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## Henry W. Cook v. City of Jacksonville

THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW SESSION. ALL WHO HAVE CAUSE TO PLEA, 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 FLORIDA SUPREME COURT. PLEASE BE SEATED. MR. CHIEF JUSTICE: GHEEF MORNING AND WELCOME TO IT ORAL ARGUMENT CALENDAR FOR THIS WEDNESDAY BEFORE THE FLORIDA SUPREME COURT. WE HAVE TWO CASES WHICH HAVE BEEN CONSOLIDATED, FOR PURPOSES OF ARGUMENT, AND IT APPEARS, ON THE INFORMATION THAT I HAVE, THAT WHAT WE ARE GOING TO DO IS TO HEAR COOK VERSUS JACKSONVILLE FIRST. AND THEN BOTH THE ENTIRE CASE, AND THEN WE WILL HEAR THE "EIGHT IS ENOUGH", THE DEBLOCKER CASE. IS THAT CORRECT? NO. THEN GIVE ME THE CONTRARY INFORMATION. BOTH APPELLANT PETITIONERS? ALL RIGHT. WELL, THAT IS CERTAINLY SATISFACTORY. IF THERE ARE MORE THAN ONE COUNSEL THAT IS GOING TO SPEAK, ON THIS MATTER, IT IS IMPERATIVE THAT YOU PAY ATTENTION TO YOUR TIMES, BECAUSE WE WILL ADHERE TO THE LIMITATIONS OF OUR TOTAL TIME. WE WANT ALL COUNSEL TO HAVE THEIR OPPORTUNITY TO SPEAK. SO FIRST, THEN, WE WILL PROCEED WITH COOK AND DEBELONGER -- DEBLOCKER, FROM THE PETITIONER'S SIDE, AND I BELIEVE OUR FIRST COUNSEL WILL BE MR. EHRlich. IS THAT CORRECT?

ACTUALLY SCOTT MAKAR.

PROCEED, MR. MAKAR.

MAY IT PLEASE THE COURT. MY NAME IS SCOTT MAKAR, REPRESENTING THE PETITIONER HENRY COOK IN THIS MATTER. THIS IS AN ISSUE ON WHETHER THE COUNTY MAY IMPOSE TERM LIMITS ON DISQUALIFICATION FOR RUNNING FOR OFFICE FOR COUNTY CLERK OF COURT. I WANT TO POINT OUT THAT THIS IS A DISQUALIFICATION CASE RATHER THAN A QUALIFICATION CASE, AND THAT IS VERY IMPORTANT. A DISQUALIFICATION CASE IS A PROHIBITION AND PROHIBITS SOMEBODY FROM RUNNING FOR OFFICE. A QUALIFICATION CASE FOCUSES ON DEGREES AND SO FORTH, THING THAT IS MAKE A PERSON FIT FOR RUNNING FOR THAT OFFICE. THERE ARE THREE CONSTITUTIONAL PRINCIPLES THAT THIS COURT HAS RECOGNIZED, AGAIN AND AGAIN, THAT ARE DISPOSITIVE OF THIS CASE IN OUR VIEW. FIRST OF ALL --

JUST A MOMENT. IS MR. COOK THE ONLY PETITIONER IN THIS CASE?

THAT'S CORRECT, JUSTICE QUINCE.

AND I BELIEVE THE ATTORNEY GENERAL'S OFFICE SAID THAT HE WAS NOT ON THE BALLOT IN 2000, SO HE IS NO LONGER IN THE POSITION OF CLERK OF THE COURT?

THAT'S CORRECT, YOUR HONOR. HE WAS INVOLUNTARILY REMOVED FROM THE BALLOT, BECAUSE OF THE FIRST DISTRICT'S DECISION THAT CAME SHORTLY BEFORE THE ELECTION SO THEREFORE HE WAS NOT ABLE TO RUN, BECAUSE OF THEISH -- THE ISSUANCE OF A MANDATE IN THIS CASE.

SO IS THIS CASE MOOT TO HIM?

MOOT IN THE SENSE THAT CERTAINLY WE CANNOT UNDO THE ELECTION 2000. BUT IT IS AN ISSUE SMOOTHERED -- SMATHERED AND STILL ALIVE, BECAUSE IT HAS POTENTIAL FOR THE FUTURE. AND AS I MENTIONED, GOING BACK TO THE ISSUE ABOUT DISQUALIFICATION, IF I HAVE

ANSWERED YOUR QUESTION, JUSTICE QUINCE, THE PRINCIPLE HERE, THE CONSTITUTIONAL PRINCIPLES, THERE ARE THREE ACTUALLY, ONE IS THAT THERE IS A CONSTITUTIONAL RULE THAT THIS COURT HAS ANNOUNCED THAT SAYS YOU CANNOT IMPOSE DISQUALIFICATIONS TO RUN. WHY? BECAUSE THE RIGHT TO RUN FOR OFFICE IS A POLITICAL POWER OF THE PEOPLE AND DISQUALIFICATIONS ARE GROUND UPON. THE COURT HAS SAID, AGAIN AND AGAIN, IN COLLINS AND NAPLES, THAT YOU CAN NOT PREVENT A PERSON TO RUN BY PLAIN PRESCRIPTION OF LAW. WHERE IS THAT PLAIN PRESCRIPTION OF LAW? THE DISQUALIFICATION LAW OF THE FLORIDA CONSTITUTION. ARTICLE VI, SECTION 4, IT IS EXCLUSIVE, AND THOSE IMPOSED BY GOVERNMENT CAN ONLY BE THOSE IMPOSED BY THAT CLAUSE. FELONY, MENTAL INCOMPETENCE, AND IN 1992 THERE WAS AN AMENDMENT TO OUR CONSTITUTION THAT --

THIS COURT, IN RAY, DID SAY THAT THIS WAS AN ISSUE OF DISQUALIFICATION, IS THAT CORRECT? THAT IS THE LATEST PRONOUNCEMENT BY THIS COURT WAS THAT, ON THE LIMIT OF TERM, WAS THAT IT WAS A QUALIFICATION RATHER THAN A DISQUALIFICATION.

WHAT HAPPENED IN RAY, IF YOU LOOK AT THAT CLOSELY, IT SAID TERM LIMITS ARE A QUALIFICATION OF PAGE 228 OF LIMITED POLITICAL TERMS AND ON THAT PAGE THIS COURT SAID IT WAS A DISQUALIFICATION. THERE IS CONFUSION IN THE LANGUAGE. I WOULD SUGGEST THAT IT WAS A MISQUOTE IN THE RAY VERSUS MORTON, CHARACTERIZING IT AS A QUALIFICATION. INSTEAD IT IS A DISQUALIFICATION UNDER THE DISQUALIFICATIONS CLAUSE. WHY WOULD A QUALIFICATION BE UNDER THE DISQUALIFICATIONS CLAUSE? IN ANY EVENT, IT IS A --

THIS IS, ALSO, SOMETHING THAT BECAME A PART OF THE CHARTER FOR JACKSONVILLE, AFTER REFERENDUM.

RIGHT. THE TERM LIMITS AMENDMENT AT ISSUE IN OUR CASE BECAME PART OF THE CHARGE.

AND BY VOTE OF THE VOTERS.

RIGHT. AND AS TO OUR ARGUMENT, THAT IS IRRELEVANT, BECAUSE THE QUESTION OF A LIMITATION ON THE RIGHT SIDE OF GOVERNMENT TO DISQUALIFY SOMEONE FROM OFFICE, THIS COURT HAS SAID, NUMEROUS TIMES, INCLUDING THE COBB CASE WHICH WE FINALIZED, THAT THE EXPRESSION OF THOSE DISQUALIFICATIONS IN THE CONSTITUTION PRECLUDE ALL OTHERS AND THAT IS WHAT THE VOTERS SAID IN 1992, DECIDING TO PUT TERM LIMITS ON THE STATE REPRESENTATIVES AND SENATORS AND PUT THAT QUALIFICATION IN THE CONSTITUTION.

YOUR ARGUMENT WOULD BE THE SAME, IF THIS WAS A SITUATION WHERE THE LEGISLATURE DECIDED THAT IT WAS GOING TO IMPOSE TERM LIMITS ON CLERKS OF COURT AND DO IT BY LEGISLATION.

THAT'S CORRECT.

THE CONSTITUTION PROHIBITS THAT?

ABSOLUTELY.

WHY IS IT CRITICAL TO YOUR ANALYSIS THAT THIS BE A DISQUALIFICATION? RATHER THAN A QUALIFICATION.

WELL, I THINK THE REASON IS, NUMBER ONE, IS THAT THIS COURT HAS MADE THAT DISTINCTION OVER TIME. THERE IS A DIFFERENT WAY OF LOOKING AT IT. ALTHOUGH I WOULD SAY THE ASKEW CASE, WE DON'T EVEN SEE IT, REALLY, AS A QUALIFICATION CASE. IT IS CLEARLY NOT A DISQUALIFICATION CASE, BUT THE ANNOUNCEMENT OF QUALIFICATIONS VERSUS DISQUALIFICATIONS, IN LIGHT OF ASKEW, COULD BE INTERPRETED DIFFERENTLY. ASKEW SORT OF MUDDIED THE WATERS A BIT, IN DECIDING WHAT TESTS SHOULD APPLY. HERE, THOUGH, THE

COURT HAS SAID IN VERY CLEAR LANGUAGE IN THE COBB CASE, SETTING FORTH THE PLAIN AND UNAMBIGUOUS SPECIFICATIONS OF DISABILITIES UNDER ARTICLE VI, SECTION 4, AND EXCLUDES ALL OTHERS, UNLESS THE CONSTITUTION PROVIDES OTHERWISE. THEY ARE CONCLUSIVE OF THE WHOLE MATTER. THAT IS WHY DISQUALIFICATION IS DIFFERENT.

IS THERE A CLAUSE ON DISQUALIFICATION?

I AM SORRY.

IS THERE A CLAUSE IN THE CONSTITUTION THAT DEALS WITH DISQUALIFICATION? SO THAT IS WHY THE DIFFERENCE IN QUALIFICATION?

EXACTLY.

I MEAN EXACTLY. IF THERE WAS NO CASE LAW ON THIS SUBJECT, WOULD IT NATURALLY FOLLOW THAT, BECAUSE THERE IS A DISQUALIFICATION CLAUSE IN THE CONSTITUTION, THAT THAT WOULD PROHIBIT A LEGISLATIVE BODY FROM ENACTING ANY OTHER DISQUALIFICATION?

THAT IS WHAT THIS COURT HAS SAID.

I AM SAYING THAT IS WHAT WE SAID, IN THE COBB CASE.

RIGHT.

AND YOU DON'T SEE THAT THERE HAS BEEN ANY RECEDE RING FROM THAT IN ASKEW?

NO. I THINK I THINK ASKEW IS DIFFICULT TO MAKE A DISQUALIFICATIONS CASE, BECAUSE IN ASKEW, THE STATUTE DIDN'T IMPOSE A QUALIFICATION OR DISQUALIFICATION. IT DIDN'T SAY YOU HAD TO HAVE A DEGREE, LIKE WAS THE CASE IN COBB. IT DIDN'T SAY DISQUALIFICATION. THE STATUTE SAID IT WAS A VACANCY IN OFFICE CASE. IT WAS MIDTERM AND CORPORATE POSITIONS SWITCHED, SO IT WASN'T REALLY A CLASSIC QUALIFICATION OR DISQUALIFICATION.

IN THE COURT BELOW OR IN THE DISTRICT COURT AND IN YOUR BRIEFS, YOU MAKE SOME SUBSTANTIAL ARGUMENT ABOUT THE FACT THAT THIS, IN JACKSONVILLE, THIS OFFICE IS NOT AN ARTICLE VIII OFFICER. IT IS JUST AN ARTICLE V OFFICER. HOW DID THAT COME ABOUT?

THAT CLERK OF COURT HERE, HE IS, AND THERE IS NO DISPUTE IN THE RECORD, AN ARTICLE V OFFICER. HE PERFORMS NO OTHER FUNCTIONS --

HOW WAS THAT DONE? BY THE CHARTER?

WELL, CORRECT. THE ORIGINAL, IF YOU GO BACK TO THE CONSTITUTION AND ARTICLE IX AND SO FORTH.

SO THE CHARTER CHANGED THAT.

NO. I BELIEVE THE CHARTER HAS ALWAYS MADE --

DIDN'T THE CHARTER TAKE AWAY THE RESPONSIBILITIES OF THE CLERK, IN TERMS OF COUNTY GOVERNMENT, AND JUST LEFT THE CLERK WITH DUTIES AS TO THE COURT SYSTEM?

THAT'S CORRECT.

THE CHARTER DID THAT, THOUGH, DID IT NOT?

RIGHT. A PURE ARTICLE V OFFICER, AND AS TO OUR ARGUMENT, IT IS NOT RELEVANT TO OUR

DISQUALIFICATION ARGUMENT.

MY -- WHAT APPEARS TO ME, THE FOLLOW-UP THERE, THAT THAT IS SOMETHING THAT THE CHARTER DOES THAT IS DIFFERENT THAN THE CONSTITUTION. CORRECT?

WELL, I THINK THE CONSTITUTIONAL ALLOWS THE LOCAL GOVERNMENT TO TINKER WITH THE DUTIES, PERHAPS, THE RESPONSIBILITIES OF LOCAL CHARTER GOVERNMENT. THAT IS IN THE CONSTITUTION. BUT HERE WE ARE TALKING ABOUT SOMETHING FUNDAMENTALLY DIFFERENT, A TOTAL DISQUALIFICATION FROM OFFICE.

LET ME ASK YOU A BROADER QUESTION, REALIZING, OF COURSE, YOUR FOCUS IS CORRECT IN LOOKING AT THESE CONSTITUTIONAL PROVIDESS. BUT IF I -- PROVISIONS, BUT IF I UNDERSTAND IT CORRECTLY, IN THE FORM OF GOVERNMENT THAT YOU HAVE OVER THERE, IN JACKSONVILLE, THAT THE MAYOR IS THE CHIEF EXECUTIVE OFFICER. IS THAT CORRECT? AS FAR AS THE EXECUTIVE BRANCH OF GOVERNMENT.

SURE.

IS THAT CORRECT?

YES.

AND YOU HAVE A CITY COUNCIL, THEN, THAT IS THE LEGISLATIVE?

CORRECT.

IS THAT CORRECT? DOESN'T IT STRIKE YOU AS IN CONGRESS REDUCE THAT -- AS INCONGRUOUS THAT ALL OF THESE MAJOR OFFICERS THAT SERVE THE PEOPLE IN THAT COMMUNITY OVER THERE, ARE SUBJECT TO THE CHARTER PROVISIONS, IN TERMS OF THEIR QUALIFICATIONS AND DISQUALIFICATIONS AND TERMS OF OFFICE AND THAT KIND OF THING, AND YET WE ARE SINGLING OUT A MUCH LESSER GOVERNMENT OFFICER OVER THERE, IN SAYING, NO, WE ARE NOT GOING TO ALLOW THE PEOPLE, IN HAVING THEIR CHARTER GOVERNMENT OVER THERE, TO CONTROL THIS CONDITION OF THE TERM OF HIS OFFICE. NOW, AS I SAID, ACKNOWLEDGING THAT THE, WE HAVE TO LOOK TO THE CONSTITUTION TO SEE IF THERE IS SOME IMPEDIMENT TO THAT, BUT DOESN'T THAT STRIKE YOU AS RATHER CONTRARY TO GOOD SENSE AND, REALLY, TO THE WHOLE SCHEME OF CHARTER GOVERNMENT OVER THERE THAT WE WOULD HAVE THE PEOPLE CONTROL EVERYTHING ABOUT THE IMPORTANT OFFICERS OF GOVERNMENT THERE, AND THEN WE WOULD HAVE THIS LESSER OFFICE THAT THEY WOULD BE RESTRAINED FROM CONTROLLING THIS ISSUE?

WELL, ON BEHALF OF THE CLERKS OF COURT, I WOULD SAY IT IS A LESSER OFFICE OVER THERE, BECAUSE IT IS A CONSTITUTIONAL OFFICE. THE MAYOR AND THE CITY COUNCIL ARE ALL UNDER THE CHARTER.

CLEARLY THE RESPONSIBILITIES OF THE COMMISSION --

SURE. IN A PRACTICAL SENSE YOU ARE CORRECT. BUT THE DIFFERENCE HERE, AND THIS COURT HAS RECOGNIZED IT, THAT, WHEN THERE IS IMPOSITION OF QUALIFICATIONS OR DISQUALIFICATIONS, AS IN THIS CASE, ON A CONSTITUTIONAL OFFICER, BUT THE CONSTITUTION IS THE EX-INCLUSIVE END OF STORY, AND THERE ARE GOOD REASONS. OTHERWISE THE CITY GOVERNMENT COULD IMPOSE THAT YOU CAN'T RUN FOR OFFICE IF YOU HAVE FILED BANKRUPTCY. YOU CAN'T RUN FOR OFFICE IF YOU HAVE BEEN TREATED FOR MENTAL DEPRESSION. YOU CAN'T RUN FOR OFFICE, IF YOU HAVEN'T PAID YOUR DEBTS ON TIME.

YOU ARE INTO YOUR REBUTTAL TIME.

IF I COULD JUST CONCLUDE ON THAT POINT, THAT IS WHY THIS COURT MUST MAINTAIN THE LINE IN THE SAND AS THE QUALIFICATIONS CLAUSE. THIS AND NO FURTHER, THE PEOPLE WANT TO AMENDED CONSTITUTION TO PROVIDE AUTHORITY, THEY CAN DO SO. THANK YOU.

MISS RICHARDSON.

MAY IT PLEASE THE COURT. MY NAME IS SARAH RICHARDSON. I REPRESENT KARLEEN DEBLACKER IN HER CAPACITY AS CLERK OF CIRCUIT COURT AND THE SHERIFF IN HIS CAPACITY AS SHERIFF IN PINELLAS K0U7B9 I. I REPRESENT THE CLERK OF COURT. THE PINELLAS COUNTY HOME RULE CHARTER, FOR THE FOLLOWING REASON, THE COMMITTEE AMEND THE CHARTER BY CITIZENS' PETITION AND VOTER REFERENDUM, ATTEMPTING TO IMPOSE TERM LIMITS ON SIX CONSTITUTIONAL OFFICERS, ONLY ONE OF, WHICH THE BOARD OF COUNTY COMMISSIONERS, ARE CHARTER OFFICERS. THE COMMITTEES ATTEMPTED EXERCISE OF THIS POWER FAR EXCEEDED WHAT THE LEGISLATURE DELEGATED TO PINELLAS COUNTY, IN CHAPTER 80-590, LAWS OF FLORIDA.

WELL, YOU ARE NOT CHALLENGING THE METHOD OF AMENDING THE CHARTER BY INITIATIVE, ARE YOU? THAT IS -- HAS BEEN SOMETHING THAT HAS BEEN IN THE CHARTER. CORRECT?

WE ARE NOT CHARGING -- CHALLENGING UNDER THE RIGHT CIRCUMSTANCES, THE ABILITY TO AMEND BY INITIATIVE. BUT, AS WITH THE ABILITY TO AMEND BY THE BOARD OF COUNTY COMMISSIONERS PROPOSING AN ORDINANCE OR THE CHARTER REVIEW COMMISSION PROPOSING AN AMEND, THOSE AMENDMENTS HAVE TO BE WITHIN THE FOUR CORNERS OF THE DELEGATED POWERS FROM THE LEGISLATURE. THIS IS A SPECIAL ACT-CREATED CHARTER, AND AS SUCH, IT HAS PRO DESCRIPTIONS ON POWERS DEL -- PROSCRIPTIONS ON POWERS DELEGATED TO THE COUNTY AND BECAUSE OF THE NON-CHARTERED OFFICERS, IT THERE FOR WENT OUTSIDE OF THE PROSCRIPTIONS DELEGATED TO THE COUNTY. THIS AMENDMENT RESULTS IN AN EXERCISE OF POWERS, HOME RULE POWERS, THAT IS INCONSISTENT WITH SECTION 1-G OF ARTICLE VIII OF THE CONSTITUTION. NOW, SECTION 1-G SAYS 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. THIS COUNTY CHARTER, VOLUSIA'S CHARTER, SOME ASPECTS OF THE DEVALUE, JACKSONVILLE CHART -- OF THE DUVAL, JACKSONVILLE CHARTER, ARE NOT CHAPTER 125 CHARTERS. IN THAT SENSE, THEN THE VERY LANGUAGE IN THE CHARTER, ITSELF, THAT ARGUABLY CREATES A LIMITATION ON THE EXERCISE OF POWERS, IS THE SPECIAL LAW APPROVED BY VOTE OF THE ELECTORS. THE CHARTER IS THAT PREACHER, UNDER SECTION 1-G OF ARTICLE VIII.

IS THERE THIS LIMITATION IN THE CHARTER, RECOGNIZING THAT YOUR ARGUMENT, THAT THIS IS A -- SOMETHING THAT WAS DONE BY SPECIAL ACT OF THE LEGISLATURE? THAT INCLUDED, WITHIN THAT, IS THE CHARTER INITIATIVE PROVISION IN SECTION 6.02, CORRECT?

YES. YOU ARE EXACTLY RIGHT.

IS THERE A LIMITATION, WITHIN THAT PROVISION, AS TO CAN YOU POINT ME TO THE LANGUAGE WHERE IT LIMITS WHAT CAN BE AMENDED?

THERE IS NO LIMITATION IN ARTICLE VI OF THE CHARTER, BUT ARTICLE VI CAN'T STAND ALONE. IT IS THE AMENDMENT PROVISION FOR THE ENTIRE CHARTER, AND YOU HAVE TO LOOK AT THE CHARTER, FROM SECTION 1 THROUGH SECTION 8. THE SPECIFIC LIMITATION WHICH WE ARE FOCUSING ON TODAY IS THE LIMITATION OF POWER SECTION UNDER ARTICLE II. IT IS SECTION 2.06, AND IT READS VERY STRONG, THE COUNTY SHALL NOT HAVE THE POWER, UNDER ANY CIRCUMSTANCES, TO ABOLISH ANY MUNICIPALITY OR IN ANY MANNER, TO CHANGE THE STATUS, DUTIES, OR RESPONSIBILITIES OF THE COUNTY OFFICERS SPECIFIED IN SECTION 1-B, ARTICLE VIII OF THE CONSTITUTION.

COULD THAT PROVISION OF THE CHARTER BE AMENDED BY, UNDER THE SECTION 6?

THAT PROVISION, NO. THAT PROVISION OF THE CHARTER CANNOT BE AMENDED UNDER SECTION 6. IT IS --

WHAT IS THE AUTHORITY FOR THAT?

IT IS A SPECIAL LAW. THE LEGISLATURE IS CHARGED OR IS SORT OF THE HOLDER, THE KEEPER OF POWERS. THE LEGISLATURE HAS THE ABILITY, UNDER SPECIAL LAWS, TO BESTOW ADDITIONAL POWERS ON THE COUNTY. IN THIS PARTICULAR CASE, THE LEGISLATURE SAID, IN 80-590, THE COUNTY OFFICERS, UNDER THE CONSTITUTIONAL PROVISION OF ARTICLE VIII, WILL NOT BE OFFICERS OF YOUR COUNTY. THEY, IN CONTRAST, MADE THE BOARD OF COUNTY COMMISSIONERS CHARTER OFFICERS. THAT IS VERY CLEAR, BOTH IN SECTIONS OR ARTICLES 2 AND ARTICLE III. IT IS A QUESTION OF DELEGATED POWER, AND A QUESTION OF RESERVATION OF POWER. THE COUNTY AND THE LEGISLATURE CANNOT SIMULTANEOUSLY HOLD THESE POWERS. AND IN THIS CASE, THE SPECIAL ACT-CREATED CHARTER RESERVED THAT POWER IN THE LEGISLATURE, SO THAT A SPECIAL ACT WOULD HAVE TO BE APPROVED OR OFFERED OR ADOPTED BY THE LEGISLATURE AND THEN APPROVED BY VOTE OF THE ELECTORS, IN ORDER TO AMEND THIS CHARTER, TO ALLOW TERM LIMITS OR ANY OTHER KINDS OF LIMITATIONS OR EXTRA DUTIES TO BE IMPOSED ON THE CONSTITUTIONAL OFFICERS LOCALLY. THAT DID NOT HAPPEN HERE.

TWO THINGS. FIRST OF ALL, YOU REFERENCED TO POWERS, DUTIES AND RESPONSIBILITIES. HOW ARE TERM LIMITS, HOW DOES IT FALL INTO POWERS, DUTIES AND RESPONSIBILITIES?

JUSTICE PARIENTE, THAT PARTICULAR, THE SECTION 2.06, ACTUALLY REFERENCES THE STATUS A DUTIES AND RESPONSIBILITIES -- THE STATUS DUTIES AND RESPONSIBILITIES. WE SUBMIT THAT THE STATUS OF THESE CONSTITUTIONAL OFFICERS IS AS CONSTITUTIONAL OFFICERS. IT IS A FAIRLY-WELL ESTABLISHED CONCEPT. THE ATTORNEY GENERAL, THERE IS A LOT OF CASE LAW ON THIS, BECAUSE I THINK IT HASN'T BEEN DISPUTED. THE ATTORNEY GENERAL SAID, IN HIS OPINION, 81-7, THAT IF I MIGHT FIND THE LANGUAGE, THAT THE COUNTY IN THAT CASE, REQUESTING AN OPINION AS TO WHETHER TO ADOPT A CHARTER WITHOUT CONSTITUTIONAL OFFICERS, AS PART OF THE FABRIC OF THE GOVERNMENT, AND THE ATTORNEY GENERAL SAID YES, INDEED, HILLSBOROUGH COUNTY COULD DO THAT, IF THE CONSTITUTIONAL OFFICERS DENOMINATED IN SECTIONS 1-D, ARTICLE VIII, ARE NOT INCLUDED AS CHARTER OFFICERS BUT RETAIN THEIR STATUS AS CONSTITUTIONAL OFFICERS.

STATUS, YOU ARE A QUAINING STAT -- EQUATING STATUS AND TERM LIMITS?

NO. WE ARE EQUATING STATUS WITH THE CONSTRUCT OF THE OFFICE, UNDER THE CONSTITUTION. THE CONSTRUCT OF THE OFFICE, AS THE DUTIES ARE ASSIGNED AND RESPONSIBILITIES BY THE LEGISLATURE --

ABOUT -- SO YOU ARE SAYING, IN THIS COUNTY CHARTER, THAT THERE IS NOTHING THEY CAN DO, WITH RESPECT TO THE CONSTITUTIONAL OFFICERS.

THAT IS EXACTLY RIGHT, UNLESS THERE IS INTERVENTION OF THE LEGISLATURE.

BUT THEN YOU SAID SOMETHING ELSE, WHICH WAS THAT, THEN, THE LEGISLATURE WOULD HAVE THE AUTHORITY TO ESTABLISH TERM LIMITS. THAT GOES DIRECTLY AGAINST WHAT MR. MAKAR IS SAYING, AS FAR AS THAT IT IS A DISQUALIFICATION AND ONLY BY CONSTITUTIONAL AMENDMENT COULD YOU DO. THAT DO YOU DISAGREE WITH THAT POSITION?

I ENDORSE MR. MAKAR'S ARGUMENT. I WILL SAY THAT, IN THIS PARTICULAR CASE, WE DON'T NEED TO REACH THAT, WHICH IS WHY WE HAVE NOT BEEN ARGUING IT. WE ARE REALLY TALKING ABOUT DELEGATION OF AUTHORITY. AND WE DON'T NEED TO GET THAT FAR. IT WILL BECOME AN

ISSUE, IF THE LEGISLATURE ATTEMPTS TO IMPOSE TERM LIMITS. WHICH IS WHY IT IS PROBABLY A GOOD THING THAT THIS ISSUE IS RESOLVED TODAY, ALSO. BUT FOR PINELLAS COUNTY, IT IS A QUESTION OF A CITIZENS INITIATIVE. THE SAME AMOUNT OF MONEY. IT COULD HAVE BEEN ABOARD ORDINANCE ATTEMPTING TO IMPOSE TERM LIMITS. IT IS OUTSIDE THE DELEGATED AUTHORITY. THE OTHER ASPECT OF STATUS FOR THE CONSTITUTIONAL OFFICERS, WHICH IS CRITICAL, IN TERMS OF THE ACTUAL FUNCTIONING OF THE GOVERNMENT, IS THESE ARE SOVEREIGN CONSTITUTIONAL OFFICERS, WITH INDEPENDENCE. THEY ARE INDEPENDENT OF THE OTHER WORKINGS OF THE COUNTY GOVERNMENT.

COULD YOUR, UNDER THE WAY THE CHARTER GOVERNMENT IS SET UP, UNDER THIS ARTICLE VIII, SECTION 1-D, IT DOES SAY THAT, WHEN NOT OTHERWISE PROVIDED BY COUNTY CHARTER OR SPECIAL LAW APPROVED BY THE VOTERS, THE LEGISLATORS, THE CLERK OF -- THE VOTERS OR THE ELECTORS, THE COUNTY CLERK SHALL BE THE OFFICIAL CUSTODIAN. HOW DOES THAT AFFECT, COULD PINELLAS COUNTY DO THAT FOR THEIR CHARTER GOVERNMENT THAT, IS MOVE THE DUTIES OF THE CLERK TO OTHER THAN THE ARTICLE V DUTIES?

THEY COULD HAVE, IF THERE WERE NOT THIS SPECIAL ACT IN PLACE. IF WE HAD A CHAPTER 125 CHARTER, THEN I THINK THAT IS A POSSIBILITY. BUT WE DON'T HAVE A 125 CHARTER.

YOU ARE SAYING THAT WOULD BE RESTRICTED FROM THAT PROVISION OF THE CONSTITUTION, IS THE WAY IT IS SET UP.

ABSENT LEGISLATIVE INTERVENTION AND DELEGATION OF ADDITIONAL AUTHORITIES OR LEGISLATIVE INTERVENTION AND REMOVAL OF THE LIMITATIONS, UNDER SECTION 206, AND 403, WHICH IS THE PROVISION THAT WAS AMENDED BY THE COMMITTEE ATTEMPTING TO IMPOSE TERM LIMITS.

IT IS A VERY TECHNICAL ARGUMENT THAT YOU ARE MAKING, BECAUSE AS FAR AS WHAT WOULD BE ENVISIONED BY A CHARTER GOVERNMENT, USUALLY THOUGHT OF AS BEING VERY BROAD HOME RULE POWERS, AND YOU ARE CONSTRUEING THAT IN A VERY NARROW SENSE.

ONLY BECAUSE OF THE "SHALL NOT BE INCONSISTENT WITH" LANGUAGE IN THE CONSTITUTION. THERE IS NO QUESTION THAT THERE ARE BROAD HOME RULE POWERS AVAILABLE, BUT THERE ARE MECHANISMS IN THE CONSTITUTION, ITSELF, FOR LIMITING THOSE HOME RULE POWERS. 1-G SAYS, YOU KNOW, HOME RULE POWER, IF IT IS INCONSISTENT WITH GENERAL LAW, THEN THAT IS NOT PART OF WHAT IS DELEGATED, I SHOULD SAY, AS HOME RULE POWER. IF WILL IS AN INCONSISTENCY -- IF THERE IS AN INCONSISTENCY WITH A SPECIAL HOME RULE APPROVED BY THE VOTEERS., AND IT CAN GET VERY SPECIFIC, COUNTY TO COUNTY, BUT THERE NEEDS TO BE THAT COMPARISON TO SEE WHETHER THE HOME RULE AUTHORITIES ARE PROPER, AND IF THEY ARE PROPER AND CONSISTENT WITH THE HOME RULE DELEGATION AUTHORITIES, THEN THEY HAVE TO BE SET ASIDE. THEY ARE VOIDABLE AND UNENFORCEABLE, AND WE SUBMIT THAT THE AMENDMENT TO THE CHARTER IS INCONSISTENT AND SHOULD BE SET ASIDE. I AM INTO MY REBUTTAL TIME. THANK YOU.

I BELIEVE NOW WE WILL HEAR FROM MR. FRENCH OR MS. FRENCH. SORRY. ON BEHALF OF THE CITY OF JACKSONVILLE.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. I AM LOREE' FRENCH, ASSISTANT GENERAL COUNSEL FOR THE CITY OF JACKSONVILLE, HERE TO DEFEND THE CITY OF JACKSONVILLE CHARTER. YOUR HONOR, THE QUESTIONS THAT MUST BE ANSWERED IS WHETHER THE STATE LEGISLATURE MAY IMPOSE TERM LIMITS ON THE OFFICE OF THE CLERK OF THE COURT. AS WAS HEARD PREVIOUSLY, AND MR. COOK COUCHED THIS QUESTION AS TO WHETHER A COUNTY, THROUGH ITS CHARTER, COULD IMPOSE THESE TERM LIMITS, BUT CLEARLY WHAT THEY ARE ARGUING IS THAT THE STATE LEGISLATURE, ITSELF, DOES NOT HAVE THIS POWER. THIS

QUESTION WAS ANSWERED AFFIRMATIVELY IN THE ASKEW CASE. ASKEW IS A CASE WHICH HAS BEEN ARGUED BY MR. COOKS I, NOT PLICK -- BY MR. COOKSY, NOT APPLICABLE HERE BECAUSE OF ITS QUALIFICATIONS. IN FACT FROM COOKSY ATTEMPTS TO PUT EMPHASIS ON THAT LABEL, WHETHER A QUALIFICATION OR DISQUALIFICATION. THE ANALYSIS REMAINS THE SAME AND THE END RESULT REMAINS THE SAME. IN LOOKING AT WHETHER THIS COURT HAS RULED IN ASKEW AND IN GRASSY THE COURT LOOSE, IN THAT SPECIFIC OFFICE, THERE ARE PROVISIONS WHICH WOULD RESTRICT OR PLACE REQUIREMENTS ON THAT OFFICE. QUALIFICATIONS OR DISQUALIFICATIONS. IF THAT SPECIFIC PROVISION IS FOUND FOR THAT OFFICE, THEN THE LOCAL GOVERNMENT OR THE LEGISLATURE WOULD BE PREEMPTED FROM ESTABLISHING THOSE QUALIFICATIONS. THE COURT, IN ASKEW, HAD BEFORE IT THE MAJORITY DECISION IN THE COBB CASE. COBB IS THE CASE THAT MR. COOK RELIES UPON EXTENSIVELY. THE MAJORITY WAS ON NOTICE THAT THE -- ASKEW, THE COURT WAS ON NOTICE THAT THE COBB CASE ARGUED THE SAME ARGUMENT, THE ARTICLE VI VI, SECTION 4 -- ARTICLE VI, SECTION 4, WHICH ARGUES THAT, IF THERE IS A DISQUALIFICATION, CONVICTED FELON, THEN YOU ARE PREEMPTED FROM ESTABLISHING ANY OTHERS. THAT COURT DID NOT FOLLOW THAT OPINION. THAT COURT, IN ASKEW, CLEARLY FOLLOWED THE CONCURRING JUSTICE TERRELL OPINION IN THE COBB CASE. WHAT THE COURT DID WAS TO LOOK AT THE SPECIFIC OFFICE, IN ASKEW. IT WAS A SCHOOL BOARD MEMBER WAS THE OFFICE. THEY LOOKED TO THE SPECIFIC OFFICE, TO SEE IF THERE WERE ANY QUALIFICATIONS IN THAT OFFICE WHICH WOULD PREEMPT THEM FROM ESTABLISHING THAT RESIDENCY REQUIREMENT, AND THEY FOUND NO, THERE WERE NO QUALIFICATIONS.

ARE YOU MAKING A DISTINCTION BECAUSE THIS IS A COUNTY OFFICE THAT IS, THAT THE LEGISLATURE COULD IMPOSE, SAY, THAT YOUR ANSWER IS, YES, THE, IF WE RULE THAT CHARTER GOVERNMENT HAS THE ABILITY TO IMPOSE TERM LIMITS ON CONSTITUTIONAL OFFICERS, THEN THE LEGISLATURE HAS THAT SAME ABILITY TO DO THAT FOR ALL THE OTHER COUNTY OFFICERS. THAT IS WHAT, CONSTITUTIONAL OFFICERS. CORRECT?

YES, YOUR HONOR. THE SECOND QUESTION --

SO THE QUESTION, THEN, I HAVE IS, THEN, WAS, FOLLOWING WHAT YOUR ARGUMENT, TO A LOGICAL CONCLUSION, OR I DON'T KNOW IF IT IS OR NOT, BUT WOULD THE LEGISLATURE, THEN, HAVE HAD THE ABILITY TO HAVE LIMITED ALL OF THE STATE'S CONSTITUTIONAL OFFICERS IN THE AMENDMENT THAT PASSED IN 1992, NOT HAVE BEEN NECESSARY AS A CONSTITUTIONAL AMENDMENT. THE LEGISLATURE HAS THE POWER TO IMPOSE TERM LIMITS ON OTHER CLASSES, STATE CONSTITUTIONAL.

YES, YOUR HONOR. THE STATE HAS THE POWERS TO IMPOSE POWERS ON OTHER STATE CONSTITUTIONAL OFFICERS.

THE CONSTITUTIONAL AMENDMENT WAS NOT NECESSARY.

THE CONSTITUTIONAL AMENDMENT WAS NOT NECESSARY. WHEN -- WHAT WE ARE TALKING ABOUT AND WAS RAISED BY MR. COOK IS THE ARGUMENT THAT THEY ANALOGIZED TO THE THORNTON CASE. THEY ARGUED THAT, BECAUSE THE U.S. SUPREME COURT IN THORNTON TELLS THAT STATE GOVERNMENTS COULD NOT IMPOSE TERM LIMITS ON FEDERAL CONSTITUTIONAL OFFICES, SUCH AS THE HOUSE OF REPRESENTATIVES, THEY SAY THAT THAT MEANS, THEN THAT, THE CITY OF JACKSONVILLE CANNOT IMPOSE TERM LIMITS ON COUNTY OFFICERS, COUNTY CONSTITUTIONAL OFFICERS, SUCH AS THE CLERK. THAT ANALOGY COULD ONLY, MAYBE, BE APPLICABLE, IF THE CITY OF JACKSONVILLE WERE TRYING TO IMPOSE TERM LIMITS ON A STATE SENATOR OR A STATE HOUSE OF REPRESENTATIVE, OUTSIDE OF THE BOUNDARIES OF DUVAL COUNTY. THAT IS NOT THE ISSUE HERE. THIS IS AN ISSUE OF THE CLERK OF THE COURT, WHICH IS STATED IN ARTICLE VIII OF THE CONSTITUTION AS A COUNTY OFFICER.

OKAY. BUT YOU ARE SAYING THAT THE STATE COULD HAVE IMPOSED OR COULD IMPOSE TERM



LIMITS ON ANY OTHER OFFICER, CONSTITUTIONAL OFFICER THAT IS A STATEWIDE OFFICE.

THAT --

UNDER THE CONSTITUTION.

NOT UNDER THE RULING IN ASKEW IF THERE ARE, FOR EXAMPLE, STATE SENATOR RIGHT NOW TERM LIMITS OR OTHER REQUIREMENTS, IF THERE ARE QUALIFICATIONS FOR THAT OFFICE, THE LEGISLATURE IS JUST LIKE THE CITY OF JACKSONVILLE. THEY CANNOT IMPOSE QUALIFICATIONS WHERE THE CONSTITUTION ALREADY EXPRESSLY PROVIDES QUALIFICATIONS FOR THAT OFFICE.

BUT BEFORE 1992, BEFORE THAT PROVISION WAS IN, YOU ARE SAYING THAT, SINCE THE CONSTITUTION HADN'T SPOKEN, IF THE LEGISLATURE COULD -- THAT THE LEGISLATURE COULD HAVE DONE THAT.

YES, YOUR HONOR. AS TO STATE OFFICERS.

WELL, DO I UNDERSTAND YOUR ARGUMENT THAT THERE IS NO DIFFERENCE IN THIS ANALYSIS BETWEEN QUALIFICATIONS AND DISQUALIFICATION?

YES, YOUR HONOR. IN LOOKING AT THE LINE OF CASES AND --

WELL, THE CONSTITUTION DOES PROVIDE CERTAIN DISQUALIFICATION DISQUALIFICATIONS FOR ALL OFFICES, DOES IT NOT? I MEAN IN THE SECTION 4, NO PERSON CONVICTED AFTER FELONY OR MENTALLY-INCOMPETENT, SHALL BE QUALIFIED TO VOTE. NOW, IF QUALIFICATIONS AND DISQUALIFICATIONS ARE THE SAME, AND WE AS R AGO -- AND WE ASSUME THE ANALYSIS TO BE CORRECT, THEN WHATEVER IS IN THE CONSTITUTION AS THE EXCLUSIVE LIST, IF THERE ARE ANY THINGS THAT ARE LISTED, THEN DOESN'T THAT LIMIT THE POWER OF THE LEGISLATURE, ON ITS OWN OR THROUGH THE APPROVAL OF A CHARTER?

THAT IS MR. COOK'S ARGUMENT, AND THAT IS EXPRESSLY THE ARGUMENT REJECTED BY THE MAJORITY IN HOLLY. IT BRINGS THE DISSENT OF JUSTICE IRVIN THAT EXPLAINS THAT SAME ARGUMENT, THAT IF THERE IS SOME GENERAL PROVISION, SUCH AS A CONVICTED FELON. A CONVICTED FELON CANNOT HOLD OFFICE, THEN THE ARGUMENTS THEN MADE, THAT MEANS THAT THERE ARE NO OTHER DISQUALIFICATIONS THAT CAN BE PLACED ON ANY OFFICE, ANY OFFICE. IN FACT. IT DOESN'T SAY CONSTITUTIONAL OFFICE. ARTICLE VI SECTION 4 SAYS ANY OFFICE. THAT COULD BE CITY OFFICES. THAT COULD BE COUNTY OFFICES. CONSTITUTIONALLY-CREATED OR OTHERWISE. BUT THE COURT, IN ASKEW, DID NOT ADOPT THAT POSITION, WHICH WAS IN THE COBB CASE. THE COURT, IN HOLLY, DID NOT ADOPT THAT POSITION, WHICH WAS JUSTICE IRVIN'S DISSENT. WHAT THEY LOOKED TO IN BOTH ASKEW AND GRASSY, WHICH WAS JUSTICE EHRlich'S OPINION, THOSE TWO CASES LOOK TO THE SPECIFIC OFFICE, ITSELF, AND WHETHER THAT OFFICE PROVIDES FOR QUALIFICATIONS FOR THAT OFFICE. YOUR HONOR, AN ADDITIONAL ARGUMENT THAT IS BEING MADE BY MR. COOK TODAY, IS THAT ARTICLE V, SOMEHOW BY MENTIONING THE CLERK IN ARTICLE V, THAT MAKES HIM A QUASI-JUDICIAL OFFICER OR SOME ELEVATED STATUS, SUCH AS HE CANNOT BE, HAVE TERM LIMITS IMPOSED AS THE OTHER OFFICERS IN THE CITY OF JACKSONVILLE. FIRST OF ALL, THE TRIAL COURT DID NOT EVEN ADDRESS THAT ISSUE, DID NOT EVEN RULE ON THAT. THE FIRST DISTRICT COURT OF APPEAL REJECTED THAT ARGUMENT IN A PARAGRAPH OF ITS OPINION. ARTICLE V SECTION 16, WHICH STATES THAT THERE SHALL BE A CLERK OF THE COURT, CLEARLY DIRECTS THAT POSITION BACK TO ARTICLE VIII SECTION 1-D, AND ARTICLE VIII SECTION 1-D CLEARLY LISTS THE CLERK AS A COUNTY OFFICER. TO TAKE MR. COOK'S ARGUMENT WOULD BE TO FIND INCONSISTENCY IN THE PROVISION THAT IS ARE ALREADY IN THE CONSTITUTION. -- THAT ARE ALREADY IN THE CONSTITUTION. TO LOOK AT THEM IN HARMONY, SECTION 16 AND ARTICLE VIII, ONE COULD NOT SIMPLY FIND THE CLERK OF COURT IS A JUDICIAL OFFICE AS STATED BY THE JACKSONVILLE CHARTER. THERE ARE ADDITIONAL PROVISIONS IN THE JACKSONVILLE CHARTER WHICH WOULD

REMOVE CERTAIN FUNCTIONS FROM THIS OFFICE, IN ORDER TO NOW SIMPLY BE A JUDICIAL OFFICER. THERE IS A DIFFERENCE HERE, BETWEEN FUNCTIONS BEING PERFORMED AND THE OFFICE AND THE STATUS OF THAT OFFICE. EVEN IF THE CLERK OF THE COURT DOES NOT PERFORM A LOT OF FUNCTIONS FOR THE COUNTY GOVERNMENT FUNCTIONS OF JACKSONVILLE, NEVERTHELESS THE CLERK OF THE COURT PROVIDES FUNCTIONS THAT ARE REQUIRED BY THE STATE OF FLORIDA AND STILL PROVIDES THOSE. AN EXAMPLE WHICH WAS PRESENTED AT THE LOWER COURT LEVEL, WOULD BE IN CHAPTER 177, HE HAS TO REPORT. CHAPTER 133 HE HAS TO HOLD TAX DEED SALES. CHAPTER 132, HE HAS TO ISSUE MARRIAGE LICENSE. THOSE FUNCTIONS ARE REGULATED AND MANDATED BY THE STATE OF FLORIDA, SO THERE IS A DIFFERENCE BETWEEN FUNCTIONS BEING PERFORMED AND WHAT IS THE REGULATION OF THE STATUS OF THAT OFFICE. THAT IS A COUNTY POSITION UNDER THE ARTICLE VIII OF THE CONSTITUTION. YOUR HONOR, MR. COOK ALSO PARADED HORRIBLES. IF THIS COURT WERE TO UPHOLD TERM LIMITS, THEN WHAT WOULD BE NEXT AND WHAT WOULD BE JACKSONVILLE'S ATTEMPT TO IMPOSE BUT THIS COURT, IN RAY V MORRISON, EXCUSE ME, ALREADY HAS ANALYZED TERM LIMITS IN ACCORDANCE WITH THE FEDERAL REQUIREMENTS, AND IT PASSED THE FIRST AND FOURTEENTH AMENDMENTS. THE SAME HAS TO BE DONE WITH ANY OTHER DISQUALIFICATION, AND THERE IS NO WAY AND THE CITY WOULD OBVIOUSLY NOT DO THAT, BUT THERE ARE NO QUALIFICATION THAT IS COULD NOT BE PASSED WHICH DID NOT PASS THE FIRST AND FOURTEENTH AMENDMENT TEST, AND THEREFORE EACH QUALIFICATION HAS TO BE LOOKED AT INDIVIDUALLY, AND TO TRY AND PROVIDE A SPECULATIVE ARGUMENT FOR OTHER QUALIFICATIONS, WHEN ALL WE ARE TALKING ABOUT HERE IS TERM LIMITS --

DOES YOUR ARGUMENT NATURALLY FOLLOW THAT, FOLLOWING UP ON JUSTICE PARIENTE'S QUESTION, THAT THE LEGISLATURE COULD SET TERM LIMITS ON ANY OFFICER OF THE STATE, INCLUDING ANY ARTICLE V OFFICER?

NO, YOUR HONOR, THEY COULD NOT, BECAUSE IN ARTICLE V, FOR EXAMPLE, JUSTICES HAVE SPECIFIC QUALIFICATIONS STATED FOR THAT OFFICE, SUCH AS BEING A LAWYER. THERE ARE SPECIFIC QUALIFICATIONS. IN FACT, A LOT OF THE OFFICES IN THE CONSTITUTION HAVE SPECIFIC QUALIFICATIONS ALREADY. IT IS THE COUNTY OFFICERS AND IN PARTICULAR HERE, CLERK OF THE COURT, THAT HAVE NO QUALIFICATIONS SPECIFIC TO THAT OFFICE THAT ARE PROVIDED FOR IN THE CONSTITUTION. YOUR HONOR --

YOU DON'T THINK THAT THE ABSENCE OF THAT MEANS THAT THE INTENT OF THE CONSTITUTION WAS TO ALLOW FOR THOSE OFFICERS TO HAVE THE BROADEST NUMBER OF POTENTIAL CANDIDATES AND NOT TO LIMIT WHO COULD SEEK AND THE TERMS THAT THEY COULD SEEK THAT THE VERY ABSENCE OF THOSE PARTICULAR QUALIFICATIONS, OR ARE YOU SAYING BECAUSE THERE AREN'T ANY, THAT THE COUNTY COULD JUST PUT ANYTHING THEY WANTED, INCLUDING MORE ONEROUS QUALIFICATIONS, UNDER THOSE OFFICES?

YOUR HONOR, A SIMILAR QUESTION WAS RAISED IN THE ASKEW CASE. AFTER THE COURT FOUND THAT THERE WERE NO QUALIFICATIONS AND THEREFORE OUR RESIDENCY REQUIREMENT WAS CONSTITUTIONAL, THEY ADDRESSED AN ARGUMENT MADE BY THE OTHER SIDE, WHICH WAS THEY LOOKED INTO THE HISTORY OF THE CONSTITUTIONAL PARAMETERS AND SAID THAT THEY WERE GOING TO PUT IN A RESIDENCY REQUIREMENT, BUT THEN THEY DIDN'T PUT IT IN, SO THE ARGUMENT WAS MADE, BECAUSE IT WAS NOT PUT IN, THAT THIS WAS AN INDICATION THEY WANTED TO LEAVE THAT ALONE, AND THAT MEANT THAT THEY COULD NOT IMPOSE THAT RESIDENCY REQUIREMENT. THE COURT SAYS THE CON -- THIS IS QUOTING FROM ASKEW, THE CONSTITUTIONAL DRAFTING COMMITTEE ACCEPTED THIS RESULT BY DECLINING TO INCLUDE QUALIFICATIONS WITHIN THE CONSTITUTIONAL PROVISION, THERE BY RECOGNIZING SUCH STATUTORY RESIDENCY REQUIREMENTS. IN SOME, THEY SIMPLY DID NOT CHOOSE TO ADDRESS ITSELF TO RESIDENCY REQUIREMENTS OR SET FORTH ANY QUALIFICATIONS FOR SCHOOL BOARD MEMBERS, THERE FOR LEAVING IT UP TO THE LEGISLATURE TO SET THEM. WHAT THEY SAID WAS THE SILENCE DOESN'T MEAN THAT YOU CAN'T DO IT. THAT WOULD BE ALMOST BIKE ARGUING

THAT THE CONSTITUTION IS AN AUTHORIZING DOCUMENT. IT DOESN'T SAY YOU CAN DO IT, YOU CAN'T DO IT. IN FACT, THIS COURT HAS HELD THAT A CONSTITUTION IS A LIMITING DOCUMENT. IT LIMITS THE THINGS THAT THE COUNTIES CAN DO AND THAT THE LEGISLATURE CAN DO.

AND YOU DON'T SEE THAT ARTICLE VI CONTAINS A DISQUALIFICATION PROVISION AS BEING DIFFERENT? THAT IS APPLICABLE TO ALL THE OFFICERS OFFICES -- THE OFFICES, THE CONSTITUTIONAL OFFICES OF THE STATE? I BELIEVE THAT WOULD BE MR. COOK'S ARGUMENT HERE, IS THAT THAT PARTICULAR SECTION OF THE CONSTITUTION CONTAINS DISQUALIFICATIONS APPLICABLE TO ALL THE OFFICERS, AND YOU DON'T SEE THAT AS A VIABLE ARGUMENT HERE?

YOUR HONOR, IT DOES, THAT PROVISION DOES APPLY TO ALL OFFICES, INCLUDING NOT JUST CONSTITUTIONAL OFFICES. IT WOULD APPLY TO ALL OFFICES, EVEN MUNICIPAL OFFICES. WHAT THE COURT, IN ASKEW, AND WHAT THE COURT, IN GRASSY WAS SAYING, THOUGH, THEY HAD THAT ARGUMENT BEFORE THEM, BECAUSE THE COBB COURT HAD RAISED THAT ARGUMENT ALREADY. THEY CHOSE TO LOOK TO THE SPECIFIC OFFICE, ITSELF, INSTEAD OF SOME GENERAL PROVISION. THEY CHOSE TO LOOK TO THE SPECIFIC OFFICE, AND IF THAT OFFICE DID NOT HAVE SPECIFIC QUALIFICATIONS, THEN THE LEGISLATURE WAS FREE TO ESTABLISH THEM.

BUT THIS WOULD -- THIS ARTICLE WOULD BE SPECIFIC DISQUALIFICATIONS, AND IT WOULD BE APPLICABLE, THEN, TO ALL THE OFFICERS. I THINK -- I AM ASKING YOU, COULDN'T ARTICLE VI BE READ IN THAT FASHION?

THIS COURT, IF THIS COURT WERE TO READ ARTICLE VI IN THAT FASHION, IT WOULD BE INCONSISTENT WITH WHAT THE COURT HELD IN ASKEW AND THE COURT HELD IN HOLLY, WHEN LOOKING AT THE DESCENDING OPINION, THAT IS CLEARLY WHAT THE DISSENT WAS TRYING TO MAKE, IN THE HOLLY CASE, SO IF YOU FOLLOW THE LINE OF CASES FROM COBB UP THROUGH TODAY, AND IN FACT EVEN, WELL, YES, FROM COBB TO TODAY, YOU WILL FIND THAT THAT IS THE ARGUMENT THAT IS BEING MADE MANY TIMES, AND, IN FACT, IT IS BEING MADE BY MR. COOK THAT THAT IS AN ARGUMENT THAT WAS REJECTED BY THE COURT.

THANK YOU, MS. FRENCH. YOUR TIME IS UP.

THANK YOU.

MR. HOOKER. ON BEHALF OF THE COMMITTEE. PINELLAS COUNTY.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS MIKE HOOKER. I REPRESENT "EIGHT IS ENOUGH", THE POLITICAL COMMITTEE THAT SPEARHEADED THE TERM LIMITS AMENDMENT IN THE PINELLAS COUNTY CASE. AT THE OUT SET, I WOULD LIKE TO MAKE A POINT THAT IS OBVIOUS BUT STILL BEARS MENTIONING, GIVEN THE CIRCUMSTANCES OF THIS APPEAL AND THAT IS THAT THE TERM LIMIT IS QUOTED WITH THE VERY STRONG CONSTITUTIONAL FINALITY. IT IS THERE FOR INCUMBENT UPON THE COURT TO CONSTRUE IT IN HARMONY WITH THE OTHER LAWS AND THE CHARTER, ITSELF, IF IT IS REASONABLE TO DO SO. WE RESPECTFULLY SUBMIT THAT IT IS REASONABLE TO DO SO, UNDER THE CIRCUMSTANCES OF THIS CASE, BECAUSE IF FOR NO OTHER REASON, TWO LOWER COURTS HAVE ALREADY CONSIDERED THE ADMITTEDLY TECHNICAL ARGUMENTS MADE BY THE PETITIONERS HERE AND HAVE REJECTED THOSE ARGUMENTS, IN FAVOR OF A CONSTRUCTION THAT WOULD RENDER THE TERM LIMITS AMENDMENT CONSTITUTIONAL. BECAUSE IT IS REASONABLE AND POSSIBLE TO CONSTRUE IT IN HARMONY WITH THE CONSTITUTION AND OTHER LAW, WE SUBMIT THAT THE COURT SHOULD DO THAT IN THIS CASE. FUNDAMENTALLY, WE THINK THIS CASE CAN BE DECIDED UNDER THE HOME RULE POWERS DOCTRINE. UNDER THAT DOCTRINE, ALL CHARTER COUNTIES ENJOY POWERS OF LOCAL SELF GOVERNMENT THAT ARE NOT INCONSISTENT WITH GENERAL LAW OR SPECIAL LAW APPROVED BY THE ELECTORS. IN EFFECT, HOME RULE POWERS COME FIRST UPON CHARTERED -- CONFER, FIRST, UPON CHARTERED COUNTIES, RELATING TO PURELY LOCAL AFFAIRS. THE ONLY LIMITATION IS IF THERE IS PREEXISTING SUPERIOR LAW THAT WOULD BE CONTRAVENED OR

CONTRADICTED BY THE EXERCISE OF HOME RULE POWER. IN THE CASE OF PINELLAS COUNTY, IT IS CLEAR THIS COUNTY GAVE, CONFERRED UPON ITSELF, A FULL BROAD HOME RULE POWER. AS THE TRIAL COURT IN THIS CASE CORRECTLY HELD, SECTIONS 2.01 AND 2.03 OF THE CHARTER LITERALLY GAVE THE COUNTY AS BROAD A HOME RULE POWER AS THE COUNTY COULD POSSIBLY GIVE ITSELF. BECAUSE IT HAS THE FULL RANGE OF HOME RULE POWERS, THE QUESTION IS DOES IT CONTRAVENE OTHER EXISTING SPECIAL OTHER SPECIAL SUPERIOR LAW TO IMPOSE TERM LIMITS TO THESE COUNTY OFFICERS? WE SUBMIT THAT THE ANSWER TO THAT LIES IN ARTICLE VIII SECTION 1-D THAT, THE ONLY PROVISION, ACTUALLY, IN THE CONSTITUTION THAT IDENTIFIES THE COUNTY OFFICERS IN QUESTION, AND A CURSORY REVIEW OF THAT SECTION OF THE CONSTITUTION REVEALS THAT THERE CERTAINLY ISN'T ANY EXPRESSED PURPOSE OF LIMITING OR PREEMPTING THE FIELD, WITH RESPECT TO THESE OFFICES AT ALL. IN FACT, THERE IS AN INDICATION THAT THERE IS QUITE A LOT OF LOCAL CONTROL GIVEN TO THESE OFFICES. INDEED, THERE IS THE POWER TO ABOLISH THE OFFICES ALL TOGETHER AND TO TRANSFER THE DUTY TO ANOTHER OFFICE, IF APPROVED BY THE CHARTER OR A SPECIAL ACT APPROVED BY THE ELECTORS, IN ADDITION THE SELECTION OF THOSE OFFICERS CAN BE AMENDED UNDER SECTION 1-D, SO FOR THAT REASON WE THINK THE HOME RULE POWERS DOCTRINE ALLOWS THE IMPOSITION OF TERM LIMITS, AND BY A COUNTY CHARTER HERE.

YOU COULDN'T GO TO A NON-- ELECTED POSITION FOR THESE CONSTITUTIONAL OFFICERS. THAT IS FOR TAX-COLLECTED -- FOR TAX COLLECTOR, PROPERTY APPRAISER AND CLERK OF THE COURT. IT SAYS THEY SHALL BE ELECTED BY THE ELECTORS. SO WHEN IT COMES TO THE ELECTIONS, THERE IS PREEMPTION THAT THEY HAVE TO BE ELECTED.

I AGREE WITH THAT, YOUR HONOR. THE METHOD OF SELECTING CAN BE ALTERED AND NOT WHETHER THEY ARE SELECT ADD BY SOME OTHER MEANS OTHER THAN ELECTION. I AGREE WITH THAT.

WELL, OKAY, SO THIS SAYS "MAY BE CHOSEN", EXCEPT -- WHAT DOES THAT MEAN? "MAY BE CHOSEN IN ANY OTHER MANNER THERE IN SPECIFIED." WHAT OTHER MANNER COULD THERE BE WOULDN'T, OTHER THAN ELECTION?

WELL, I AM NOT SURE, YOUR HONOR. I DON'T RECALL KNOW EXACTLY WHAT THE FRAMERS OF THE CONSTITUTION HAD IN MIND THERE, BUT I THINK THE IMPORTANT POINT FROM OUR STANDPOINT IS THE FRAMERS KONT'S PLATED THAT THERE COULD BE A -- ---CONTEMPLATED THAT THERE COULD BE A DIFFERENT METHOD OF SELECTION, IF IT WAS PROVIDED FOR BY THE VOTE OF THE ELECTORS, PURSUANT TO A SPECIAL LAW, OR BY THE CHARTER, ITSELF. THE PETITIONERS HERE MADE TWO FUNDAMENTAL ARGUMENTS. BASICALLY THEY HAVE ASSERTED, FIRST, THAT THIS IS A SPECIAL LAW CREATED CHARTER, THAT SOMEHOW RESTRICTS WHAT THE COUNTY CAN DO, IN TERMS OF ITS HOME RULE POWERS, BECAUSE THERE IS AN EXPRESSION OF PURE LEGISLATIVE INTENT, AND SECONDLY THEY HAVE ARGUED THAT THESE OFFICERS IN QUESTION, THE COUNTY OFFICERS IDENTIFIED IN ARTICLE VIII SECTION 1-D, ARE VIEWED WITH SOME SORT OF HIGHER STATE SOVEREIGNTY, SUCH AS THEY ARE OUT OF REACH OF THE LOCAL COUNTY ELECTORATE, WITH RESPECT TO TERM LIMITS. WITH RESPECT TO THE FIRST ARGUMENT, THE ARGUMENT, I THINK, IS THAT THERE WERE LIMITATIONS PLACED IN THE CHARTER BY THE LEGISLATURE, PURSUANT TO THE SPECIAL ACT, CHAPTER 80-590, THAT PROPOSED THE CHARTER TO THE ELECTORATE, AND THEREFORE ONLY THE ELECTORATE CAN REMOVE THOSE RESTRICTIONS SUPPOSEDLY. THE PROBLEM WITH THAT ARGUMENT, FUNDAMENTALLY, IS THAT THE CHARTER DID NOT BECOME LAW, UNLESS AND UNTIL APPROVED BY THE ELECTORATE. IN OTHER WORDS UNDER CHAPTER 80-590, BY THE SPECIAL TERMS OF THAT ACT, THE CHARTER BECAME FINAL, ONLY UPON APPROVAL OF THE ELECTORATE, AND THAT IS ALSO CONSISTENT WITH ARTICLE VIII SECTION 1-C, WHICH PROVIDES THAT ONLY THE COUNTY ELECTORATE CAN APPROVE, ADOPT OR AMEND A COUNTY CHARTER. BECAUSE THE ELECTORATE HAS THE FINAL WORD WITH RESPECT TO THIS CHARTER, THERE FOR IF THERE WERE ANY RESTRICTIONS PLACED IN THE CHARTER, IT WAS PLACED THERE EFFECTIVELY BY THE ELECTORATE. THEREFORE THE

ELECTORATE HAS THE POWER TO REMOVE ANY SUCH RESTRICTIONS, AND THAT REALLY GOES TO JUSTICE WELLS'S QUESTION ABOUT WHETHER THERE ARE ANY LIMITATIONS IN THE AMENDMENT PROVISION SET FORTH IN THE CHARTER INITIATIVE PROCEDURES AND PROVISIONS IN SECTION 6.02 OF THE CHARTER. THE ONLY RESTRICTION OF THE ELECTORATE'S ABILITY TO AMEND THE CHARTER WOULD HAVE TO BE LOCATED IN THE AMENDMENT PROVISION OF THE CHARTER, WHICH IS ARTICLE VI SECTION 6.02 OF THE CHARTER. IF YOU LOOKED AT THAT PROVISION, THERE ARE NO RESTRICTIONS WHATSOEVER ON THE ELECTORATE'S POWER TO AMEND THE CHARTER THIS CASE. THE FUNDAMENTAL FLAW, I THINK, WITH THIS ARGUMENT IS THAT, TAKEN TO THE LOGICAL EXTREME, IT WOULD ACTUALLY RENDER THE CHARTER INITIATIVE, CHARTER AMENDMENT PROCEDURES, COMPLETELY MEANINGLESS. BASICALLY THEIR ARGUMENT IS THAT THERE ARE CERTAIN PROVISIONS, AND THEY WANT TO FOCUS JUST ON THE PROVISIONS THEY WANT TO FOCUS ON, BUT CERTAIN PROVISIONS IN THE CHARTER THAT ARE SUPPOSEDLY EXPRESSIONS OF PURE LEGISLATIVE INTENT. BECAUSE THESE ARE EXPRESSIONS OF SUPERIOR LEGISLATIVE INTENT, SUPPOSEDLY ONLY THE LEGISLATURE, THE STATE LEGISLATURE, CAN CHANGE THOSE EXPRESSIONS. WELL, IF THAT IS THE CASE, REALLY, BECAUSE THE CHARTER WAS INITIATED VIA A SPECIAL ACT OF THE LEGISLATURE, LITERALLY EVERY PROVISION IN THE CHARTER WOULD CONSTITUTE AN EXPRESSION OF SUPERIOR LEGISLATIVE INTENT AND THEREFORE NO PROVISION OF THE CHARTER COULD BE AMENDED WITHOUT RESULT TO THE LEGISLATURE, WHICH WOULD, OF COURSE, RENDER MEANINGLESS, THE PROVISION OF AMENDING THE CHARTER BY THE LEGISLATURE, IN ANY WAY, SHAPE, FORM OR FASHION.

BUT REALLY, ACCEPTING THAT THERE COULD BE, THERE IS NO LIMITATION IN THE INITIATIVE SECTION, AS TO WHAT CAN BE AMENDED, AS FAR AS THIS SPECIAL ACT, AND ASSUMING THAT THAT WAS GIVEN TO THE POWER, GIVEN TO LOCAL GOVERNMENT UNDER THIS CHARTER, YOU STILL HAVE TO HAVE THE CHARTER AMENDMENTS, EVEN BY INITIATIVE, CONSISTENT WITH THE STATE CONSTITUTION, DO YOU NOT? BECAUSE IT IS FROM THE STATE CONSTITUTION THAT IS DERIVED THE LOCAL CHARTER POWER.

YES, YOUR HONOR.

AND SO THAT, REALLY, BRINGS US, THESE TWO CASES IN THE INTERSECTION, IN THAT THE ULTIMATE QUESTION IS, KIND OF HAS TO COME DOWN TO WHETHER THERE CAN BE ADDITIONAL QUALIFICATIONS OR DISQUALIFICATIONS FOR OFFICE. IF IT IS A CONSTITUTIONAL OFFICE.

YOUR HONOR, I AM SORRY. I THINK THAT YOU ARE REALLY BASICALLY RAISING THE ISSUES THAT WERE RAISED IN THE COOK CASE, WHICH HAVEN'T BEEN RAISED IN OUR CASE. OF COURSE WE HAVE NOT BEEN GIVEN AN OPPORTUNITY TO BRIEF THOSE ARGUMENTS, BECAUSE THEY WERE NEVER RAISED IN OUR CASE, AND I THINK JUSTICE PARIENTE CORRECTLY POINTED OUT THAT THE POSITION TAKEN BY PINELLAS COUNTY ACTUALLY CONTRAVENES THE POSITION TAKEN BY COOK, BECAUSE THEY HAVE ASSERTED THAT THE LEGISLATURE COULD MAKE AMENDMENTS TO OUR CHARTER, BUT THAT THE PEOPLE CAN'T. WELL, IF THAT IS THE CASE, THEN THEIR ARGUMENT THAT ALL QUALIFICATIONS OR DISQUALIFICATIONS OR WHATEVER YOU WANT TO CALL THEM ARE PREEMPTED, FALSE BY THE WAYSIDE. WE -- FALLS BY THE WAYSIDE. WE, BY THE WAY, HEARTILY ENDORSE THE POSITION OF THE CITY OF JACKSONVILLE IF THAT RESPECT. WE THINK THEY ARE ABSOLUTELY CORRECT. IF I MAY SPEAK TO ISSUES THAT WEREN'T RAISED OR BRIEFED IN OUR CASE FOR JUST A MOMENT, IN RESPONSE TO YOUR QUESTION. WE BELIEVE THAT THERE HAS BEEN AN EVOLUTION, SO TO SPEAK, OF THE LAW, SINCE THIS COURT DECIDED COBB ALMOST HALF A CENTURY AGO, AND THAT WAS PURSUANT, BY THE WAY, TO A DIFFERENT PROVISION OF THE 1885 FLORIDA CONSTITUTION, WHICH IS DIFFERENT FROM THE LANGUAGE AND ARTICLE VI SECTION 4 IS DIFFERENT FROM THE LANGUAGE AT ARTICLE V SECTION 4 IN THAT CASE. THE PREQUALIFICATION OR DISQUALIFICATIONS, I SHOULD SUBMIT, ARE RESPECTIVE TO A PARTICULAR OFFICE AND QUALIFICATIONS AS TO THAT PARTICULAR OFFICE IN THE CONSTITUTION.

BY THAT, YOU ARE REFERRING TO THE ASKEW CASE, THE HOLLY CASE, IT IS NOT A WHOLE LOT OF OTHER CASES?

I AGREE, YOUR HONOR. THERE ARE ONLY A FEW CASES ON POINT, BUT YOU ARE RIGHT. I AM REFERRING TO THE ASKEW CASE. I AM REFERRING TO THE HOLLY CASE. EVEN THE WILSON --

ASKEW DID NOT EXPRESSLY RECEDE FROM COBB, DID IT?

NO, YOUR HONOR, BUT THEY ARE HARD TO RECONCILE IN MY MIND, BECAUSE IF THERE WERE KIND OF A PREEMPTION OF THE FIELD LEFT BY COBB, THEN BASICALLY I THINK THAT YOU WOULD HAVE GOTTEN TO A DIFFERENT RESULT IN ASKEW. THE COURT, IN ASKEW, BASICALLY LOOKED AT ARTICLE IX SECTION 4-A WITH RESPECT TO A CONSTITUTIONAL OFFICE OF A SCHOOL BOARD MEMBER AND ESSENTIAL CHREELED THAT, IN THAT CASE, QUALIFICATIONS SIMPLY WEREN'T DEALT WITH IN ARTICLE IX SECTION 4-A, AND BECAUSE QUALIFICATIONS WEREN'T DEALT WITH, THE FIELD WAS OPEN FOR --

I GUESS WHAT YOU SEEM TO, AND MAYBE EVERYONE SEEMS TO TAKE ONE CASE AND SAY, WELL, NOW, THIS IS THE LAW, AND I THINK WE HAVE TO LOOK AT THE SPECIFIC FACTS. I THINK WHAT WE ARE CONCERNED ABOUT, TODAY, IS WHAT THE OVERALL IMPLICATIONS ARE, OF SAYING THAT COUNTIES CAN DO THIS FOR A CONSTITUTIONAL OFFICER. WHAT DOES THAT MEAN? WHAT ELSE COULD THE LEGISLATURE DO, AND TRY TO LOOK AT IT IN, YOU KNOW, IN AN INTEGRATED WAY, SO THAT THERE AREN'T ANY OTHER UNINTENDED CONSEQUENCES. AND THAT IS A CONCERN. I MEAN, WHAT IS YOUR POSITION AND ARE TERM LIMITS OF QUALIFICATION OR DISQUALIFICATION?

WELL, YOUR HONOR, I AM WELL AWARE OF THE FACT THAT THE COURT HAS CALLED THEM QUALIFICATIONS AND DISQUALIFICATIONS.

IT WASN'T REALLY THE ISSUE.

I THINK THAT THEY REALLY GO TO ELIGIBILITY REQUIREMENTS, AS DEALT WITH IN THE HOLLY CASE. BASICALLY IN HOLLY, THE STATUTE IN QUESTION WAS THE RESIGN TO RUN LAW, IN WHICH BASICALLY, SOMEONE HAD TO STEP DOWN FROM AN EXISTING OFFICE BEFORE THEY COULD RUN FOR ANOTHER OFFICE, AND THE COURT FOUND DISTINGUISHED BY THE COBB AND DISTINGUISHED THE WILSON CASE, BY FINDING THAT ESSENTIALLY IN THOSE CASES, THERE ACTUALLY WERE QUALIFICATIONS AT ISSUE, THAT BEING RESIDENCY REQUIREMENTS IN THE WILSON CASE, AND THE TEACHER CERTIFICATE REQUIREMENT QUALIFICATIONS REQUIREMENT, IN THE COBB CASE, BUT IN HOLLY THEY SAID THAT THE RESIGN-TO-RUN LAW WAS AN ELIGIBILITY LAW REALLY. QUALIFICATIONS IN THE HOLLY PROVISION, GO TO THE TASKS THAT HAVE TO BE PERFORMED IN ORDER TO INTEROFFICE. ELIGIBILITY, ON THE OTHER HAND, ACCORDING TO HOLLY, IS THE CAPABILITY OF BEING CHOSEN FOR OFFICE. ONE COULD BE IMMINENTLY QUALIFIED TO RUN FOR OFFICE BUT SIMPLY BE IN CAPABLE OF BEING CHOSEN, INELIGIBLE FOR BEING CHOSEN FOR OFFICE. WE WOULD SUBMIT THAT TERM LIMITS ARE EFFECTIVELY ELIGIBILITY REQUIREMENTS. AND THIS POSITION, BY THE WAY, WAS VERY-WELL BRIEFED IN THE COOK CASE BY THE SOLICITOR GENERAL, I THOUGHT. BASICALLY WE SUBMIT THAT TERM LIMITS ARE VERY MUCH ELIGIBILITY REQUIREMENTS. IF ONE HAS ALREADY SERVED TWO CONSECUTIVE TERMS IN OFFICE, THEY ARE SIMPLY IN CAPABLE OF BEING CHOSEN, INELIGIBLE TO RUN FOR A THIRD TERM, AND THAT TAKES US, FRANKLY, OUTSIDE THE ENTIRE QUALIFICATIONS, DISQUALIFICATIONS DEBATE.

BUT THE TERM LIMITS AMENDMENT IS UNDER THE QUALIFICATIONS SECTION. IT IS NOT, THAT IS NOT SIGNIFICANT INTEL WAG IT IS.

THANK IS A IT FORTUITIOUS LABEL, YOUR HONOR. IT IS NOT QUITE CLEAR, ACCORDING TO THE PRECEDENT, WHETHER THEY ARE QUALIFICATIONS OR DISQUALIFICATIONS. I THINK, AGAIN, THEY

ARE ELIGIBILITY REQUIREMENTS. BUT THE FUNDAMENTAL POINT I WOULD LIKE TO MAKE THERE IS THAT I THINK THE COURT HAS SHOWN AN INCLINATION, A TENDENCY, SINCE COBB AND THE HALF-CENTURY ENSUING, TO ONLY FIND PREEMPTION WHERE THERE IS AN EXPRESS OFFICE BEING DEALT WITH AND EXPRESS QUALIFICATIONS, AS TO THAT OFFICE, STATED IN THE CONSTITUTION. ABSENT THAT, THE COURT HAS NOT FOUND PREEMPTION OF QUALIFICATIONS OR DISQUALIFICATIONS FOR OFFICE.

SO IN ANSWER TO THE HYPOTHETICAL QUESTIONS, THIS IS BEFORE 1992, IT WOULD BE YOUR POSITION THAT, UNDER THE CONSTITUTION, THAT THE LEGISLATURE WOULD HAVE HAD THE POWER TO IMPOSE TERM LIMITS ON OTHERWISE STATEWIDE CONSTITUTIONAL OFFICES.

YOUR HONOR, I THINK WE WOULD HAVE TO DO A CASE-BY-CASE BASIS ON THAT FRANKLY. THAT WAS A QUESTION THAT WAS ASKED BEFORE, BUT I THINK YOU HAVE GOT TO LOOK AT THE PARTICULAR OFFICE YOU ARE TALKING ABOUT AND DETERMINE WHETHER THERE ARE ANY PROVISIONS SETTING FORTH CONSTITUTIONALLY, THAT PARTICULAR OFFICE. IF THERE ARE, THEN I WOULD SUGGEST THAT THE QUALIFICATIONS AT LEAST, PREEMPTED, BUT FACTUALLY, AND THIS IS THE POINT IN SECTION 1-D, THAT THERE ARE NO QUALIFICATIONS FOR COUNTY OFFICE. THE POINT THAT THEY HAVE MADE IS ESSENTIALLY THESE ARE STATE SOVEREIGN OFFICES. WHAT DOES THE CONSTITUTION CALL THEM? NOT STATE OFFICES, SOLICITORS OFFICERS, ARTICLE I-D CALLS THESE OFFICERS COUNTY OFFICERS, AND WE WOULD CERTAINLY SUBMIT IT WOULD BE THE HOME RULE POWER OF THIS COUNTY TO IMPOSE TERM LIMITS.

THANK YOU. REBUTTAL? MISS FRENCH. MISS RICHARDS.

ALL RIGHT. YOUR HONORS, THIS CASE, IN SOME ASPECTS, INVOLVES SEPARATION OF POWERS. THE COMMITTEE IS REALLY ASKING THIS COURT TO REWRITE THE SPECIAL ACT THAT WAS ADOPTED BY THE LEGISLATURE AND TO WRITE OUT THE LIMITATION OF DELEGATION OF POWERS THAT WAS IN THAT SPECIAL ACT AND APPROVED BY BOTH OF THE ELECTOR AT. -- OF THE ELECTOR AT. THEY ARE BASICALLY ASKING THIS COURT TO READ THOSE LIMITATIONS IN SECTION 2.06. THERE ARE OTHERS, IN 0.02 AND ELSEWHERE IN THE CHARTER, ASKING THE COURT TO READ THOSE LIMITATIONS AS A PROMISE TO THE ELECTOR AT THAT THE LIMITATIONS ON THE DELEGATION ARE THERE UNTIL THE VOTE OF THE LEG RATS, AND THEN THEY -- THE ELECTOR AT, AND THEN THEY EVAPORATE. WE HAVE SOMETHING LIKE THE 125 CHARTER. THAT IS NOT WHAT PINELLAS COUNTY HAS. PINELLAS COUNTY HAS A SPECIAL-ACT CHARTER. THERE IS LAW IN VOLUSIA COUNTY THAT SUPPORTS THE POSITION AND SUPPORTS THE NECESSITY OF GOING BACK TO THE LEGISLATURE FOR ADDITIONAL GRANTS OF POWERS. THE COMMITTEE, ALSO, HAS STATED THAT THE TRIAL COURT SAID THAT THE PINELLAS COUNTY CHARTER HAS SUCH MEN ARI POWERS AS COULD BE -- SUCH PLENARY POWERS AS COULD BE CONFERRED ON THE COUNTY, BUT EVEN THE TRIAL COURT INCLUDED A QUALIFIER IN ITS OPINION. IT SAID THE VOTERS OF PINELLAS COUNTY CONFER ALL OF THE POWERS A FLORIDA CHARTER CAN HAVE, SUBJECT ONLY TO OTHER CONTRARY PROVISIONS IN THE CHARTER, ITSELF. THAT IS NOT THE BROADEST STATEMENT AS HAS BEEN REPRESENTED, AND WHERE THE CHARTER, ITSELF, IS A SPECIAL LAW APPROVED BY VOTE OF THE ELECTORS, THEN THERE ARE ADDITIONAL LIMITATIONS INHERENT IN THE CHARTER, THAT MUST IMPOSE LIMITATIONS ON THE EXERCISE OF THAT POWER, UNDER SECTION 1-G OF ARTICLE VIII OF THE CONSTITUTION. THIS CASE IS REALLY ANALOGOUS TO THE UNITED STATES TERM LIMITS CASE. IT IS NOT EXACTLY A ONE TO ONE. WE DON'T HAVE THE SAME STATUTE THAT THE SUPREME COURT RELIED ON BUT THE U.S. SUPREME COURT UNDERSTOOD THAT STATES CANNOT IMPOSE ADDITIONAL MATTERS, WAS THEIR QUALIFICATIONS FOR, I MEAN INVOLVING TERM LIMITS OR ANY OTHER RESTRICTIONS ON A FEDERAL CONSTITUTIONAL OFFICER. LIKewise, THE LOCAL ELECTORATE OF ANY COUNTY, BUT PARTICULARLY IN THE CASE OF PINELLAS COUNTY, CANNOT IMPOSE TERM LIMITS ON A STATE CONSTITUTIONAL OFFICER. AND I SUBMIT THAT THE PINELLAS COUNTY CONSTITUTIONAL OFFICERS RETAIN THAT STATUS AS CONSTITUTIONAL OFFICERS, RETAIN ALL THE POWERS, WHETHER -- EXCUSE ME. I AM OUT OF MY TIME. THANK YOU.

THANK YOU. MR. MAKAR.

FIRST OF ALL, IF I COULD ADDRESS THE HOLLY ELIGIBILITY ISSUE, THE CASE OF THIS COURT IN HOLLY SAID THIS IS NOT A QUALIFICATIONS CASE. IT IS AN ELIGIBILITY CASE, SO HOLLY DOESN'T APPLY, AND A MORE IMPORTANT POINT, THAT IN HOLLY NO ONE WAS PRECLUDED FROM RUNNING FOR OFFICE. THE CIRCUIT JUDGE IN HOLLY COULD RUN FOR WHATEVER OFFICE HE WANTED TO RUN FOR. IT DIDN'T PROHIBIT HIM FROM RUNNING FOR OFFICE. IF HE WANTED TO RUN FOR OFFICE, BEING IN OFFICE, HE HAD TO RESIGN FROM OFFICE, BUT IT DIDN'T PRECLUDE HIM AS THE TERM LIMITS, FROM TOTALLY RUNNING FOR OFFICE. THAT IS THE DISTINCTION THIS COURT MADE IN THAT CASE. THIS IS NOT A QUALIFICATIONS CASE. IT IS AN ELIGIBILITY CASE. ASKEW, I THINK THE COURT, OF COURSE, WILL REVIEW VERY CLOSELY. ASKEW, AS JUSTICE PARIENTE SAYS, HAS TO BE LOOKED AT ON ITS FACTS FACTS. A CRITICAL POINT IN ASKEW AND HAS TO BE CHALLENGED THERE WAS SPECIFIC WITH THE ARTICLE AND THE CONSTITUTION AND ADDRESSES VACANCIES IN OFFICE. IN OTHER WORDS THE STATUTE THAT WAS ALREADY BEING ADDRESSED WAS CONSISTENT WITH THE CONSTITUTIONAL PROVISION THERE, AND COURT SAID WE UPHOLD IT IN THAT PART. IF YOU LOOK AT THE CASES IN TERMS OF QUALIFICATION ANSWER DISQUALIFICATIONS AND SO FORTH, IT STRUCK DOWN EVERY ONE OF THEM THEM. COBB. WILSON VERSUS NEWELL. YOU GO ON. IT INSTRUCTED THAT. WHY? BECAUSE IN PROTECTING THE DISQUALIFICATION CLAUSE OF THE CONSTITUTION AND THE HISTORIC RULING OF THIS COURT SINCE THE 1885 CONSTITUTION, WHICH IS THAT QUALIFICATIONS OR DISQUALIFICATIONS, WHETHER THEY ARE SET FORTH EXPLICITLY OR LEFT OUT, IT WAS INTENTIONAL BY THE FRAMERS. THEY ARE OFF-LIMITS. ASKEW ADMITTEDLY MUDDIED THE WATER A BIT, BUT IT WAS A VERY UNIQUE KIND OF, ON ITS FACTS SENSE OF CASE, AND I WOULD CONVENIENT TO THE COURT THAT -- AND I WOULD REPRESENT TO THE COURT THAT ASKEW DIDN'T FUND AEM AMOUNTALLY -- FUNDAMENTALLY CHANGE THAT LAW. THAT LAW IS IN PLACE. THEY HAVE RAISED THE HOME RULE POWERS. HOME RULE POWER DOES NOT TRUMP THE CONSTITUTION AND DOES NOT TRUMP THE DISQUALIFICATION CLAUSE. WHEN HOME RULE POWERS WERE PUT INTO THE CONSTITUTION IN 1992, THE CONSTITUTIONAL PROVISIONS FROM 1885 WERE BROUGHT FORWARD AND WHAT HAPPENED? THEY WERE NARROWED. THERE WERE TWO PROVISIONS, WHICH DEALT WITH FELONY AND MENTALLY-INCOMPETENT, AND THERE WAS THE AUTHORITY OF THE LEGISLATURE TO PROVIDE FOR OTHER DISQUALIFICATIONS FOR DUELING AND GAMBLING AND SO FORTH. SECTION 5 WAS TAKEN OUT. IT NARROWED THE DISQUALIFICATIONS. IT TOOK AWAY POWER, SO THAT INFERENCE MUST BE, AS CONSISTENT WITH THE COURT'S PRIOR CASES, THAT THAT IS A SACK ARE SANKT AREA AND -- A SACROSANCT AREA AND NOT TO TREAD UPON IT WITH THE CONSTITUTION, AND I HAVE HEARD THE POINT THAT OH, I DON'T NEED THAT AMENDMENT, IS ERRONEOUS. THERE HAS TO BE AN AMENDMENT FOR THE LOCAL GOVERNMENT, IN THIS PARTICULAR INSTANCE, TO IMPOSE TERM LIMITS. THAT IS WHAT WE ARE TALKING ABOUT, MAINTAINING THE INTEGRITY OF THE CONSTITUTION. IF YOU ACCEPT THAT ARGUMENT THAT THAT DISQUALIFICATION OR QUALIFICATION OR WHATEVER YOU WANT TO CALL IS T IS NOT IN THE CONSTITUTION AND WE DON'T WANT TO DO IT, IT DOESN'T KEEP ARTICLE V OFF-LIMITS. WELL, THERE IS NO DISQUALIFICATION FOR JUDGES WHO DECLARE BANKRUPTCY OR FOR COUNTY JUDGES, IF YOU HAVE EVER DECLARED BANKRUPTCY, YOU CAN'T RUN FOR COUNTY JUDGE OR HAVE TERM LIMITS ON THE COUNTY JUDGE. THERE ARE NO TERM LIMITS ON THE COUNTY JUDGES, A LOCAL COUNTY OFFICER. WE ARE GOING TO IMPOSE IT. THERE IS NOTHING IN THE CONSTITUTION, SO WE CAN DO IT. THAT IS NOT THE PROPER ANALYSIS. THERE IS SOMETHING IN THE CONSTITUTION, ARTICLE VI SECTION 4, WHICH IS HERE FOR THE COURT TO PROTECT. AND AS I SAY, THERE IS REALLY NO PRINCIPLE BASIS, UNDER THEIR ARGUMENT, TO HOLD BACK THE FLOOD GATE. I DON'T SUSPECT, PERHAPS, MY GOOD FRIENDS IN DUVAL COUNTY AND THE CITY ARE GOING TO UNLEASH A PARADE OF HORRIBLES, BUT THAT IS NOT THE POINT. THE POINT IS THAT THE PRINCIPLE, WHICH IS THAT WE NEED TO ENSURE THE INTEGRITY OF THE CLAUSE, SO THAT THERE AREN'T THESE HODGEPODGE HAPPENSTANCE DISQUALIFICATIONS FROM OFFICE, BECAUSE THE COURT IS HERE TO PROTECT THAT RIGHT TO RUN FOR OFFICE. THE COURT HAS SAID THAT, AGAIN AND AGAIN, AND IT SAID IT AT THE OUTSET, THE RIGHT TO RUN FOR OFFICE IS A HIGHLY-VALUED RIGHT, NOT



TO BE PROHIBITED EXCEPT BY CLEAR EXPRESSION OF LAW. IF THERE IS NO FURTHER QUESTIONS  
THANK YOU FOR YOUR TIME.

THANK YOU, MR. MacAMPLT THANK YOU, COUNSEL, FOR YOUR -- MR. MAKAR. THANK YOU,  
COUNSEL, FOR YOUR ASSISTANCE IN THIS VERY IMPORTANT CASE. THE COURT IS GOING TO, AT  
THIS TIME, TAKE ITS MORNING RECESS. THE COURT WILL BE IN RECESS FOR 15 MINUTES. THE  
MARSHAL: PLEASE RISE.