

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT, IN AND FOR POLK COUNTY

53-2011 CA-00 1950-0000-00
CASE NO.: _____

Sec 08

IN RE: THE MATTER OF
SAM KILLEBREW, an individual,

Plaintiff,

vs.

LORI EDWARDS, Polk County Supervisor
of Elections, RICHARD M. WEISS, Clerk of
the Circuit Court for Polk County, Florida,
and Auditor to the Board of County
Commissioners and POLK COUNTY,
FLORIDA, a political subdivision of the
State of Florida

Defendants.

FILED IN THIS OFFICE

MAY 03 2011

CLERK CIRCUIT COURT
POLK COUNTY

COMPLAINT

Plaintiff, SAM KILLEBREW ("Plaintiff") individually, by and through his undersigned counsel, hereby files this action for declaratory relief pursuant to Florida Statute Chapter 86 and names as Defendants the following parties who may have an interest in the outcome of this action: LORI EDWARDS ("Supervisor" or "Edwards"), as Polk County Supervisor of Elections, RICHARD M. WEISS, as Clerk of the Circuit Court and Auditor to the Polk County Board of County Commissioners ("Clerk" or "Weiss") and POLK COUNTY, FLORIDA, a political subdivision of the State of Florida. In support of the declaratory relief sought, Plaintiff states as follows:

Overview

1. This is an action for declaratory relief to determine the constitutionality of Article 2, Section 2.3 of the Polk County Charter, which is entitled "Qualifications" (hereinafter referred to as "Term Limit") and Article 2, Section 2.5 of the Polk County Charter, which is entitled "Salary and other compensation" (hereinafter referred to as "Salary Reduction").

2. On September 12, 2000, after a citizen initiative petition drive authorized by Article 8, Sec. 8.3.2 of the Polk County Charter, the Board of County Commissioners ("BoCC") adopted Resolution 2000-79 authorizing a referendum for the voters of Polk County to consider amending the Polk County Charter ("Charter") to impose a two-term or eight year term limit on Polk County Commissioners. The referendum passed on November 7, 2000 and went into effect that same day.

3. As adopted, Section 2.3 of the Charter prohibits any person from appearing "on the ballot for re-election to the office of commissioner to the Polk County Board of County Commissioners if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) as a Commissioner for eight (8) consecutive years." That section also provides that any service in office prior to the effective date will not apply to the eight-year term limit.

4. On September 12, 2000, the BoCC adopted Resolution 2000-80 authorizing a referendum for the voters of Polk County to consider amending the Polk County Charter ("Charter") to reduce the salaries paid to Polk County Commissioners to \$33,500 which was approximately one-half of the salaries established by Florida Statutes Section 145.031. The

referendum passed on November 7, 2000 and went into effect with the commission term beginning in November of 2000.

5. As adopted, Section 2.5 of the Charter provides for increases in commissioners' salaries but only by adoption of an ordinance, passed by unanimous vote of the BoCC, and not based on the statutory scheme set out in Florida Statutes Section 145.031 for such increases.

6. Plaintiff is uncertain as to whether (1) the Term Limit Amendment serves as an unlawful disqualification from election to office for a class of constitutional officers in violation of Article VI, § 4 of the Florida Constitution and (2) as to whether the Salary Reduction Amendment is in violation of Article II, § 5 (c) a the Florida Constitution mandating that the "compensation and method of payment" for county officers shall be "fixed by law" and whether it is in violation of general law establishing a uniform system of compensation for county officers in Chapter 145, Florida Statutes and, thus, seeks a declaratory judgment as to the constitutionality of the Term Limit Amendment and the Salary Reduction Amendment.

Jurisdiction and Venue

7. This action for declaratory relief is within this court's jurisdiction pursuant to Article V, § 5 of the Florida Constitution, and §§ 26.012, 86. 011, 86.021, and 86.051, Florida Statutes.

8. Venue is appropriate in Polk County, Florida, pursuant to § 47.011, Florida Statutes because the cause of action accrues in Polk County, Florida.

Parties

9. Plaintiff, SAM KILLEBREW, is a resident and voter of Polk County, Florida. Plaintiff brings this action in his capacity as a resident and voter.

10. Defendant, LORI EDWARDS, in her official capacity as the Polk County Supervisor of Elections is a constitutional officer of this State as established by Article VIII, § 1(d) of the Florida Constitution, is over eighteen and *sui juris*. Edwards, in her capacity as Supervisor of Elections is required under Florida law to enforce candidate qualifications, establish written measures to assure proper voting procedures, and to otherwise ensure compliance with state election law as prescribed in Chapters 97 through 107, Florida Statutes ("Florida Election Code"). Because the resolution of this matter will impact the manner in which the Supervisor will execute those duties relative to the Term Limit Amendment, Edwards has an interest in the outcome of this action.

11. Defendant, RICHARD M. WEISS, in his official capacity as Clerk of the Circuit Court for Polk County and Auditor to the Board is a constitutional officer of this State as established by Article VIII, § 1(d) of the Florida Constitution, is over eighteen and *sui juris*. Weiss, in his capacity as Auditor to the Board is the custodian of all county funds and is prohibited, by Florida Statutes, Section 129.09, from signing warrants for payment of claims or bills against the county in excess of amounts allowed by law or county ordinance, or to pay any illegal charge against the County, or pay any claim against the County not authorized by law. Because the resolution of this matter will impact the manner in which the Clerk will execute those duties relative to the Salary Reduction Amendment, Weiss has an interest in the outcome of this action.

12. Defendant, POLK COUNTY, FLORIDA is a political subdivision of the State of Florida and the legal and political entity responsible for the actions of the Polk County Board of County Commissioners. The resolution of this matter will impact the manner in which the County, through the Supervisor of Elections, conducts elections in Polk County, i.e. adheres to the requirements of the Florida Election Code and the manner in which Commissioners' salaries are budgeted and paid and, thus, is a proper party to this action.

General Allegations

13. The County is governed and bound by the particular provisions and mandates of the Florida Constitution.

14. Polk County, following procedures set out in Florida Statutes, Sections 125.60 – 125.69, established a Charter Commission in 1998 to study the issue of a county charter and to recommend a proposed charter to the Board of County Commissioners.

15. During the course of the study the Polk County Charter Commission considered issues of term limits and salaries for county commissioners.

16. The charter proposed by the Charter Commission was put before the voters in a referendum as required by Florida law. The Charter was approved by voters on November 3, 1998 and the Charter went into effect January 1, 1999.

17. The Polk County Charter, as adopted, provides that the offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court and Supervisor of Elections shall remain as elected Constitutional Officers and maintains the offices of county commissioners as provided by Article VIII, Section 1 (e) of the Florida Constitution.

18. The Polk County Charter, as adopted, provided for commissioners to serve four year terms with no term limits.

19. The Polk County Charter, as adopted, provided that salaries for commissioners shall be "the same as those set by general law."

20. A year after the Charter was first approved by voters, amendments relating to term limits and salaries were proposed to the Polk County Charter by means of petitions sponsored by a citizens' group, the Home Rule Charter Committee, pursuant to Article 8, Section 8.3.2 of the Charter which provides that amendments to this Charter, not inconsistent with the State Constitution or with general law, may be proposed. ..." Article 8, Section 8.3.3 required the Board of County Commissioners to submit any such proposed amendments to the electors for their approval.

21. Article VIII, § I (g), of the Florida Constitution explains that counties operating under county charters, like Polk County, "shall have all powers of local self- government **not inconsistent with general law,**" and may enact "county ordinances **not inconsistent with general or special law.**" (emphasis added). That limitation is incorporated into the Polk County Charter which provides it "shall not be construed to conflict with the Constitution of the State of Florida, general law, or special law approved by vote of the electorate." (Article 1, Sec. 1.7, Polk County Charter).

22. The County is bound by Article VIII, § 1 (e), of the Florida Constitution, which provides the composition and terms for the election of certain classes of constitutional officers including county commissioner, to *wit*:

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

23. Article VI, § 4 of the Florida Constitution specifically delineates disqualifications for constitutional officers and specifies those state and federal offices for which term limits may apply. Indisputably, under both statutory and decisional law, Art. VI, § 4 is recognized as preempting the field regarding the disqualification of constitutional officers.

24. Notwithstanding, effective November 2000, Polk County voters adopted the Term Limit Amendment to Article 2, Section 2.3 of the Polk County Charter which provided additional grounds for disqualifying a potential candidate for the office of county commissioner:

“No person may appear on the ballot for re-election to the office of Commissioner to the Polk County Board of County Commissioners if, by end of the current term of office, the person will have served (or, but for resignation, would have served) as a Commissioner for eight (8) consecutive years. This amendment shall take effect on the date it is approved by the electorate, but no service in a term of office which commenced prior to the effective date of this amendment will be credited against the eight (8) consecutive years term limitation.”

Art. 2, § 2.3, Polk County Charter (“Term Limit Amendment”).

25. As a result of the Term Limit Amendment, Polk County currently maintains a two consecutive, four-year term limit for election to the office of county commissioner.

26. The County is bound by Article II § 5 (c), of the Florida Constitution, which provides that the “powers, duties, **compensation and method of payment** of state and county officers shall be fixed by law.” (emphasis added).

27. The County is further bound by the General Law provisions of Florida Statutes Chapter 145, a mandatory procedure enacted in 1969 to insure that salaries of county officers, including county commissioners, were uniform statewide based on population. In amending Chapter 145, the Florida Legislature clearly explained the Legislative Intent behind those changes:

“(1) In compliance with S. 5 (c), Art. II of the State Constitution, it is the intent of the Legislature to provide for the annual compensation and method of payment for the several county officers named herein.

(2) The Legislature has determined that a uniform and not arbitrary and discriminatory salary law is needed to replace the haphazard, preferential, inequitable, and probably unconstitutional local law method of paying elected county officers.

(3) It is further the intent of this Legislature to provide by general law for such uniform compensation of county officials having substantially equal duties and responsibilities, taking into account the multitude of changes that have affected these offices within the past decade.

(4) The salary schedules in this chapter are therefore based on a classification of counties according to each county’s population, which the Legislature determines to be the most practical basis from which to arrive at an adequate, uniform salary system.”

Florida Statutes, Section 145.011 (1969).

28. In order to insure the “preservation of statewide uniformity of county officials’ salaries essential to the fulfillment of the legislative intent expressed in [Chapter 145],” the Legislature specifically prohibited all “special laws or general laws of local application pertaining to the compensation of county officers including county commissioners. Section 145.16, Florida Statutes.

29. Notwithstanding the provisions of Article II § 5 C of the Florida Constitution and Chapter 145, Florida Statutes, effective November 2000, Polk County voters approved the Salary Reduction Amendment which reduced salaries for county commissioners from the \$67,042 prescribed by Florida Statutes Section 145.031 at that time to \$33,500.

30. Amended Section 2.5 of the Polk County Charter further violated the uniform general law procedures for setting salaries based on the county population, a procedure the Legislature has deemed to be the "most practical basis" for setting such salaries, and imposed different procedures for salary adjustments:

"The Board of County Commissioners may amend the salary established in this Charter by ordinance, which requires, for passage, the unanimous vote of the members of the entire Board of County Commissioners. Any increase shall not exceed the average percentage increase in the salaries of county employees for the fiscal year just concluded, or the percentage change in the U.S. consumer price index for the previous year, whichever is less. Any salary increase shall not be effective until the first day of January in the year following the adoption of the increase."

Article 2, Sec. 2.05, Polk County Charter (2000).

31. As a result of the Salary Reduction Amendment, and subsequent increases since 2000, the Polk County salary for county commissioners is currently \$41,216. Following uniform procedures established by Chapter 145, the salary should be \$83,590 for Fiscal year 2010-11.

32. The amendment of Sections 2.3 and 2.5 of the Polk County Charter to provide for term limits and salary reductions is in violation of Article VIII, § I (g), of the Florida Constitution which limits powers of County government to those "not inconsistent with general law" and with Article 1, Section 1.7 of the Polk County Charter which provides it "shall not be construed to conflict with the Constitution of the State of Florida, general law, or special law."

33. Candidate qualification rules, such as term limits, implicate the right to associate for the advancement of political beliefs and the right of qualified voters to cast their votes effectively, both of which are strictly protected by the Constitution's First and Fourteenth Amendments. The imposed Term Limit Amendment unconstitutionally restrict voters' First Amendment right to freedom of association--- here, the freedom to associate for the advancement of their political beliefs and to support a candidate who embodies and/or espouses that position.

34. Plaintiff is in doubt as to the constitutionality of Article 2, Section 2.3 of the Polk County Charter and, therefore, seeks a declaratory judgment by the court.

35. Plaintiff's doubt arises from the apparent conflicts between the Term Limit Amendment and Art. VI, § 4, of the Florida Constitution as interpreted by the Florida Supreme Court's decision in *Cook v. City of Jacksonville*, 823 So.2d 86 (Fla. 2002) and by the Seventeenth Judicial Circuit Court decision in the case of *Telli v. Snipes*, Case No: 10-7095 (25) (17th Circuit, October 29, 2010).

36. In *Cook*, the Court held that term limit provisions for Jacksonville's Clerk of Court (imposed in 1992 and challenged in 1998) and Pinellas County's county officers (imposed in 1996) were unconstitutional prohibitions on election to office determining that Article VI, § 4, of the Florida Constitution preempted the field for imposing disqualifications for classes of constitutional officers. *Id.* at 92-95. A similar result was reached in the recent *Telli* decision where a Broward County Charter Amendment setting a twelve-year term limit for county commissioners starting in 2000, which amendment was challenged in 2010, was found to be an unconstitutional additional qualification for that office. Citing *Cook* as controlling authority, the

Telli court concluded that “by the Constitution identifying the offices to which a term limit disqualification applies, we find that it necessarily follows that the constitutionally authorized offices not included in Article VI, Section 4 (b) may not have a term limit disqualification imposed. If these other constitutionally authorized offices are to be subject to term limit disqualification, the Florida Constitution will have to be amended to include those offices.” *Telli*, at 2.

37. Of the members serving as elected Polk County Commissioners as of January 2011, the commissioners from District 1 and District 5 will have reached the eight-year limit imposed by Article 2, Section 2.3 of the Polk County Charter at the time of the 2012 General Election and will, if Article 2, Section 2.3 is not found to be unconstitutional, be precluded from running for a third term should they wish to do so.

38. The lower salaries paid to Polk County Commissioners for substantially equal duties and responsibilities undertaken by county commissioners statewide limits the pool of potential candidates to those individuals who are financially secure enough to accept a position paying less than one-half of the statutorily mandated salary thus implicating the right to associate for the advancement of political beliefs and the right of qualified voters to cast their votes effectively, both of which are strictly protected by the Constitution's First and Fourteenth Amendments. The imposed Salary Reduction Amendment unconstitutionally restricts voters' First Amendment right to freedom of association---here, the freedom to associate for the advancement of their political beliefs and to support a candidate who embodies and/or espouses that position---by eliminating potential candidates who are working, supporting

families, and otherwise in need of a full-time salary while undertaking the full-time responsibilities of such office.

39. Plaintiff is in doubt as to the constitutionality of Article 2, Section 2.5 of the Polk County Charter and, therefore, seeks a declaratory judgment by the court.

40. Plaintiff's doubt arises from the apparent conflicts between the Polk County Salary Reduction Amendment and Art. II, § 5 (c), of the Florida Constitution as interpreted by the Florida's Attorney General in 1977 (AGO 77-88) and in 2008 (AGO 2008-28) and the Florida Supreme Court's interpretation of Art III, Sec. 27 of the 1885 Florida Constitution, the precursor to Art. II, Sec. 5(c), in the case of *Buford v. Spencer*, 87 So. 634 (Florida 1921).

41. In the *Buford* decision, the Florida Supreme Court held that a general law empowering county commissioners to fix salaries of other Constitutional Officers was unconstitutional because Art. 3, Sec. 27 of the 1885 Constitution provided, as does the current Art. II, § 5 (c), of the Florida Constitution, that only the Legislature had the authority to fix compensation for such officers. The 2008 Attorney General's Opinion reiterated that the "authority to set salaries for county officers is vested in the Legislature." AGO 2008-28. The 1977 Attorney General's Opinion addressed provisions in the "Optional Charter Law" (Sections 125.80 et seq, Florida Statutes providing a streamlined method for forming charter counties without the use of a Charter Commission) which require that a charter include a requirement that salaries for all county officers shall be provided by ordinance. Although that statutory procedure was not used by Polk County in adopting its charter, the discussion relating to establishment of salaries for county officers is instructive. The Attorney General found the requirement in Section 125.83, Florida Statutes that a charter adopted under the "Optional

Charter Law” must provide that salaries be provided by ordinance is “constitutionally suspect,” and “may well prove to be an invalid delegation of legislative power in its authorization for the fixing of salaries of all county (officers by ordinance and I cannot in good conscience advise or suggest to the county that it attempt to exercise the purported authority prescribed in s. 125.83(4) until the courts resolve the issue.”

42. Plaintiffs doubt arises from the apparent conflict between the Salary Reduction Amendment and the clear, preemptive, statutory procedure set out in Chapter 145, Florida Statutes, in which the Florida Legislature,, following the mandate of Art. II, § 5 (c), of the Florida Constitution established a uniform, not arbitrary or discriminatory, salary law for county commissioners and prohibited any conflicting special laws or general laws of local application on the subject.

43. Accordingly, there is a bona fide, actual, present and practical need for a declaration because the County may be compelled to enforce a Term Limit Amendment and a Salary Reduction Amendment that are in conflict with decisional law and general law, or, alternatively, unlawfully encroach upon an area fully; regulated by the Florida Constitution.

Count I - Declaratory Judgment

(No express grant of power to Polk County to set term limits for county commissioners)

44. Plaintiff re-alleges and re-incorporates by reference paragraphs 1 through 43 as if fully set forth herein.

45. This is an action pursuant to Fla. Stat. §§ 86.011 *et seq.*, to obtain a declaratory judgment from this Court that the 2000 amendment to Article 2, Section 2.3 of the Polk County Charter violates the Florida Constitution.

46. This action for declaratory relief should be judicially decided as there is a bona fide, actual, present practical need for the declaration as to whether the Term Limit Amendment is constitutional considering Article VI, § 4, of the Florida Constitution and the case law interpreting same.

47. The declaration sought pertains to a present, ascertainable state of facts or controversy involving these facts.

48. Plaintiff is in need of a declaration as to its rights, status, immunities, powers, and/or privileges under the Florida Constitution relative to the constitutionality of the Term Limit Amendment.

49. Plaintiff has an actual, present, adverse and antagonistic legal interest in the resolution of the present controversy and to the determination of the constitutionality of the law applicable to the instant facts which will affect their rights, status, immunities, powers, and/or privileges.

50. All persons having an actual, present, adverse and antagonistic interest in the subject matter have been joined in this action, and all adverse interests are before the court.

51. The relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity; rather, the relief sought is an approved use of the Declaratory Judgment Act under Florida law. See, *Cook v. City of Jacksonville*, 823 So.2d 86 (Florida 2002) (Declaratory relief appropriate to challenge term limit provision of County Charter), *Plante v. Smathers*, 372 So.2d 933 (Fla. 1979); *West Palm Beach Ass 'n of Firefighters, Local Union, 727 v. Board of City Com'rs of City of West Palm Beach*, 448 So.2d 1212 (Fla. 4th DCA 1984).

52. Indeed, Plaintiff contends that the 2000 amendment to Article 2, Section 2.3 of the Polk County Charter is in violation of the Constitution of the State of Florida in the following respects:

(a) Article VIII, § 1 (g), of the Florida Constitution asserts that local charter governments have all powers of self-government not inconsistent with general law and grants authority to adopt ordinances not inconsistent with general law.

(b) Article VI, § 4 of the Florida Constitution provides specific disqualifications for a constitutional officer to hold office in Florida and provides term limits on specifically enumerated offices, which enumeration does not include county commissioners:

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

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

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

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

(c) The Term Limit Amendment to Article 2, Section 2.3 of the Polk County Charter is inconsistent with the Florida constitution in that it exceeds the constitutional grant of power made to Polk County under Article VIII, § 1 (g) of the

Florida Constitution and violates Article VI, § 4,
of the Florida Constitution.

53. Accordingly, Plaintiff requests this Court to enter a judgment determining that there is no express or implied grant of power to Polk County to establish term limits for county commissioners.

Count II- Declaratory Judgment

(No express grant of power to Polk County to set salary for county commissioners)

54. Plaintiff re-alleges and re-incorporates by reference paragraphs 1 through 43 as if fully set forth herein.

55. This is an action pursuant to Fla. Stat. §§ 86.011 et seq., to obtain a declaratory judgment from this Court that the 2000 amendment to Article II, Section 2.5 of the Polk County Charter violates the Florida Constitution.

56. This action for declaratory relief should be judicially decided as there is a bona fide, actual, present practical need for the declaration as to whether the Salary Reduction Amendment is constitutional considering Art. II, § 5 (c), Florida Constitution, and the statutory and case law implementing and interpreting the same.

57. The declaration sought pertains to a present, ascertainable state of facts or controversy involving these facts.

58. Plaintiff is in need of a declaration as to its rights, status, immunities, of the Salary Reduction Amendment.

59. Plaintiff has an actual, present, adverse and antagonistic legal interest in the resolution of the present controversy and to the determination of the constitutionality of the law

applicable to the instant facts which will affect their rights, status, immunities, powers, and/or privileges.

60. All persons having an actual, present, adverse and antagonistic interest in the subject matter have been joined in this action, and all adverse interests are before the court.

61. The relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity; rather, the relief sought is an approved use of the Declaratory Judgment Act under Florida law. See, *Cook v. City of Jacksonville*, 823 So.2d 86 (Florida 2002) (Declaratory relief appropriate to challenge term limit provision of County Charter), *Newell v. Carlisle*, 298 So.2d 568 (Declaratory relief sought by county commissioners and Defendant Clerk of Court to obtain interpretation of the provisions of Chapter 145 requiring a uniform method of setting salaries for county commissioners), *Plante v. Smathers*, 372 So.2d 933 (Fla. 1979); *West Palm Beach Ass 'n of Firefighters, Local Union, 727 v. Board of City Com'rs of City of West Palm Beach*, 448 So.2d 1212 (Fla. 4th DCA 1984).

62. Indeed, Plaintiff contends that the 2000 amendment to Article 2, Section 2.5 of the Polk County Charter is in violation of the Constitution of the State of Florida and Florida general law in the following respects:

- a. Article II, Sec. 5 (c), Florida Constitution, mandates that the "powers, duties, compensation and method of payment of state and county officers shall be fixed by law."
- b. Article VIII, § 1 (g), Florida Constitution provides that a Charter Government shall have "all powers of local self-government not inconsistent with general law" including the authority to enact county ordinances "not inconsistent with general law."
- c. Florida Statutes, Sections 145.011, 145.031 and 145.16 provide for a uniform, non-arbitrary or discriminatory, salary law

for county commissioners based on population and prohibit any conflicting special laws or general laws of local application on the subject.

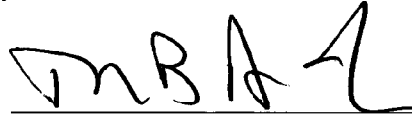
d. The Salary Reduction Amendment to Article 2, Section 2.5 of the Polk County Charter violates Article II, Sec. 5 (c), Florida Constitution by creating a local ordinance which attempts to fix the salaries of county commissioners; violates Article VIII, § 1 (g), Florida Constitution by creating a Charter provision inconsistent with both the Florida Constitution and general law; and violates Florida Statutes, Sections 145.011, 145.031 and 145.16 by providing for a non-uniform method of fixing salaries for county commissioners, not based on population, which amounts to a law of local application inconsistent with the Legislature's preemption of this issue in Chapter 145.

63. Accordingly, Plaintiff request this Court to enter a judgment determining that there is no express or implied grant of power to Polk County to establish or reduce salaries for county commissioners.

WHEREFORE, Plaintiff, SAM KILLEBREW, respectfully requests that this court enter a judgment, as to Count I, declaring Article 2, Section 2.3 of the Polk County Charter, as amended in 2000, as unconstitutional and invalid, finding that Article VI, Sec. 4 of the Florida Constitution promulgates the exclusive list of disqualifications for Florida's constitutional officers and directing that the 2000 amendment to Article 2, Section 2.3 be stricken from the Polk County Charter; as to Count II, declaring Article II, Section 2.5 of the Polk County Charter, as amended in 2000, as unconstitutional and invalid, finding that Article II, Sec. 5 (c) of the Florida Constitution promulgates the exclusive method for fixing salaries of county officers and that the Florida Legislature, in adopting a general law setting salaries for county commissioners based on population criteria has provided the sole means of setting such salaries in Florida and directing that the constitutionally infirm language contained in the 2000 amendment to Article

2, Section 2.5, be stricken from the Polk County Charter; and granting Plaintiff any such further relief that this court deems equitable and just under the circumstance.

DATED this 3 day of May, 2011.



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