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HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON STATE ADMINISTRATION
ANALYSIS

BILL #: HJR 1

RELATING TO: Judiciary

SPONSOR(S): Representative(s) Kyle

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) COMMITTEE ON STATE ADMINISTRATION
(2)
(3)
(4)
(5)

I. SUMMARY:

This joint resolution proposes an amendment to the state constitution regarding the Judiciary, which includes the following changes:

- Limits court jurisdiction to actual cases in law, equity, admiralty, and maritime jurisdiction and to actual controversies arising under the constitution and the laws of the State of Florida, and of the United States.
- Prohibits the Florida Supreme Court rules from being inconsistent with statutes in place at the time of the adoption of the rules; provides that the rules must be revised to conform to subsequently adopted statutes that regulate substantive rights; and provides that rules may be repealed by general law adopted by a majority, rather than 2/3, vote of each house of the Legislature.
- Requires that rules adopted by the Florida Supreme Court not abridge, enlarge, or modify the substantive rights of any litigant, and provides that additional rulemaking power may be delegated to courts by general law.
- Provides that an advisory opinion of the Florida Supreme Court justices given to the Governor pursuant to Article IV, Section 1(c), of the Florida Constitution, is not binding on any party not voluntarily participating in the proceedings.
- Provides that some legal or equitable claim otherwise cognizable by the court is required to establish the jurisdictional basis for the issuance of a writ, and that all writs are subject to statutes of limitation (in a criminal case the statute of limitation for post conviction relief can be no shorter than 2 years from the final judgment or mandate on direct appeal in a criminal case).
- Provides that a District Court of Appeal may be given exclusive jurisdiction over a subject matter on a statewide basis, and removes a now unnecessary phase-in schedule.

This joint resolution does not appear to have a fiscal impact on state or local government. This joint resolution requires a 3/5 vote of the membership of each house of the Legislature.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [x]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes [x]	No []	N/A []
4.	Personal Responsibility	Yes [x]	No []	N/A []
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Brief History of the Florida Constitution and Article V

The state of Florida has enacted five constitutions, namely, the Constitution of 1838, commonly known as the St. Joseph's Constitution, which went into effect in 1845 upon admission of the state to the Union; the Confederate Constitution of 1861; the Constitution of 1865, which was not recognized by the Congress of the United States; the Constitution of 1885, which went into effect in 1887; and the Constitution of 1968, which became effective January 7, 1969.[1]

Article V of the Florida Constitution provides for the judicial system. The citizens at the November 6, 1956 election, effective July 1, 1957, adopted former Article V. The proposed constitution of 1968 did not include a revised Article V, because the Legislature could not agree on a text for revision. In 1970, the citizens rejected a proposed revision of Article V. The current Article V passed at the third special session of the Legislature in 1971, and was adopted by the citizens at a special election held March 14, 1972, effective January 1, 1973.[2]

Case and Controversy

Article III, section 2, of the United States Constitution, provides in part:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[1] Constitutional Law § 1, 10 Fla.Jur.2d 366.
[2] Historical notes to Article V of the Florida Constitution, Florida Statutes Annotated; and Talbot "Sandy" D'Alemberte, *Judicial Reform – Now or Never*, 46 Fla. Bar J. 68 (1972).

Article V, section 1, of the Florida Constitution, simply provides that the "judicial power shall be vested in a Supreme Court, district courts of appeal, circuit courts and county courts." The Florida Constitution does not have a specific case and controversy limitation, as does the United States Constitution.

The United States Supreme Court in *United States v. Muskrat,*[3] address the meaning of "case" and "controversy."[4] The Court stated:

> The judicial article of the Constitution mentions cases and controversies. The term 'controversies,' if distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature. By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. Whenever the claim of a party under the Constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case. The term implies the existence of present or possible adverse parties, whose contentions are submitted to the court for adjudication.[5]
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> . . .
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> In [*Marbury v. Madison*], Chief Justice Marshall, who spoke for the court, was careful to point out that the right to declare an act of Congress unconstitutional could only be exercised when a proper case between opposing parties was submitted for judicial determination; that there was no general veto power in the court upon the legislation of Congress; and that the authority to declare an act unconstitutional sprang from the requirement that the court, in administering the law and pronouncing judgment between the parties to a case, and choosing between the requirements of the fundamental law established by the people and embodied in the Constitution and an act of the agents of the people, acting under authority of the Constitution, should enforce the Constitution as the supreme law of the land. The Chief Justice demonstrated, in a manner which has been regarded as settling the question, that with the choice thus given between a constitutional requirement and a conflicting statutory enactment, the plain duty of the court was to follow and enforce the Constitution as the supreme law established by the people. And the court recognized, in *Marbury v. Madison* and subsequent cases, that the exercise of this great power could only be invoked in cases which came regularly before the courts for determination.[6]

The Florida Supreme Court has determined that Florida courts are not similarly bound by the cases and controversies limitation because the Florida Constitution does not contain a cases and controversies clause.[7] Accordingly, Florida courts hear matters that do not meet the case or controversy restriction found in federal law. For example, in *In re Connors*[8], the Florida Supreme Court declared a state statute unconstitutional because the statute was in conflict with a criminal rule of procedure in existence at the time the statute was passed. By the time the case reached the Florida Supreme Court, the criminal defendant had been released, and was not appealing the

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[3] 219 U.S. 346 (1911).
[4] The question before the United States Supreme Court in *Muskrat* was whether the Court of Claims could enter a declaratory judgment regarding the conditions upon which lands were ceded to Native American tribes and their members.
[5] *Muskrat v. U.S.*, 219 U.S. 346, 356-57 (1911) (citations omitted).
[6] *Id.*. at 357-58.
[7] *Sheldon v. Powell*, 128 So. 258, 261 (Fla. 1930).
[8] 332 So.2d 336 (Fla. 1976).

decision. Because the trial court had ruled the statute unconstitutional, it was the affected state agency that had filed the appeal. Under federal jurisprudence, the appeal would have been dismissed because there was no longer a case or controversy; but the Florida Supreme Court heard and decided the issue. In dissent, Justice Hatchett[9] argued for a case and controversy requirement under Florida law, stating:

> The 'judicial power' in Florida, as in the Nation, 'is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of property jurisdiction,' *Muskrat v. United States*, 219 U.S. 346 (1911), with the lone exception of gubernatorial requests for advisory opinions. When the Court overreaches its jurisdiction in order to decide questions which do not 'determine actual controversies,' it invades the province of the other branches of government.[10]
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> . . .
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> It is on the ground of separation of powers that the Court today strikes down a statute which was reenacted, as amended, by unanimous vote of both houses of the legislature in the 1974 session. According to the majority, the statute conflicts with a previously adopted court rule, and must therefore fall. Whenever possible, however, striking down 'a solemn act of the Legislature,' should be scrupulously avoided. The majority asserts that such extreme action must be taken in the present case in order to preserve the separation of powers intact. Ironically, in the name of preserving the separation of powers, the Court has blurred the distinctions between the separate branches of government by passing on a statute as a general proposition, in much the same way the governor might, when exercising the power of the veto.[11]

Court Rules

Article V, section 2(a), of the Florida Constitution, provides that the "Supreme Court shall adopt rules for the practice and procedure in all courts". A court rule may be repealed by general law enacted by a two-thirds vote of each house of the Legislature.

Florida law is substantially different from federal law on the issue of court rules. "It has long been settled that Congress has the authority to regulate matters of practice and procedure in the federal courts."[12] Federal law provides the that United States Supreme Court has "the power to prescribe general rules of practice and procedure," which "rules shall not abridge, enlarge or modify any substantive right."[13] No rule is in effect until Congress has had seven months within which to review the rule.

The Florida Supreme Court has affirmed the general proposition that a court rule may not abridge, enlarge or modify any substantive right, stating:

> Unlike the Act of Congress in providing that the Supreme Court of the United States may promulgate rules for the district courts, Section 3 of Article V, supra, failed to specify that such rules as might be promulgated by this court 'shall neither abridge, enlarge, nor modify the substantive rights of any litigant'; however, such limitation is

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[9] Justice Joseph W. Hatchett was a justice of the Florida Supreme Court from 1975 to 1979. In 1979, President Carter appointed him as an appellate judge for the Fifth Circuit Court of Appeals (from which the Eleventh Circuit Court of Appeals was created in 1981).
[10] *In re Connors*, 332 So.2d 336, 347 (Fla. 1976) (Hatchett, dissenting).
[11] *Id*.
[12] *Allen v. Butterworth*, 756 So.2d 52, 63 (Fla. 2000).
[13] 28 U.S.C. § 2072.

> implicit by reason of Article II of our Constitution providing for a separation of the powers of government of this state. The rule [at issue in this case] exceeds the scope of 'practice and procedure,' is legislative in character and must yield to the provisions of the statute.[14]

Florida courts protect their rulemaking power by striking down laws that conflict with their rules. For example, the Florida Supreme Court held a statute unconstitutional regarding the state mental hospital because it was in conflict with a previously passed criminal rule of procedure regarding persons found not guilty by reason of insanity.[15] A statute requiring mandatory severance of a mortgage foreclosure trial from a trial on any counterclaims in the action was also held unconstitutional by the Florida Supreme Court because it conflicted with an existing rule of civil procedure.[16]

Accordingly, in Florida, if a matter is substantive in nature it is for the legislature to address; if procedural it is for the Florida Supreme Court to attend. However, determining the difference between the two is not simple or clear. In 1973, former Justice Adkins described the difference between substance and procedure:

> The entire area of substance and procedure may be described as a "twilight zone" and a statute or rule will be characterized as substantive or procedural according to the nature of the problem for which a characterization must be made. From extensive research, I have gleaned the following general tests as to what may be encompassed by the term "practice and procedure." Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof. Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution. [17]

In addition to the often difficult task of determining procedure versus substance, the courts have provided inconsistent treatment of the issue. While there have been numerous instances where the Florida Supreme Court has struck down a statute because it was procedural, there are numerous examples where the Court has accepted procedure found in the statutes. For example, the current Probate Code, passed in 1974, is rife with procedural matters. In 1984, however, the Court adopted the procedural aspects of the Probate Code as "temporary rules of procedure."[18] In 1988, the Probate Rules Committee, organized by the Court, announced its intention to review the Probate Code and identify procedural matters to be removed[19] -- a task that was not completed until 2001. Other statutes that include substantial amounts of unchallenged procedure include chapters 51, F.S. (Summary Procedure); 61, F.S. (Dissolution of Marriage; Support; Custody); 63, F.S.

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[14] *State v. Furen*, 118 So.2d 6, 12 (Fla. 1960).
[15] *In re Connors*, 332 So.2d 336 (Fla. 1976).
[16] *Haven Federal Saving & Loan Association v. Kirian*, 579 So.2d 730 (Fla. 1991).
[17] *In re Florida Rules Of Criminal Procedure*, 272 So.2d 65, 66 (Fla. 1973).
[18] *The Florida Bar Re Emergency Amendments To Florida Rules Of Probate And Guardianship Procedure*, 460 So.2d 906 (Fla. 1984).
[19] *The Florida Bar, In re Rules Of Probate And Guardianship Procedure*, 531 So.2d 1261, 1263 (Fla. 1988)

(Adoption); 73, F.S. (Eminent Domain); 744, F.S. (Guardianship); and 900-985 (Criminal Procedure and Corrections).

Two recent Florida Supreme Court opinions have addressed the distinction between substantive law and procedure. In *Kalway v. Singletary,*[20] the Court upheld a thirty-day statute of limitations for filing an action challenging a prisoner disciplinary proceeding. In discussing the separation of powers issue, the Court said:

> As a practical matter, the Court on occasion has deferred to the expertise of the legislature in implementing its rules of procedure. *See, e.g.*, *Amendment to Florida Rule of Juvenile Procedure 8.100(a)*, 667 So.2d 195, 195 (Fla.1996) (noting that the need for juvenile detention shall be made "according to the criteria provided by law" and explaining that these "include those requirements set out in section 39.042, Florida Statutes (1995)"); *In re Family Law Rules of Procedure*, 663 So.2d 1049, 1086 (Fla.1995) (setting forth amended rule 12.740, which provides that all contested family matters may be referred to mediation, "[e]xcept as provided by law"). The setting of an interim time frame for challenging the Department's disciplinary action following the exhaustion of intra-departmental proceedings is a technical matter not outside the purview of the legislature. We do not view such action as an intrusion on this Court's jurisdiction over the practice and procedure in Florida courts.[21]

Two years later, the Legislature passed a statute of limitations applicable to post-conviction death penalty cases as part of the Death Penalty Reform Act (DPRA). In holding that the statute of limitations was unconstitutional, the Florida Supreme Court declared: "We find that the DPRA is an unconstitutional encroachment on this Court's exclusive power to 'adopt rules for the practice and procedure in all courts.'"[22] The Court found that it has "exclusive authority to set deadlines for postconviction motions" under its rulemaking authority pursuant to Article V, section 2(a), of the Florida Constitution.[23]

Jurisdiction

Article V, section 3(b), of the Florida Constitution, provides that the Florida Supreme Court

- Shall hear appeals from final judgments of trial courts imposing the death penalty.
- Shall hear appeals from decisions of district courts of appeal declaring a state statute or a provision of the state constitution invalid.
- When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness
- When provided by general law, shall review actions of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.
- May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the Florida Supreme Court on the same question of law.

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[20] 708 So.2d 267 (Fla. 1998).
[21] *Kalway* at 269.
[22] *Allen v. Butterworth*, 756 So.2d 52, 54 (Fla. 2000).
[23] *Allen* at 62 (rejecting a comparison to the holding in Kalaway).

- May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.
- May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the Florida Supreme Court.
- May review a question of law certified by the United States Supreme Court or a United States Court of Appeals that is determinative of the cause and for which there is no controlling precedent of the Florida Supreme Court of Florida.
- May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.
- May issue writs of mandamus and quo warranto to state officers and state agencies.
- May, or any justice may, issue writs of habeas corpus returnable before the Florida Supreme Court or any justice, a district court of appeal or any judge thereof, or any circuit judge.
- Shall, when requested by the Attorney General pursuant to the provisions of Article IV, section 10, of the Florida Constitution, render an advisory opinion of the justices, addressing issues as provided by general law.

Article V, section 4(b), of the Florida Constitution, provides that the District Courts of Appeal have jurisdiction to:

- Hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the Florida Supreme Court or a circuit court.
- Review interlocutory orders in such cases to the extent provided by rules adopted by the Florida Supreme Court.
- Direct review of administrative action, as prescribed by general law.
- Issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court.
- Issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction.
- To the extent necessary to dispose of all issues in a cause properly before it, exercise any of the appellate jurisdiction of the circuit courts.

Article V, section 5(b), of the Florida Constitution, provides that the Circuit Courts have jurisdiction to

- Hear all trial court matters not vested in the county courts.
- Hear appeals when provided by general law.
- Issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction.
- Direct review of administrative action prescribed by general law.

Article V, section 6(b), of the Florida Constitution, provides that the jurisdiction of the County Courts is prescribed by general law.

Quo Warranto

Quo warranto is defined as

> [a] common law writ designed to test whether a person exercising power is legally entitled to do so. An extraordinary proceeding, prerogative in nature, addressed to preventing a continued exercise of authority unlawfully asserted. It is intended to prevent exercise of powers that are not conferred by law, and is not ordinarily available to regulate the manner of exercising such powers.[24]

Quo warranto is an archaic writ used to challenge the right of an individual to hold an office. The most common use for quo warranto is by a losing candidate to challenge an election result. However, in Florida it has been used to challenge "the manner of exercising" an officer's power. As the Florida Supreme Court stated in 1936:

> It is not out of place to state, however, that under our practice, quo warranto is a remedial as well as a prerogative writ, and that this court will not refuse to extend its use on proper showing made. In *State ex rel. Watkins v. Fernandez*, 106 Fla. 779, 143 So. 638, and *State ex rel. Bauder v. Markle*, 107 Fla. 742, 142 So. 822, we reviewed many instances in which the common-law writ of quo warranto had been extended and employed for purposes other than for which it was originally conceived.[25]

In 1989, the Florida Supreme Court upheld the use of quo warranto to test the scope of the governor's powers. More particularly, the Florida Supreme Court stated:

> Quo warranto is the proper method to test the "exercise of some right or privilege, the peculiar powers of which are derived from the State." *Winter v. Mack*, 142 Fla. 1, 8, 194 So. 225, 228 (1940). *Compare, e.g., State ex rel. Smith v. Brummer*,[26] 426 So.2d 532 (Fla.1982) (quo warranto issued because public defender did not have authority to file class action on behalf of juveniles in federal court), *cert. denied*, 464 U.S. 823, 104 S. Ct. 90, 78 L.Ed.2d 97 (1983); *Orange County v. City of Orlando*, 327 So.2d 7 (Fla.1976) (legality of city's actions regarding annexation ordinances can be inquired into through quo warranto); *Austin v. State ex rel. Christian*, 310 So.2d 289 (Fla.1975) (power and authority of state attorney should be tested by quo warranto). Testing the governor's power to call special sessions through quo warranto proceedings is therefore appropriate.[27]

More recently, quo warranto has been used once again beyond its intended purpose, as defined. In *Chiles v. Phelps*,[28] individual petitioners sought a writ of quo warranto determining that the Legislature and its officers exceeded their authority in overriding the Governor's veto of a bill. The

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[24] Black's Law Dictionary, Sixth Edition, at 1256 (citations omitted).
[25] *State ex rel. Pooser v. Wester*, 170 So. 736, 737 (Fla. 1936).
[26] The respondent in this case was the Honorable Bennett H. Brummer, Public Defender for the Eleventh Judicial Circuit (Dade County). Representative Fred Brummer, sponsor of this joint resolution, was not involved in the case.
[27] *Martinez v. Martinez*, 545 So.2d 1338, 1339 (Fla. 1989) (footnote added).
[28] 714 So.2d 453 (Fla. 1998).

Florida Supreme Court accepted original jurisdiction and acknowledged that quo warranto was the appropriate method of challenge:

> Additionally, petitioners A Choice for Women and Dr. Watson filed their petition as members of the general public. We have held that members of the general public seeking enforcement of a public right may obtain relief through quo warranto. *See Martinez v. Martinez*, 545 So.2d at 1339 ("In quo warranto proceedings seeking the enforcement of a public right the people are the real party to the action and the person bringing suit 'need not show that he has any real or personal interest in it.' ") (footnote omitted) (quoting *State ex rel. Pooser v. Wester*, 126 Fla. 49, 53, 170 So. 736, 737 (1936)). The "public right" at issue in *Martinez* was the right to have the Governor perform his duties and exercise his powers in a constitutional manner. 545 So.2d at 1339 n. 3. A similar public right is at issue here, i.e., the right to have the legislature and its leaders exercise their powers in a constitutional manner. Therefore, quo warranto is an appropriate method to bring the instant challenge.[29]

"All Writs" Jurisdiction

The Florida Supreme Court, District Courts of Appeal, and the Circuit Courts, have jurisdiction to issue "all writs necessary to the complete exercise of its jurisdiction." In 1980, Former Justice Arthur J. England, Jr., described the all writs power as follows:

> The "all writs" powers of the Supreme Court has been defined to exclude writs which initiate jurisdiction in the court, as opposed to those which are necessary after jurisdiction is otherwise properly invoked. Besoner v. Crawford, 357 So.2d 414 (Fla. 1978); Shevin *ex rel.* State v. Public Serv. Comm'n, 333 So.2d 9 (Fla. 1976). *Contra*, Couse v. Canal Auth., 209 So.2d 865 (Fla. 1968).[30]

Justice England's statement of all writs power has not, however, been consistently applied by the courts.

The historically recurring question regarding the all writs power is whether the all writs power confers jurisdiction, or merely follows it. In 1942, the Florida Supreme Court in *State ex rel. Watson v. Lee*,[31] stated that the all writs power "has reference only to ancillary writs to aid in the complete exercise of the original or the appellate jurisdiction of the Supreme Court, and does not confer added original or appellate jurisdiction in any case."[32] In 1968, the Florida Supreme Court changed its mind. The Court ruled in *Couse v. Canal Authority*,[33] that the all writs power gave the court jurisdiction to hear an issue that ultimately could end up in the Florida Supreme Court on appeal. Realizing the conflict in decisions, the Court expressly overruled *Watson v. Lee*.[34] Yet, in 1976, the Florida Supreme Court again stated that the all writs power "contemplates a situation where the Court has already acquired jurisdiction of a cause on some independent basis, and the complete exercise of that jurisdiction might be defeated if the Court did not issue an appropriate writ or other process," citing to the previously overruled *Watson v. Lee*.[35] However, in 1982, the Florida Supreme Court accepted jurisdiction of an original action whereby the Senate sued the Governor,

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[29] *Chiles v. Phelps*, 714 So.2d 453, 456-57 (Fla. 1998).
[30] England, *Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform*, 32 U.Fla.L.Rev. 147, 197 n.294 (1980).
[31] 8 So.2d 19 (Fla. 1942).
[32] *Id*. at 21.
[33] 209 So.2d 865 (Fla. 1968).
[34] Id. at 867.
[35] *Shevin ex rel. State v. Public Service Commission*, 333 So.2d 9, 12 (Fla. 1976).

where there clearly was no ancillary action upon which a writ could be issued, thus again finding that the all writs power alone conferred jurisdiction.[36]

In the recent past, the use of the all writs power to create jurisdiction in the Florida Supreme Court has increased. Apparently, greater numbers of petitioners without an underlying ground for jurisdiction are filing petitions that ask for relief based on the all writs power.[37] In 1999, the Florida Supreme Court noted how the practice of filing original actions in the Court seeking extraordinary relief has grown:

> In the last year alone, this Court has received well over 500 petitions for extraordinary relief. The overwhelming majority of these petitions were filed by prisoners seeking to invoke this Court's original writ jurisdiction pursuant to article V, section 3(b)(7), (8) and (9) of the Florida Constitution. This case is but one example.[38]

The practice is most visible in the death penalty area, where numerous "all writs petitions" are filed with the Florida Supreme Court.[39] In 1999, the Florida Supreme Court disposed of 17 cases without opinion where the disposition was either "all writs denied" or "invoke all writs dismissed."

Writs

The Florida Supreme Court has the authority to issue writs of prohibition, mandamus, quo warranto, habeas corpus, and all writs necessary to the complete exercise of its jurisdiction.[40] The District Courts of Appeal, under Article V, section 4(b)(3), of the Florida Constitution, and circuit courts, under Article V, section 5(b), of the Florida Constitution, have the authority to issue writs of habeas corpus, mandamus, certiorari, prohibition, quo warranto, and all other writs necessary to the complete exercise of jurisdiction.

Statutes of Limitations

A statute of limitations is a "statute prescribing limitations to the right of action on certain described causes of action or criminal prosecution; that is, declaring that no suit shall be maintained on such causes of action, nor any criminal charge be made, unless brought within a specified period of time after the right accrued."[41] "A State's interest in regulating the work load of its courts and determining when a claim is too stale to be adjudicated certainly suffices to give it legislative jurisdiction to control the remedies available in its courts by imposing statutes of limitations."[42]

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[36] *The Florida Senate v. Graham*, 412 So.2d 360 (Fla. 1982).
[37] A common title to the petitions is ""Petition for Writs of Mandamus and Prohibition and Other Extraordinary Relief and Petition Invoking This Court's All-Writs Jurisdiction". *See, for example, Hauser ex.rel Crawford v. Moore*, 767 So.2d 436 (Fla. 2000); *In re Rules Governing Capital Postconviction Actions*, 763 So.2d 273, note 2, (Fla. 2000) (footnote listing 2 cases with similar title in the petition). Some are even briefer, simply titled "Petition to Invoke All Writs Jurisdiction". *Richardson v. State*, 760 So.2d 983, 984 (Fla. 3rd DCA 2000). Among others, convicted murderers Thomas Provenzano and Terry Sims filed last minute "all writs" petitions. *Provenzano v. Moore*, 744 So.2d 413 (Fla. 1999); *Sims v. State*, 750 So.2d 622 (Fla. 1999).
[38] *Harvard v. Singletary*, 733 So.2d 1020 (Fla. 1999).
[39] *See, for example, Arbelaez v. Butterworth*, 738 So.2d 326 (Fla. 1999) (Capital Collateral Representative seeking stay of all death penalty cases until the CCR office is "adequately funded").
[40] Art. V, ss. 3(b)(7)-(9), Fla. Const.
[41] Black's Law Dictionary, 6th Ed., at 926.
[42] *Sun Oil Co. v. Wortman*, 486 U.S. 717, 730 (U.S. 1988).

Federal law now imposes a one-year statute of limitations for habeas corpus petitions filed in federal court.[43] The Florida Supreme Court has stated, however, that a Florida law creating a statute of limitations on habeas corpus relief was unconstitutional.[44]

Writ of Habeas Corpus

Habeas corpus is described as follows:[45]

> Although the term "habeas corpus" is applicable to each of several different writs, as generally used, it refers to habeas corpus ad subjiciendum, a writ issued pursuant to a petition or application, directed to an officer or person detaining another, and requiring that person to make a return thereon. The writ requires the body of the person alleged to be unlawfully held in custody or restrained of liberty to be brought before the court so that appropriate judgment may be rendered, upon judicial inquiry into the alleged unlawful restraint.
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> The writ known commonly by the name of habeas corpus was a high prerogative writ known to the common law, the object of which was the liberation of those who were imprisoned without sufficient cause. It is a writ of inquiry upon matters of which the State itself is concerned in aid of right and liberty. In other words, the writ is designed for the purpose of effecting a speedy release of persons who are illegally deprived of their liberty or illegally detained from the control of those who are entitled to their custody. Essentially, it is a writ of inquiry granted to test the right under which a person is detained. It's function is to make precise and definitive inquiry as to whether one's liberty is legally restrained, not to conduct general inquiry in the nature of an appellate review. As a general rule, a habeas corpus proceeding is an independent action, legal and civil in nature, designed to secure prompt determination as to the legality of restraint in some form.
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> The writ of habeas corpus ad subjiciendum is not an action or suit but is a summary remedy open to the person detained. It is civil rather than criminal in nature and is a legal and not equitable remedy. It is not the purpose of the writ to determine whether a person has committed a crime, or the justice or injustice of a person's detention on the merits, but to determine whether the person is legally imprisoned or restrained of liberty, and to secure speedy release when the illegality of detention is shown.

Article V, section 3(b)(9), of the Florida Constitution, provides that the Florida Supreme Court as a whole, or any justice, has jurisdiction to issue a writ of habeas corpus returnable before the Court or any justice, a district court of appeal or any judge thereof, or any circuit judge. Article I, section 13, of the Florida Constitution, provides that the writ of habeas corpus is grantable of right, freely and without cost. A writ of habeas corpus is returnable without delay, and the right to seek a writ of habeas corpus may not be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

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[43] 28 U.S.C. § 2244(d).

[44] *Allen v. Butterworth*, 756 So.2d 52, 62 (Fla. 2000) (interpreting Florida Constitution to grant Florida Supreme Court exclusive authority to set deadlines for postconviction motions).

[45] From Fla.Jur.2d *Habeas Corpus and Postconviction Remedies* §3 (footnotes omitted); see also, *Allen v. Butterworth*, 756 So.2d 52, 60 (Fla. 2000) (stating that habeas corpus petitions are technically civil action, but unlike other traditional civil actions).

Judicial Qualifications Commission

Article V, section 12, of the Florida Constitution, provides for the creation of a Judicial Qualifications Commission (JQC). The JQC investigates and recommends to the Florida Supreme Court of Florida the removal from office of any justice or judge who is unfit to hold office, or for whom discipline is warranted. The JQC also investigates allegations of incapacity during service as a justice or judge.

The JQC is composed of two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts, two judges of county courts selected by the judges of those courts, four members of The Florida Bar who are Florida residents and are selected by The Florida Bar, and five Florida residents who have never held judicial office or been members of The Florida Bar who are appointed by the Governor. The members of the JQC serve staggered terms, not to exceed six years.

Article V, section 12, also sets forth the structure of the JQC, e.g., the composition of its investigative panel, which by its own terms no longer is effective once the JQC adopts its own rules. The JQC has adopted its own rules regarding these matters, thus this language in the constitution is no longer effective.

Geographical Jurisdiction of Courts of Appeal

Article V, section 1, of the Florida Constitution, provides that the intermediate appellate courts are to be divided into districts upon geographical lines. This provision may be in conflict with the long-standing statutory provision in s. 440.271, F.S., which directs that any review of an order by a judge of compensation claims must be appealed to the First District Court of Appeal.

Certification of Cases to the Florida Supreme Court

Article V, section 3(b)(5), of the Florida Constitution, provides that a District Court of Appeal may certify a case as requiring immediate resolution by the Florida Supreme Court. In such cases, the Court has jurisdiction to hear the appeal notwithstanding that there is not an appellate decision being appealed from. Upon certification, the District Court's jurisdiction is deemed transferred to the Supreme Court, and thus the District Court cannot issue any form of temporary order (such as a temporary injunction) that may be necessary to preserve the issue or protect a party.

Phase-in Schedule

Article V, section 20, of the Florida Constitution, provides a phase-in schedule for transfer of offices and duties from the previous Article V, and was necessary as part of the 1972 enactment. The phase-in has been complete for some time now, and the section is of no more than historical interest today.

C. EFFECT OF PROPOSED CHANGES:

Case and Controversy

This joint resolution amends Article V, section 1, of the Florida Constitution, to provide that the jurisdiction of any state court extends only to actual cases in law, equity, admiralty and maritime jurisdiction, and to actual controversies arising under the constitution and the laws of the State of Florida and of the Untied States.

Court Rules

This joint resolution amends Article V, section 2(a), of the Florida Constitution, to authorize the Florida Supreme Court to adopt rules of practice and procedure ("may adopt rules") instead of requiring the Court to do so ("shall adopt rules"). The amendatory language also expressly provides that rules of court may not be inconsistent with statutes in place at the time of adoption and must be revised to conform to subsequently adopted statutes that regulate substantive rights; and that furthermore, a court rule may not abridge, enlarge, or modify substantive legal rights. Additionally, this joint resolution adds language that provides that additional rulemaking power may be expressly delegated to courts by general law. Finally, the provision allowing by general law the repeal of a court rule with a 2/3 vote of each house is changed to require only a simple majority vote.

Jurisdiction

This joint resolution creates Article V, section 1(b), which provides in part that the "any writs power" does not in and of itself grant a court jurisdiction over a case or controversy. Some legal or equitable claim otherwise cognizable by such court is required to establish the jurisdictional basis for the issuance of a writ. The power to issue a writ of quo warranto does not establish power to review any right, power, or duty of a public official other than the officer's right to hold that particular office. In other words, a writ of quo warranto can not be used for any purpose except to test a person's authority to continue holding an office when challenged by competing claimant to such office.

This joint resolution also makes conforming changes to Article V, sections 3(b) (as to the Florida Supreme Court); 4(b)(3) (as to District Courts of Appeal); and 5(b) (as to circuit courts), of the Florida Constitution, regarding the "case and controversy" limitation on jurisdiction.

This joint resolution also amends Article V, section 3(b)(10), of the Florida Constitution, to provide that advisory opinions requested by the attorney general are not subject to the "case and controversy" restriction created by this joint resolution, and to make such advisory opinions binding upon all citizens of this state.

This joint resolution creates Article V, section 3(b)(11), to grant jurisdiction when the Governor requests an advisory opinion of the Florida Supreme Court pursuant to Article IV, section 1(c), of the Florida Constitution. Any such request is not subject to the "case and controversy" restriction created by this joint resolution. Unlike advisory opinions requested by the attorney general pursuant to Article IV, section 10, of the Florida Constitution,[46] which are binding upon all citizens (under other changes proposed by this joint resolution), advisory opinions to the Governor are not binding upon any party not voluntarily participating in such proceeding.

This joint resolution creates Article V, section 3(b)(12), which provides that the Florida Supreme Court has jurisdiction to hear an original proceeding only if the case is instituted against or relating to a judicial officer or officer of the court pursuant to Article V, sections 3(b)(7) ("all writs" clause); 12 (discipline of judges); or 15 (discipline of attorneys), of the Florida Constitution; or is a claim ancillary to one of these types of claim. Original proceedings may also be instituted pursuant to Article V, sections 3(b)(2) (certain bond validation and utilities matters); 3(b)(6) (advisory opinions to

[46] Section 10 provides: "The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion expeditiously."

the United States Supreme Court or a United States Court of Appeals); 3(b)(9) (writ of habeas corpus); 3(b)(10) (advisory opinion on request of the Attorney General); or 3(b)(11) (advisory opinion on request of the Governor), of the Florida Constitution.

Statute of Limitations for Writs

This joint resolution creates Article V, section 1(b), which provides in part that all writs except those directed to judicial officers are subject to statutes of limitation as provided by general law. This joint resolution further provides that a statute of limitations applicable to the writ of habeas corpus may not be less than two years. Conforming amendments are made to Article V, sections 3(b)(9) (as to the Florida Supreme Court), and 4(b)(3) (as to the District Courts of Appeal), of the Florida Constitution.

Judicial Qualifications Commission

This joint resolution amends Article V, section 12, of the Florida Constitution, to provide that all other matters of procedure and organization of the Judicial Qualifications Commission, and any panels thereof, the selection of judges to serve on the commission, and the power to recover costs of an investigation, that are not otherwise set forth in the Constitution, are to be governed by rules adopted by the Florida Supreme Court. Currently the Judicial Qualifications Commission is vested with such rulemaking authority.

This joint resolution further amends section 12 to remove a now unnecessary phase-in schedule regarding the Judicial Qualifications Commission.

Geographical Jurisdiction of Courts of Appeal

This joint resolution amends Article V, sections 1 and 4(b)(1), of the Florida Constitution, to provide that the Legislature has the flexibility to grant a District Court of Appeal exclusive jurisdiction over a subject matter. This would allow for the development of subject matter expertise with a particular District Court of Appeal. For example, the First District Court of Appeal, which currently hears approximately 90 percent of the appeals to administrative rulings, might be considered for statewide jurisdiction over all cases brought pursuant to the Administrative Procedure Act (Ch. 120, F.S.). However, in implementing such a provision caution needs to be taken that certain Florida residents are not effectively denied access to the courts because they live in a section of the state remote to that particular district court of appeal.

One commentator was concerned that "the legislature could pick one DCA to be the final court for all death penalty appeals."[47] This is not possible because Article V, section 3 (b)(1), of the Florida Constitution, otherwise expressly provides that the Florida Supreme Court "[s]hall hear appeals from final judgments of trial courts imposing the death penalty."

Certification of Cases to the Florida Supreme Court

This joint resolution amends Article V, section 3(b)(5), of the Florida Constitution, to provide that, when a case is certified as requiring immediate resolution by the Florida Supreme Court, the district court's jurisdiction shall be retained unless and until the Court issues an order accepting jurisdiction.

[47] Blankenship, Gary, "First House bill filed would rewrite Article V," The Florida Bar News, August 15, 2001 at 9.

Phase-in Schedule

This joint resolution deletes Article V, section 20, of the Florida Constitution, which provides a phase-in schedule that was necessary when Article V was substantially re-written in 1972, but which is now unnecessary.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

A mandates analysis is unnecessary to an analysis of a proposed constitutional amendment.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

A mandates analysis is unnecessary to an analysis of a proposed constitutional amendment.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

A mandates analysis is unnecessary to an analysis of a proposed constitutional amendment.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article XI, section 1, of the Florida Constitution, provides that a constitutional amendment may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house; passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2002 general election.[48] Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published. If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.[49]

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

A strike-all amendment to be filed by the sponsor makes editorial, technical, and stylistic changes and amends the ballot summary to more thoroughly summarize the contents of the joint resolution.[50]

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON STATE ADMINISTRATION:

Prepared by:	Staff Director:
J. Marleen Ahearn, Ph.D., J.D.	J. Marleen Ahearn, Ph.D., J.D.

[48] *See* Art. XI, s. 5, Fla. Const. The 2002 general election is on November 5, 2002.
[49] The first Tuesday after the first Monday in January after the election is Tuesday, January 7, 2003.
[50] In *Armstrong v. Harris*, 773 So.2d 7 (Fla. 2000), the Florida Supreme Court found that there is an implicit requirement that the ballot summary of a proposed constitutional amendment initiated by the Legislature must accurately and completely describe all matters in the proposal.