BECAUSE WE REALLY CAN'T TAKE
INTO CONSIDERATION THE POLICY.
WE HAVE TO TAKE INTO
CONSIDERATION WHAT THE
CONSTITUTION ACTUALLY PROVIDES
FOR.

>> THAT'S EXACTLY HOW WE START
WITH OUR ARGUMENT WHICH IS THAT
THERE SHOULD BE A REASON THAT
THE FRAMERS CREATED TWO
DIFFERENT SECTIONS OF THE
FLORIDA CONSTITUTION.

OTHERWISE THEY COULD HAVE PUT
THEM ALL IN ONE SECTION AND
THEY USE THE EXCEPTION CLAUSE
VERY DIFFERENTLY.

STARTS AT THE OUTSET OF SECTION
E AND SAYS AS PROVIDED BY
COUNTY CHARTER --

>> LET ME TRY ONE MORE TIME.
HOW DOES THAT GET AROUND THE
SECTION 4 OF ARTICLE VI WHICH
SETS FOURTH DISQUALIFICATIONS
IS THE EXCLUSIVE WAY THAT YOU
CAN HAVE DISQUALIFICATION
FROM ANY OFFICE SPECIFIED IN
THE CONSTITUTION?

>> WHICH IS WHAT TAKES US BACK
TO THE EXPRESSIO UNIUS ARGUMENT
IN COOK.

I WOULD SUGGEST THE LITMUS TEST
THE COURT USED ON EXPRESSIO

UNIUS, DOES THE LOCAL TERM
LIMIT DETRACT FROM THE OTHER.
IS THERE ANYTHING ABOUT THE
TERM LIMIT IN BROWARD COUNTY
CHARTER THAT DETRACTS FROM THE
STATEWIDE TERM LIMITS IN 4-B.
>> WOULDN'T THE SAME ARGUMENT
BE FOR THE SHERIFF OR
SUPERVISOR OF ELECTIONS?
WHAT IS NOT REALLY ANY
STATE INTEREST IN SOMEBODY THAT
SERVES FOR EIGHT YEARS?
I MEAN PEOPLE MAY BE FOR OR
AGAINST TERM LIMITS, WHETHER
THAT HAS HELPED IN THE
LEGISLATIVE PROCESS OR NOT BUT
THE ISSUE IS TERM LIMITS BECAME
A VERY POPULAR THING.
SO YOU'RE NOT SAYING THAT A
SUPERVISOR OF ELECTIONS HAS TO
SERVE, OR, FOR 30 YEARS VERSUS
EIGHT FOR THEM TO BE QUALIFIED
BUT YET THE COURT SAID THAT
BECAUSE IT WAS NO
DISQUALIFICATION IT COULDN'T
TRUMP ARTICLE VI, SECTION 4.
>> WHAT THE COURT HAS NEVER
SAID, SET THE DISQUALIFICATION
HAS TO APPEAR ON THE FACE OF
THE CONSTITUTION.
EVEN GOING BACK TO THE OLD
THOMAS CASE AND OTHER CASES IS
THAT THE COURT HAS SAYS THERE
HAS TO BE A BASIS FOR IT IN THE
CONSTITUTION.
AND OUR ARGUMENT VERY SIMPLY IS
THE DIFFERENCE BETWEEN D AND E
PROVIDES THAT BASIS.
THAT, THAT COOK IS
DISTINGUISHABLE BECAUSE THESE
OFFICERS ARE DIFFERENT.
THEY'RE TREATED DIFFERENTLY AND
THAT IS OUR BEST ARGUMENT.
>> IS THE COUNTY COMMISSIONER A
CONSTITUTIONALLY AUTHORIZED
OFFICER?
>> WE BELIEVE FOR ALL PURPOSES
EXCEPT COOK.
AND UNDERSTAND THAT THE FOURTH
DISTRICT SAID THEY WERE NOT
CONSTITUTIONALLY AUTHORIZED BUT
ONLY FOR THE NARROW PURPOSE OF
COOK BECAUSE THE COURT WAS
CLEARLY STRUGGLING WITH THE
IDEA THAT, THE SAME VOTERS AT A

LOCAL LEVEL COULD NOT PLACE A DISQUALIFICATION AT THE STATE LEVEL.

>> CONSTITUTIONALLY AUTHORIZED IF YOU'RE NOT A CHARTER COUNTY? IF A NON-CHARTER COUNTY, DO THEY HAVE TO HAVE A COUNTY COMMISSION UNDER SECTION E?

>> NO, THEY DO NOT.

>> OKAY.

>> THEY MAY BE CONSOLIDATED CITY-COUNTY GOVERNMENT.

THEY CAN BE ANYTHING ELSE WHICH THERE IS NO STATEWIDE INTEREST IN ESTABLISHING THAT BODY.

AND FOR THOSE REASONS BECAUSE IT IS A MATTER OF PARTICULAR LOCAL INTEREST AND WITHIN THE CONTROL OF THE VOTERS WE WOULD RESPECTFULLY ASK THAT YOU AFFIRM THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL AND ALLOW THE LOCAL VOTERS TO HAVE TERM LIMITS ON THEIR LOCAL LEGISLATORS.

THANK YOU.

>> TO AFFIRM THE DECISION BELOW THIS COURT WOULD HAVE TO, EXCUSE ME, TO AFFIRM THE DECISION BELOW THIS COURT WOULD HAVE TO RECEDE OR OVERRULE COOK.

>> ON COOK, AND WE'VE, I MEAN, RECEDING FROM PRECEDENT ISN'T SOMETHING THAT CAN NEVER, IF IT WAS WRONGLY REASONED OR WRONGLY DECIDED.

WE ONCE STARTED TO RECEDE FROM SOMETHING, HOW WE DID ABOUT BONDING AND YOU KNOW THE CASE I'M TALKING ABOUT, CREATED A LOT OF UNSETTLED CONCERNS.

IF WE WERE TO RECEDE FROM COOK, DOES IT HAVE ANY IMPLICATIONS OTHER THAN GOING FORWARD THAT THE OTHER OFFICERS IN D COULD BE TERM LIMITED IF THEIR CHARTER PROVIDES FOR IT? DOES IT HAVE ANY OTHER IMPLICATIONS?

>> I THINK IT WOULD HAVE THOSE IMPLICATIONS.

>> WHAT OTHER IMPLICATIONS WOULD IT HAVE?

>> WELL, I HAVEN'T THOUGHT

ABOUT ALL THE POSSIBLE THINGS
BUT I THINK ONE OF THE TROUBLES
OF INTERPRETING A CONSTITUTION
IS THAT IT OPENS THE DOOR TO
SOMETIMES UNFORESEEN RESULTS.

>> IF WRONGLY, IF WE REALLY
MISREAD WHAT THE B PART WAS,
WHICH WAS JUST THE VOTERS
SAYING THERE SHOULD BE TERM
LIMITS FOR STATEWIDE OFFICERS,
PEOPLE THAT ARE, THE
LEGISLATORS, THE LIEUTENANT
GOVERNOR, AND WE, THERE WAS NO
INTENT OF THE VOTERS TO
PRECLUDE HOME RULE COUNTIES
FROM ENACTING TERM LIMITS AS
PART OF THEIR GOVERNANCE, I
DON'T SEE HOW THAT, DON'T SEE
HOW THAT UNSETTLES ANYTHING
ELSE I GUESS.

JUSTICE ANSTEAD WAS RIGHT IN
WHAT HE SAID, WE DID NOT PAY
DUE DEFERENCE TO THE HOME RULE
CHARTER POWERS.

WHAT ELSE, WHAT OTHER PROBLEM
IS THERE IN RECEDING FROM COOK
OTHER THAN YOUR CLIENTS DOEN'T
TRAVAIL?

THAT'S A BIG PROBLEM FOR YOUR
CLIENTS.

>> I THINK IT DOES POSE A 1-D
KIND OF ISSUE ABOUT TERM
LIMITING THE OFFICES IN 1-D,
THE QUOTE, STATEWIDE OFFICES
THAT, WHILE THEY'RE NOT
STATEWIDE THEY'RE VIEWED AS
COUNTY OFFICES BUT I THINK MOST
TROUBLING IS THIS LANGUAGE IN
COBB, D'S PLAIN AND
UNAMBIGUOUS EXPLANATION OF
DISABILITIES EXCLUDES ALL OTHER
UNLESS THE CONSTITUTION
PROVIDES OTHERWISE. THAT IS
PAGE 183 OF COBB.

>> IF WE RECEDE FROM COBB,
THE RESULT IS
ADVERSE FROM YOUR CLIENT WE
WOULD HAVE TO RECEDE FROM
THOMAS, WOULD WE NOT?

>> THOMAS IS COBB.

>> I'M SORRY.

>> I'M HEARING COOK WHEN YOU
SAID COBB.

>> REALLY BOTH COOK AND COBB
WOULD HAVE TO BE INVALIDATED

BASICALLY IN TERMS OF THE
PLAIN, SIMPLE LANGUAGE THAT
THEY STOOD FOR.
AND I THINK THAT'S THE KEY TO
THIS.
IT IS A CONSTITUTION WE'RE
INTERPRETING.
THE COURT HAS INTERPRETED IT.
AND THIS LANGUAGE HAS BEEN VERY
CLEAR AND CLEARLY UNDERSTOOD.
SO I THINK FOR THOSE REASONS
THE DECISION BELOW SHOULD BE
REVERSED.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS.