IN THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA CIVIL DIVISION

LIBERTY HOSPITALITY MANAGEMENT, LLC,

Petitioner,

Case No.: 22-CA-5055
Division: E

v.

CITY OF TAMPA,

Respondent.
_____/

ORDER DISMISSING PETITION FOR WRIT OF CERTIORARI FOR LACK OF SUBJECT MATTER JURISDICTION

Florida's Constitution mandates that "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Art. II, § 3, Fla. Const. Under Article V, Section 1, "[t]he judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality." Art. V, § 1, Fla. Const.

A form of judicial power called quasi-judicial power "may be granted" to specific categories of non-judges specified in Article V, Section 1, and circuit courts are granted subject matter jurisdiction to review the exercise of that limited form of quasi-judicial power on a petition for the supervisory writ of certiorari. See Art. V, § 5, Fla. Const. (granting to the circuit courts subject matter jurisdiction to issue writs of certiorari); see also Johansson v. Miami-Dade Cnty. Value Adjustment Bd., No. 3D23-1165, 2023 WL 8608641, at *3 (Fla. 3d Dist. Dec. 13, 2023), rev. denied, No. SC2024-0277, 2024 WL 3217641 (Fla. June 28, 2024)) (on a petition for writ of certiorari, "the issuing court must have appellate review and supervisory power over the tribunal

to whom the extraordinary writ is directed."); Great Am. Ins. Co. of New York v. Peters, 105 Fla. 380, 390, 141 So. 322, 326 (1932) (nature of the writ of certiorari is supervisory); Nellen v. State, 226 So. 2d 354, 355 (Fla. 1st Dist. 1969) ("the common law writ of certiorari is issuable only by those courts which are vested by law with supervisory appellate jurisdiction over the decisions of the court whose order is challenged and for which certiorari review is sought."); 3 Fla. Jur. 2d Appellate Review § 461 ("The common-law writ of certiorari is issuable only by those courts that are vested by law with supervisory appellate jurisdiction over the decisions of the court whose order is challenged and for which certiorari review is sought.").

In this case, Petitioner asks this Court to issue a writ of certiorari not to a lower court, an administrative body, or any of the categories of persons who "may be granted" Article V, Section 1 quasi-judicial power. Rather, Petitioner asks that this supervisory writ be issued to the Tampa City Council, which is a legislative body.

From a separation of powers perspective, the issues can be summarized as follows. As a branch of government that exercises legislative power, the City Council cannot exercise judicial power unless the Florida Constitution expressly provides for it. Likewise, as a branch of government that exercises judicial power, this circuit court cannot exercise supervisory power through issuance of a supervisory writ over a legislative branch unless the Florida Constitution expressly provides for it. In neither case has an express authorization been identified. As an additional complication, the Tampa Charter itself requires separation of powers. That Charter grants the City Council legislative power only; it grants the Mayor "all" executive and administrative powers.

In light of this and for the reasons that follow, this Court lacks subject matter jurisdiction to issue a writ of certiorari pursuant to Article V, Section 5.

I. Background

A. Facts

Liberty Hospitality Management, LLC hopes to develop a hotel on a piece of property it owns on Harbour Island, near downtown Tampa. Liberty followed the necessary process to seek its approvals for its plans and met with interested members of the public. Although it redesigned the project in response to its neighbors' concerns, when Liberty's application went before the City Council it was met with substantial public opposition. Ultimately, in a proceeding in which Liberty argues that the City Council's decision-making was legally flawed under the three prongs of first-tier certiorari review, the City Council told Liberty "no."

Initially in a combined pleading, Liberty petitioned for a writ of certiorari and also alleged a cause of action for damages. Those two avenues of relief have since been bifurcated into separate cases. This order relates only to the petition for writ of certiorari.

In this case, Liberty seeks review of the City Council's denial of its request to rezone its property. Liberty also challenges the denial of its proposed change to the Harbour Island Development of Regional Impact, which would have permitted an increase in hotel and parking space entitlements in conformance with its application to rezone. Among other things, Liberty argues that the City Council's decisions were arbitrary, unreasonable, and lacking in legitimate public purpose. Liberty also asserts that the property's current zoning is not justifiable and the City Council's decision is not supported by substantial, competent evidence.

II. Subject Matter Jurisdiction

A. Generally

Subject matter jurisdiction, also known as the "power to adjudicate a class of cases," "cannot be conferred by the acquiescence or consent of the parties." Lovett v. Lovett, 112 So.

768, 775 (1927). The power to adjudicate a class of cases is the power "to hear and determine the issues and render judgment upon the issues joined." Id. If the sovereign—the people of Florida—did not grant subject matter jurisdiction to a court, that court is without power to act. While a lack of subject matter jurisdiction is a defense that "can be raised at any time," the principle of judicial restraint requires courts to independently respect the limits of their own jurisdiction even if the question is not raised by the parties. Cunningham v. Standard Guar. Ins. Co., 630 So. 2d 179, 181 (Fla. 1994). If a trial court enters a judgment when the trial court in fact lacked subject matter jurisdiction, that judgment is void. In re D.N.H.W., 955 So. 2d 1236, 1238 (Fla. 2d DCA 2007).

B. Subject Matter Jurisdiction to Issue Writs of Certiorari

Circuit courts plainly have jurisdiction to issue writs of certiorari. See Art. V, Section 5, Fla. Const. But subject matter jurisdiction to issue writs of certiorari is not unlimited; the writ is available to review the exercise of judicial power conferred by Article V of the Florida Constitution. Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995) (describing the availability of common law certiorari, and acknowledging that it "has been made available to review quasi-judicial orders *of local agencies and boards* not made subject to the Administrative Procedure Act when no other method of review is provided.") (emphasis added) (citing De Groot v. Sheffield, 95 So.2d 912 (Fla.1957)); see also id. ("If the *administrative action* was initially reviewable by certiorari to the circuit court, the district court then has jurisdiction to review the circuit court's decision by a second petition for writ of certiorari.") (emphasis added) (citing Phillip J. Padovano, Florida Appellate Practice § 3.7 (1988)).

By definition, a common law writ of certiorari is issued "by a superior to an inferior *court*." Certiorari, Black's Law Dictionary 207 (5th ed. 1979) (emphasis added). However, in Florida, the writ of certiorari also extends to review of Article V quasi-judicial power, which the Constitution

expressly permits certain categories of non-judges to exercise if they are granted it. These non-judges must be either "[c]ommissions established by law" or "administrative officers or bodies," pursuant to Article V, Section 1. And quasi-judicial power does not automatically vest in these non-judges; it "may be granted" to them. See Art. V, § 1, Fla. Const. Use of the word "may" suggests that a specific grant of quasi-judicial power is required.

The idea that the circuit court's Article V, Section 5 subject matter jurisdiction is limited to issuance of writs of certiorari to lower courts and non-judges who are exercising Article V quasi-judicial power is consistent with both the definition of certiorari and the limitations of the Florida Constitution.

Here, the Tampa City Council is not a lower court. See Art. V, § 1, Fla. Const. (prohibiting the establishment of municipal courts). Article V, Section 1 makes no express provision for a legislative body to exercise quasi-judicial power, and no other part of the Florida Constitution has been identified that could rationally be considered the express constitutional permission required by Article II, Section 3 before a legislative branch could also exercise judicial power. While Article VIII, Section 2(b) allows a municipality to "exercise any power for municipal purposes except as otherwise provided by law," the legislative branch of municipal government cannot exercise all the powers of the municipality. For example, we would not read Article VIII, Section 2(b) to mean that the legislative branch could also exercise the powers of the executive branch. Put differently, the question is not whether Article VIII allows for *someone* in local government to exercise quasi-judicial power; the question is whether the legislative branch of municipal government is among the ones who could exercise that power.

III. Analysis

A. The Florida Constitution Requires a Strict Separation of Powers.

The framers of the Florida Constitution shared the concerns that America's founding generation had about the tyrannical forces unleashed when a government actor consolidates power. They recognized that government, though necessary to certain ends, represents a clear and present danger to the people. As a consequence, they built into the Florida Constitution a structural safeguard against consolidation of power within our government. Found in Article II, Section 3, the framers required that the powers of government be separated into discrete branches. Further, no one who has the authority to exercise the powers of one branch can also exercise the powers of another branch, without the people's express authorization in the Constitution.

Florida has had several different constitutions during its statehood and while some aspects have changed or been added, a strict separation of powers has been required from the very beginning. See Art. II, §§ 1-2, Fla. Const. of 1838 ("The power of the Government of the State of Florida shall be divided into three distinct departments and each of them confided to a separate body of Magistracy, to wit: Those which are Legislative to one, those which Executive to another; and those to which are Judicial to another." and "No person, or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except in the instances expressly provided in this Constitution.").

Notably, Floridians required more from our State government in terms of separation of powers than the founders of America provided for in the United States Constitution. Consider the history of the United States Constitution. That document—"the longest surviving written constitution in all of history;" what Abraham Lincoln called the "apple of gold" in the Declaration of Independence's "frame of silver," Larry P. Arnn, The Founder's Key 10, 19 (2013) (citing

Abraham Lincoln, Fragment on the Constitution, January 1862)—did not separate powers enough for Floridians. The Declaration of Independence was the throwing off of one government and the Constitution was the building of a new one in its place, id. at 21, and when viewed in reference to one another it seems evident that the separation of powers in the U.S. Constitution is explained by the Declaration. Id. The Declaration's "list of charges against the king" reflects outrage over King George III's interference with the operation of the legislative and judicial functions, which even in a monarchy had, over time, been taken away from the King of England. Id. at 24, 32-36. With appreciation for the role that separation of powers played in the making of America, the fact that the framers of Florida's Constitution trusted government *even less* than America's founding generation ought to drive home a sense that Floridians are constitutionally intolerant of the idea that, for example, a legislative body could also exercise judicial power.

The Florida Supreme Court in Chiles v. Children A, B, C, D, E, and F, 589 So. 2d 260 (Fla. 1991), underscored the historical context for our separation of powers. It recognized that "[t]he principles underlying the governmental separation of powers antedate our Florida Constitution and were collectively adopted by the union of states in our federal constitution." Id. at 263. Powers of government are separated out of a "fundamental concern" that "fusion of the powers of any two branches into the same department would ultimately result in the destruction of liberty." Id. It cited Montesquieu that: "[t]here would be an end of everything, were the same . . . body . . . to exercise those three powers, that of executing the public resolutions, and of trying the causes of individuals." Id. (quoting Charles de Montesquieu, L'Espirit des Lois (Robert M. Hutchins ed., William Benton 1952) (1748)). The Supreme Court interpreted Article II, section 3 of the Florida Constitution to include "two fundamental prohibitions:" first, "that no branch may encroach upon the powers of another" and second, that "no branch may delegate to another branch its

constitutionally assigned power." Id. at 264. Of added interest to the case at bar, the Supreme Court held that "[a]ny attempt by the legislature to abdicate its particular constitutional duty is void," even if it would further "policy considerations" to do so. Id.

B. The Tampa Charter Separates Municipal Power and Does Not Grant Quasi-Judicial Power to the City Council.

With the importance of separation of powers in mind, the next consideration is the Tampa Charter. Consistent with the Article V, Section 1 prohibition on establishing a municipal court, the Tampa Charter provides only for legislative and executive functions of government. See Art. V, § 1, Fla. Const. In the Charter, the City Council is vested with "all legislative power" and the Mayor is vested with "all executive and administrative power." Art. I, § 1.04, Tampa Charter.

Mirroring the Florida Constitution, the Tampa Charter requires that the powers of the City Council and the Mayor to be "distinctly" separated. Id. ("There shall be a distinct separation of legislative and executive powers; and, except as otherwise herein expressly provided, all legislative powers shall be vested in and exercised by the city council and all executive and administrative powers shall be vested in and exercised by the mayor."). With the Mayor of Tampa being given "all" administrative power, the City Council cannot be among the class of persons who could be considered "administrative officers or bodies" within the ambit of Article V, Section 1 of the Florida Constitution. The remaining question is whether the City Council could be a "commission established by law" in Article V, Section 1.

C. *Stare Decisis* & Distinguishing Precedent

Petitioner and the City argue that, in essence, this issue has already been resolved by the Florida Supreme Court. In the cases they cite, both seem to make the error Justice Canady cautioned against in his concurrence in Yule, prior to his appointment to the Florida Supreme Court. Then-Judge Canady recognized that "[t]he doctrine of *stare decisis* does not require that

we treat every broad statement of principle made in a prior decision as establishing a binding rule." State v. Yule, 905 So. 2d 251, 259 (Fla. 2d DCA 2005) (Canady, J., specially concurring). He cautioned against "the tendency of latching on to each and every statement of legal principle in judicial opinions and treating them as binding holdings." Id. at 260. His point was that it is "critical to the legitimacy of judicial decision making" to avoid both unduly restrictive and unduly expansive readings of holdings in cases. Id. at 260. He argued that "a commitment to the rule of law and a proper understanding of the source of legitimate authority in our constitutional order will result in a holding/dictum distinction that turns on rationales, not just facts and outcomes." Id.

A "holding," according to then-Judge Canady, is based on "a decisional path or paths of reasoning" reflecting (1) what was actually decided, (2) the facts of the case, and (3) what led to the judgment. Id. Because a holding turns on what a case actually decided, the facts of the case, and the decisional path that led to the judgment, it is evident that none of the cases that Petitioner and Respondent cite actually held that a circuit court has Article V, Section 5 subject matter jurisdiction to issue writs of certiorari to legislative bodies who have not been granted Article V, Section 1 quasi-judicial power.[1]

[1] In all of these cases, the fact that the circuit court's subject matter jurisdiction seems to have never been considered is interesting but also understandable considering the dynamics. First, unlike a federal trial court where questions of subject matter jurisdiction are litigated with relative frequency, a state trial court has such broad jurisdiction that lack of subject matter jurisdiction is relatively unusual. Second, the alignment of incentives involved in zoning decisions makes it unlikely that the parties would raise the issue themselves. Here, the petitioner has no incentive to raise a jurisdictional defect: it wants a different result than it obtained with the City and hopes this court will take an unfavorable view of the City Council's decision. By the same token, it is unlikely that a local government would raise defects in its own structure as a defense to a petition for certiorari. Third, if no one raised subject matter jurisdiction in the circuit court then reviewing courts likely focused exclusively on their own subject matter jurisdiction. Yet just as second-tier certiorari is different than first-tier certiorari, the subject matter jurisdiction questions may also be different. Fourth, because of longstanding adherence to the party-presentation principle, courts are not inclined to decide cases based on arguments never raised by the parties. See generally, United States v. Campbell, 26 F. 4th 861, 872 (11th Cir. 2022) (discussing the party-presentation principle). Fifth, on second-tier certiorari, the district court's focus is on the circuit court's decision and not the decision by the local government actor. Without focus on the local government actor, the local government actor's status as a legislative body and the related Article II, Section 3 and Article V questions are less likely to arise. Sixth, the variety of different local government structures across the State makes the subject matter jurisdiction analysis potentially different from one local government unit to the next. For the same reason that contract cases present a *stare decisis* challenge, differences in municipal structure and decision-

In 1993, the Florida Supreme Court decided Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469, 474 (Fla. 1993). The focus of Snyder is how to determine if given action by a "board" is properly characterized as legislative or quasi-judicial. Id. at 474. There is no discussion in Snyder about the circuit court's subject matter jurisdiction, perhaps because no one raised this issue. One explanation for why no one raised the issue is that the nature of the case seems to have materially changed after it left the circuit court. At the circuit court level, the petition was denied and the opinion does not mention whether the circuit court's jurisdiction was discussed. Id. at 471. Then, at the district court level, the district court "acknowledged that zoning decisions have traditionally been considered legislative in nature" and recognized that precedent required such decisions to be upheld if they were fairly debatable, but the district court did not follow that precedent because it decided that the zoning decision in that case was "quasi-judicial" and therefore subject to a higher level of scrutiny. Id.

In some ways, one might argue that the district court in Snyder applied a new first-tier certiorari standard on second-tier certiorari. Although the reasons why the constitutional questions were not raised in Snyder are less important that the simple fact that they were not addressed—since the absence of an Article V or Article II, Section 3 analysis shows that the Court did not take up the jurisdictional issue, which is a significant basis on which to distinguish the case—understanding how something could have happened can help us accept that it did happen. It's possible that the reasons why Article V and Article II, Section 3 were not raised for consideration is the unusual procedural progression and the fact that the standard of review seems to have been materially altered at the district court. Id. Because it is the circuit court's jurisdiction that would

making bodies present a similar challenge. In many of these cases, the underlying municipal structure, allocation of power, and the nature of the decision-making body is not described in detail.

be questionable under that new standard of review, it's less surprising if in fact no one raised or considered the jurisdictional problem. See also, foonote 1, *supra*.

In any event, the only mention about Article V jurisdiction in the whole Snyder opinion is in reference to the Supreme Court's own jurisdiction. Id. at 471. Aside from the Supreme Court's jurisdictional statement, there is virtually no discussion about the Florida Constitution; the opinion does not mention much less construe Article V, Section 1; Article V, Section 5; Article II, Section 3; or the Tampa Charter.

We do not read appellate decisions to resolve questions that no one asked. Nor must cases be read as deciding constitutional issues that an appellate court did not even mention. Arguably, the importance of Justice Canady's point in Yule about recognizing what was actually before a court and what that court actually decided is only amplified when constitutional and jurisdictional questions are at stake. For these reasons, Snyder is distinguishable. Park Commerce Associates v. City of Delray Beach, 636 So. 2d 12 (Fla. 1994) is distinguishable for the same reasons.

There are multiple bases on which to distinguish Broward County v. G.B.V. Intern., Ltd., 787 So. 2d 838, 841 (Fla. 2001). First, that case examined the role of a district court on second-tier certiorari; it did not address the subject matter jurisdiction of the circuit court on first-tier certiorari. 787 So. 2d 838, 841 (Fla. 2001) ("We granted review based on conflict with numerous decisions of this Court holding that a district court's role on 'second-tier' certiorari is limited to the two-step assessment set forth in City of Deerfield Beach v. Valliant, 419 So. 2d 624 (Fla. 1982)."). Second, G.B.V. seemed to involve a different local government structure. Id. (describing interplay of Broward Planning Council and the Broward County Commission). Perhaps because it was examining a different local government structure, the third basis on which to distinguish G.B.V. is its reference to the idea that "[t]he writ functions as a safety net and gives

the upper court the prerogative to reach down and halt a miscarriage of justice where no other remedy exists." Id. Here, the Tampa City Council is an elected, politically-accountable legislative body. When a decision-maker is a politically-accountable, elected legislative body, the judicial branch need not craft a "safety net" through certiorari; if a legislative body commits an error in the eyes of the people, the next election is the ultimate safety net. In G.B.V., the writ "was intended to fill the interstices between direct appeal and the other prerogative writs." Id. Interstices involve space between two things: where are the interstices in this case? G.B.V. involved a court that had a "supervisory prerogative;" this court has no supervisory prerogative over the City Council. G.B.V. discusses miscarriages of justice; how would this standard be applied to a legislative body? The work of a legislative body is at times the standard by which we define "justice," limited only by the Constitution.

Moreover, G.B.V. highlights scenarios in which Florida courts have adapted the common law writ of certiorari, none of which obviously apply: "(1) to review actions of local government *agencies*; (2) to review decisions of circuit courts acting in their appellate capacity; and (3) to review nonfinal, nonappealable orders of lower tribunals, e.g., discovery orders." Id. at 843 (emphasis added). Notably, the first category refers to local government agencies, not local government legislative bodies. The G.B.V. court found that "local agency action" was "in issue in [that] case" and the category "comprises local agency action that is not otherwise subject to review under the Administrative Procedure Act." Id. Note also that Justice Pariente and Justice Wells dissented in G.B.V., expressing concern about "agencies." Compare id. at 849 (Wells, J., dissent) with id. (Pariente, J., dissent) ("I would require written findings, as would be required of any other administrative agency sitting as a fact-finder.").

The Second District's decision in City of Ft. Myers v. Splitt is distinguishable for the same reasons: no one questioned the circuit court's first-tier certiorari jurisdiction. 998 So. 2d 28, 31 (Fla. 2d Dist. 2008). The same is true for Hillsborough Ass'n for Retarded Citizens, Inc. v. City of Temple Terrace, 332 So. 2d 610 (Fla. 1976) and Harris v. Goff, 151 So. 2d 642 (Fla. 1st Dist. 1963).

Meanwhile, DeGroot v. Sheffield, 95 So. 2d 912 (Fla. 1957), which also does not address the circuit court's subject matter jurisdiction, is distinguishable for additional reasons. To begin, DeGroot is not a zoning case; it involved a petition for writ of mandamus and the question was whether an action of the Duval County School Board could be reviewed and collaterally assaulted as a defense to a mandamus proceeding. Id. at 913. Moreover, DeGroot involved "the problem of determining the appropriate procedure for obtaining review of an order of an administrative agency," not a legislative branch of local government. Id. at 914.

DeGroot documents the rise of the administrative state within Florida and the issues created by its ever-expanding reach. Id. ("Because of the expansion of the number of boards, commissions, bureaus and officials having authority to make orders or determinations which directly affect both public and private rights, there has been an increasing number of cases involving the extent of the authority of these agencies as well as the validity or correctness of their conclusions in particular instances."). Someone could argue that DeGroot confined itself to the issue of administrative agencies in a way that has not always been acknowledged in cases that cite to it. Id. ("The *reviewability of an administrative order* depends on whether the function *of the agency involved* is judicial or quasi-judicial in which its orders are reviewable or on the contrary whether the function *of the agency* is executive in which event its decisions are not reviewable by the courts except on the sole grounds of lack jurisdiction.") (emphasis added); id. at 915 ("The

reason for the difference is that when notice and a hearing are required and the judgment *of the board* is contingent on the showing made at the hearing, then its judgment becomes judicial or quasi-judicial as distinguished from being purely *executive*.") (emphasis added).

Having examined these cases, none of them addresses the grant of quasi-judicial power under Article V, Section 1; the subject matter jurisdiction of the circuit court under Article V, Section 5; separation of powers and the prohibition on power-sharing under Article II, Section 3; or the Tampa Charter. They are all distinguishable.

D. Constitutional Meaning: Supremacy-of-Text

In the absence of precedent that squarely addresses the circuit court's subject matter jurisdiction to review a decision by the legislative body of local government, the focus must turn to the Florida Constitution itself and the Florida Supreme Court's guidance on determining constitutional meaning. Precedent guiding that inquiry is found in Planned Parenthood of Southwest & Central Fla. v. State, 2024 WL 1363525, at *5 (Fla. Apr. 1, 2024). In Planned Parenthood, the Supreme Court explained that interpretation of the Florida Constitution must "reflect[] a commitment to the supremacy-of-text principle" and recognize that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." Planned Parenthood of Sw. Fla. & Cent. Fla., 2024 WL 1363525 at *6 (quoting Coates v. R.J. Reynolds Tobacco Co., 365 So. 3d 353, 354 (Fla. 2023)). "The goal of this approach is to ascertain the original, public meaning of a constitutional provision—in other words, the meaning understood by its ratifiers at the time of its adoption." Id. (citing City of Tallahassee v. Fla. Police Benevolent Ass'n, Inc., 375 So. 3d 178, 183 (Fla. 2023)). This effort to discern original public meaning calls for consideration of the text, contextual clues, dictionaries, canons of construction, and historical sources, including evidence of public discussion. Id.

1. Article V, Section 1

Article V, Section 1, as amended, reflects that "[t]he judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts" and that "[n]o other courts may be established by the state, any political subdivision or any municipality." Art. V, § 1, Fla. Const. It further provides that "commissions established by law" or "administrative officers or bodies" "may be granted quasi-judicial power in matters connected with the functions of their offices." Id.

There are few interesting things about the provisions for quasi-judicial power in Article V, Section 1. One is the placement of this reference to quasi-judicial power within Article V. Article V confers judicial power. See A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 167 (2012) ("Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts."). Although Article V permits the exercise of quasi-judicial power through non-judges, provision for quasi-judicial power within Article V conveys an intention that quasi-judicial power is a form of Article V judicial power. Considering that Article V is the constitutional source of both quasi-judicial power and subject matter jurisdiction for circuit courts to issue writs of certiorari, a logical reading is that Article V, Section 5 certiorari review is available to supervise the exercise of Article V power by (1) lower Article V courts and (2) non-judges granted quasi-judicial power under Article V, Section 1.

The City argues that this is wrong. The City thinks that circuit courts have certiorari power to supervise decisions that were not made in the exercise of judicial power but were made in a judge-like manner. To the City, although the City Council "does not have judicial power, nor does it exercise judicial power" in its zoning decisions, this Court nevertheless has jurisdiction because

the City Council makes these decisions "in a quasi-judicial *manner*." See Respondent City of Tampa's Brief on Subject Matter Jurisdiction, at 20 (emphasis added).

There is no textual support in the Constitution for the exercise of Article V, Section 5 power in the way the City suggests. Certainly, nothing in Article V, Section 5 would have alerted the ratifiers of the Constitution of 1968 that they were working a revolution on the separation of powers to give circuit court judges a supervisory role over legislative bodies that somehow do their work in a manner that looks judicial-ish. See Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ., 262 So. 3d 127, 144 (Fla. 2019) (Canady, J. concurring) ("capaciously vague terms" in the Constitution "cannot be understood to have wrought a revolution in the separation of powers."). And where is the limit to Article V, Section 5 power if it is not confined to supervision of the exercise of Article V power? Did the people who ratified the Constitution of 1968 believe they were authorizing circuit judges to become roving peanut galleries, or hall monitors who peer over the shoulders of anyone who makes a decision in a manner that looks somewhat judicial? Surely not. The very idea of jurisdiction is that it sets limits on overreach.

Providing for quasi-judicial power in Article V is important because anyone could act like a judge when they fashion a decision-making process. Anyone can convene a meeting; call it a "hearing;" tell everyone about that meeting by use of a "notice of hearing;" conduct the meeting in an impressive, serious-looking location; convey authority through the layout of the room; listen to various viewpoints at that hearing; have an official with authority to place under oath the people who wish to be heard at that meeting; have a court reporter transcribe the meeting; and even wear a black robe, hold a gavel, and document the decision made at that meeting and call it an "order."

None of those window-dressings will make that meeting a judicial proceeding. A judicial proceeding necessarily requires one thing: the person running it must have judicial power

conferred under Article V. Without Article V judicial power, anyone who conducts a meeting like this is just conducting a meeting while behaving like a judge. If what was being exercised was not judicial power but instead some other type of authority dressed up to look "judicial-ish," then by the City's standard circuit judges could be invited to poke their noses into all kinds of decision-making processes well outside the bounds of government.

Meanwhile, a search of the Florida Constitution for the word "quasi-judicial" reveals that the term is used nowhere else other than in reference to the vesting of judicial power in Article V, Section 1. With this, it becomes clearer that quasi-judicial power is a creature of the Florida Constitution that carries a specific meaning as a limited allowance for judicial power to be delegated to specific categories of non-judges: "commissions established by law" and "administrative officers or bodies." That quasi-judicial power is a form of judicial power carries significance under Article II, Section 3. Article II, Section 3 says that no person who has the power of one branch of government "shall exercise any powers appertaining to either of the other branches unless expressly provided herein." If Article V, Section 1 quasi-judicial power is a limited delegation of judicial power to specific categories of non-judges, then those specific categories of non-judges must be people who do not exercise legislative or executive power, absent express provision elsewhere in the Constitution.

The second textual point of interest in Article V, Section 1 is the use of the word "may." "May" conveys a sense of possibility or contingency, see *May*, Black's Law Dictionary at 883 (5th ed. 1979), rather than certainty. See also, A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 140 (2012) ("[R]ules of grammar govern unless they contradict legislative intent or purpose."). The framers could have said that "commissions established by law" and "administrative officers or bodies" "are," "have been," "will be," or "shall be" granted quasi-

judicial powers, which would have imparted a sense of present or future certainty. Yet the word chosen by the framers of Article V, Section 1 is "may," which carries a sense of contingent potential. Black's Law Dictionary at 883 (explaining that "may" is a word that while courts over time have "not infrequently construed 'may' as 'shall' or 'must,'" but "as a general rule the word 'may' will not be treated as a word of command unless there is something in context or subject matter" that "indicate[s] it was used in such sense."). In context with the rest of the sentence, the contingency becomes clear: "commissions established by law" and "administrative officers or bodies" *may* exercise quasi-judicial powers *if* those powers are "granted" to them. The significance of this is that not every "commission established by law" or "administrative officer or body" will have quasi-judicial authority; they have that authority only where it has been granted. As noted above, the Tampa Charter does not grant quasi-judicial power to the Tampa City Council. The City Council is granted only legislative power; the Mayor has executive and administrative power.

The next interesting aspect of Article V, Section 1 is that it does not say that, for example, "*county commissions and city councils* established by law" may be granted quasi- judicial power. It says that "commissions" and "administrative officers or bodies" may be granted quasi-judicial power. In other parts of the Florida Constitution, when the framers intended to refer to county commissions they did so. See, e.g., Art. VIII,§ 1 (d), (e), and (f), Fla. Const.; see also A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 167 (2012) (discussing the whole-text canon, and the fact that "[c]ontext is a primary determinant of meaning" and the presumption of consistent usage).

In the same vein, the Constitution elsewhere uses the term "administrative officer" to refer to office-holders in both the executive and judicial branch. See Art. V, § 2, Fla. Const.; Art. IV, §

1, Fla. Const. There seems to be no use of that term in reference to a member of a legislative body. While the terms "administrative body" or "administrative bodies" do not appear elsewhere in the Constitution, no textual support has been found for the idea that a legislative body is considered an administrative body. Perhaps this is because our framers opposed the unitary judge-jury-executioner model and believed that the one who creates the law ought not to be the one responsible to "manage or conduct" the law. See *Administer*, Black's Law Dictionary at 41 (5th ed. 1979).

The City claims that in Chapters 163 and 166 the Legislature "required that the rezoning processes in cities and counties be carried out by the legislative body of the governmental entity in question." Resp. City of Tampa's Brief on Subject Matter Jurisdiction at 10. The City makes various other arguments that the Legislature has expressly delegated authority to adopt and enforce zoning regulations. Id. at 12. Statutes do not override the Constitution. The reason why Chapters 163 and 166 are not best understood to be a legislative conferral of judicial power on the legislative branch of local government is that (1) the Florida Constitution is the source of power for everyone in Florida government; (2) if the Florida Constitution does not provide power to someone, they do not have it; and (3) we cannot give away that which we do not have permission to give. If the Legislature does not have the authority to give away judicial power to anyone except specific categories of non-judges, and those specific categories of non-judges must be people who do not exercise the power of any other branch of government, then it seems obvious that we would not read Chapters 163 and 166 in the way the City advocates.

2. Article V, Section 5

Article , Section 5 is the power source of the circuit court. It specifies that circuit courts have:

> original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

Art. V, § 5, Fla. Const.

In this analysis, the key is the original public meaning of writs of certiorari. While circuit courts have the power to issue writs of certiorari under Article V, the power to issue writs of certiorari does not extend without limitation. Article V, Section 5 certiorari "lies only to review the actions of *courts, boards, or officers* exercising functions clearly judicial or quasi-judicial." Fla. Motor Lines v. Railroad Com'rs, 100 Fla. 538, 543 (Fla. 1930) (emphasis added).

The City makes a point that seems relevant to the inquiry into original public meaning of writs of certiorari. According to the City, before Snyder was decided in the 1990s, it was generally understood that the circuit court *did not* have the power to issue writs of certiorari to legislative bodies of local government. Respondent City of Tampa Brief on Subject Matter Jurisdiction, at p. 17. According to the City, prior to Snyder, "zoning decisions were considered legislative in nature," not subject to the writ of certiorari. In other words, the City seems to argue that Snyder was a surprise, given the original understanding of circuit court certiorari jurisdiction.

On this question about the original public meaning of the certiorari jurisdiction granted to circuit courts under Article V, Section 5, appellate opinions following shortly after the ratification of the Constitution of 1968 have evidentiary value. Much like the other historical materials, judicial decisions that immediately followed the revisions to the Constitution of 1968 do not reveal extensive consideration of the issues raised here. Analysis of them does, however, support the ideas that certiorari (1) was viewed as inappropriate to review the acts of elected, politically-

accountable members of a legislative body but (2) was viewed as appropriate to review the acts of unelected, unaccountable administrative boards making quasi-judicial decisions.

In one of the first zoning cases to follow the ratification of the Constitution of 1968, the Second District considered whether injunctive relief was a proper means by which a rezoning ordinance could be challenged in circuit court in Town of Bellair v. Moran, 244 So. 2d 532, 533 (Fla. 2d DCA 1971). A scholar contemporaneously examining the issue described the Town of Bellair as "the first opinion recognizing the effect of the 1968 constitution on the source of municipal powers." See Harley E. Riedel, Municipal Powers in Florida: By Constitutional Right or Legislative Grace?, 25 U. Fla. L. Rev. 597, 599 (1973). The Town of Bellair decision reflects that, shortly after the Constitution of 1968 took effect, the public understanding was that certiorari was not appropriate to review the acts of a legislative body.

The Second District framed the questions before the court as "whether an injunction suit is proper instead of a certiorari proceeding pursuant to Rule 4.1, F.A.R, 32 F.S.A. and (since we answer that question in the affirmative), whether the complaint failed to show that the Town had not acted within the permissible scope of its authority and discretion in taking the action complained of." Id. at 533. The Second District concluded that injunctive relief was a proper remedy because the act subject to attack was legislative rather than quasi-judicial in nature, because "[i]n such case certiorari is inappropriate," citing to a decision prior to any amendments to Article V and the addition of Article VIII. Id. (citing Harris v. Goff, 151 So. 2d 642 (Fla. App. 1963)).

There was no discussion of Article II, Section 3; Article V, Section 1; or Article V, Section I; or any aspect of Article VIII in the majority opinion. Id. However, reference to the use of certiorari to review a legislative body's work was called "inappropriate," which have been an

acknowledgement of the separation of powers problem with the judicial branch entertaining an appeal of a politically-accountable legislative body's work product. Id. Moreover, the Second District referred to the fact that an action taken by the Town of Bellair is "differ[ent] from one in which an appeal is sought from a decision of a *Board of Adjustment* relating to a variance and made pursuant to Ch. 176, F.S.A." Id. (emphasis added); see Art. V, § 1, Fla. Const. ("Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices."). While of course this is not dispositive of the structure of the Town of Bellair's local government in 1971, information that is currently publicly-available suggests that the Bellair Beach Board of Adjustment is presently "responsible for granting/denying variances to the City land development codes as well as hearing appeals to administrative determinations concerning the land development codes. It is a seven-member board, with members appointed to three-year terms . . made up of volunteers from the City who are appointed to serve by the City Council." See, Board of Adjustment, Bellair Beach, Florida, at https://www.cityofbelleairbeach.com/board-adjustment (last visited July 19, 2024). Such a board is more arguably within the conception of a "commission[] established by law, or administrative officer[] or body" that under Article V, Section 1 "may be granted quasi-judicial power in matters connected with the functions of their offices." Art. V, § 1, Fla. Const. If such a board lacks political accountability and legislative power, this may explain why the Second District did not have reason to discuss Article II, Section 3. After all, if what the Second District was reviewing in 1971 was a situation where plaintiffs sought to enjoin an a legislative act for legally-permissible reasons, the Town of Bellair decision could be read as fully supportive of the analysis that, at the time of the ratification of the Constitution of 1968, (1) certiorari was not viewed as an appropriate as a vehicle to challenge acts of a politically-accountable legislative body that

operates under the authority of the Florida Constitution, because (2) Article II, Section 3 prohibits a legislative body from exercising judicial power except specifically authorized; meanwhile (3) certiorari was viewed as appropriate under Article V, Sections 1 and 5 to consider the acts of an unelected administrative body with no political accountability that has been "granted quasi-judicial power in matters connected with the functions of their offices." Notably, the majority opinion concluded with a discussion about the fact that "a zoning ordinance must bear a substantial relationship to public health, safety, morals or general welfare" and when the complaint sufficiently calls into question the existence of such a relationship, then "the duty should be on the zoning authority to respond and allege sufficient facts to demonstrate that the matter is at least 'fairly debatable.'" Id. at 534. In its answer to the complaint for injunction, the majority called for the Town of Bellair to "put plaintiffs on strict proof of their charges or affirmatively plead facts which bring these essential matters within the 'fairly debatable' rule." Id. It seems that the Second District did not believe this should occur in response to a petition for certiorari.

The dissent in Town of Bellair offers additional clarity. The dissent noted that the Town of Bellair appealed the denial of its motion to dismiss the citizen's complaint for injunction on the basis that certiorari was the appropriate vehicle, not injunction. The trial court denied the motion to dismiss and, as noted above, the majority affirmed the trial court's denial of the motion to dismiss because injunction (not certiorari) was the appropriate method to attack the rezoning decisions of a legislative body. Id. at 535. First, the dissent highlighted that the action that the majority determined to have been legislative in nature (rezoning) was taken by the Board of Commissioners of the Town of Bellair. Id. at 535. Second, the Town Charter gave the Board of Commissioners "all legislative and governmental authority reserved to municipalities pursuant to and in accordance with the Constitution (of 1968)," so there was no debate that the Board of

Commissioners was a legislative body. Id. Third, the majority rejected the dissent's contention that certiorari was appropriate since (a) there was no specific method of review in a special act of the Florida Legislature that allowed acts of the Board of Commission to be attacked on the basis that they were illegal and (b) in the dissent's view, certiorari should be available to review the legislative act because "[e]xtraordinary remedies, such as certiorari, prohibition, mandamus or injunction may be resorted to 'in situations where applicable statutes fail to provide specific methods of review.'" Id. (citing DeGroot v. Sheffield, 95 So. 2d 912 (Fla. 1957)). Fourth, the majority rejected the dissent's contention that, pursuant to the Administrative Procedure Act, "certiorari is categorized 'as an alternative procedure for review.'" Id. The fact that the majority was unpersuaded by these points provides additional support for the premise that, shortly after the ratification of the Constitution of 1968, there was a sense that certiorari was inappropriate as a vehicle to attack the acts of a legislative body in local government, taken in the context of rezoning.

An additional feature of the Town of Bellair dissent bears note. Even the dissent articulated separation of powers concerns with the idea of any standard of review that obscured the political accountability of elected officials, referring to the idea that "immunity from judicial control embraces the exercise of all municipal powers, whether legislative or administrative, which are strictly discretionary." See, e.g., Id. at 537-38 (quoting Town of Riviera Beach v. State, 53 So. 2d 828 (Fla. 1951). That is, the dissent believed that the acts of the Board of Commissioners—the legislative body whose acts the dissent believed should be subject to the writ of certiorari—could not be attacked if the petition "did not directly or clearly allege that any of the actions taken by the Town Commissioners was illegal *vel non*." Id. at 538.

The majority and the dissent in Town of Bellair articulate analyses that could be considered evidence of the original public meaning of the Constitution of 1968 as it relates to the issues raised

in this case. Specifically, the Town of Bellair case suggests that the original public understanding of Article II, Section 3; Article V, Section 1; or Article V, Section I; and Article VIII at the time the Constitution of 1968 was ratified was consistent with the idea that circuit court's jurisdiction to issue writs of certiorari extended to administrative bodies but not elected, politically-accountable legislative bodies. Rather, at that time certiorari was meant to provide a means by which appointees to "administrative officers and bodies" and "commissions established by law" made quasi-judicial decisions for which they would not be politically-accountable.

3. Article VIII

No support has been found for the premise that the original public meaning of Article VIII circa 1968 was that it would exempt local governments from the necessity to separate the powers of government, and the prohibition on job-sharing between branches of government. Nor has support been found for the idea that the ratifiers would have understood the amendment of Article VIII to broaden the subject matter jurisdiction of the circuit court to give the circuit court supervisory authority over the legislative branch of municipal government.

To really cover the landscape on the history of local government, we have to go back to England. This is because American municipal governments have their roots in English history, dating back to the medieval period. Florida League of Cities, Florida Municipal Officials' Manual 5 (2022). The sovereign would grant charters to certain groups, giving them power to exercise a degree of narrowly-defined and strictly-limited control over their communities. Id. "This pattern for the formation of English municipal governments was extended to the American colonies" and after the American Revolution, to the states. Id. "From this practice evolved the traditional American legal principle that a municipality is a creation of the state, may exist only with the

consent of the state, derives its powers from the state, and enjoys only those powers which are granted by the state through the state constitution and actions of the state Legislature." Id.

The fact that "Florida municipalities exist within the American federal system" has "many implications for the way a municipal government functions." Id. at 2. America's founders produced a government that was a hybrid of "two familiar forms of government" at the time, one of which was "unitary" and one "confederal." Id. "A unitary government was one in which all powers were held and exercised by a central government; regional units might exist, but they exercised only such powers as were granted (delegated) by the central government." Id. In contrast, "[a] confederal government was one such as the 13 states had previously adopted under the Articles of Confederation," in which "each participating state was an independent unit that could not be controlled by the central government; rather, the central government was created by the states and exercised only such powers as the states saw fit to grant it." Id.

In the early United States, the Supreme Court construed Congress' lawmaking power "very generously" and "the 10th Amendment, which states that all powers not given to Congress shall be reserved to the states or the people thereof, was interpreted as having little meaning at all." Id. Decisions such as McCulloch v. Maryland and Gibbons v. Ogden "established a basis for a strong, wide-ranging central government," even though "the original intent of the Founding Fathers was to create a system that was balanced between centralization and decentralization." Id.

The role of the federal government was "enlarged significantly" in the 19th century with the adoption of the post-Civil War Fourteenth and Fifteenth Amendments to the United States Constitution. Id. "These amendments tremendously expanded the potential power of the national government in its relationship to the states" by giving "a broad grant of lawmaking power to Congress" that included "power to regulate actions of the states and local governments" and "by

implication rather than explicit statement, they empowered the federal judiciary to enforce these new restrictions on the states, thereby greatly expanding the federal courts' potential authority over state and local government actions." Id. at 3. Because the forces of "decentralization" "and even of division—were dominant throughout the first two-thirds of the century," little centralization occurred during this time and a period that some have described as a "conservative" Supreme Court and a "progressive" Congress resulted in "little change" with regards to local governments during this time. Id.

Then, the 1930s, "a new Supreme Court began to consistently uphold 'New Deal' legislation, which involved great expansions of the national government's role." Id. "Since the 1930s, the national government's role in American society has grown even larger" and "state and local governments have found their powers limited and their responsibilities expanded, by decisions of Congress, federal agencies and the federal judiciary." Id.

Although Article VIII, Section 2 of the Florida Constitution authorizes the Florida Legislature to establish municipalities by general law and provides such local governments with the ability to largely run themselves, in the early period of our statehood the Legislature had absolute control over municipalities and they "were regarded as entities of the state without inherent powers," with the Legislature running them through general, local, or special enactments. Florida League of Cities, Florida Municipal Officials Manual 6 (2022). In fact, "[s]pecial and local acts dealing with municipalities were permitted, with no requirement that notice of such legislation be published in the affected community." Id.

Over time, legal writers and municipal associations across the country "suggested that problems caused by rapid urbanization were best solved at the local level" and that "the delay and expense necessary for legislative action could be avoided with greater municipal initiative."

Riedel, supra, at 598.[2] "The concept of home rule became the principal means for achieving some degree of local autonomy." Id. In the process of "explain[ing] the new constitution to the electorate, the Legislative Reference Bureau issued a pamphlet with analyses of the changes," which "stated that, under the 1968 constitution, 'municipalities would be given additional powers to perform services unless specifically prohibited by law.'" Id. at 601 (quoting Legislative Reference Bureau, Draft of Proposed 1968 Constitution 25 (1968)). Based on the information provided to the electorate to encourage ratification, the original public understanding of the effects of changes to Article VIII were that the purpose was to "delineate an area where municipalities can govern without threat of legislative interference." Id. at 602.

Following this effort, the people ratified the Constitution of 1968 and enacted home rule. Florida Municipal Officials Manual at 6. The Home Rule provisions of Article VIII are found in Section 2(b), which provides that municipalities may exercise any power for municipal purposes "except as otherwise provided by law." Id. at 7.

This meant that "[u]nder the new constitutional language, a municipal government may exercise any purpose which is not prohibited by law, so long as its exercise is for a valid 'municipal purpose.'" Id. Prior to this point in time, the concept of municipal power was based on the opposite: the municipality prior to 1968 could only do what it was "clearly authorized to do" and any doubts about municipal power were resolved against the municipality. Id. "After 1969, a municipality may do anything which it is not prohibited from doing by state or federal law." Id. After Article VIII was revised, the 1969 Legislature "promptly enacted Chapter 69-33, Laws of

[2] Governing every municipality in the state was also an arduous task for the Legislature. In 1965, during the regular legislative session, 2,107 bills were introduced that only pertained to local ordinances. See Local Government Formation Manual 16 (2003). This statistic does not represent any other legislation presented to the legislature regarding state-wide matters – these bills were only directed at specific local issues. To contrast with the legislative tasks of modern day, in the 2024 regular legislative session, 1,902 bills were introduced total. Florida State Legislative Dashboard 7 (2024). This legislative burden may suggest one reason the legislature looked to adopt the 1968 Florida Constitution and include Article IIIV on local government.

Florida, which repeated the constitutional Home Rule provision, with the most significant change in wording being that the clause 'except as otherwise provided by law' was replaced by 'except when prohibited by general or special law.'" Id.

Thereafter, "the state supreme court rendered an opinion that stripped the constitutional Home Rule provision of all effect" and "[i]n response, the 1973 Legislature enacted Chapter 73-129, Laws of Florida, the Municipal Home Rule Powers Act, which was codified as Chapter 166, Florida Statutes." Id. In this legislative effort to strengthen and clarify the constitutional grant of Home Rule power, the 1973 Legislature "also defined 'municipal purposes' as identical to those purposes for which the state itself might act." Id.

This history provides context to the changes to Article VIII in the Constitution of 1968. Specifically, the amendments to Article VIII reflect a desire to shift a greater degree of responsibility for the operation of local government from the State level to the local level. No indication has been found that the ratifiers intended to exempt local governments from the prohibition on job-sharing contained in Article II, Section 3 at the State level. Moreover, no support was found for the idea that the amendments to either Article VIII or Article V were intended to grant the circuit court subject matter jurisdiction to issue writs of certiorari to the legislative branch of local government.

4. Municipal Government Structure

Not every local government structure suggests job-sharing among branches of local government, but the fact that some do supports the idea that many of the appellate decisions in this area could be distinguishable based on the structural differences and what part of local government made the decision. After all, appellate decisions that do not address the power structure and organization of local government may have involved forms of local government in which

impermissible Article II, Section 3 job-sharing did not invite a subject matter jurisdiction problem for the circuit court.

According to the Florida League of Cities, Florida's municipalities have been historically organized in various forms. The League of Cities' Florida Municipal Officials Manual proposes that "[s]tate law does not prescribe one or more permissible forms, nor does it prohibit any." Id. at 17 and Preface. However, the Manual acknowledges that "[d]espite the general grant of Home Rule authority, a city may not exercise powers that are prohibited to municipalities by the constitution or general law." Id. at 21; see also Art. II, § 3, Fla. Const.

The League of Cities describes a "council-strong" form as one with a "distinct division of powers between the council and the mayor," where the mayor is chief executive with "substantial influence in the policy-making process and substantial control over administration," holding "important budgetary and appointing powers, along with the power to veto legislative actions of the council." Id.[3] In this council-strong form, "[a]dministrative authority is not shared with a number of independent boards and commissions," "the mayor enjoys general power to appoint people to boards and commissions," and the mayor's role is frequently non-legislative. Id. at 14-15. According to this description, it seems possible that in a council-strong form of local government, the mayor may exercise her appointment power to boards and commissions who exercise quasi-judicial power. In such situations, the circuit court's power to review the quasi-judicial decision may have been in less doubt. After all, Article V, Section 1 says that while local governments may not establish their own courts, "[c]ommissions established by law" and

[3] The Florida Municipal Officials' Manual published by the Florida League of Cities does not hold itself out specifically pinpoint this information circa 1968. Given the objectives of the supremacy-of-text principle, it would be preferable to derive this information from a source that specifically targets the appropriate era; however, given the resources available to this Court it is worth noting that there is no indication in this source that would suggest that the various types of municipal organization throughout Florida have vastly changed between 1968 and the present, except to the extent that certain forms have become less popular and certain forms more popular.

"administrative officers or bodies" may be granted quasi-judicial power in matters connected to the functions of their offices.

The same argument may be more difficult to sustain for other forms of municipal government. Some cities, for example, have a "council-weak" form of governance, where the office of mayor is simply rotated among the elected council members on an annual basis. Id. at 14. Others have a municipal "commission" that "combines both executive and legislative powers into a governing board—the commission" and there is no chief executive. Id. "Early advocates of the commission form hoped that the concentration of power in the hands of a few elected council members would make administration more effective and would enhance accountability to the public," but a proliferation of problems with this form has made it unpopular and it "exists in less than five municipalities" in the State. Id.

Yet another municipal form used in Florida is the council-manager form, which calls for a "strong and non-political executive office" that is intended to be the "administrative centerpiece of municipal government. Id. Mirroring a business corporation, the "voters (stockholders) elect the council (board of directors), including the mayor (chairman of the board), which, in turn appoints the manager (chief administrative officer)." Id. at 16. In the council-management arrangement, the manager has total responsibility for municipal administration, which he mayor is the ceremonial head and presides over council meetings and may serve as the city's spokesperson. Id. The manager is expected to abstain from any political involvement, council members are expected to refrain from intruding on the manager's role as chief executive, and the manager is subject to the authority of the council. Id.

Significantly, the League of Cities Manual undermines support for the idea that somehow the word "commission" in Article V, Section 1 would have been understood to mean a legislative

body. This is because terms like "commission," "council," and "administrator" do not have uniform meaning across municipalities. See, e.g., id. at 15-17 ("Many Florida municipalities designate their legislative bodies as the 'commission' but do not have the commission form of government" and "use of the title 'administrator' can cause confusion in this form of government as the title does not always indicate the same responsibilities or authority as a manger."). For example, the Florida League of Cities' manual discusses the fact that "[t]he elected municipal governing body is responsible for the policymaking function of city government" and such a body may be "titled council, commission, board of alderman or councilor" but the "choice of title for the legislative body has no legal significance" because "whether 'council,' 'commission,' 'alderman,' or 'councilor,' the body's functions and powers are the same." Id. at 33. Moreover, the same manual contains an entire section called "Commissions, Boards, and Advisory Committees" to refer to bodies that may be created or abolished by municipal administrative order of the municipal legislative body, subject to open meeting and public record laws. Id. at 35-36.

Not only does this information suggest an absence of consideration of Article II, Section 3's job-sharing prohibition, it diminishes the possibility that somehow Article V, Section 1's reference to "commissions" means that ratifiers would have understood that they were authorizing legislative branches of local government to exercise quasi-judicial power.

IV. Conclusion

A beautifully-written Constitution is not what makes us the envy of the world. We are the envy of the world because we demand that our government must work the way it was designed in the Constitution. If we ever stop expecting the government to work how the Constitution says it should, then the freedoms the Constitution was written to secure are not worth much more than the paper itself.

The powers of our government are separated because the founders of our nation experienced tyranny that flowed from consolidation of power. Because of their wisdom and lived experience, we have a Constitution that says that if someone in government has the powers of one branch of government, then that person may not exercise the powers assigned to another branch, unless the Constitution specifically says so.

The Constitution establishes "the judicial power" in Article V. All of that judicial power can only be vested in the categories of persons listed in Article V. Article V, Section 1 allows for non-judges to, under limited conditions, exercise the judicial power. However, neither the text nor the original public meaning of Article V, Section 1 supports a reading that would include the legislative branch of municipal government exercising quasi-judicial power. Power-sharing under Article II, Section 3 can only happen when the Constitution expressly permits it. Meanwhile, circuit courts only have Article V, Section 5 power to issue writs of certiorari in relation to the exercises of judicial power permitted in Article V.

The sum total of this is that the Florida Constitution does not grant this circuit court the subject matter jurisdiction to issue a writ of certiorari to the Tampa City Council. For that reason, the petition for writ of certiorari is DISMISSED for lack of subject matter jurisdiction.

DONE and ORDERED in Chambers in Tampa, Florida this 29th day of July, 2024.

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The Hon. Anne-Leigh Gaylord Moe
CIRCUIT JUDGE