Florida Law Review

Volume 32 | Issue 2 Article 1

January 1980

Constitutional Jurisdiction of the Supreme Court of Florida: 1980 Reform

Arthur J. England

Eleanore Mitchel Hunter

Richard C. Williams

University of Florida Law Review

VOLUME XXXII WINTER 1980 NUMBER 2

CONSTITUTIONAL JURISDICTION OF THE SUPREME COURT OF FLORIDA: 1980 REFORM

ARTHUR J. ENGLAND, JR.*
ELEANOR MITCHELL HUNTER**
RICHARD C. WILLIAMS, JR.***

TABLE OF CONTENTS

*B.S., University of Pennsylvania 1955; LL.B., University of Pennsylvania 1961; LL.M. (Taxation), University of Miami 1971; Justice of the Supreme Court of Florida (Chief Justice 1978-1980).

**B.A., Bennett College (North Carolina) 1968; Certificate, Johns Hopkins University School of Advanced International Studies 1970; J.D., Florida State University 1975; Administrative Assistant to Chief Justice England 1978-1980 and Supreme Court liaison with the Appellate Structure Commission.

***B.A., Davidson College 1976; J.D., Columbia University 1979; Research aide to Justice England.

INTRODUCTION

The practical aspects of "justice" to most citizens mean speedier, less costly and more conclusive adjudications of property and liberty rights. To achieve these objectives, the chief justice of the Supreme Court of Florida in 1978 appointed a commission to study judicial reform in the state's appellate system, including jurisdictional changes for the Florida Supreme Court.

The efforts of the commission and many others culminated on March 11, 1980, when the voters of Florida were given the opportunity to approve an amendment to Florida's Constitution which would redefine the jurisdiction of the Supreme Court of Florida.[1] Believing the amendment would eliminate delay and costs in appellate proceedings, and expedite the careful resolution of important decisions emanating from the supreme court, the voters overwhelmingly adopted this constitutional amendment.

Principally this article explores the extent to which the voters' expectations have been or will be met by their adoption of the 1980 amendment to article V of the Florida Constitution. A subsidiary purpose is to chronicle the history of this amendment, identify reference sources for later use in construing the amendment, and suggest procedures and rules which should be established to effect the framers' and the voters' wills.

Properly understood and implemented, the 1980 amendment potentially offers an effective, expeditious appellate system geared to the uniqueness of Florida's judiciary. Dedicated appellate jurists, a cooperative appellate bar, and a vigilant public are necessary to assure the efficacy of the amendment. Principal responsibility for the success or failure of the intended changes, however, rests squarely on the seven members of the Florida Supreme Court. Their construction and application of the amendment, particularly in its formative years, will either realize or frustrate the voters' hopes for a new day in Florida appellate justice.

I. ESTABLISHING THE ROLE OF THE SUPREME COURT OF FLORIDA: 1851-1957

From 1851, when a permanent supreme court with three justices was established, until 1957, the state experienced a growing number of civil and criminal courts of record.[2] Various means were devised to enable the high tribunal to

1. See appendix A for the full text of this amendment. Unless otherwise noted, all materials cited in this article are available in the Florida Supreme Court Library, Supreme Court Building, Tallahassee, Florida 32304.

Other major appellate court reforms had been suggested by the Appellate Structure Commission and were adopted in 1979. These reforms included: the creation of a new appellate district and district court of appeal for Florida, *see In re* The Creation of The District Court of Appeal, Fifth District, 374 So. 2d 972 (Fla. 1979); the establishment of eleven new district court judgeships, *see* 1979 Fla. Laws, ch. 79-413 § 3; the adoption of an en banc hearing and rehearing rule for the district courts of appeal, *see In re* Rule 9.331, Determination of Causes by a District Court of Appeal En Banc, Florida Rules of Appellate Procedure, 374 So. 2d 992 (Fla.), *modified,* 377 So. 2d 700 (Fla. 1979); and the elimination of direct supreme court review of workmen's compensation cases, *see* 1979 Fla. Laws, ch. 79-312, § 1.

2. *See* FLA. CONST. art. V, § 1 (1838), for the court's former appellate jurisdiction.

review cases appealed from these courts. At various times the court relied on commissioners, was expanded in size, or sat in separate panels or divisions to manage the increasing number of appeals.[3]

In 1954, the Judicial Council[4] established a task force to study the appellate system and to consider "the question of intermediate courts to hear and determine appeals in the usual cases, at or near the source, not only to diminish the cost but also to curtail the docket of the supreme court where appeals are being filed at the rate of more than one thousand each year."[5] The task force intended to enable the supreme court to sit en banc for oral arguments and decisions in all cases within its jurisdiction. Additionally, the task force sought to restrict supreme court appellate jurisdiction so "that there might not be any possibility of merely offering two appeals, one to the district court of appeal and one to the Supreme Court, and thereby making litigation even more costly and prolonged."[6]

With these objectives in mind, the Council recommended that more than two-thirds of the appeals jurisdiction of the supreme court (then over approximately 1,300 cases) be shifted to three district courts of appeal, each composed of three judges. Applying the 1954 statistics, the supreme court would retain jurisdiction over 7 capital cases, 40 constitutional appeals, 6 certified questions, 18 railroad commission cases, 49 workmen's compensation cases, 117 original matters, and varying numbers of bar admission or discipline petitions, advisory opinion requests, and constitutional writs, not to exceed approximately 450 cases in the aggregate.[7] In 1956, the Council's suggestions to divide appeals between the supreme court and the newly created district courts were endorsed by The Florida Bar, approved by the legislature, and ratified by the voters.[8]

II. THE DEVELOPING DILEMMA: 1957-1977

A. *Classes of Jurisdiction*

The 1956 Constitution assigned the court essentially three classes of jurisdiction — mandatory, discretionary, and constitutional writs. The courts "mandatory" jurisdiction, which encompassed a narrower class of cases after the 1956 constitutional amendment, was further limited by the 1980 amendment. It consists, generally, of those cases for which the court provides plenary review — that is, the court must accept and render a decision on the merits in these pre-

3. *See* A. MORRIS, FLORIDA HANDBOOK 224 (17th ed. 1979-80).

4. The Judicial Council of Florida was created by 1953 Fla. Laws, ch. 28062, which now appears as FLA. STAT. § 43.15 (1979). Although an active leader in judicial reform when it was created, the Council had little to do with judicial reform in Florida after 1972. The fact that no appellate justices or judges have been appointed to the Judicial Council by recent governors, and the gradual shift of judicial data collection functions to the Office of the State Courts Administrator explain the court's frequent use of ad hoc study commissions such as the Appellate Structure Commission. *See* notes 28-30 and accompanying text, *infra*. The Judicial Council was abolished by the 1980 Legislature. H.B. 1777 (Reg. Sess. 1980).

5. FIRST ANNUAL REPORT OF THE JUDICIAL COUNCIL OF FLORIDA at 5-6 (June 30, 1954).

6. *Id.* at 14.

7. *See* SECOND ANNUAL REPORT OF THE JUDICIAL COUNCIL OF FLORIDA at 2-3 (June 30, 1955).

8. FOURTH ANNUAL REPORT OF THE JUDICIAL COUNCIL OF FLORIDA at 3 (June 30, 1957).

scribed cases. The court's "discretionary" jurisdiction was created in 1956 for designated classes of cases — a form of structured, supervisory review — which the 1980 amendment continues. Generally, discretionary jurisdiction cases offer the court an opportunity to accept or reject for substantive consideration those cases presumed sufficiently important for supreme court resolution.

A third category, properly characterized as discretionary but more frequently described as the court's "writ" jurisdiction, authorizes the court to consider extraordinary requests to accelerate or halt some action of a statewide commission or an inferior court. The court's writ jurisdiction is extraordinary in that it is not a substitute for a direct appeal,[9] and other forms of relief typically must be unavailable in another forum.[10] Because the 1980 amendment has left the court's writ jurisdiction virtually unchanged, the amendment's background and effects are conveniently discussed in terms of the first two of these general jurisdictional categories.

B. *Expansion of the Classes*

Although the 1956 amendment contemplated that the court's jurisdiction would be relatively narrow, the supreme court itself created two exceptions to its restricted role. The exceptions severely flawed the court's ability to perform the constitutional role which had been selected for the court by the people. Both exceptions, in fact, contributed to a dilemma which was accurately predicted by dissenting members of the court at the time they were adopted. Both, it developed, impeded the court's later efforts to identify and explain the causes of delay and a rapidly increasing backlog of cases.[11]

The constitution mandated the review of orders or decisions which "directly" passed on the validity of a statute, whether from trial courts or from district courts of appeal. The court, however, in 1959, adopted a policy of reviewing cases in which a challenge to the validity of a statute was not necessarily identified in the lower court's decision, but rather was only "inherent" in the court's ultimate action. In *Harrell's Candy Kitchen, Inc. v. Sarasota-Manatee Airport Authority*,[12] the court assumed jurisdiction over a zoning case based on an assertion in the trial court that the statute creating the zoning board was invalid. Although the central issue at trial was the validity of a height limitation on buildings near a runway, a majority of the court accepted direct appellate jurisdiction because the statutory creation of the board was approved "inherently." The dissenting opinion of Justice Thomas described the so-called "doctrine of inherency" as "a usurpation of the power of the District Court of Appeals."[13]

In effect, this early expansion of the constitution's directive potentially provided for direct review in the supreme court of all criminal cases, where a statute necessarily underpins a criminal charge and can always be attacked as

9. Jenkins v. Wainwright, 322 So. 2d 477 (Fla. 1975).

10. *See, e.g.*, Shevin *ex rel.* State v. Public Serv. Comm'n, 333 So. 2d 9 (Fla. 1976) (mandamus); State *ex rel.* Turner v. Earle, 295 So. 2d 609 (Fla. 1974) (prohibition).

11. These efforts are discussed in detail in section III *infra*.

12. 111 So. 2d 439 (Fla. 1959).

13. *Id.* at 445 (Thomas, J., dissenting).

invalid, and of a majority of civil cases in which statutory rights are applied. The court's adoption of and continued adherence to the inherency doctrine thus created a procedure by which attorneys could bypass the district courts of appeal. In effect, it judicially authorized forum-shopping.

The second, more devastating exception to a restrictive view of the court's jurisdictional limitations was announced in the 1965 decision of *Foley v. Weaver Drugs, Inc.*[14] *Foley* began with a trial court complaint for damages as a result of injuries sustained in 1959. The court granted a motion for summary judgment in favor of one of the defendants and the district court affirmed without opinion.[15] Two years later, the supreme court responded to a petition seeking certiorari review based on an alleged conflict with another district court's opinion by temporarily relinquishing jurisdiction and requesting the district court to "prepare and adopt an opinion setting forth the theory and reasoning upon which a decision in this cause is reached. . . ."[16] The dissenters called the procedure "a distortion of the provisions of the constitution and an arrogation by this Court of power it does not possess."[17]

The district court refused to comply with the request to prepare an opinion, noting that supreme court jurisdiction is supplied by a conflict of decision, not of opinions or reasons. The court also refused to reconsider the cause because after two years, the panel members might be unable to recall the disclosures in the record and arguments, the law might have changed, and the results of reconsideration could only be permeated with uncertainty and instability. The district court concluded that the plaintiffs had no cause of action against one of the defendants under either theory of the complaint, and returned the cause to the supreme court to discern the reasons for its decision from the early affirmance.[18] The supreme court's second review of *Foley*, approving the district court's decision on the merits, demonstrated the court's willingness to accept for review cases without written opinions by the district court. It also created the concept of "record proper" – defined as "the written record of the proceedings in the court under review except the report of the testimony" – as a basis to ascertain the source of alleged direct conflicts in the decisions of the district courts.[19]

Foley had a tremendous impact on the number of cases filed in the court, producing an attitude among attorneys that a district court decision was never final. Thus, practitioners began to perceive the court's conflict jurisdiction as a mechanism by which to seek review of any district court decision. The increased number of filings necessitated a two-step screening process within the court. Files in conflict jurisdiction cases circulated to a minimum of five justices' offices at least twice – once for a vote on jurisdiction, and a second time either for an often sought rehearing on a denial or, if certiorari was granted, for a decision on the merits.

14. 177 So. 2d 221 (Fla. 1965).
15. Foley v. Weaver Drugs, Inc., 146 So. 2d 631 (Fla. 3d D.C.A. 1962).
16. Foley v. Weaver Drugs, Inc., 168 So. 2d 749, 750 (Fla. 1964).
17. *Id.* at 751.
18. Foley v. Weaver Drugs, Inc., 172 So. 2d 907, 909 (Fla. 3d D.C.A. 1965).
19. 177 So. 2d 221, 225 (Fla. 1965).

Although the court's caseload slowly grew from 482 filings in 1958 to 1,288 filings by 1972,[20] court reform efforts in the early 1970s did not identify the supreme court's jurisdiction as a problem when the judicial structure of the state underwent critical analysis in 1971-1972. Reformers, including the court itself, concentrated on the need to consolidate and establish uniform jurisdiction for trial courts. (An attitude also lingered among some justices[21] and commentators[22] that, unlike the court's pre-1957 predicament, the court could at any time relieve its growing caseload merely by overruling its decisions in *Harrell's Candy Kitchen* and in *Foley*.)

Internal efforts were made to cope with the court's rising caseload. The court expedited procedures to screen appeals, limited oral arguments to cases where the court deemed them essential rather than those in which argument was requested by counsel, sat in five-man panels on many cases orally argued, and created a pool of attorneys to summarize certiorari petitions. The court attempted to distinguish substantial from insubstantial questions of constitutional construction and statutory validity.[23] The court wrestled with extensions of the *Foley* doctrine to decisional conflicts created by dicta,[24] dissenting opinions,[25] and concurring opinions.[26] It also struggled with efforts to enlarge the doctrine of "record proper" to include statements by the trial judge, depositions, and testimony.[27]

III. FASHIONING A SOLUTION: 1977-1979

The mistaken impression that internal devices alone could alleviate the court's problem was finally corrected in the spring of 1979. Review of the data revealed by a commission appointed to study Florida's appellate structure indicated that alternative devices were necessary.

In his 1978 Report to the Legislature, then Chief Justice Ben Overton[28]

---

20. Statistics obtained from the Clerk of the Supreme Court of Florida.

For an analysis of the detrimental effects of this increasing caseload on the quality of appellate justice, *see* England & McMahon, *Quantity Discounts in Appellate Justice*, 60 JUD. 442 (1977).

21. *See generally* Letter from Justices of the Supreme Court of Florida to Talbot D'Alemberte, Chairman, Florida Constitution Revision Commission (Nov. 16, 1977).

22. *See generally* Commentary, *Establishing New Criteria for Conflict Certiorari in Per Curiam District Court Decisions: A First Step Toward a Definition of Power*, 29 U. FLA. L. REV. 335 (1977); Comment, *Conflict Certiorari: Is the Supreme Court of Florida Following its Constitutional Mandate?*, 32 U. MIAMI L. REV. 435 (1977); Note, *The Erosion of Final Jurisdiction in Florida's District Courts of Appeal*, 21 U. FLA. L. REV. 375 (1969).

23. *See* Simmons v. State, 354 So. 2d 1211 (Fla. 1978), discussed in Borgognoni & Keane, *Practice Before the Supreme Court of Florida: A Practical Analysis*, 8 STETSON INTRA. L. REV. 318, 330-36 (1979). *See also* Jordan v. State, 334 So. 2d 589 (Fla. 1976).

24. See note 248 *infra*.

25. See note 246 *infra*.

26. See note 247 *infra*.

27. *See* State *ex rel.* Ranalli v. Johnson, 277 So. 2d 24, 25 (Fla. 1973); AB CTC v. Morejon, 324 So. 2d 625 (Fla. 1974); Commerce Nat'l Bank v. Safeco Ins. Co. of America, 284 So. 2d 205 (Fla. 1973).

28. Justice Overton served as chief justice from March 1, 1976 through June 30, 1978. The members of the supreme court elect one justice to serve as chief justice. FLA. CONST. art. V,

recommended the creation of a commission with a broad based participation to determine the need for an additional district court and to consider district court rather than supreme court review of workmen's compensation cases.[29] In the summer of 1978, newly-elected Chief Justice Arthur England implemented Justice Overton's recommendation by appointing an Appellate Structure Commission chaired by Justice Overton and composed of district, circuit and county court judges, legislators, laymen and members of the bar. Justice England expanded the scope of the commission's inquiry, however, to include a review of the entire appellate system in light of the 1956 goal "to ensure that the district courts of appeal are courts of final appellate review as contemplated by Article V of the Constitution."[30]

In response to its expanded duty, the commission analyzed each category of the supreme court's jurisdiction to determine if the encompassed cases were significant or important enough to justify the attention of a then overloaded state high court. Tentative votes at the October 12, 1978, meeting indicated that ideally, mandatory jurisdiction should be restricted to death penalty cases, decisions invalidating statutes or construing the constitution, and bond validations.[31] Nonetheless, after six months of work, the commission rejected constitutional change to achieve this goal and recommended only that the supreme court's jurisdiction be modified by statute and by rule. In light of the overwhelming defeat of all constitutional reforms, the commission feared that legislative and voter approval of an amendment to the constitution would be virtually impossible.[32]

After weeks of intense internal discussion and numerous drafts of proposed changes within the court, the chief justice, on behalf of a unanimous court, presented virtually every aspect of the commission's recommendations for appellate court reforms to the 1979 legislature. The most notable exception was the court's rejection of the commission's proposal to alter the jurisdiction of the supreme court solely by rule and by statute.[33] The court viewed the commission's data as conclusive of the need for a constitutional adjustment and it refused to deny the voters of Florida the right to refine the jurisdictional role which the constitution had created in 1956.

For the first time, the commission's statistics had demonstrated that the court's growing problems were not (as generally believed) attributable to the court's liberality in accepting cases for review, but rather to the ramifications

---

§ 2(b). Traditionally, a chief justice is elected for two years beginning in July of each even-numbered year. SUP. CT. MANUAL OF INTER. OPER. PROC. art. I, § B.

29. 1978 Report to the Legislature, submitted by Chief Justice Ben F. Overton, to the Florida Legislature.

30. *In re* Commission on The Florida Appellate Court Structure, (filed July 26, 1978, as amended Aug. 15, 1978 and Nov. 28, 1978), app. F.

31. Minutes of the Supreme Court Commission on Florida Appellate Court Structure, Oct. 12, 1978 [hereinafter cited as Appellate Structure Commission minutes] at app. E.

32. *See* Tapes of the Supreme Court Commission on Florida Appellate Court Structure, Nov. 16, 1978 [hereinafter cited as Appellate Structure Commission tapes].

33. 1979 Report on the Florida Judiciary, submitted by Chief Justice Arthur J. England, Jr., to the Florida Legislature, April 1979, *reprinted in* 53 FLA. B.J. 296 (1979) [hereinafter cited as 1979 Report].

of its constitutionally assigned mandatory jurisdiction and the numbers of cases being brought as a result, among others, of the *Foley* doctrine. The commission found that "the Court has in reality exercised great restraint in accepting for review the cases over which it has any freedom of choice" and "granted [discretionary petitions] in less than 5 percent of the cases. . . ."[34]

A second exception was the court's rejection of the commission's recommendation that the supreme court screen statutory validity and constitutional construction cases for substantiality. The court regarded this as a circumvention of the constitution. Additionally, the device would prove to be inefficient, requiring another screening procedure in the court and shuttling seemingly insubstantial cases between the dockets of two successive courts.

The court proposed a constitutional amendment in April 1979, filed as Senate Joint Resolution 714 (SJR 714),[35] for consideration at the 1979 regular session of the Florida Legislature. The court's proposal limited the categories of mandatory review to death penalty cases, bond validation proceedings, and district court decisions expressly passing on the validity of a statute or expressly construing a constitutional provision. The court's discretionary jurisdiction under SJR 714 was predicated on district court certifications of decisions in conflict or of questions of great public importance, plus a "safeguard" provision authorizing the supreme court, on its own initiative, to reach down and obtain for review trial court orders and district court decisions which had substantial importance and required immediate statewide resolution.

The Judicial Council endorsed and supported SJR 714.[36] Under pressure to accept or reject the court's proposal on very short notice, however, the Board of Governors of The Florida Bar by a vote of eighteen for and twelve against failed to endorse SJR 714 with the two-thirds vote required by the Board's bylaws.[37] The members of the Board objected to SJR 714 principally because attorney-filed petitions for conflict certiorari review were eliminated, and because the initiative, or so-called "reach down" provision, did not appear to allow attorney-filed suggestions to the court.

During two Senate Judiciary-Civil Committee hearings Justice Alan Sundberg,[38] on behalf of the court, explained the need to limit mandatory jurisdiction. Despite the court's expressed intent to limit severely the exercise of the safeguard or "reach down" provision, that provision was ridiculed by opponents of SJR 714 as "pluck up" power which would destroy finality in all cases throughout the judicial system.[39] Opposition to SJR 714 also developed from

34. 53 FLA. B.J. at 298.

35. Fla. S.J. Res. 714 (Reg. Sess. 1979, introduced by S. Hair) *reprinted in* 53 FLA. B.J. 304 (1979).

36. Twenty-Fifth Annual Report of the Judicial Council of Florida at 7-9 (Feb. 1, 1980). As noted later, its chairman publicly opposed constitutional reform. *See* note 58 and accompanying text, *infra.*

37. Fla. Bar Integr. Rules By laws, art. VI, § 2. *See* Minutes of the Florida Bar Board of Governors meeting, April 18, 1979 (available from The Florida Bar).

38. Justice Sundberg was elected to serve as chief justice for a two year term commencing July 1, 1980.

39. *Proposed Amendment to Section 3, Article V of the State Constitution: Tapes of*

attorneys who expressed a lack of trust in district court judges' ability or willingness to recognize, concede, and certify conflicting decisions. SJR 714 was then withdrawn from further consideration during the 1979 regular session, in order to give the court an opportunity to discuss alternatives with opponents and critics and to seek a consensus substitute in time for an announced special legislative session in the fall of 1979.[40] No comparable bill was introduced into the House of Representatives, and no House committee considered the court's recommendations.

Notwithstanding the fate of SJR 714, the court gained support for its position that structural change was essential to avoid a potential decline in the quality of its work and increasing backlogs and delays. In an effort to review the controversial aspects of the court's original proposal, Justice Sundberg scheduled a series of meetings with a committee[41] appointed by the president of The Florida Bar. Eventually the bar committee and Justice Sundberg drafted a statement of agreed principles[42] to advise the bar's Board of Governors and the court of a consensus that could be reached. This included a proposal to retain discretionary review of written opinions of district courts invoked by attorney-filed petitions asserting decisional conflict. The bar committee made clear its intent to overrule the *Foley* decision regarding conflict, however, by declaring that only an opinion which "articulates a rule of law . . ." should qualify for discretionary review.

To replace the much-maligned "reach down" provision, the bar committee recommended a mechanism for direct supreme court review of some trial court orders which required immediate resolution. Designed to allow a bypass of the district courts, this procedure would be initiated by certification of the cause by the chief judge of the judicial circuit. The bar committee also suggested that the court propose more severe limitations on mandatory appeals than the court itself had originally proposed, recommending that district court decisions upholding the validity of statutes be reviewed on a discretionary rather than a mandatory basis. Finally, at the urging of attorneys Tobias Simon and others who feared too severe a narrowing of the court's review authority, the bar committee presented an alternative plan for discretionary review of "decisions of a district court of appeal which substantially affect the general public interest or the proper administration of justice throughout the state" — a standard based on the American Bar Association model for constitutionally unlimited discretionary review.[43]

After the bar's deliberations, Justice Overton reconvened the Appellate Structure Commission to review the bar committee's statement of principles. At its meeting on September 5, 1979, the commission agreed that mandatory

Hearings on S.J. Res. 714 Before the Senate Judiciary-Civil Committee, 6th Legis., Reg. Sess., May 3, 1979 [hereinafter cited as *Senate Committee Hearings on S.J. Res. 714*].

40. *Id.*

41. The members of the Select Committee of The Florida Bar were: Benjamin Redding, Chairman; Edwin C. Cluster, Vice-Chairman; Gerald Brown, Talbot D'Alemberte, C. Harris Dittmar, Charles C. Edwards, Timothy A. Johnson, Jr., David V. Kerns, and N. David Korones.

42. Special Committee to Study Supreme Court Jurisdiction, The Florida Bar, Statement of Principles (Sept. 12, 1979), app. D.

43. ABA Standards Relating to Appellate Courts § 3.00 (1977).

jurisdiction should be limited more severely than the court had proposed in SJR 714, but it disagreed with the bar committee's preferential guidelines for discretionary review. At the urging of commission member Tobias Simon, the commission opted for the alternative – constitutionally unlimited discretionary review – to be restricted by the court's adoption of rules setting guidelines for its own exercise of discretion.[44]

An important suggestion emerged from the commission's review of the proposed "bypass" mechanism. Rather than having circuit court chief judges certify causes in need of immediate resolution by the supreme court, the commission recommended that the district courts themselves certify those special cases after the filing of an appeal in their court. The commissioners perceived the advantage under this procedure of collecting like cases from the various circuits within the district for consolidated supreme court review.

On September 15, 1979, the bar committee formally presented its principles to the Board of Governors through the committee's chairman, attorney Benjamin Redding of Panama City. Tobias Simon argued for the alternative, commission-approved approach of constitutionally unlimited discretionary review. The members of the Board of Governors, at the request of Justice Sundberg, agreed to support a court proposal for constitutional change based either on the committee's principles or the alternative.[45]

As the court prepared to submit a proposed substitute for SJR 714 to the November special legislative session, the chairman of the American Bar Association's Committee to Implement Standards of Judicial Administration expressed an interest in Florida's court reform effort and chose Tallahassee as the site for the next scheduled ABA Committee meeting. The ABA Committee's national expertise with appellate courts focused, in accordance with the ABA standards, on constitutionally unlimited discretionary review for the supreme court. In discussions with legislative committee members, the court and the bar, the ABA Committee members recognized unusual features in the Florida system. Florida's judiciary is unique with the large number of appeals (35 per year) filed in death penalty cases, each requiring full record and sentence review, compared with only eight cases per year in the state with the next highest volume. The ABA Committee also noted the special concern for constitutional conflict resolution jurisdiction, due to the diversity in geographical regions of the state. These and other unique factors, the Committee concluded, adequately explained Florida's proposed deviation from the ABA's model standard of constitutionally unlimited discretionary review. A majority of the ABA Committee left Tallahassee satisfied with the consideration of ABA standards which had gone into Florida's court reform effort.[46]

Only two issues in the proposal were very controversial when the combined Senate-House Judiciary Committees met to consider the court's new constitutional amendment during the three day special session. The first was the court's suggestion to remove from the selection of supreme court justices the constitu-

44. *See* Letter from Tobias Simon to Justice Overton (Sept. 6, 1979), at app. E.

45. *See* Minutes of the Florida Bar Board of Governors meeting, Sept. 15, 1979 (available from The Florida Bar).

46. *Court Caseload Amazes Experts*, Today, Nov. 16, 1979, at 8B, col. 3.

tional restriction which required appellate district representation on the court. The Senate committee voted to retain the district selection requirement in that committee's draft resolution, Senate Joint Resolution 20-C (SJR 20-C) and the selection reform issue immediately died at that juncture.[47] The other publicly controversial issue concerned a proposal to transfer review from the supreme court to the district courts of appeal of most public utility decisions. The House and Senate committees determined, however, in accordance with an understanding between the court and major utilities, that only those Public Service Commission cases relating to rates and services of electric, gas, and telephone utilities were appropriate for initial review in the supreme court because these frequently affected segments of the population in service areas larger than the territory of any of the five appellate districts. Other Commission matters, such as those affecting transportation and water and sewer companies, were deemed suitable for initial review in one or more district courts of appeal in the manner that other agencies' actions were reviewable under Florida's Administrative Procedure Act.[48] The court's proposal, SJR 20-C, emerged from committees of both chambers of the legislature in essentially the form suggested by the court, as derived from the bar committee's statement of principles.[49]

At the request of the sheriffs' and clerks' associations, the Judiciary-Civil Committee chairman introduced an amendment on the floor of the Senate to retain discretionary review of district court decisions affecting a class of constitutional or state officers,[50] a provision which had been proposed for deletion by the court and the bar committee. The court and the associations' representatives had agreed that the amendment was acceptable, so long as district court decisions in this category, as in all others, "expressly" dealt with either of the classes. The Senate also amended SJR 20-C to delete any mention of the Public Service Commission, preferring to avoid naming any particular agency in the constitution and selecting the term "statewide agencies" based on an explanation for that term by the chairman of the sponsoring committee.[51]

SJR 20-C, as amended, was adopted by the Senate by a vote of 38 to 2 on November 28, together with a companion bill (SR 21-C) to accelerate submission to the voters by allowing the proposed amendment to be considered at the special presidential primary election scheduled for March 11, 1980.[52] Immedi-

47. *Proposed Amendment to Section 3, Article V of the State Constitution: Tapes of Hearings on S.J. Res. 20-C Before the Senate Judiciary-Civil Committee*, 6th Legis., Spec. C Sess., Nov. 26, 1979 [hereinafter cited as *Senate Committee Hearings on S.J. Res. 20-C*].

48. *Id.*

49. *See* app. D.

50. Journal of the Senate, 6th Legis., Spec. C Sess., Nov. 28, 1979, at 11; app. C.

51. *Id.* at 12-13.

52. *Id.* at 12. Art. XI, § 5(a) of the Florida Constitution requires a three-fourths vote of each house of the legislature in order to authorize voting on a constitutional amendment before the next regularly scheduled general election, which in this case would have been held in November 1980. On March 11, 1980, the special presidential election would be held and provided an opportunity to submit other matters for the voter's consideration. One other constitutional proposal previously scheduled concerned an increase of the homestead exemption of property-owners for school tax purposes. *See* Journal of the House of Representatives, 6th Legis., Spec. Sess., June 6, 1979, at 2-3. Like the court reform proposal, it also received overwhelming (69%) voter approval.

ately following the vote in the Senate, both measures were certified to the House, substituted for comparable House legislation, and adopted without further amendment by a vote of 110 to 2.[53]

IV. Adoption of the 1980 Amendment: November 1979-March 1980

During the period between November 28, 1979 and March 11, 1980, active public support for SJR 20-C was undertaken by six of the seven justices of the supreme court,[54] the governor, the attorney general of Florida, and the organized bar. Endorsements for the proposal were sought and received from the conferences of district court, circuit court, and county court judges, the League of Women Voters, the prosecuting attorneys' association, the sheriffs' association, and numerous newspaper and television editorial boards.[55]

Proponents such as The Florida Bar[56] and the justices[57] argued two dominant themes of persuasion. First, the amendment would eliminate delay in the supreme court, both by removing from the court's docket those district court decisions without written opinion, and by eliminating all direct appeals to the supreme court from trial courts (except in bond validation cases and cases in which a death penalty had been imposed). Second, the amendment would reduce the cost of litigation by reducing the number of successive appeals and by making the district courts truly final in the bulk of matters brought to Florida's appellate courts. Yet, as was continually pointed out, the amendment would still provide the opportunity for supreme court review of all cases having statewide importance.

Opposition to the amendment developed from a small group of Florida attorneys organized by Tobias Simon as "Floridians against Limited Access," from one current and one former member of the supreme court,[58] and from the public defenders' association. The opponents' main efforts were directed toward development of media appearances and editorial support against the amendment and to develop opposition in local bar associations.

---

53. Journal of the House of Representatives, 6th Legis., Spec. C Sess., Nov. 28, 1979 at 23-24; app. B.

54. Chief Justice Arthur England, and Justices Joseph Boyd, Ben Overton, Alan Sundberg, James Alderman and Parker Lee McDonald.

55. See note 63 *infra*.

56. The Florida Bar and the Young Lawyers Section of The Florida Bar developed and disseminated promotional literature, and provided speakers for both civic clubs and media discussions and debates. Promotional literature, including targeted explanations of the amendment, was distributed widely throughout the state to employees of the state's electric and telephone companies, and to condominium association members.

57. Articles supporting passage of the amendment, most authored by justices of the court supporting the amendment, were published in trade publications such as the journals or monthly newsletters of the Florida Bankers Association, the cattlemen's association, the county commissioners' association, the League of Municipalities, and the like. Television appearances and radio spots were scheduled whenever possible for the justices supporting the amendment, and for others offering public support for its adoption.

58. Justice James Adkins and retired Justice B. K. Roberts, who was then chairman of the Judicial Council.

Five dominant themes were espoused. First, it was suggested to the media that the amendment would limit or cut off entirely their access to the supreme court for the resolution of first amendment cases.[59] Second, local bar associations and the public were told that general access to the court would be curtailed.[60] Third, it was suggested that district court judges would be given the power to prevent review of their decisions by the supreme court.[61] Fourth, it was urged that the Supreme Court of Florida should be like the United States Supreme Court and the ABA's model high tribunal, having constitutionally unlimited discretionary review of district court decisions.[62] Lastly, the opponents inferred that the amendment was unnecessary because the court's caseload was in fact diminishing and the justices travelled too much.

Immediately before the March 11 vote, the 1980 amendment was endorsed editorially by almost every major daily newspaper in the state.[63] The official vote for passage on March 11 was 940,420 to 460,266 – a 67 percent ratio of voter approval.[64] The significance of the public discussion concerning the amendment is that it provides a frame of reference by which to ascertain the intent of the voters.[65] In this case, the public debate and informational literature make abundantly clear that the voters were asked to approve an appellate court structure having these features:

1. a supreme court having constitutionally limited, as opposed to unlimited,[66] discretionary review of intermediate appellate court decisions;[67]

---

59. *See* explanation by attorney Tobias Simon, available in the Supreme Court Library.

60. *Id.*

61. *Id.*

62. *Id.*

63. For example, editorial endorsements for the amendment were written by the Sarasota Herald Tribune, Feb. 22, 1980, at 6A, col. 1; St. Petersburg Times, Feb. 29, 1980, at 20A, col. 1; Pensacola News-Journal, March 2, 1980, at 20A, col. 1; (Orlando) Sentinel Star, March 2, 1980, at 8D, col. 1; Fort Myers News-Press, March 3, 1980, at 6A, col. 1; (Jacksonville) Florida Times-Union, March 7, 1980, at A8, col. 1; Tampa Tribune, March 8, 1980, at 12A, col. 1; (Cocoa) Today, March 9, 1980, at 22A, col. 1; Miami Herald, March 9, 1980, at 2M, col. 1; and the Tallahassee Democrat, March 10, 1980, at 4A, col. 1. Editorials against the amendment were written by the Ft. Lauderdale News and Sun-Sentinel, March 8, 1980, at 26A, col. 1; and by the (Lakeland) Ledger, March 7, 1980, at 14A, col. 1.

64. Certificate of Secretary of State (unofficial).

65. Myers v. Hawkins, 362 So. 2d 926 (Fla. 1978).

66. Proponents of the amendment urged that unlimited discretionary review would necessitate the creation of a pool of research assistants (a "hidden judicial bureaucracy") to screen the 5,000 to 6,000 cases which would likely come to the court. Opponents did not deny that a research pool would in all probability be required. The supporting justices expressed concern in terms of their unwillingness to abdicate judicial decision-making to a pool of recent law graduates. *Proposed Amendment to Section 3, Article V of the State Constitution: Tapes of Hearings on H.J. Res. 33-C Before the House Judiciary Committee*, 6th Legis., Spec. C Sess., Nov. 26, 1979, [hereinafter cited as *House Committee Hearings on H.J. Res. 33-C*] (remarks of Justice Sundberg). For a recent comment on this problem, *see* Abramson, *Should a Clerk Ever Reveal Confidential Information?*, 63 JUD. 361, 363 (1980); S. WASBY, T. MARVELL & A. AIKMAN, VOLUME AND DELAY IN STATE APPELLATE COURTS: PROBLEMS AND RESPONSES, Nat'l Center for State Courts (Pub. No. R0048, 1979).

67. Adoption of the 1980 amendment was, of course, merely a reaffirmation of the decision to provide a structured review originally made in 1956 when the first district courts

2. finality of decisions in the district courts of appeal, with further review by the supreme court to be accepted, within the confines of its structural review, based on the statewide importance of legal issues and the relative availability of the court's time to resolve cases promptly; and

3. use of the district courts for the initial appellate review of all trial court orders and judgments, other than in death penalty and bond validation matters, in order to cull routine points of appeal (such as evidentiary rulings) from the important legal issues eventually brought to the court.[68]

V. Analysis of the 1980 Constitutional Change

A. *Mandatory Jurisdiction*

The mandatory jurisdiction of the supreme court is now limited to death penalty cases from circuit courts, district court decisions invalidating state statutes or provisions of the state constitution and, because provided by statute, bond validations and Public Service Commission cases relating to electric, gas and telephone utilities.

(1) Death penalties — section 3(b)(1)

The 1980 amendment provides that the supreme court

> [s]hall hear appeals from final judgments of trial courts imposing the death penalty ....[69]

This portion of section 3(b)(1) is identical to its predecessor. This aspect of the court's jurisdiction provoked very little controversy during the discussions leading to the 1980 amendment.[70] Indeed, it was thought that any attempt to relieve the supreme court of its responsibilities in death penalty cases might jeopardize the constitutionality of Florida's capital sentencing procedures.[71]

---

were created. *House Committee Hearings on H.J. Res. 33-C*, Nov. 26, 1979, *supra* note 66 (remarks of Benjamin Redding and Justice Sundberg).

68. Proponents of the amendment described as "baggage" the routine points of appeal formerly brought along with the issue or issues which provided jurisdictional authority for filing in the supreme court. *Senate Committee Hearings on S.J. Res. 20-C*, Nov. 26, 1979, *supra* note 47 (remarks of Justice Sundberg); *House Committee Hearings on H.J. Res. 33-C*, Nov. 26, 1979, *supra* note 66 (remarks of Benjamin Redding).

69. Fla. Const. art. V, § 3(b)(1).

70. During the deliberations of the Appellate Structure Commission, a suggestion was made that review of death penalty cases be bifurcated, so that only sentences would first be reviewed by the supreme court. It was thought that a reduction of a death sentence to life would obviate the need for a full record review of the conviction in the supreme court. In view of the necessity of an initial full record review to determine the appropriateness of the sentence, however, a subsequent district court review of the conviction was rejected as being duplicative and unwieldy. *See* Appellate Structure Commission minutes, Feb. 22, 1979, *supra* note 31 (statement of Tobias Simon); Letter from Tobias Simon to Justice Overton (Feb. 14, 1979).

71. The constitutionality of these procedures, which are codified in § 921.141, Florida Statutes (1979), was upheld by the United States Supreme Court in Proffitt v. Florida, 428 U.S. 242 (1976). In that case, the Court recognized the vital role of the Supreme Court of Florida in reviewing "each death sentence to ensure that similar results are reached in

In recent years, the review of death penalty cases has consumed an estimated 25 percent of the court's available work time.[72] The time-consuming nature of this review stems in part from the exceptionally high number of death penalty cases before the court. The court has received an average of 30 to 35 cases in this category each year since the enabling statute was enacted,[73] and at the time of the adoption of the 1980 amendment approximately 110 such cases were pending in the court.[74] The difficulty of the task also constitutes an immense drain on judicial time because the supreme court must review the entire record to determine both the validity of the conviction and the appropriateness of the sentence of death.[75] This system of dual review mandated by statute[76] is probably essential to the constitutional imposition of any death penalty.[77] Since the 1980 amendment neither disturbs prior procedures nor affects current trends, it is certain that review of death penalty cases will continue to constitute a major part of the court's work.

(2) Life sentences — section 3(b)(2)

The 1980 amendment provides that the supreme court

> [w]hen provided by general law, shall hear appeals from ... ~~orders of trial courts imposing life imprisonment~~ ....[78]

Under current Florida law, conviction for a capital felony[79] may give rise to either a sentence of life imprisonment or a sentence of death.[80] The supreme court has direct appellate jurisdiction of death penalty cases under section 3(b)(1).[81] In contrast, life imprisonment cases traditionally have been reviewed

---

similar cases," and concluded that the state tribunal performed this function "with a maximum of rationality and consistency." *Id.* at 258-59 (footnote omitted).

72. *Senate Committee Hearings on S.J. Res. 20-C*, Nov. 26, 1979, *supra* note 47 (remarks of Judge Albert Tate, United States Court of Appeals, Fifth Circuit); *see also House Committee Hearings on H.J. Res. 33-C*, Nov. 26, 1979, *supra* note 66 (remarks of Chief Justice England).

73. FLA. STAT. § 921.141(4) (1979). Statistics obtained from the Clerk of the Supreme Court of Florida.

74. *Id.*

75. *See* Proffitt v. Florida, 428 U.S. 242 (1976); LeDuc v. State, 365 So. 2d 149 (Fla. 1978); Gibson v. State, 351 So. 2d 948 (Fla. 1977), *cert. denied*, 435 U.S. 1004 (1978); State v. Dixon, 283 So. 2d 1 (Fla. 1973), *cert. denied*, 416 U.S. 943 (1974). The court always examines both the conviction and the sentence, even though the defendant does not challenge his conviction. 351 So. 2d at 949 & n.2. See note 70 *supra*.

76. FLA. STAT. § 921.141(4) (1979); FLA. R. APP. P. 9.140(f).

77. See note 71 and accompanying text, *supra*.

78. FLA. CONST. art. V, § 3(b)(2).

79. There are only two capital felonies in Florida — first-degree murder, FLA. STAT. § 782.04(1) (1979), and sexual battery (when committed by an adult upon a minor 11 years of age or younger), FLA. STAT. § 794.011(2) (1979).

80. FLA. STAT. § 775.082(1) (1979).

81. See note 69 and accompanying text, *supra*.

initially by the district courts of appeal.[82] Under former section 3(b)(2), the legislature had the power to assign these cases to the supreme court, but it never chose to do so.

On recommendation of the supreme court, the 1980 amendment was fashioned to eliminate the legislature's authority to assign the review of life sentences to the supreme court. The purpose for the deletion was twofold. There was little likelihood the legislature would ever assign life imprisonment cases to the supreme court, as there was no expressed dissatisfaction with decisions in those cases emanating from the district courts of appeal.[83] More important, there was no certainty as to the actual number of life imprisonment cases which legislative assignment would send to the court.[84] Two justices expressed serious concern that any such assignment would overwhelm the court with capital cases.[85]

The deletion of the legislature's authority to assign life imprisonment cases to the supreme court will have no effect on existing practice or the validity of the statute which authorizes imposition of a death penalty.[86] Cases involving a life sentence will continue to be reviewed by the district courts of appeal.

---

82. *See, e.g.*, Trotter v. State, 377 So. 2d 34 (Fla. 1st D.C.A. 1979); Bradley v. State, 374 So. 2d 1154 (Fla. 3d D.C.A. 1979); Cason v. State, 373 So. 2d 372 (Fla. 2d D.C.A. 1979).

83. It should be noted that several judicial and legislative attacks on the limited nature of the supreme court's jurisdiction have been unsuccessful. For example, Justice Ervin argued in dissent in State v. Dixon, 283 So. 2d 1, 18 (Fla. 1973), *cert. denied*, 416 U.S. 943 (1974), that the court's inability to review life imprisonment cases prevented it from properly monitoring uneven sentencing in capital cases. *Id.* Similar fears were later expressed by Justice England. Alvord v. State, 322 So. 2d 533, 541-42 (Fla. 1975) (dissenting opinion), *cert. denied*, 428 U.S. 923 (1976). Nevertheless, the United States Supreme Court firmly rejected this argument in Proffitt v. Florida, 428 U.S. 242 (1976), concluding "[t]his problem is not sufficient to raise a serious risk that the state capital-sentencing system will result in arbitrary and capricious imposition of the death penalty." 428 U.S. at 259 n.16.

The Court's conclusion in *Proffitt* did not end debate over the wisdom of mandating state supreme court review of life imprisonment cases. During the debates of the 1977 Florida Constitution Revision Commission, several commissioners renewed the argument that such review was necessary to ensure uniformity in the imposition of the death penalty. *See* Transcript of Fla. Const. Rev. Comm'n proceedings 214-27 (Jan. 26, 1978), 41-52 (Jan. 27, 1978). As a result of these debates, the Commission included in its package of revisions a proposal giving a defendant the option of appealing his conviction to the supreme court when a life sentence was imposed. This proposal, like all others in the Commission's package, was defeated by the voters at the November, 1978 general election. For a complete analysis of the background and possible effect of this proposal on the workload of the supreme court, *see* Note, *A Step Toward Uniformity: Review of Life Sentences in Capital Cases*, 6 FLA. ST. U.L. REV. 1015 (1978).

84. It is interesting to note that during the debates of the 1977 Florida Constitution Revision Commission, then Chief Justice Overton predicted that the Commission's proposal—giving defendants the option of appealing life imprisonment cases to the supreme court, see note 83 *supra*—would add at least 150-200 merit appeals to the court's workload each year. Transcript of Fla. Const. Rev. Comm'n proceedings 247-48 (Mar. 7, 1978).

85. *Senate Committee Hearings on S.J. Res. 714*, May 3, 1979, note *supra* 39 (remarks of Justice Sundberg); Address by Chief Justice Arthur J. England, Jr. to the Commission on the Florida Appellate Court Structure (Aug. 28, 1978).

86. FLA. STAT. § 921.141 (1979).

(3) Appeals from trial courts — formerly section 3(b)(1)

The 1980 amendment provides that the supreme court

> [s]hall hear appeals ... ~~from orders of trial courts ... initially and directly passing on the validity of a state statute or a federal statute or treaty, or construing a provision of the state or federal constitution.~~[87]

Under former section 3(b)(1), orders of circuit courts and county courts could be brought to the supreme court by direct appeal if they initially and directly passed on the validity of a state statute, a federal statute, or a federal treaty (either expressly or inherently), or if they expressly[88] construed a provision of the state or federal constitution. By far, the most important feature of the 1980 amendment is the abolition of all direct appeals to the supreme court from trial courts in these five generic categories.

Jurisdiction to review declarations of statutory and state constitutional invalidity under section 3(b)(1) is now expressly limited to "decisions of district courts of appeal . . . ."[89] The court's discretionary authority to review declarations of statutory validity and constitutional constructions under section 3(b)(3) is also limited to district court decisions. As a corollary of these changes, of course, the "initially and directly" requirement[90] became unnecessary and was deleted. The intended result of these related changes is that appeals from challenges to a state statute or to a constitutional provision will now be considered in the district courts of appeal, with presumptive finality of the appeals process in those courts as to all cases other than those in which a declaration of invalidity results.[91]

Reasons for the reassignment of jurisdiction were numerous. First, cases coming to the supreme court from the trial courts usually lacked a written explanation of the reasoning for the decision where a statute was declared valid. Moreover, many were at a preliminary stage of the trial proceeding. As a consequence of these factors, neither the reasoning of the trial judge nor a developed record was available for review of the constitutional question pre-

87. FLA. CONST. art. V, § 3(b)(1).

88. Although former § 3(b)(1), by its terms, did not require that constitutional constructions be "express," this requirement had been imposed on the provision by the case law. *See* Rojas v. State, 288 So. 2d 234 (Fla. 1973); Ogle v. Pepin, 273 So. 2d 391 (Fla. 1973) (holding the inherency doctrine inapplicable to constitutional constructions).

89. FLA. CONST. art. V, § 3(b)(1). See note 98 and accompanying text, *infra*.

90. This requirement limited supreme court review in any particular case to the order or decision of the court which first passed on the validity of a statute or which first construed a constitutional provision. *See* Matthews v. State, 363 So. 2d 1066 (Fla. 1978); *In re* Kionka's Estate, 121 So. 2d 644 (Fla. 1960) (O'Connell, J., concurring specially).

91. The circuit court, rather than the district court, will hear appeals from county court orders. FLA. STAT. § 26.012(1) (1979). Conceivably, supreme court review of some county court orders invalidating a statute or constitutional provision could be precluded, depending on the action of reviewing tribunals. For an explanation and analysis of this problem, see notes 110-119 and accompanying text, *infra*.

sented.[92] The court thus faced abstract constitutional questions presenting the most difficult form of legal issue for it to review because the parties frequently viewed the issue in different perspectives. As a result of the absence of a factual context, the precedential value of the court's decisions in these areas was often, although inadvertently, either overnarrow or overbroad.[93]

Equally affecting the workload of the court was the fact that trial court decisions frequently carried a number of rulings on subsidiary issues, bringing before the supreme court a range of comparatively insignificant matters which did not warrant review by the state's highest tribunal. Nonetheless, the jurisprudence had developed that the supreme court would consider the entire case once any appealable issue had arisen.[94] The consequence of this doctrine was that subsidiary, nonconstitutional issues were brought to the court which could have been equally well handled by three district court judges.

In recent years the court criticized the apparent use of this constitutional provision as a means either of bypassing the district courts of appeal or coming to the supreme court for review of evidentiary and other "routine" matters on the basis of a technical or occasionally "frivolous" constitutional issue.[95] The most flagrant abuse of this jurisdictional tool was the practice of raising a constitutional issue by simple motion, perhaps as one ground of many, before a county or circuit court, with no intention to develop or argue the constitutional claim.[96]

After considering these problems, both the Appellate Structure Commission and the bar committee concluded that, with the obvious exception of death penalty and bond validation cases, all matters coming to the supreme court from trial courts should pass through the district courts of appeal. Generally, it was thought a more refined record and distillation of the issues would result

---

92. *See, e.g.*, Johnson v. State, 351 So. 2d 10, 13 (Fla. 1977) (England, J., dissenting); Jordan v. State, 334 So. 2d 589, 593 (Fla. 1976) (England, J., dissenting).

93. *See, e.g.*, Spears v. State, 337 So. 2d 977 (Fla. 1976), *limited in* State v. Keaton, 371 So. 2d 86 (Fla. 1979).

94. *See* Coffin v. State, 374 So. 2d 504 (Fla. 1979); Anoll v. Pomerance, 363 So. 2d 329 (Fla. 1978); Griffis v. State, 356 So. 2d 297 (Fla. 1978); Allen v. State, 326 So. 2d 419 (Fla. 1975). The rationale traditionally offered in support of this doctrine is that it promotes "the efficient and speedy administration of justice . . .", P.C. Lisseden Co. v. Board of County Comm'rs, 116 So. 2d 632, 636 (Fla. 1959), for as the court noted in *Coffin*, "once a case has been accepted and the issues briefed and argued, transfer of the cause involves a repetitive waste of judicial time and energy." 374 So. 2d at 508.

In extreme cases — that is, where the constitutional issue is obviously "frivolous" or insubstantial and is employed solely to provide a basis for supreme court jurisdiction — the court will depart from this doctrine and transfer the entire case to the appropriate lower court. *See, e.g.*, MBF Theatres, Inc. v. State, 373 So. 2d 920 (Fla. 1979); Simmons v. State, 354 So. 2d 1211 (Fla. 1978); Evans v. Carroll, 104 So. 2d 375 (Fla. 1958).

95. *See* Coffin v. State, 374 So. 2d 504 (Fla. 1979); Evans v. Carroll, 104 So. 2d 375 (Fla. 1958). In *Coffin*, the court urged appellate practitioners to challenge "frivolous" constitutional issues by appropriate motions before argument. The court also cautioned that attempts to expand jurisdiction by focusing on these constitutional issues might "obscure lesser, but significant, trial errors." 374 So. 2d at 508 & n.6.

96. *See* Johnson v. State, 351 So. 2d 10 (Fla. 1977); Jordan v. State, 334 So. 2d 589 (Fla. 1976).

from this process. Additionally, the presence of a written opinion by the district court would facilitate the supreme court's consideration of all other cases.[97]

No estimate was made as to the number of new trial court orders which the 1980 amendment would add to the caseload of the district courts. The bar committee and the legislature felt, however, that the impact on each district court would be minimal because of the diffusion of these cases among the five appellate districts. In fact, there are no reported instances of the supreme court's having reviewed a trial court order which initially and directly passed on the validity of a federal statute or treaty. Therefore, this authority for review was removed by the 1980 amendment.

(4) Invalidity of state statute or constitutional provision – section 3(b)(1)

The 1980 amendment provides that the supreme court

> [s]hall hear appeals from ... decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution ....[98]

This provision drastically alters the court's former mandatory jurisdiction over questions of statutory validity and constitutional construction. Before the 1980 amendment, section 3(b)(1) required the supreme court to review both trial court orders and district court decisions which "initially and directly" passed on the validity of a state statute, federal statute or treaty, or which construed a provision of the state or federal constitution.[99] These five generic categories placed a very broad range of cases within the court's mandatory jurisdiction.

The 1980 amendment significantly narrows the scope of former section 3(b)(1). The supreme court's mandatory jurisdiction is now limited to district court decisions, and only to those which declare invalid either a state statute or a provision of the state constitution.[100] When a district court pronounces a statute or constitutional provision valid, review must be sought only under the court's discretionary authority.[101] Review of constitutional constructions is also shifted to the court's discretionary jurisdiction.[102] As previously noted, supreme court review of orders and decisions passing on the validity of federal statutes and treaties has been completely eliminated.

The rationale for these changes is best understood by reference to the development of the provision which was eventually enacted. The Appellate Structure Commission and the bar committee considered whether it was necessary for the supreme court to review every district court decision which declared

97. *Senate Committee Hearings on S.J. Res. 714*, April 12, 1979, *supra* note 39 (comments of Justice Sundberg).

98. FLA. CONST. art. V, § 3(b)(1).

99. FLA. CONST. art. V, § 3(b)(1) (1968).

100. FLA. CONST. art. V, § 3(b)(1).

101. *Id.* § 3(b)(3).

102. *Id.*

valid a state statute or a provision of the state constitution.[103] Often these decisions lack statewide significance, or do not pose significant issues for supreme court consideration. For example, in *Hotoph v. State*,[104] the court was forced to examine the constitutionality of a special law prohibiting net or seine fishing in certain parts of St. Johns County.[105] Some cases do have statewide significance, of course, and those will come to the court for discretionary consideration with a presumption of both legislative correctness,[106] and judicial correctness.[107] These factors obviously tend to reduce the likelihood that supreme court review will alter the result in any particular case, and therefore mandatory review was not thought to be necessary.

Any district court decision invalidating a statute or provision of the state constitution would necessarily result in some disharmony in the law or confusion in the administration of justice throughout the state. Supreme court review is essential for uniformity in the application of the law in those cases. In contrast, the court's refusal to review a case validating a statute or a constitutional provision will have no adverse effect on the statewide operation of the law or constitution.

These considerations prompted the commission and the bar committee to recommend that the supreme court consider as a matter of right only those cases in which a statute or constitutional provision is declared invalid, and leave other cases involving questions of statutory validity or constitutional construction to its discretionary jurisdiction.[108] The Clerk of the supreme court has estimated that approximately 25 cases of constitutional or statutory invalidity will come to the court each year after the adoption of the 1980 amendment.[109]

Although new section 3(b)(1) is precisely worded, the provision has been so completely changed that a few unanswered questions necessarily remain.

(a) County court orders

One question is whether the limitation of the court's mandatory jurisdiction to "decisions of district courts of appeal"[110] prevents supreme court review of cases emanating from county court orders which invalidate statutes or constitutional provisions. Under the present statutory scheme, the circuit courts have

---

103. Appellate Structure Commission minutes, Oct. 12, 1978, *supra* note 31. *See also* app. E.

104. 367 So. 2d 1015 (Fla. 1979).

105. Similarly, in Graham v. State, 362 So. 2d 924 (Fla. 1978), the court upheld the constitutionality of a statute making it unlawful for any person to molest crab traps, lines, or buoys without the permission of the owner.

106. Statutes are presumptively constitutional, and all reasonable doubts are resolved in favor of their validity. A.B.A. Indus., Inc. v. City of Pinellas Park, 366 So. 2d 761 (Fla. 1979); Belk-James, Inc. v. Nuzum, 358 So. 2d 174 (Fla. 1978); Golden v. McCarty, 337 So. 2d 388 (Fla. 1976).

107. A trial court's findings and judgment come to an appellate court clothed with a presumption of correctness. Delgado v. Strong, 360 So. 2d 73 (Fla. 1978); Herzog v. Herzog, 346 So. 2d 56 (Fla. 1977). Similar deference would obtain for district court decisions coming to the supreme court.

108. FLA. CONST. art. V, § 3(b)(3). *See* notes 204-227 and accompanying text, *infra*.

109. Statistics obtained from the Clerk of the Supreme Court of Florida.

110. FLA. CONST. art. V, § 3(b)(1).

general appellate jurisdiction over the county courts,[111] and any further appellate review of a county court order generally lies within the district court's discretionary certiorari jurisdiction.[112] It is conceivable that a county court order invalidating a state statute or constitutional provision might never be received by the supreme court if, on review, the circuit court affirmed the order and a district court later denied certiorari review. Conceivably, then, a statute or constitutional provision could be valid in some counties or circuits of the state and invalid in others. This obviously would undermine the framers' intent to ensure uniformity in the law.[113]

Although this problem was not anticipated by the framers, there are at least two possible solutions. First, district courts could be encouraged to grant certiorari review in all cases where a circuit court order, on review of a county court order, has invalidated a statute or a constitutional provision.[114] District court review would then give at least three appellate judges[115] the opportunity to examine the case on the merits. More significantly, it would lay the predicate for a future review in the supreme court.

As a second possible solution, the legislature could enact a statutory "bypass" for the circuit courts, giving the district courts direct appellate jurisdiction over all county court orders passing on the validity of a state statute or constitutional provision.[116] This procedure would expedite district court review and ensure that the supreme court has the final word on all invalidation cases. It would also prevent four levels of review, and attendant delay, for this class of cases. At the start of the 1980 legislature's regular session, the supreme court requested that the legislature adopt this second alternative.[117]

---

111. FLA. STAT. § 26.012(1) (1979).

112. FLA. CONST. art. V, § 4(b)(3).

113. See note 108 and accompanying text, *supra*.

114. This problem was discussed at a meeting of the state's appellate judges and justices, which was convened by the chief justice on March 22, 1980. Of the 33 district court judges present, all agreed that review should be granted in all such cases even though certiorari was the basis of the request.

115. More than three judges will have the opportunity to review the case if the district court decides to sit en banc. *See* FLA. R. APP. P. 9.331 (1977).

116. Both the circuit courts and the district courts benefited from a similar sort of "constitutional double bypass" under old § 3(b)(1) since all county court orders involving constitutional constructions or questions of statutory validity were appealable directly to the supreme court. *See* FLA. STAT. § 26.012(1) (1979).

117. At the request of the supreme court, bills were introduced at the 1980 regular session of the legislature to revise § 26.012(1), Florida Statutes (1979), as follows:

26.012 Jurisdiction of circuit court.—

(1) Circuit courts shall have jurisdiction of appeals from county courts except ~~those--appeals which-may-be-taken-directly-to-the-Supreme-Court~~ appeals of county court orders and judgments declaring invalid a state statute or a provision of the state constitution.

Fla. S. 702 (Reg. Sess. 1980); Fla. P.C.B. 38 (Reg. Sess. 1980). In effect, this proposal would enable a bypass of the circuit courts whenever a county court order declared invalid a state

It should be noted that section 3(b)(5) enables a district court to certify a trial court order directly to the supreme court if it requires immediate resolution and is either of great public importance or will have a great effect on the administration of justice.[118] Some county court invalidations, whether initially brought to a district court or brought through a circuit court affirmance, could fall within this provision if its requirements were met.[119]

(b) Inherency doctrine

A second question is whether the new provision, which mandates review of district court decisions "declaring invalid" either a state statute or constitutional provision, carries forward the inherency doctrine of *Harrell's Candy Kitchen*.[120] Under this doctrine, it was not necessary that a written opinion or order expressly rule on the validity of a state statute[121] in order to predicate review in the supreme court. A ruling of validity that was implied or inherent in the lower court's decision was considered sufficient.[122]

If the new provision were interpreted to obviate the old inherency doctrine and require an express declaration of invalidity, the possibility would exist that some district court decisions "declaring invalid" a state statute or constitutional provision would not be eligible for supreme court review. For example, a trial court could declare a state statute invalid and a district court could affirm the trial court without an explanation of its action.[123] Thus, the decision might not be reviewable in the supreme court.[124] Such a result would clearly be at odds with the intent of the framers in adopting the provision.[125] Moreover, the contrast between the "expressly" requirements in section 3(b)(3) and the omission of any like directive in this section suggests that inherency is preserved. Thus, the term "declaring invalid" should carry forward the inherency doctrine to the extent that the district court's action can be shown to be predicated on a trial court order which declares a statute or constitutional provision invalid.

---

statute or constitutional provision. If enacted, the district courts would be required to determine whether this provision applies to "as applied" invalidations as well as facial invalidations. This had been an issue for the supreme court before the 1980 amendment. *See* notes 126-132 and accompanying text, *infra*. The district courts could treat the issue differently, perhaps leading to a direct conflict of decisions which the supreme court would want to resolve.

118. FLA. CONST. art. V, § 3(b)(5).

119. *See, e.g.*, State v. Champe, 373 So. 2d 874 (Fla. 1978), discussed at notes 271-272 and accompanying text, *infra*.

120. *See* Harrell's Candy Kitchen, Inc. v. Sarasota-Manatee Airport Auth., 111 So. 2d 439 (Fla. 1959), discussed at notes 12-13 and accompanying text, *supra*.

121. Under the case law which had developed prior to the 1980 amendment, application of the inherency doctrine was limited to cases involving questions of statutory validity; it did not apply to those cases construing a provision of the state or federal constitution. *See, e.g.*, Craft v. Craft, 276 So. 2d 4 (Fla. 1973); Ogle v. Pepin, 273 So. 2d 391 (Fla. 1973).

122. *See, e.g.*, Gissendanner v. State, 373 So. 2d 898 (Fla. 1979); Levitz v. State, 339 So. 2d 655 (Fla. 1976).

123. The district court's decision without an explanation could be a per curiam affirmance or a written opinion which says simply that all points have been considered and are without merit.

124. See notes 171-192 and accompanying text, *infra*.

125. See notes 103-108 and accompanying text, *supra*.

The inherency problem should rarely arise. District court judges, it would seem, have an obligation to express their reasoning for so solemn a responsibility as declaring invalid either a state statute or a provision of the state constitution. A district court might well reduce its writing role, however, by adopting a trial court's order which adequately articulates reasoning for the action taken and reproducing that order as its opinion. In those cases, no problem of inherency will arise because the district court's decision will be adequately expressed for subsequent review.

(c) "As applied" decisions

A third question under new section 3(b)(1) arises from the distinction between an attack on the validity of a statute "on its face" as opposed to "as applied." A facial attack on the validity of a statute challenges its constitutionality for all situations.[126] In contrast, an as applied attack merely challenges the statute's constitutionality as it pertains to the facts of a particular case.[127] It is thus possible for a statute to be constitutionally valid on its face, but invalid as applied to a certain fact pattern.[128]

In *Snedeker v. Vernmar, Ltd.*,[129] a narrowly-divided court[130] held that jurisdiction would lie under old section 3(b)(1) when a lower court passed on the validity of a statute as applied.[131] Since *Snedeker*, the court has regularly entertained both facial and as applied challenges to the validity of statutes, although one justice recently questioned the wisdom of that decision.[132] It remains to be seen whether the new section 3(b)(1) will carry forward *Snedeker* and its progeny, so as to encompass declarations of both facial and as applied invalidity.[133]

---

126. *See, e.g.*, Vernold v. State, 376 So. 2d 1166 (Fla. 1979); Scott v. State, 369 So. 2d 330 (Fla. 1979); State v. Belgrave, 364 So. 2d 1225 (Fla. 1978).

127. *See, e.g.*, Cross v. State, 374 So. 2d 519 (Fla. 1979); Matthews v. State, 363 So. 2d 1066 (Fla. 1978); Reams v. State, 279 So. 2d 839 (Fla. 1973).

128. *See, e.g.*, Fiske v. State, 366 So. 2d 423 (Fla. 1978); *In re* Fuller, 255 So. 2d 1 (Fla. 1971).

129. 151 So. 2d 439 (Fla. 1963).

130. The vote in *Snedeker* was four-to-three.

131. *Snedeker* overruled the court's contrary decision on this point in Stein v. Darby, 134 So. 2d 232 (Fla. 1961).

132. In Cross v. State, 374 So. 2d 519 (Fla. 1979), Chief Justice England urged that *Snedeker* be reevaluated. The majority in *Cross* accepted jurisdiction without comment, and then proceeded to uphold the validity of Florida's disorderly intoxication statute against a claim that, as applied to the defendant, it impinged on protected first amendment rights. In response, Chief Justice England stated:

> After reading the majority's opinion, I cannot help asking myself why this case should be in our Court to resolve. The majority, I believe, has merely performed an exercise of the most fundamental form of evidential review, of the type properly performable by the district courts of appeal rather than this tribunal.
>
> Having asked myself why, under Florida's present appellate structure, we have provided this form of appellate review without articulating any legal principle of value to the jurisprudence of this state, I found the answer in the Court's decision in *Snedeker v. Vernmar, Ltd.*, 151 So. 2d 439 (Fla. 1963), upon which the majority has implicitly relied as the basis for our jurisdiction.

There was virtually no discussion of this problem during the development of the 1980 amendment. Arguably, one interpretation of section 3(b)(1) which is consistent with the amendment's objectives,[134] is that it would not require as applied determinations of the district courts to fall within the supreme court's mandatory review jurisdiction. This argument is premised on the notion that a successful as applied attack results only in a declaration that an individual application of a statute is without the bounds of constitutional permissibility. The challenged statute remains unaffected, posing none of the implications for further review which led to this aspect of the court's mandatory jurisdiction. Consequently, it can be argued that district court determinations of as applied invalidity usually will not have statewide significance, and therefore supreme court review is not essential.[135]

Conversely, a failure to accept as applied invalidations would create a crack through which some important cases might fall, resulting in a lack of jurisdiction for necessary supreme court review. The point can be illustrated by the recent supreme court decision of *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*[136] In that case the court reviewed a district court decision which had determined that a certain agent hired by a public body was subject to the public records law.[137] Hypothetically, the district court could have ruled that the public records law was invalid as applied to that particular agent of a public body. If as applied determinations were not appealable under section 3(b)(1), there would be no basis for the parties to seek supreme court review under the court's mandatory jurisdiction. Of course, the district court could certify the issue for discretionary consideration,[138] but it might not. This scenario raises the question upon which the authors decline to speculate, whether that case or any other which seemingly presents important public principles needs supreme court review after the district court has fully considered the issue and ruled on the merits.[139] The ultimate issue in this debate

---

. . . .

Rather than restate the jurisdictional arguments set forth in the majority and dissenting opinions in *Snedeker* to indicate my concerns, I need only say here that the dissenting opinion of Justice Thomas in *Snedeker* is by far more compelling to me than the majority's opinion, that we should reevaluate *Snedeker* in light of what we now know about the appellate processes that have evolved in the past fifteen years, and that a realistic appraisal of contemporaneous jurisprudence in Florida will reveal that Justice Thomas' hypothesized concerns with our taking "as applied" statutory challenges were amazingly farsighted.

Id. at 521.

133. This analysis is equally applicable but less important under the court's authority in section 3(b)(3) to review any decision of a district court which declares a state statute valid. Under that provision, the court's jurisdiction is discretionary.

134. See notes 66-68 and accompanying text, *supra.*

135. There are other possible avenues within the court's discretionary jurisdiction for review of district court decisions holding a statute invalid as applied. *See, e.g.*, FLA. CONST. art. V, §§ 3(b)(3) (constitutional construction), 3(b)(4) (certification).

136. 379 So. 2d 633 (Fla. 1980).

137. FLA. STAT. ch. 119 (1975).

138. FLA. CONST. art. V, § 3(b)(4).

139. Notably, the district courts also will have to resolve the question of whether to re-

would be whether the 1980 amendment was framed to permit district court finality in cases such as these, or whether the as applied invalidity problem simply was not foreseen. The debates of the framers and the information provided the public offer no answer.

(5) Bond validations – section 3(b)(2)

The 1980 amendment provides that the supreme court

> [w]hen provided by general law, shall hear appeals from final judgments ... entered in proceedings for the validation of bonds or certificates of indebtedness ....[140]

Before and after the 1980 amendment, section 3(b)(2) authorized the legislature to provide by general law for supreme court review of final judgments in bond validation proceedings. The legislature has provided for such review in section 75.08, Florida Statutes (1979).[141] This category of jurisdiction, which brings approximately five to ten cases to the court each year,[142] remained unchanged in the constitution.

The rationale for retaining authority over bond validation cases in the supreme court appears to have been pragmatic. It was believed that the finality of bond judgments, for marketability purposes, would be enhanced and speeded by decisions of the supreme court rather than a district court of appeal.[143] Moreover, aside from being few in number, bond finance cases in the supreme court do not entail the elaborate record review which encumbers the court in other matters, such as death penalty cases.[144] The court's function in reviewing bond validation final judgments is simply to determine whether the governmental agency issuing the bonds had the power to act and whether it exercised that power in accordance with the law.[145] Review of bond validation cases therefore does not consume an inordinate amount of the court's time.

(6) Review of administrative action – section 3(b)(2); formerly sections 3(b)(3) and 3(b)(7)

The 1980 amendment provides that the supreme court

---

view as applied invalidations from the trial courts. While it is possible that the five district courts might take different stands on this issue, the supreme court ultimately could resolve any such conflict of decisions.

140. FLA. CONST. art. V, § 3(b)(2).

141. This section provides that "[a]ny party to the action whether plaintiff, defendant, intervenor or otherwise, dissatisfied with the final judgment, may appeal to the Supreme Court within the time and in the manner prescribed by the Florida Appellate Rules." FLA. STAT. § 75.08 (1979).

142. Statistics obtained from the Clerk of the Supreme Court of Florida.

143. *House Committee Hearings on H.J. Res. 33-C*, Nov. 26, 1979, *supra* note 66 (remarks of Benjamin Redding).

144. See note 75 and accompanying text, *supra*.

145. Doane v. Lee County, 376 So. 2d 852 (Fla. 1979); Speer v. Olsen, 367 So. 2d 207 (Fla. 1978).

(2) [w]hen provided by general law, ... shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.[146]

~~(3) may issue writs of certiorari to commissions established by general law having statewide jurisdiction.~~

~~(7) [s]hall have the power of direct review of administrative action prescribed by general law.~~

Before the 1980 amendment, two provisions of article V — sections 3(b)(3) and 3(b)(7) — directed or authorized review of administrative action which might be assigned to the supreme court by the Florida Legislature. Over the years, only two classes of administrative cases remained with the supreme court — Industrial Relations Commission (IRC) decisions in workmen's compensation cases,[147] and decisions of the Public Service Commission (PSC).[148]

The supreme court never expressly declared whether its review of PSC matters was premised on section 3(b)(7), which assigned the power of direct review of administrative action as prescribed by general law, or section 3(b)(3), which allowed review by certiorari of commissions established by general law having statewide jurisdiction.[149] It is clear, however, that the court generally considered cases from the PSC "by certiorari," frequently denying review with-

---

146. FLA. CONST. art. V, § 3(b)(2).

147. *See, e.g.*, Exxon Co. v. Alexis, 370 So. 2d 1128 (Fla. 1978); Farrell v. Amica Mut. Ins. Co., 361 So. 2d 408 (Fla. 1978).

IRC decisions were assigned to the court by 1971 Fla. Laws ch. 71-355, § 120 (former FLA STAT. § 440.27(1)), which provided, in relevant part, that "[o]rders of the [Industrial Relations Commission] entered pursuant to s. 440.25 shall be subject to review only by petition for writ of certiorari to the supreme court." On October 1, 1979, review of IRC decisions was transferred to the First District Court of Appeal. See note 154 and accompanying text, *infra*.

148. *See, e.g.*, Aloha Utils., Inc. v. Florida Pub. Serv. Comm'n, 376 So. 2d 850 (Fla. 1979); Gulf Coast Motor Line, Inc. v. Hawkins, 376 So. 2d 391 (Fla. 1979).

Supreme court review of PSC decisions is directed by various statutes relating to specific regulated industries, *see* authorities cited in notes 158 & 162 *infra*, and by one "blanket" provision, FLA. STAT. § 350.641(1) (1979) ("All petitions to the Supreme Court to review orders of the Florida Public Service Commission by writ of certiorari shall be filed in the Supreme Court within the time and in the manner provided by the Florida Appellate Rules."). The 1980 amendment will necessitate the repeal or revision of many of these statutes. See note 162 *infra*. Bills for this purpose were introduced at the commencement of the 1980 regular session of the legislature.

149. *Compare* City of St. Petersburg v. Hawkins, 366 So. 2d 429, 430 (Fla. 1978) ("This cause is before us on a petition for writ of certiorari to review an order of the Florida Public Service Commission. . . . We have jurisdiction pursuant to Article V, Section 3(b)(7), Florida Constitution.") *with* H. Miller & Sons, Inc. v. Hawkins, 373 So. 2d 913, 913 (Fla. 1979) ("This cause is before us on petition for writ of certiorari to the Public Service Commission. Art. V, § 3(b)(3), Fla. Const.").

out a written opinion.[150] In contrast, the court specifically stated in *Scholastic Systems, Inc. v. LeLoup*,[151] that its review of IRC decisions was by certiorari under section 3(b)(3).

During the debates of the Appellate Structure Commission[152] and in the statement of principles developed by the bar committee,[153] it was generally agreed that all administrative decisions could be properly reviewed by the district courts of appeal instead of the supreme court. In the meantime, the 1979 legislature withdrew workmen's compensation cases from supreme court review by its dual action of abolishing the Industrial Relations Commission and assigning the review of workers' compensation decisions to the First District Court of Appeal.[154] With that action, the supreme court's administrative review jurisdiction was limited to matters arising from the Public Service Commission. Considerable debate ensued as to whether even that jurisdiction of the court should be retained.[155] However, it was decided that the statewide significance of PSC decisions in electric, telephone and gas cases, and their financial impact on the citizens of the State of Florida, warranted leaving the review of those Commission decisions with the court.[156]

Section 3(b)(2) commences with the phrase "when provided by general law,"[157] thus enabling the legislature to withdraw the court's limited jurisdiction. This continues former section 3(b)(7), which indicated that reviewable administrative actions would be those "prescribed by general law." Of course, implementing legislation to confer jurisdiction on the supreme court already appears in the statutes which govern the three classes of regulated utilities.[158]

150. *See, e.g.*, Flamingo Transp., Inc. v. Hawkins, 368 So. 2d 1366 (Fla. 1979); Florida Power Corp. v. Hawkins, 366 So. 2d 881 (Fla. 1978).

151. 307 So. 2d 166 (Fla. 1974).

152. Appellate Structure Commission minutes, Oct. 12, 1978, *supra* note 31. *See* app. E.

153. *See* app. D.

154. *See* 1979 Fla. Laws, ch. 79-312, § 1. For a complete analysis of the 1979 reform of Florida's Workers' Compensation Law, see Sadowski, Herzog, Butler & Gokel, *The 1979 Florida Workers' Compensation Reform: Back to Basics*, 7 FLA. ST. U. L. REV. 641 (1979).

155. *See Senate Committee Hearings on S.J. Res. 20-C*, Nov. 26, 1979, *supra* note 47; *House Committee Hearings on H. J. Res. 33-C* (later replaced by S.J. Res. 20-C), Nov. 26, 1979, *supra* note 66.

156. See notes 162-166 and accompanying text, *infra*.

157. FLA. CONST. art. V, § 3(b)(2).

158. FLA. STAT. § 366.10 (1979) enables the supreme court to review PSC orders affecting gas and electric utilities. There is no comparable provision in chapter 364, which governs the regulation of telephone companies, so supreme court review of PSC orders affecting telephone companies is based on FLA. STAT. § 350.641(1) (1979), the "blanket" provision. *See, e.g.*, Florida Tel. Corp. v. Mayo, 350 So. 2d 775 (Fla. 1977).

In response to the passage of the 1980 amendment, a bill was introduced at the 1980 regular session of the legislature which would amend both of the above statutes to conform with the language of new section 3(b)(2). S.B. 458 (Reg. Sess. 1980). Section 366.10, under the bill, would provide specifically for supreme court review of "any action of the commission relating to rates or service of utilities providing electric or gas service." Section 350.641(1), the "blanket" provision, would be amended similarly so as to enable supreme court review of PSC orders involving telephone, gas, and electric utilities, and a new provision in chapter 364 would provide specifically for supreme court review of PSC orders involving telephone companies. The proposed revision of § 350.641(1) also assigns review of all other PSC action to the First District Court of Appeal.

This new provision has several significant features which should be noted. First, the legislature is only free to prescribe review of the action of "statewide agencies."[159] This term first appeared in SJR 20-C when it reached the floor of the Senate, and is best explained by reference to the journal of the Senate on the day this provision was adopted.[160] The term "statewide agencies" was designed both to eliminate a direct reference to the Public Service Commission,[161] and to ensure that decisions of local agencies, such as municipal utilities, would not be initially reviewable in the supreme court.

Second, the only classes of utilities for which supreme court review may be prescribed are those providing electric, gas and telephone services. Eliminated from direct supreme court review are all decisions of the Public Service Commission, or any other statewide agency, affecting other regulated industries.[162] The framers of this provision limited supreme court review to only three classes of utilities on the basic premise that PSC decisions with respect to any of them would have significant, statewide, financial implications, whereas PSC decisions involving other regulatory functions would not. For example, the supreme court had reviewed for a number of years transportation decisions of very minor statewide impact, such as those determining the size of passenger busses between municipalities and their outlying airports,[163] regulating sightseeing services,[164] and one involving the state's only regulated bridge company.[165] The framers intended to cut down substantially the number of cases that would come to the court from the PSC, and it is estimated the court will now receive approximately five to ten such cases each year.[166]

The plan to limit supreme court review to three major classes of utility cases was conceived through an alliance between the supreme court and representatives of the electric, gas and telephone utilities in the state. This alliance arose as a reaction to earlier drafts of the proposed constitutional amendment, including SJR 714, which would have eliminated all supreme court review of Public Service Commission cases.

---

159. FLA. CONST. art. V, § 3(b)(2).

160. *See* app. C.

161. An earlier draft of § 3(b)(2) expressly mentioned the Public Service Commission. This was later considered unwise in light of the possible change in the commission's name or function, and the inappropriateness of naming any particular administrative agency in the Florida Constitution. *See* app. C.

162. Ground transportation cases (e.g., bus and trucking) and water and sewer cases are the main categories of PSC decisions which had been, but are no longer, eligible for direct supreme court review. Some of the statutes which authorize direct supreme court review of cases now outside the court's jurisdiction, and which therefore should be repealed, include FLA. STAT. § 367.131 (1979) (water and sewer cases), *id.* § 365.12 (private wire companies), and *id.* § 323.09(1) (ground transportation cases). A bill was introduced in the 1980 regular session of the legislature to repeal these and other inoperative statutes. S.B. 458 (Reg. Sess. 1980).

163. *See, e.g.*, Daytona Beach Limousine Serv., Inc. v. Yarborough, 267 So. 2d 11 (Fla. 1972).

164. *See, e.g.*, Tamiami Trail Tours, Inc. v. Mayo, 333 So. 2d 15 (Fla. 1976); A-1 Bus Lines, Inc. v. Bevis, 330 So. 2d 1 (Fla. 1976); American Sightseeing Tours, Inc. v. Bevis, 326 So. 2d 437 (Fla. 1976).

165. *See* Florida Bridge Co. v. Bevis, 363 So. 2d 799 (Fla. 1978).

166. Statistics obtained from the Clerk of the Supreme Court of Florida.

Some members of the Public Service Commission opposed placing review of any PSC decisions in the district courts of appeal for fear of a dispersal of review among the five district courts.[167] The 1980 amendment did not resolve the place for review of PSC cases removed from the supreme court. Shortly after the amendment was adopted a bill was filed to assign review of these cases to the First District Court of Appeal.[168]

Third, the 1980 amendment allows the legislature to prescribe review of the "action" of statewide agencies relating to the three subject classes of utilities. The obvious intent of the framers was to parallel former section 3(b)(7) and the terminology of the Administrative Procedure Act, which describes virtually all things which an administrative agency can do, either by order or rule, as "agency action."[169]

Fourth, the provision allows review of statewide agency (PSC) actions which relate to "rates or service."[170] This phraseology was selected with the broad intent of covering all subjects of regulation relative to electric, gas and telephone utilities. The framers of the constitutional proposal did not envision that PSC decisions affecting these three classes of utilities would be channeled to any district court of appeal. For practical purposes the terms "rates" and "services" should be viewed as all-encompassing as to these utilities.

B. *Discretionary Jurisdiction*

Before analyzing the categories of cases within the court's discretionary jurisdiction, discussion of two specific changes in terminology intended to clarify the constitutional standards is essential.

(1) Inserting "expressly"

The 1980 amendment provides in section 3(b)(3) that the supreme court

> [m]ay review ~~by certiorari~~ 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 ~~any~~ district court of appeal or of the supreme court on the same question of law ....[171]

The 1980 amendment places the term "expressly" before each distinctive

167. *House Committee Hearings on H.J. Res. 33-C*, Nov. 26, 1979, *supra* note 66 (remarks of Benjamin Redding).

168. See note 158 *supra*.

169. FLA. STAT. § 120.52(2) (1979); City of Plant City v. Mayo, 337 So. 2d 966 (Fla. 1976); City of Titusville v. Florida Pub. Employees Relations Comm'n, 330 So. 2d 733 (Fla. 1st D.C.A. 1976).

170. FLA. CONST. art. V, § 3(b)(2).

171. FLA. CONST. art. V, § 3(b)(3).

jurisdictional base of the supreme court's discretionary jurisdiction which appears in section 3(b)(3). This change is equal in importance to the reordering of direct appeals.[172] The profound effect of the change is that all of the court's discretionary jurisdiction is now predicated on written opinions of the district courts on points of law brought for review, rather than on obscure legal issues which were never discussed at the appellate level.[173] The impact of this change becomes apparent when one considers the practice of the court under former section 3(b)(3).

As was mentioned earlier,[174] the major purpose of the 1956 revision of article V was to relieve the supreme court's overburdened docket by creating the district courts and making them courts of final appellate jurisdiction in most cases. This purpose was severely undermined by *Foley*, where a bare majority (4-3) of the justices held that the court would accept jurisdiction of cases where conflict certiorari was based solely upon a district court per curiam affirmance of lower court action without opinion (hereafter called "PCA").[175] The rather dubious rationale offered in support of this holding was that a district court affirmance without opinion became an effective precedent in the trial court being affirmed, so as to provide the potential for a "conflict" of decisions within the circuit.[176] Because there was no articulation of conflicting precedent in the

172. See notes 87-97 and accompanying text, *supra*.

173. Possibly, a legal issue could be discussed at length in a trial court's order but avoid supreme court review by omission from a district court's decision. The seemingly anomalous result becomes highly rational when it is remembered that the district court may have resolved the case on a legal or factual ground (such as standing) which made it unnecessary or inappropriate to reach the legal issue discussed below.

174. See note 5 and accompanying text, *supra*.

175. *Foley* overruled Lake v. Lake, 103 So. 2d 639 (Fla. 1958), which held that, with some exceptions, district court decisions are not reviewable under conflict certiorari unless there is direct conflict on the face of the opinion.

176. In Florida Greyhound Owners & Breeders Ass'n, Inc. v. West Flagler Assocs., 347 So. 2d 408 (Fla. 1977), Justice England severely criticized this basic rationale underlying *Foley*:

> In my view, the [rationale] articulated by the *Foley* majority is in all events manifestly unsound. It is based on the indefensible assumption that trial judges assume that district courts issue per curiam affirmances only when they agree with the trial judge's reasons for ruling a certain way. That assumption is not only fallacious as a matter of simple logic, but it has, since *Foley*, been expressly rejected by the district courts themselves. . . . To my mind, there is no possible way that a district court's affirmance without opinion can create decisional disharmony in the jurisprudence of this state sufficient to warrant our attention. The foul assumption which underlies any review is that the district court perpetrated an injustice which it could not explain away in an opinion. I refuse to indulge that assumption.
>
> • • • •
>
> Even if I am wrong in my premise that an affirmance without opinion doesn't constitute a "precedent," I would still contend that the need to "harmonize" such a precedent with other decisions is too miniscule to require our intercession. A precedent so limited simply does not create disharmony in the general law of the state. Similar situations occur whenever a losing litigant fails to take an erroneous trial court decision to the district court or an erroneous district court decision to us. In those cases future litigants are affected by any propensity of the trial judge or the appellate court to follow its erroneous

district court's decision, it was necessary to create the concept of "record proper" – the written record of the proceedings in the trial court except the transcript of testimony[177] – from which to determine whether the district court affirmance created the necessary conflict.[178] Justice Thornal, in dissent, strongly criticized the majority's holding in *Foley*:

> [A]ll of this simply means that the District Court decisions are *no longer final* under any circumstances. It appears to me that the majority view is an open invitation to every litigant who loses in the District Court, to come up to the Supreme Court and be granted a second appeal – the very thing which we assured the people of this state would *not* happen when the judiciary article was amended in 1956.[179]

Justice Thornal's warning was accurate and prophetic, as the *Foley* doctrine created a number of unfortunate consequences for supreme court practice. Increasing numbers of certiorari petitions were filed alleging decisional conflict on the basis of district court PCAs, and the court found that it was no small task either to define or to dig into the "record proper" to find decisional conflict.[180] By providing both a new and virtually boundless level of review, the *Foley* doctrine exacted a high price in time and money for individual litigants and became a means of delaying lost causes.[181] It also commanded significant time and energy from the supreme court's justices.[182]

"precedent," yet the system survives. That is because those cases have no lasting effect on our general jurisprudence. For the same reason, unexplained district court decisions have only a limited potential effect throughout the system.

Id. at 410-12 (footnote omitted) (concurring opinion).

177. Foley v. Weaver Drugs, Inc., 177 So. 2d 221, 225 (Fla. 1965).

178. The concept of "record proper," which was derived from the English common law, created great confusion in the court's jurisdictional jurisprudence. *See* Note, *Conflict Certiorari Jurisdiction of the Supreme Court of Florida: The "Record Proper,"* 3 FLA. ST. U.L. REV. 409 (1975) and authorities cited therein. The court's expansive, yet unpredictable, treatment of this concept led one student commentator to state that "[t]he post-*Foley* cases lead to one conclusion: where the supreme court is interested in the merits of the controversy before it, it will examine the *entire* record, not merely the record proper, in determining whether it has conflict certiorari jurisdiction." *Id.* at 424 (emphasis in original). *See also* Gibson v. Maloney, 231 So. 2d 823, 832 (Fla.), *cert. denied*, 398 U.S. 951 (1970) (Thornal, J., dissenting) ("The majority is out-Foleying *Foley*. Just once, it would be helpful if my colleagues who follow the *Foley* majority would actually define what is meant by 'record proper' and 'transcript of testimony.' There is no clear-cut definition in the books and I think our cases on the subject are extremely confusing.").

179. Foley v. Weaver Drugs, Inc., 177 So. 2d at 234.

180. *See, e.g.*, AB CTC v. Morejon, 324 So. 2d 625 (Fla. 1975); Baycol, Inc. v. Downtown Dev. Auth., 315 So. 2d 451 (Fla. 1975); Gibson v. Maloney, 231 So. 2d 823 (Fla.), *cert. denied*, 398 U.S. 951 (1970).

181. *Compare* FLA. R. APP. P. 4.5(c)(6) (1962) *with* FLA. R. APP. P. 9.120 (1977). The 1977 appellate rules removed the automatic stay which was permitted under previous rules.

182. The supreme court attempted to deal with the burden in various ways. A "pool" of research aides was created to screen petitions and write memoranda. When this procedure failed to keep pace with the volume, additional research aides were hired for the individual justices. Later, new internal procedures were devised to circulate certiorari petitions, and

By the mid-1970s, a minority of new justices on the court began challenging the *Foley* doctrine.[183] Their protests helped shape the 1980 amendment, and the legislative debates indicate clearly that the purpose for including the term "expressly" in section 3(b)(3) was to overrule *Foley*[184] and thereby eliminate supreme court review of PCAs.[185] A written opinion of the district court on the point of law sought to be reviewed is now an essential predicate for supreme court review.[186]

Under section 3(b)(3), the court clearly will refuse to review PCAs. For similar reasons, the court should decline to review several other types of district court decisions. Per curiam affirmances containing only a citation of authority ("citation PCAs"), for example, stand on no better precedential footing than pure PCAs,[187] and should likewise be insufficient as a basis for supreme court

---

litigants were required to assume the additional burden of filing multiple briefs simultaneously.

183. *See, e.g.*, Florida Greyhound Owners & Breeders Ass'n v. West Flagler Assocs., 347 So. 2d 408 (Fla. 1977) (England, J., concurring; Overton, C.J., concurring specially); Williams v. State, 340 So. 2d 113 (Fla. 1976) (England, J., dissenting, joined by Overton, C.J. and Hatchett, J.); Golden Loaf Bakery, Inc. v. Charles W. Rex Constr. Co., 334 So. 2d 585 (Fla. 1976) (England, J., concurring, joined by Overton, C.J.); AB CTC v. Morejon, 324 So. 2d 625 (Fla. 1975) (England, J., dissenting, joined by Overton, C.J.); Baycol, Inc. v. Downtown Dev. Auth., 315 So. 2d 451 (Fla. 1975) (Overton, J., dissenting).

One student commentator described the situation as follows:

> In the past several years, this resistance to the review of PCA's without opinion and to the erosion of the finality of the district courts' jurisdiction has suddenly become highly visible. Since his election to the court, Chief Justice England has written a number of opinions recognizing the jurisdictional principles early established by the court, pointing out the court's deviation from these established constitutional principles and vociferously calling for the dethronement of the *Foley* decision. While most of the other members of the court have concurred in England's opinions at one time or another, in no decision has a majority of the court concurred in any opinion explicitly calling for the overruling of *Foley*.

Note, *Per Curiam Affirmances Without Opinion: A Proper Basis For Conflict Jurisdiction?*, 7 FLA. ST. U.L. REV. 295, 305-06 (1979) (footnote omitted).

As might be expected, *Foley* and its progeny were subjected to intense discussion in academic circles. Most commentators were highly critical of the decision. *See generally id.*; Note, *supra* note 178; Note, *Establishing New Criteria for Conflict Certiorari in Per Curiam District Court Decisions: A First Step Toward a Definition of Power*, 29 U. FLA. L. REV. 335 (1977); Note, *Conflict Certiorari: Scope and Purpose Examination*, 6 STETSON INTRA. L. REV. 15 (1976); Comment, *Certiorari Review of District Court of Appeal Decisions by the Supreme Court of Florida*, 28 U. MIAMI L. REV. 952 (1974).

184. See notes 28-68 and accompanying text, *supra*.

185. While requests for the review of PCAs could have been grounded on jurisdictional bases other than conflict certiorari under former § 3(b)(3), conflict assertions were most prevalent.

186. FLA. CONST. art. V, § 3(b)(3) (1980). Of course, a written opinion does not guarantee that the supreme court will accept jurisdiction of the matter. Section 3(b)(3) is within the court's *discretionary* jurisdiction.

187. The citation of authorities in a citation PCA is for the benefit of the parties, not the public at large. Thus, a citation PCA is normally of no precedential value. P. CARRINGTON, D. MEADOR & M. ROSENBERG, JUSTICE ON APPEAL 33, 39-40 (1976).

review.[188] So-called "no merit opinions," which merely state that the court has reviewed the record and found no merit in the points presented and no reversible error in the record, should be similarly treated.[189] Being of no real precedential value, and failing to treat "expressly" any point of law, these classes of opinions should form no basis for supreme court review.

Similarly, the "inherency" doctrine developed in *Harrell's Candy Kitchen*[190] will no longer be applicable under section 3(b)(3). The "expressly" requirement, obviously, cannot be met by an inherent declaration of a statute's validity in a written opinion which does not discuss the statute.

The history of the 1980 amendment indicates, however, that while a district court written opinion must treat the area of law sought to be reviewed, it is not essential that a conflict of decisions be recognized or acknowledged in the opinion. Any discussion of a point of law which in fact "directly conflicts" with another appellate precedent is grounds for a request for review. This construction of section 3(b)(3) accomodates the bar's insistence that attorneys retain the right to argue an alleged conflict, and that they need not be required to rely on the district courts to preserve their review right by mentioning the cases with which the court disagrees. This position is bolstered by the amendment's

---

188. There is one circumstance which could argue for an exception to this rule. If a case cited as authority in a citation PCA is overruled on the legal issue asserted for conflict within the 30-day time period for filing for review, *see* FLA. R. APP. P. 9.120(b), then it is arguable that the district court's decision is in "conflict" with the overruling case so that the supreme court should have jurisdiction. The court itself is generally aware of the recent overruling case, and has generally accepted jurisdiction of such cases in the past to avoid an unjust result to a litigant whose case is not truly concluded. *Cf., e.g.*, Robbins v. State, 364 So. 2d 871 (Fla. 3d D.C.A. 1978), *remanded*, No. 55,857 (Fla. Mar. 27, 1980) (the supreme court accepted jurisdiction of, and then remanded, a district court no merit opinion which cited as its sole authority a case which had been reversed recently by the court). In these instances the court may simply remand to the district court for reconsideration in light of the overruling decision. This possible exception to a rule calling for the total rejection of citation PCAs by the court is distinguishable from cases in which the time for review has expired when the precedent is overruled, even if it is one day later. In those situations, the doctrine of finality of decisions operates to override all other considerations.

189. The following is a typical "no merit opinion," or more precisely, a "citation no merit opinion":

> This is an appeal from a final judgment in a suit to quiet title instituted by the Board of Trustees of the Internal Improvement Trust Fund, an agency of the State of Florida Department of Natural Resources, in the Circuit Court for the Eleventh Judicial Circuit of Florida. We have carefully examined the thorough and detailed final judgment entered by the trial court in this cause together with the record on appeal and the briefs of the parties. In our view, no reversible error has been shown. Accordingly, the final judgment appealed from is affirmed. Shaw v. Shaw, 334 So. 2d 13, 16 (Fla. 1976); Jefferson National Bank at Sunny Isles v. Metropolitan Dade County, 271 So. 2d 207, 214 (Fla. 3d DCA 1972); Gars v. Woodard, 214 So. 2d 385, 386 (Fla. 3d DCA 1968).
>
> Affirmed.

Brown v. Board of Trustees of the Internal Improvement Trust Fund, 369 So. 2d 640 (Fla. 3d D.C.A. 1979).

190. See notes 12-13 and accompanying text, *supra*.

creation of certified conflict, which accommodates instances of recognized conflict and allows the district courts to certify the conflict.[191]

The addition of the term "expressly" should vastly improve supreme court practice under section 3(b)(3). The much-maligned and confusing doctrine of "record proper" will have been interred, saving the justices immeasurable time and effort in locating alleged decisional conflict. The clerk's office will be able to screen petitions to ascertain if they are supported by a written opinion of a district court, and those without such support will simply be returned to the filing attorney. The court's review process for exercising its discretion will be expedited considerably by the district court's discussion of the point of law brought for review, enabling significantly shorter jurisdictional briefs.[192] Moreover, where jurisdiction is accepted, the court will have a better basis for making an informed decision since the written opinions of the appellate courts will most likely analyze both sides of the same issue.

Section 3(b)(3) now places an increased obligation on district court judges who again have some ability to control a party's right to supreme court review. Now, as was originally intended, these judges must keep a wary eye on the broad import of their decisions before issuing an affirmance without opinion. It goes without saying that the press and the public will keep a wary eye on them.

(2) Deleting "by certiorari"

The deletion of the words "by certiorari" from section 3(b)(3) may prove to be another very significant aspect of the 1980 amendment. Under the former provision, the supreme court's discretionary jurisdiction in section 3(b)(3) was exercised "by certiorari," based on common law notions of that term. Certiorari is essentially a common law writ issued by a superior court to an inferior court for the purpose of bringing up the record to determine whether the inferior court exceeded its jurisdiction or failed to proceed according to the essential requirements of law.[193] Generally, certiorari is not available to review final judgments and decrees where another remedy exists,[194] and the issuance of a writ of certiorari will always lay in the sound discretion of the superior court.[195] In *DeGroot v. Sheffield*,[196] Justice Thornal emphasized the limited nature of

191. FLA. CONST. art. V, § 3(b)(4).

192. Currently, jurisdictional briefs are limited to 20 pages. FLA. R. APP. P. 9.210(a)(5).

193. Dade County v. Marca, S.A., 326 So. 2d 183 (Fla. 1976); Ellison v. City of Ft. Lauderdale, 183 So. 2d 193 (Fla. 1966); Kilgore v. Bird, 149 Fla. 570, 6 So. 2d 541 (1942); G-W Dev. Corp. v. Village of N. Palm Beach Zoning Bd. of Adjustment, 317 So. 2d 828 (Fla. 4th D.C.A. 1975).

194. DeGroot v. Sheffield, 95 So. 2d 912 (Fla. 1957); Roper v. Roper, 336 So. 2d 654 (Fla. 4th D.C.A. 1976); G-W Dev. Corp. v. Village of N. Palm Beach Zoning Bd. of Adjustment, 317 So. 2d 828 (Fla. 4th D.C.A. 1975); Biscayne Kennel Club, Inc. v. Board of Bus. Reg., 239 So. 2d 53 (Fla. 1st D.C.A. 1970).

195. Burdine's, Inc. v. Drennon, 97 So. 2d 259 (Fla. 1957); G-W Dev. Corp. v. Village of N. Palm Beach Zoning Bd. of Adjustment, 317 So. 2d 828 (Fla. 4th D.C.A. 1975); Arvida Corp. v. City of Sarasota, 213 So. 2d 756 (Fla. 2d D.C.A. 1968).

196. 95 So. 2d 912 (Fla. 1957).

certiorari review, noting that the reviewing court will not undertake to reweigh or reevaluate the evidence presented to the lower tribunal.

The implicit incorporation of common law principles in former section 3(b)(3) led to a number of unfortunate consequences. For one, bringing up the lower court's entire record allowed the supreme court to review the full record and address the merits of all points in cases it had accepted for review.[197] For another, a notion developed over the years that finding a decisional conflict required, rather than permitted, acceptance of the case for review.[198] This practice led members of the Appellate Structure Commission to conclude that the court had all but written the word "may" out of section 3(b)(3).[199] Moreover, the certiorari issue contributed to the court's frequent, and often lengthy discussions regarding the acceptance or rejection of jurisdiction.[200]

The combined effect of these developments was to waste vast amounts of judicial time and labor. The justices often reached issues which had already received full consideration by a district court, and considered the non-substantive subject of jurisdiction. These practices encouraged attorneys to seek a third, plenary review, and created a climate whereby attorneys could never advise their clients that a case was indeed final after district court review. Full review by certiorari, coupled with the *Foley* doctrine, in effect evolved into a practice by judicial fiat, giving the court the role rejected by the framers of the 1956 constitution – that of third level, unlimited, discretionary review of the full record of every case which passed through the district courts.

The debates which led to the 1980 constitutional reform quite clearly indicate that the term "may" has been resurrected to its original stature.[201] The deletion of "by certiorari" from section 3(b)(3) was intended to eliminate the common law jurisdictional predicate of bringing up the whole record for scrutiny and therefore signifies the end of full record review of a discretionary case.[202] The supreme court should now decline to review any district court decision which the court deems to lack importance to the jurisprudence of the state, even though a conflict of decisions or one of the other enumerated criteria for review exists. Opinions should embrace only the legal issue which was important enough to persuade the justices to accept the case for review. The need for protracted written debates on the existence or nonexistence of a jurisdictional predicate will be obviated, since the supreme court's decisions will themselves deal with the legal issue or issues on which jurisdiction was predicated.[203]

197. Bould v. Touchette, 349 So. 2d 1181 (Fla. 1977); D'Agostino v. State, 310 So. 2d 12 (Fla. 1975); Kennedy v. Kennedy, 303 So. 2d 629 (Fla. 1974).

198. Numerous cases invoking the court's conflict jurisdiction speak in terms of the court's "duty" to consider the case on the merits. *E.g.*, Tyus v. Apalachicola N. R. R., 130 So. 2d 580 (Fla. 1961); Adjmi v. State, 154 So. 2d 812, 817 (Fla. 1963).

199. *Appellate Structure Commission Report*, 53 FLA. B.J. 274, 285 (1979).

200. *E.g.*, PERC v. School Bd. of Palm Beach County, 380 So. 2d 427 (Fla. 1980) (England, C.J., dissenting); Kendry v. Division of Admin., State Dept. of Transp., 366 So. 2d 391, 395 (Fla. 1978) (Overton, J., dissenting); Winn-Dixie Stores, Inc. v. Goodman, 276 So. 2d 465 (Fla. 1972).

201. *Senate Hearings on S.J. Res. 20-C*, Nov. 26, 1979, *supra* note 47 (remarks of Chief Justice England).

202. *Id.*

203. There is one minor exception to this point. The initial decisions defining the

As for that aspect of the common law concept of certiorari which allows the superior court to refuse review when another remedy is available, that principle should remain intact as a matter of conscience for the seven justices. One ramification of these changes in the court's constitutional jurisdiction is to give the court greater control of its discretionary jurisdiction, another goal so often mentioned in the history of the 1980 amendment.

(3) Validity of state statutes – section 3(b)(3)

The 1980 amendment provides that the supreme court

> [m]ay review ~~by certiorari~~ any decision of a district court of appeal that expressly declares valid a state statute ....[204]

The district court's declaration of validity must be expressed in a written opinion of a district court dealing in some form with the legal issue of validity. Presumably, there need be no more identification of the issue than the announcement in the court's opinion, as had been common in the orders of trial courts, that "Section ———, Florida Statutes, is valid." But the inherency doctrine announced in *Harrell's Candy Kitchen* is clearly no longer viable.[205]

As was mentioned above,[206] section 3(b)(3) was added to the supreme court's discretionary review jurisdiction as a corollary to the court's mandatory review of district court decisions which declare statutes invalid. Discussions preceding the adoption of the 1980 amendment[207] emphasized the discretionary aspect of review in validity cases, for it was recognized that not all statutes are of statewide importance,[208] that not all general laws declared valid require supreme court consideration,[209] and that the court should have the freedom to restrict its writing responsibilities by declining to review cases when it was thought necessary.[210]

Under the new provision, of course, the supreme court's denial of review where a statute is upheld does not foreclose other challenges to the same statute in the same[211] or in other appellate districts. Declining to review a validity case,

---

contours of the court's jurisdiction under the 1980 amendments will undoubtedly include extensive discussions of jurisdiction so as to provide some guidance for attorneys and judges.

204. FLA. CONST. art. V, § 3(b)(3).

205. See text accompanying notes 12-13, 121-122, *supra*.

206. See notes 100-101 and accompanying text, *supra*.

207. See text accompanying notes 103-108, *supra*.

208. *See, e.g.*, Barndollar v. Sunset Realty Corp., 379 So. 2d 1278 (Fla. 1979); North Ridge General Hosp., Inc. v. City of Oakland Park, 374 So. 2d 461 (Fla. 1979).

209. *See, e.g.*, Gaer v. State, 372 So. 2d 80 (Fla. 1979); Grant v. State, 363 So. 2d 1063 (Fla. 1978).

210. If the district court of appeal gives adequate treatment to the issues raised in a proceeding, the supreme court should have the discretion to leave the district court's opinion untouched. Indeed, it is not unusual for the court to adopt the district court's opinion as its own. *See, e.g.*, Satz v. Perlmutter, 379 So. 2d 359 (Fla. 1980); Leatherby Ins. Co. v. American Bankers Ins. Co., 371 So. 2d 488 (Fla. 1979); Ringel v. State, 366 So. 2d 758 (Fla. 1978).

211. A subsequent panel of the same district court could declare the statute invalid, or

therefore, does not preclude a subsequent declaration of invalidity which the court would be required to take,[212] another declaration of validity which might persuade the court to grant a request for review, or a later certification of the issue.[213] In other words, by exercising its discretionary review with care, the supreme court can avoid using its limited resources to analyze and write concerning a state statute which does not immediately appear to be controversial or of current importance, safe in the knowledge that a decision not to review will not forever insulate the legal issue from supreme court consideration.

One district court could declare a statute invalid "as applied" to one set of circumstances, and another district court could declare the same statute valid as applied to a similar set of circumstances. As suggested earlier,[214] an as applied declaration of invalidity might not trigger mandatory review of the first decision. Of course, a declaration of validity, whether as applied or facially, does not trigger mandatory review. The question arises whether two similarly situated persons might not have different results in their litigation, without supreme court harmonization. The answer is "yes," of course. In these situations, however, the presence of close factual circumstances with conflicting judicial interpretations might well persuade a district court to certify a case,[215] or the supreme court to accept discretionary review of either or both cases, in order to reconcile the difference.

The Clerk of the supreme court has estimated that approximately 150 requests will be filed each year seeking to have reviewed district court declarations of statutory validity.[216]

(4) Construction of the constitution – section 3(b)(3)

The 1980 amendment provides that the supreme court

> [m]ay review ~~by certiorari~~ any decision of a district court of appeal ... that expressly construes a provision of the state or federal constitution ....[217]

The "expressly" requirement continues by constitutional directive a judicial doctrine which had grown up as a gloss on the earlier constitutional construction provision.[218]

Prior to the adoption of this provision, review of district court decisions construing a provision of the constitution was available only if that court was the first court in the proceeding to make such a construction, such as might occur when the constitutional issue arose during the pendency of appeal and

---

the full district court could consider a subsequent challenge to the same statute. *See* FLA. R. APP. P. 9.133.

212. A conflict of decisions would also then exist, but the mandatory jurisdiction of the court would make invocation of discretionary conflict certiorari unnecessary.

213. See notes 257-264 and accompanying text, *infra*.

214. See note 133 and accompanying text, *supra*.

215. See notes 265-267 and accompanying text, *infra*.

216. Statistics obtained from the Clerk of the Supreme Court of Florida.

217. FLA. CONST. art. V, § 3(b)(3).

218. Ogle v. Pepin, 273 So. 2d 391 (Fla. 1973).

had not been passed upon or dealt with by the parties in the trial court.[219] As noted earlier, of course, the "initially and directly" requirements of the former provision became unnecessary when trial court appeals were removed and the "expressly" requirement was added.[220]

Choice of the word "construes" in the new provision is advertent, carrying forward the term as it appeared in section 3(b)(1) of the constitution before the amendment was adopted. The shift of this provision from the court's mandatory to its discretionary jurisdiction provides no reason to suggest that prior judicial interpretations of the term "construe" will not remain applicable. Decisions such as *Armstrong v. City of Tampa*,[221] which differentiate the "construction" of a constitutional provision from the "application" of a provision,[222] would seem to be incorporated into the new provision of the constitution to the same extent that they were embedded in the earlier version.

When constitutional constructions were brought to the supreme court by way of mandatory appeal under former section 3(b)(1), the court sometimes concerned itself with the substantiality of the constitutional claim as a predicate for its jurisdiction.[223] By reclassifying review of constitutional constructions as discretionary, the need for any discussion of substantiality has been wholly eliminated. The court, however, can certainly consider the insubstantiality of the issue as a basis to exercise its discretion to deny a request to review a constitutional construction.

Also made inconsequential by this constitutional shift is the court's recent suggestion in *State v. Coffin*[224] that insubstantial constitutional questions should be challenged by a motion to dismiss. Such motions will no longer be necessary since the respondent, addressing the court's exercise of discretionary review, may suggest the insubstantiality of the question in his jurisdictional brief.[225]

After the 1980 amendment, one district court could adopt a construction of the federal or state constitution which differs from that of another district court, and conceivably those differences would remain outstanding in the respective appellate districts if the supreme court simply denied discretionary review in both cases. This appears unlikely, however, if either of the differing constructions were brought to the court's attention by a petition for review.[226] Differing

---

219. *See, e.g.*, Foerster v. Foerster, 300 So. 2d 33 (Fla. 1st D.C.A. 1974), *aff'd in part, rev'd in part sub nom.*, Williams v. Foerster, 335 So. 2d 810 (Fla. 1976). *See also In re* Kionka's Estate, 121 So. 2d 644, 646-47 (Fla. 1960) (O'Connell, J., concurring specially), which describes three circumstances in which a district court may "initially" rule on the validity of a statute or "initially" construe a constitutional provision. A fourth instance could occur during a district court's review of administrative action. *E.g.*, Wasserman v. Florida State Bd. of Architecture, 361 So. 2d 792 (Fla. 1st D.C.A. 1978), *rev'd*, 377 So. 2d 653 (Fla. 1979).

220. See note 90 and accompanying text, *supra*.

221. 106 So. 2d 407 (Fla. 1958).

222. *E.g.*, Dykman v. State, 294 So. 2d 633 (Fla. 1973); Rojas v. State, 288 So. 2d 234 (Fla. 1973); Ogle v. Pepin, 273 So. 2d 391 (Fla. 1973).

223. *See* Evans v. Carroll, 104 So. 2d 375 (Fla. 1958).

224. 374 So. 2d 504 (Fla. 1979).

225. *See* Commentary to FLA. R. APP. P. 9.120.

226. The petitioner in this instance could, of course, assert conflict of decisions as an

constructions of the state or federal constitution pose problems for the jurisprudence of the entire state, comparable to those which would exist if a statute were declared valid in one portion of the state and invalid in another. Consequently, these situations would seem to provide a most logical basis for the court to exercise its jurisdiction in favor of review.

A more likely possibility, consistent with the constitutional reforms adopted, is that a construction of the constitution in one district court in the first instance might not be reviewed by the supreme court for reasons of untimeliness, workload, insubstantiality of issue, general agreement with the district court's construction, or any other relevant consideration. In that event, the district court's construction might well prove persuasive, although not technically precedential, throughout the state, so that plenary supreme court review will either be deferred or become wholly unnecessary.

The Clerk of the supreme court has estimated that approximately 80 requests will be filed each year seeking to have reviewed constructions of the state or federal constitution.[227]

(5) Class of constitutional or state officers — section 3(b)(3)

The 1980 amendment provides that the supreme court

> [m]ay review ~~by certiorari~~ any decision of a district court of appeal ... that expressly affects a class of constitutional or state officers ....[228]

Before the 1980 amendment, the supreme court could review on a discretionary basis those district court decisions which affected a class of constitutional or state officers. The nature and extent of this review had been limited in scope by *Richardson v. State*,[229] and *Spradley v. State*.[230] In *Spradley*, the court stated that:

> [a] decision which "affects a class of constitutional or state officers" must be one which does more than simply modify or construe or add to the caselaw which comprises much of the substantive and procedural law of this state. Such cases naturally affect all classes of constitutional or state officers, in that the members of these classes are bound by the law the same as any other citizen. To vest this Court with certiorari jurisdiction, a decision must *directly* and, in some way, *exclusively* affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers.[231]

---

additional, independent ground for the exercise of certiorari jurisdiction. See notes 235-251 and accompanying text, *infra*.

227. Statistics obtained from the Clerk of the Supreme Court of Florida.

228. FLA. CONST. art. V, § 3(b)(3).

229. 246 So. 2d 771 (Fla. 1971).

230. 293 So. 2d 697 (Fla. 1974).

231. *Id.* at 701. This restrictive test announced in *Spradley* had an immediate and decisive effect on the court's jurisdiction. As one justice observed in 1976: "My research indicates that, dating from [*Spradley*'s] adoption in May 1974 to the present, only two cases have been accepted by this Court on the jurisdictional ground that a requisite class of officers was

The 1980 amendment made no change in this jurisprudence. The operative language of the provision remained unchanged, so that existing case law interpreting this provision would seem to have continuing vitality.

The 1980 amendment did, however, insert the word "expressly" before the description of this portion of the court's discretionary jurisdiction. The requirement of an express written decision of the district court which affects either a class of constitutional or state officers would seem to have little practical impact, since virtually all of the cases which have come to the court in recent years arose from written opinions of district courts articulating their effect on the class.[232]

Nonetheless, the preface "expressly" makes clear that the court is not free to entertain review of a district court decision which counsel alleges affects a class of state or constitutional officers, if the district court has written no opinion on that legal point. In fact, the principal reason for the requirement of "expressly" as regards this aspect of the court's jurisdiction was to prevent a loophole in the court's discretionary review authority by which PCAs could be brought to the court for review.[233] Members of the court following the legislative evolution of SJR 20-C were well aware that judicial decisions can expand or contract the court's jurisdiction, and they perceived that the *Spradley* doctrine might someday be overruled or broadened to provide an open door through which PCAs might once again be brought for review. The addition of the word "expressly" to this aspect of the court's jurisdiction not only constitutionally foreclosed that possibility, but it further emphasized the court's inability to entertain through any device a district court PCA or its nonprecedential equivalent.

The Clerk of the supreme court has estimated that approximately 10 requests will be filed each year seeking review of decisions affecting a class of constitutional or state officers.[234]

(6) Conflict of decisions — section 3(b)(3)

The 1980 amendment provides that the supreme court

> [m]ay review ~~by certiorari~~ any decision of a district court of appeal ... that expressly and directly conflicts ... with a decision of another ~~any~~ district court of appeal or of the supreme court on the same question of law ....[235]

affected by a district court's decision. Many assertions to that effect have been made, of course, but only two have prevailed." Shevin v. Cenville Communities, Inc., 338 So. 2d 1281, 1282-83 (Fla. 1976) (England, J., concurring) (footnote omitted).

232. *E.g.*, Nelson v. Pinellas County, 343 So. 2d 65 (Fla. 2d D.C.A. 1977), *aff'd in part, rev'd in part*, 362 So. 2d 279 (Fla. 1978); Taylor v. Tampa Elec. Co., 335 So. 2d 349 (Fla. 2d D.C.A. 1976), *rev'd*, 356 So. 2d 260 (Fla. 1978). *But see* Satz v. Perlmutter, 362 So. 2d 160 (Fla. 4th D.C.A. 1978), *aff'd*, 379 So. 2d 359 (Fla. 1980).

233. For a discussion of the use of the term "expressly" to prevent petitions for review of PCAs, see notes 171-192 and accompanying text, *supra*.

234. Statistics obtained from the Clerk of the Supreme Court of Florida.

235. FLA. CONST. art. V, § 3(b)(3).

Prior to the 1980 amendment, the supreme court had discretionary authority to review district court decisions which were in "direct conflict" either with any other district court decisions or with decisions of the supreme court on the same question of law.[236] The concept of "direct conflict" was carried forward in the 1980 amendment, with minor but important changes.

First, the amendment eliminated the notion of intra-district conflict – that is, a direct conflict within any appellate district by reason of conflicting decisions of the same district court. This change restores the constitutional provision to its stature before 1972, when the constitution first authorized the review of intra-district conflicts.[237]

In conjunction with the development of the 1980 amendment, there was a question as to whether the notion of intra-district conflict was in fact possible, since a decision of a three judge panel in one district which differs in result from an earlier decision of another panel in the same district court would seem to overrule the latter as precedent. Whatever the merits of that view, the fact remains that the 1980 amendment eliminated any possibility that the supreme court would review decisions alleging intra-district conflict.

The supreme court was cognizant, of course, of the possibility that multiple panels of the same district court could achieve different legal results, possibly inadvertently, on the same question of law.[238] For that reason, and based on a recommendation of the Appellate Structure Commission,[239] the court adopted, effective January 1, 1980, a rule for an en banc review within the district courts of any conflicting three judge panel decision.[240] Elimination of the court's review of intra-district conflicts, combined with the creation of an en banc rehearing proceeding for intra-district conflict, results in potential supreme court "conflict" review of (i) panel or en banc decisions of a district court which conflict with a decision of another district court, and (ii) panel or en banc decisions which conflict with a supreme court decision.[241]

The second significant change in the conflict jurisdiction of the supreme court is the requirement that the district court decision must "expressly" be in conflict. As discussed above, this new requirement means that the court will no longer entertain alleged conflicts of appellate decisions which do not arise from

---

236. FLA. CONST. art. V, § 3(b)(3) (1972).

237. *Compare* FLA. CONST. art. V, § 3(b)(3) (1972) *and* David v. State, 369 So. 2d 943 (Fla. 1979), *with* FLA. CONST. art. V, § 4(2) (1956) *and* Grisillo v. Franklyn S., Inc., 173 So. 2d 682 (Fla. 1965).

238. *E.g.*, Cumbie v. State, 378 So. 2d 1 (Fla. 1st D.C.A. 1978) and Nevels v. State, 364 So. 2d 517 (Fla. 1st D.C.A. 1978), *cert. denied*, 372 So. 2d 470 (Fla. 1979), *resolved in* State v. Cumbie, 380 So. 2d 1031 (Fla. 1980); David v. State, 348 So. 2d 420 (Fla. 4th D.C.A. 1977) and Childers v. State, 277 So. 2d 594 (Fla. 4th D.C.A. 1973), *resolved in* David v. State, 369 So. 2d 943 (Fla. 1979).

239. *Appellate Structure Commission Report*, 53 FLA. B.J. 274, 279 (1979).

240. *In re* Rule 9.331, Determination of Causes by a District Court of Appeals En Banc, 377 So. 2d 700 (Fla. 1979).

241. Although the supreme court prohibits the district courts from deciding cases in contradiction of a supreme court decision, a conflict can arise with a supreme court decision rendered after the district court's decision and before the grant or denial of review by the supreme court. See note 251 and accompanying text, *infra*.

a written opinion of a district court.[242] With respect to this issue, there was very little discussion among the framers of this provision, the bar committee, the Appellate Structure Commission or the legislature, whether the term "expressly" would require that the conflict of law be identified and discussed in the district court's opinion, or alternately whether a general statement of the legal issue might be adequate to permit a petition for review based on an asserted conflict of decisions. Given the strong desire of the bar for the retention of pre-existing conflict review,[243] which did not require district court recognition of conflicting precedents, the latter view seems the more consistent with the development of the amendment.

In light of the two limited intended effects of the 1980 amendment on the court's conflict jurisdiction — that is, the elimination of intra-district conflict and the requirement of a written opinion as a predicate for further review — it is also clear that doctrines which had developed by case law under the prior provision and which were not antithetical to the two changes would carry forward after April 1, 1980. For example, the two basic types of "direct conflict" articulated in *Nielsen v. City of Sarasota*,[244] would seem to be continued.[245] On the other hand, the "expressly" requirement would seem to have eliminated the review of those district court decisions without opinion which contain a written dissent or a special written concurrence, where formerly counsel was allowed to argue for so-called "dissent conflict"[246] or "concurrence conflict."[247] Plainly, the "expressly" requirement for district courts' majority decisions cannot be satisfied by a dissenting or concurring characterization of what the majority has done. To this extent, numerous jurisdictional precedents appear to have been overruled by the 1980 amendment.

"Uncertain" best characterizes the effect of the expressly requirement on so-called "dicta conflict," where a written opinion of the district court discusses legal points which are not germane to the decision (and therefore properly classifiable as dicta) but which are nonetheless apparent on the face of the opinion. Before the 1980 amendment, the court considered itself free to review these cases, depending on their perceived importance for consideration and resolution.[248] No view is expressed as to the continuation of that practice.

---

242. See notes 184-186 and accompanying text, *supra*.

243. See notes 41-43 and accompanying text, *supra*.

244. 117 So. 2d 731 (Fla. 1960).

245. *See* Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960), discussing two types of decisions properly reviewable as in direct conflict:

(1) decisions announcing a rule of law different from that announced in a previous district court or supreme court decision; and

(2) decisions applying a rule of law to a set of facts substantially similar to that considered in a previous district court or supreme court decision, but arriving at a disparate result.

246. *E.g.*, David v. State, 369 So. 2d 943 (Fla. 1979); Keller v. Keller, 308 So. 2d 106 (Fla. 1974). *See* Golden Loaf Bakery v. Charles W. Rex Constr. Co., 334 So. 2d 585, 586 (Fla. 1976) (England, J., concurring, suggesting infirmities in dissent conflict even before adoption of the constitutional amendment); Williams v. State, 340 So. 2d 113, 116 (Fla. 1976) (England, J., dissenting, joined by Overton, C.J., and Hatchett, J.).

247. Rosenthal v. Scott, 131 So. 2d 480 (Fla. 1961); State v. Greene, — So. 2d — (Fla. 4th D.C.A.), *petition for cert. docketed*, No. 57,980 (Fla. Oct. 29, 1979).

248. *E.g.*, Twomey v. Clausohm, 234 So. 2d 338 (Fla. 1970); Sunad, Inc. v. City of

The constitution retains a minor anomaly which preexisted the 1980 amendment, concerning which there was little discussion as the amendment evolved. Previously, the constitution had allowed review of a district court decision which directly conflicted with a decision of the supreme court on the same question of law. After *Hoffman v. Jones*,[249] it became impermissible for a district court to announce a decision in direct conflict with a previous decision of the supreme court. Rather, the court was obliged to follow the directive of the supreme court even if it chose to articulate reasons why the policy or justification for the supreme court's earlier decision should no longer be followed. The district court could, however, certify the legal question to the court as one suitable for reconsideration.[250]

As the sole intent of the "expressly" requirement of the 1980 amendment was to require a written decision for review, and the sole intent for the language change from "any" to "another" was to eliminate intra-district conflict, the amended provision contains the same anomaly which previously existed. There is, however, a small area where decisional conflicts between the district courts and the supreme court may operate. Although a district court cannot decide a legal issue in direct conflict with a supreme court pronouncement on the subject, any district court's decision could *become* in direct conflict with a supreme court decision rendered after the district court has ruled.[251] If a conflict of that type were to develop, either during the time available to seek supreme court review (where the sole basis for review is that particular conflict) or before the supreme court acts on a petition for review otherwise properly filed (so that a notice of additional authority could be filed), then a direct conflict with the supreme court could properly be brought to the court's attention or provide a basis for granting review.

Sarasota, 122 So. 2d 611 (Fla. 1960). The legitimate differences of opinion between attorneys and among the justices as to what is dicta and what is not suggests that dicta conflict may still be available as a basis to request supreme court review. *See* State v. Embry, 322 So. 2d 515, 519 (Fla. 1975) (England, J., dissenting). *See also* Florida Greyhound Owners & Breeders Ass'n, Inc. v. West Flagler Assocs., Ltd., 347 So. 2d 408, 410 n.6 (Fla. 1977) (England, J., concurring).

249. 280 So. 2d 431 (Fla. 1973).

250. This was done in Johnson v. Bathey, 350 So. 2d 545 (Fla. 2d D.C.A. 1977), *aff'd*, 376 So. 2d 848 (Fla. 1979), wherein the district court expressly questioned the wisdom of Florida's attractive nuisance doctrine yet, in accord with *Hoffman*, applied the existing rule. *See also* Raisen v. Raisen, 370 So. 2d 1148 (Fla. 4th D.C.A. 1978), *aff'd*, 379 So. 2d 352 (Fla. 1979).

251. *E.g.*, Rose v. D'Alessandro, 364 So. 2d 763 (Fla. 2d D.C.A. 1978), *rev'd in part, aff'd in part*, 380 So. 2d 419 (Fla. 1980) (conflicting with Wait v. Florida Power & Light Co., 372 So. 2d 420 (Fla. 1979)); Brunson v. State, 355 So. 2d 812 (Fla. 3d D.C.A. 1978), *rev'd*, 369 So. 2d 945 (Fla. 1979) (conflicting with Hargrave v. State, 366 So. 2d 1 (Fla. 1978)). The opposite effect is also possible, that is, a direct conflict of district court decisions can be dispelled between the filing of the district court decision and its review by the supreme court. *See, e.g.*, St. Johns Assocs. v. Mallard, 373 So. 2d 912 (Fla. 1979) (where a later supreme court decision dispelled preexisting conflict); Aiken v. State, — So. 2d — (Fla. 4th D.C.A.), *petition for cert. docketed*, No. 56,671 (Fla. April 19, 1979) (pending after oral argument; respondent has argued that decisional conflict between the Third and Fourth District Courts of Appeal was dispelled by a later decision of the former court, adopted after certiorari had been filed in the supreme court, receding from the conflicting decision in favor of the latter court's view).

During discussions which led to the adoption of the 1980 provision, it was estimated that 25 to 35 percent of the preamendment discretionary petitions for conflict review arose from cases in which the district courts had written no decision.[252] The elimination of these cases from the supreme court docket will save judicial and administrative labor in the court in the processing and review of those matters. It may be expected that the court will amend the appellate rules to alter the format and size of jurisdictional briefs in conflict cases, and amend its manual of internal procedures to state that attempts to file based on alleged conflict found in district court decisions without opinions will be returned to the petitioning attorney by the clerk's office, without being seen by any justice or his staff.

The Clerk of the supreme court estimates that conflict review petitions will continue to provide the bulk of the court's discretionary cases, or approximately 1,200 cases per year.[253]

(7) Interlocutory trial court orders – formerly section 3(b)(3)

The 1980 amendment provides that the supreme court

> [m]ay review ~~by certiorari ... any interlocutory order passing upon a matter which upon final judgment would be directly appealable to the supreme court ....~~[254]

This provision removed all supreme court review of interlocutory orders of the trial courts. The reasons for routing all cases through the district courts have been previously explored.[255] By eliminating the review of interlocutory orders of trial courts, the 1980 amendment also made moot the doctrine of *Burnsed v. Seaboard Coastline RR*,[256] which construed former sections 3(b)(1) and 3(b)(3) as they related to such interlocutory orders. The gist of that decision was that the court would review only final, as opposed to interlocutory, orders of trial courts, under section 3(b)(1).

(8) Certified questions of great public importance – section 3(b)(4); formerly section 3(b)(3)

The 1980 amendment provides in section 3(b)(4) that the supreme court

> [m]ay review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance ....[257]

The 1980 amendment moved the supreme court's discretionary review of district court decisions that pass upon a question certified by the district court

252. Statistics obtained from the Clerk of the Supreme Court of Florida.
253. Statistics obtained from the Clerk of the Supreme Court of Florida.
254. FLA. CONST. art. V, § 3(b)(3).
255. See notes 87-97 and accompanying text, *supra*.
256. 290 So. 2d 13 (Fla. 1974).
257. FLA. CONST. art. V, § 3(b)(4).

from old section 3(b)(3) to new section 3(b)(4). The sole change is that the word "interest" has now become "importance."

The development of this provision suggests that this terminology change has limited significance. As various proposals for constitutional change wound their way through the Appellate Structure Commission, The Florida Bar, the House Judiciary Committee and the Senate Judiciary Committee, the provision in section 3(b)(3) granting the supreme court jurisdiction over district court decisions affecting a class of constitutional or state officers was deleted as unnecessary in light of the narrow construction given it in *Spradley*.[258] It was generally believed this subject area could safely be left to certified questions if the operative phrase were expanded to encompass questions of great public "importance." The day before the amendment was actually adopted, however, the sheriffs' and clerks' associations urged that the "class" category be restored.[259] There being no serious reason to reject the associations' suggestion, the restoration was effected on the floor of the Senate.[260] Although the change in terminology from great public "interest" to great public "importance" became unnecessary, there was no time before final Senate passage to restore the original wording, or even to explain the justification for so doing.

The term "great public importance" in section 3(b)(4), consequently, should be given content similar to that which "great public interest" had in former section 3(b)(3).[261] This content would include, for example, the review of a district court decision even if the question were not precisely framed in that decision, although the failure to frame a clear question has always been strongly discouraged.[262]

Finally, of course, there is no doubt that under the new provision, as under the predecessor provision, the supreme court may decline for any reason to review any legal question which has been certified.[263] The Clerk of the supreme court estimates that approximately 35 decisions will be certified to the court under this provision each year.[264]

(9) Certified conflict — section 3(b)(4)

The 1980 amendment provides that the supreme court

---

258. See note 231 and accompanying text, *supra*.

259. *House Committee Hearings on H.J. Res. 33-C*, Nov. 27, 1979, *supra* note 66 (remarks of Jack M. Skelding, Jr.).

260. See app. C.

261. This change of language may broaden slightly the scope of the provision. Indeed, the commentary to the 1980 amendments to the Florida Rules of Appellate Procedure states that "[t]he change was to recognize the fact that some legal issues may have 'great public importance,' but may not be sufficiently known by the public to have 'great public interest.' *In re* Emergency Amendments to Rules of Appellate Procedure, 381 So. 2d 1370 (Fla. 1980). The actual effect of the change, of course, must await future developments in the case law.

262. Rupp v. Jackson, 238 So. 2d 86 (Fla. 1970). *But see* Lake Region Packing Assoc. v. Furze, 327 So. 2d 212, 217 (Fla. 1976) (England, J., concurring in part and dissenting in part).

263. *See* Zirin v. Charles Pfizer & Co., 128 So. 2d 594 (Fla. 1961).

264. Statistics obtained from the Clerk of the Supreme Court of Florida.

> [m]ay review any decision of a district court of appeal ... that is certified by it to be in direct conflict with a decision of another district court of appeal.[265]

This provision is entirely new, and expands the instances for district court certification to situations in which a direct conflict of decisions among the districts is perceived by the district court. In the years 1978 and 1979, the district courts actually commented on conflicting appellate court decisions in 25 percent of their decisions brought by attorneys and accepted by the supreme court on the basis of conflict certiorari.[266] This provision adds to the district court's arsenal the authority to certify the more important decisional conflicts for supreme court reconciliation.

The Clerk of the supreme court estimates that approximately 20 decisions will be certified to the court under this provision each year.[267]

(10) Certified trial court orders — section 3(b)(5)

The 1980 amendment provides that the supreme court

> [m]ay 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 supreme court.[268]

The 1980 amendment authorizes the supreme court to review, in its discretion, orders or judgments of trial courts which have been certified by a district court either as being of great public importance or as having a great effect on the proper administration of justice throughout the state. A requisite to review, however, and therefore a necessary part of the district court's certification, is also a determination by the district court that the matter certified requires an immediate resolution by the supreme court. This provision can only be understood in the context of its development.

Under the constitution as it existed before the 1980 amendment, some trial court orders which either passed on the validity of a statute or which construed the state or federal constitutions would be appealed directly to the supreme court.[269] If the court's immediate attention were required, either of the parties to the lawsuit could ask the court to expedite consideration of the matter, or

265. FLA. CONST. art. V, § 3(b)(4).

266. *See* Statistics obtained from Appellate Structure Commission (memorandum from Elaine Williams to Justice Overton (Mar. 1, 1979)).

267. Statistics obtained from the Clerk of the Supreme Court of Florida.

268. FLA. CONST. art. V, § 3(b)(5).

269. See note 88 and accompanying text, *supra*.

the court on its own motion could recognize the urgency of a particular case and process it ahead of others. The appeal process had been so abused, however, with attorneys rather than the justices holding the potential control of the supreme court's docket, that the framers of the 1980 amendment unanimously agreed on the need to eliminate all direct appeals from trial courts (except in death penalty and bond validation cases) throughout the developmental stage of the amendment.[270]

Nonetheless, the framers were aware that on a limited number of occasions the proper administration of justice throughout the state required a prompt resolution of certain matters by the supreme court. The Appellate Structure Commission, for example, had fresh in mind the chaos which had developed in the administration of the traffic laws due to the uncertain validity of a 1977 statute requiring the collection of fines and penalties on each traffic offense as a means of funding a Crimes Compensation Commission.[271] By the time the supreme court received and concluded the case which tested the validity of that statute,[272] millions of dollars had been collected in small amounts by clerks throughout the state. The court's decision declaring the statute invalid necessitated the return of a portion of those collections, creating severe administrative hardships and some injustices.

The proper administration of justice throughout the state was also severely affected by trial judges' variant interpretations of a statute which created a bifurcated proceeding for criminal proceedings in which the defense of insanity was raised.[273] By the time the supreme court decided that the new enactment was invalid,[274] many new trials were required to unwind the disparate effects of these varying interpretations of the law.[275]

The need for an expeditious method by which the state's highest court could resolve cases of this type was identified in the 1979 Report on the Florida Judiciary, submitted to the 1979 legislature by the chief justice.[276] To meet this need, that report contained a recommendation of the Appellate Structure Commission[277] that the constitution permit the court to "reach-down," and pull up for expeditious treatment those cases in the lower courts which required immediate resolution. As stated earlier,[278] this provision generated considerable controversy in the legislature and among bar members, although it had been approved by the Judicial Council.

During the summer of 1979 when members of the court, the bar and the Appellate Structure Commission reconsidered the so-called "reach-down" provision, two possibilities emerged as a necessary "safety valve" for the system. One, which was later rejected, required a certification from a trial court judge

270. See notes 93-97 and accompanying text, *supra.*

271. 1977 Fla. Laws, ch. 77-452.

272. State v. Champe, 373 So. 2d 874 (Fla. 1978).

273. 1977 Fla. Laws, ch. 77-312.

274. State *ex rel.* Boyd v. Green, 355 So. 2d 789 (Fla. 1978).

275. *See, e.g.*, Freeman v. State, 377 So. 2d 1152 (Fla. 1979); Ashcraft v. State, 367 So. 2d 630 (Fla. 1979).

276. 1979 Report, *supra* note 33, 53 FLA. B.J. at 299-300.

277. *Id.* at 300.

278. See notes 36-40 and accompanying text, *supra.*

or from the chief judge of any judicial circuit with respect to which cases required immediate supreme court attention. The other was the district court certification process which was written into the 1980 amendment.

The rationale for the provision which was adopted is essentially twofold. First, there must be some way in the judicial system by which the supreme court can obtain and decide promptly those cases which have an immediate statewide impact on the administration of justice. Second, by allowing an appeal to take its ordinary course from a judgment or order of a trial court to a district court of appeal, the extra delay over direct processing in the supreme court would be, at the maximum, the amount of time taken by the district court to identify the need and act on the certification. Upon receipt of the appeal papers, a district court may on its own motion or at the request of any party[279] immediately certify the matter to the supreme court in order to avoid the delay inherent in rendering a decision at the district court level.

This "bypass" provision has counterparts in other judicial systems. Indeed, the famous Nixon tapes case[280] decided by the United States Supreme Court came directly from a decision of district court Judge John Sirica under a procedure very much like the one which now appears as section 3(b)(5).[281]

As the bypass provision was developed in various drafting stages, the certification authority was conferred only where the matter might involve a question of great public importance. The alternate phrase, "or to have a great effect on the proper administration of justice throughout the state," had previously appeared in the Appellate Structure Commission[282] recommendation for a rule proceeding by which the supreme court could decide which cases it would take under the then proposed "reach-down" authority. The Senate thought the latter phrase had significance beyond that of "great public importance," and it was therefore added to section 3(b)(5) by the Senate drafting subcommittee and staff during the short November special session at which the constitutional proposal was adopted.[283] When hastily consulted as to the wisdom of this provision, or by then the difficulty of having it removed, members of the bar, the court and others who were monitoring the amendment elected to leave the language in as an alternate predicate for certification. It was generally believed that the language was not harmful, although it did not add anything of significance to the "great public importance" test. Section 3(b)(5) now provides, however, two alternate bases for the certification of trial court orders requiring immediate resolution. It remains for the courts to define or distinguish those two concepts.

The most important aspect of section 3(b)(5) is its clearly narrow intended application. Not more than two or three cases each year are expected to be certified to the supreme court under this provision. A great deal of responsibil-

279. The supreme court has tentatively promulgated rules implementing this procedure. FLA. R. APP. P. 9.125, as adopted in *In re* Emergency Amendments to Rules of Appellate Procedure, 381 So. 2d 1370 (Fla. 1980).

280. United States v. Nixon, 418 U.S. 683 (1974).

281. 28 U.S.C. §§ 1254(1), 2101(c) (1976).

282. 1979 Report, *supra* note 33, 53 FLA. B.J. at 300.

283. *Senate Committee Hearings on S.J. Res. 20-C*, Nov. 26, 1979, *supra* note 47.

ity will repose with the district court judges to distinguish inappropriate cases for which no certification would be appropriate from all those certifications requested by individual litigants. Inevitably, some cases may be certified because they seem to the district court judges politically sensitive in their geographic area of the state. If these cases do not require immediate resolution in order to resolve difficult questions of law having an important impact throughout the state, the supreme court may well decline immediate review and return the case for normal handling.[284]

(11) Questions certified from federal courts — section 3(b)(6)

The 1980 amendment provides that the supreme court

> [m]ay review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.[285]

The 1980 amendment provides express authority for the supreme court to consider questions of state law certified from federal appellate courts which are dispositive of litigation pending in the federal judicial system. Before the amendment there was no comparable provision in the constitution, although the supreme court had provided by rule[286] and judicial decision[287] for the receipt and disposition of these types of questions, and the legislature had authorized their being entertained by statute.[288] The language of section 3(b)(6) is precisely the language which formerly governed these types of decisions under the statute, the rule and case law.[289] Accordingly, the addition of this provision to the constitution can be seen as no more than a constitutional codification of existing authority for the supreme court to deal with such cases. The representations of the framers of this provision to legislative committees were, in fact, all to that effect.[290]

---

284. The court's temporary rules to implement the 1980 amendment state that the record should be retained in the district court until the court has exercised its discretion to accept or reject review. If review is rejected, the case will simply remain in the district court for a resolution of the appeal in that forum. FLA. R. APP. P. 9.125(g), as adopted in *In re* Emergency Amendments to Rules of Appellate Procedure, 381 So. 2d 1370 (Fla. 1980).

285. FLA. CONST. art. V, § 3(b)(6).

286. FLA. R. APP. P. 9.510.

287. *See* Mobil Oil Corp. v. Shevin, 354 So. 2d 372 (Fla. 1977); Sun Ins. Office, Ltd. v. Clay, 133 So. 2d 735 (Fla. 1961) (upholding the constitutionality of the federal court certification process).

288. FLA. STAT. § 25.031 (1979).

289. Federal courts have made regular use of the certification process. *See, e.g.*, Greene v. Massey, 595 F.2d 221 (5th Cir. 1979); Everglades Marina, Inc. v. American E. Dev. Corp., 374 So. 2d 517 (Fla. 1979); Cesary v. Second Nat'l Bank, 369 So. 2d 917 (Fla. 1979).

290. *Senate Committee Hearings on S.J. Res. 20-C*, Nov. 26, 1979, *supra* note 47 (remarks of Chief Justice England).

The Clerk of the supreme court estimates that federal appellate courts will continue to send the court approximately 5 cases per year.[291]

(12) Writs of prohibition to courts and commissions — section 3(b)(7); formerly section 3(b)(4)

The 1980 amendment provides that the supreme court

> [m]ay issue writs of prohibition to courts ~~and commissions in causes within the jurisdiction of the supreme court to review;~~ and all writs necessary to the complete exercise of its jurisdiction.[292]

When the supreme court's authority to review administrative action was narrowed to the limited category described earlier, conforming amendments were made to other provisions of the constitution which had conferred broader authority either by direct review or by writs of prohibition. Former section 3(b)(7), of course, was deleted in its entirety by the 1980 amendment,[293] and was replaced with the narrower section 3(b)(2). Section 3(b)(3) was amended to delete certiorari jurisdiction over statewide commissions.

Former section 3(b)(4) was also altered to delete language which had conferred express authority on the supreme court to issue writs of prohibition to commissions in causes within the jurisdiction of the supreme court to review. The framers of the 1980 amendment considered whether the deletion of that express authority to issue this type of extraordinary writ to commissions would preclude the issuance of a writ of prohibition to the Public Service Commission — the only agency having statewide jurisdiction over the rates and service of electric, gas and telephone companies. They concluded it would not. The authority to issue writs of prohibition, as well as any other appropriate extraordinary writ directed to that agency, was retained through section 3(b)(7), where the court is authorized to issue all writs necessary to the complete exercise of its jurisdiction.[294]

VI. Conclusions and Recommendations

Several general conclusions may be drawn from the adoption of the 1980 amendment, and several recommendations are appropriate.

1. District court judges have been given more responsibility under the con-

---

291. Statistics obtained from the Clerk of the Supreme Court of Florida.

292. Fla. Const. art. V, § 3(b)(7).

293. See notes 146-156 and accompanying text, *supra*.

294. The "all writs" power 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). Accordingly, the constitution does not give the court authority to issue an original writ of prohibition to the Public Service Commission (or any other statewide agency falling within the ambit of the court's authority under § 3(b)(2)), absent an independent basis for the court's jurisdiction.

stitution for the finality of judicial decisions and for the control of cases which might come to the supreme court for review.

(a) Additional authority has been granted district court judges to certify urgent matters of great public importance under the bypass provision, and to certify direct conflicts in district court decisions.

(b) Under the supreme court's rule providing for en banc rehearings, intra-district conflicts will be resolved within the district courts so that district court judges can deal en banc with important matters which are deemed suitable for full court analysis.

(c) A decision not to write an opinion in any particular case may be dispositive of the litigation. Therefore, district court judges will play a significant role in the state's justice system by the exercise of their judgment in this regard. No one questions the desirability of some dispositions without opinion at the district court level, for example, in cases which involve a straightforward application of existing law to individual and non-unique fact situations. On the other hand, the responsibility for articulating decisions on questions of law which might have statewide importance, or which might be in conflict with other appellate decisions, now rests more heavily on the district courts' judges. Perhaps greater precision will also be required of counsel to isolate, identify and discuss the issues of law which they present to the district courts.

2. The district courts appear to be candidates for more rehearing petitions, because of the en banc rehearing rules and the restrictions on supreme court review in certain categories of cases. New district court procedures may be necessary to accommodate this new round of rehearing requests. Ideally, uniformity will be achieved through the development of rules by the district courts for submission to the supreme court for adoption.

3. The extent to which the supreme court finds its necessary or desirable to identify and discuss in its opinions the bases for accepting jurisdiction in discretionary cases will, to a large extent, determine whether the 1980 amendment achieved all of the economies it was designed to accomplish. Notwithstanding the desirability of the court's attempts to guide review-seekers by articulating reasons for the exercise or nonexercise of the court's discretion, numerous commentators, commissioners and bar members condemned the extraordinary waste of judicial effort over the years from the supreme court's discussion of those matters.[295] The extensive case law defining "conflict certiorari," "questions of great public interest," "classes of constitutional or state officers," "record proper" and the like, highlights a loss of the justices' otherwise valuable time.

The clear intent of the framers of the 1980 amendment was to relieve the court of the time-consuming process of explaining the basis for an acceptance or rejection of jurisdiction. It is true, of course, that those who opposed the 1980 amendment (because it created categories of review, rather than allowing unlimited discretionary review) argued that categorical "pigeon holes" would necessitate the same kind of judicial effort which has heretofore hindered the substantive decision-making responsibilities of the court.[296] Probably, strong-

295. See note 200 and accompanying text, *supra*.

296. Letter from Tobias Simon to members of The Florida Bar, 4-5 app. (Jan. 7, 1980).

minded justices will debate the exercise of jurisdiction in terms of their analysis of the revised constitutional pigeon holes. Nonetheless, there is no compelling reason for the court to articulate its reasons for exercising jurisdiction in every particular case, and many who proposed and supported the 1980 amendment hope that the court would dispense with that practice for the most part. It remains to be seen whether the justices will view the revised constitution in this light.

4. Additional and revised appellate rules will be necessary to govern the procedures by which cases come to the supreme court and are considered in the district courts.[297] Amendments to the supreme court's Manual of Internal Operating Procedures will, of course, also be needed.

Among the new rules that should be developed is a new page limitation for review petitions filed with the supreme court. During the debates leading to the adoption of the 1980 amendment, it was frequently suggested that review petitions should be limited to five page applications by attorneys, simply stating the district court decision and attaching a copy of the court's opinion.[298] A page or two might be needed to identify the law in conflict, the class affected, or the like, but the bulk of the five pages would be devoted to a discussion of the reasons for exercising review.

A limitation on the size of jurisdictional briefs is consistent with the amendment in another respect. Extensive discussions of the basis for jurisdiction appear less necessary now that all district courts' opinions must "expressly" discuss or mention the issue or issues of law which are brought for review. A required copy of the district court's opinion to a large extent will obviate the need for an advocate's paraphrasing.

5. The district courts should give special attention to those decisions which declare a statute valid, and are thereby eligible for discretionary review by the supreme court. If a district court elects not to write an opinion, but simply adopts a trial court order, it would seem desirable to reproduce the trial court's order in the district court's decision. In that way, not only the parties but the general public will know what statute has been passed upon. Where that is not done, but the requisite jurisdiction for review is conferred by a simple announcement that the statute has been upheld, counsel should at least include as an appendix to the review petition a copy of the trial court's order which articulates the reasons for that action (if a written expression from the trial judge is available).

6. The 1980 amendment will not provide a leisurely pace for the supreme court's justices; certainly, never again in the range of 450 cases which the court considered in 1957. The estimated, annual caseload will be 2090, consisting of approximately 70 mandatory appeals, 1500 discretionary petitions for review, and all other matters (totaling 520 in 1979) which are unaffected by the changes

297. On March 27, 1980, the court temporarily adopted a series of emergency amendments to the Florida Rules of Appellate Procedure to govern all proceedings within their scope after 12:01 a.m., April 1, 1980 (the effective date of the 1980 amendment). *In re* Emergency Amendments to Rules of Appellate Procedure, 381 So. 2d 1370 (Fla. 1980). Cases pending in the court prior to April 1, 1980, will continue to be governed by the former rules. *Id.* at 1371.

298. *See* app. D.

— such as extraordinary writs, practice and procedure rules, bar admissions and disciplinary action, judicial discipline and advisory opinions to the governor. Thus, although jurisdictionally streamlined, the Supreme Court of Florida will remain one of the nation's high volume high courts. Although the amendment becomes effective on April 1, 1980, the effects of the 1980 amendment will not be realized until at least 1981 because the backlog of pending cases will occupy the justices for a significant period of time.

7. By redefining the supreme court's jurisdiction, the 1980 amendment provided the opportunity for the district courts, the attorneys of Florida, and particularly the justices of the supreme court to redefine the role of the supreme court in Florida's judicial system. The clear import of the change has been to free the court from non-policy types of decisions, and direct its efforts to issues of statewide importance or jurisprudential significance. The opportunity to exercise the new role requires a collective mentality which perceives the court as a limited policy-maker and law-harmonizer, rather than just a second level of trial reviewer for every litigant. Should the justices lose the mantle of restrained supremacy which the amendment invites them to don, or should the justices allow the bar to diminish the court's proper role with importunings for trivia, many of the benefits conferred by the amendment will have been lost. Should that occur, and an attendant new round of caseload pressures, revised internal screening procedures, and delayed dispositions ensue, the justices themselves must bear direct responsibility for the consequences.

APPENDIX A

Senate Joint Resolution No. 20-C

A joint resolution proposing an amendment to Section 3, Article V of the State Constitution, relating to the organization and jurisdiction of the Supreme Court.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 3 of Article V of the State Constitution is hereby agreed to and shall be submitted to the electors of this state for approval or rejection at a special election to be held in conjunction with the presidential preference primary election in March 1980; and which, if approved, shall take effect April 1, 1980.

ARTICLE V
JUDICIARY

SECTION 3. Supreme court.—

(a) ORGANIZATION.—The supreme court shall consist of seven justices. Of the seven justices, each appellate district shall have at least one justice elected or appointed from the district to the supreme court who is a resident of the district at the time of his original appointment or election. Five justices shall constitute a quorum. The concurrence of four justices shall be necessary to a decision. When recusals for cause would prohibit the court from convening because of the requirements of this section, judges assigned to temporary duty may be substituted for justices.

(b) JURISDICTION.--The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from ~~orders of trial courts and~~ decisions of district courts of appeal declaring invalid a state statute or a provision of the state

CODING: Words in ~~struck-through~~ type are deletions from existing law; words in underscored type are additions.

constitution ~~initially and directly passing on the validity of a state statute or a federal statute or treaty, or construing a provision of the state or federal constitution.~~

(2) When provided by general law, shall hear appeals from final judgments ~~and orders of trial courts imposing life imprisonment or final judgments~~ entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review ~~by certiorari~~ 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, ~~that passes upon a question certified by a district court of appeal to be of great public interest~~, or that expressly and directly conflicts ~~that is in direct conflict~~ with a decision of another ~~any~~ district court of appeal or of the supreme court on the same question of law, ~~and any interlocutory order passing upon a matter which upon final judgment would be directly appealable to the supreme court, and may issue writs of certiorari to commissions established by general law having statewide jurisdiction.~~

(4) 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.

(5) 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 supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court

CODING: Words in ~~struck through~~ type are deletions from existing law; words in undescored type are additions.

of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) ~~(4)~~ May issue writs of prohibition to courts ~~and commissions in causes within the jurisdiction of the supreme court to review~~, and all writs necessary to the complete exercise of its jurisdiction.

(8) ~~(5)~~ May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) ~~(6)~~ May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

~~(7) Shall have the power of direct review of administrative action prescribed by general law.~~

(c) CLERK AND MARSHAL.--The supreme court shall appoint a clerk and a marshal who shall hold office during the pleasure of the court and perform such duties as the court directs. Their compensation shall be fixed by general law. The marshal shall have the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE V, SECTION 3

Proposing an amendment to the State Constitution to modify the jurisdiction of the Supreme Court.

Filed in Office Secretary of State November 29, 1979.

CODING: Words in ~~struck through~~ type are deletions from existing law; words in underscored type are additions.

APPENDIX B

JOURNAL OF THE HOUSE OF REPRESENTATIVES

November 28, 1979

Messages from the Senate

The Honorable J. Hyatt Brown, Speaker

I am directed to inform the House of Representatives that the Senate has passed as amended, by the required constitutional three-fifths vote of all members elected to the Senate, SJR 20-C, and request the concurrence of the House.

Joe Brown, Secretary

By Committee on Judiciary-Civil—

SJR 20-C—A joint resolution proposing an amendment to Section 3, Article V of the State Constitution, relating to the organization and jurisdiction of the Supreme Court.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 3 of Article V of the State Constitution is hereby agreed to and shall be submitted to the electors of this state for approval or rejection at a special election to be held in conjunction with the presidential preference primary election in March 1980; and which, if approved, shall take effect April 1, 1980.

[The full text is printed in appendix A, *supra*.]

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 3

Proposing an amendment to the State Constitution to modify the jurisdiction of the Supreme Court.

—was read the first time by title. On motions by Mr. Thompson, the rules were waived and SJR 20-C was read the

second time by title and the third time by title. On passage, the vote was:

Yeas—107

Bankhead	Foster	Lehman	Price
Barrett	Fox	Lewis, J. W.	Ready
Batchelor	Gallagher	Lewis, T. F.	Richmond
Beard	Gersten	Liberti	Robinson
Bell	Girardeau	Lippman	Rosen
Boles	Gustafson	Mann	Ryals
Brantley	Haben	Margolis	Sadowski
Burnsed	Hagler	Martin	Sample
Bush	Hattaway	Martinez	Shackelford
Campbell	Hawkins, L. R.	McCall	Sheldon
Carlton	Hawkins, M. E.	McPherson	Silver
Carpenter	Hazouri	Meek	Smith, C. R.
Conway	Healey	Melby	Smith, J. H.
Cox	Hieber	Mica	Smith, L. J.
Crady	Hodges	Mills	Spaet
Crawford	Hollingsworth	Mitchell	Thomas
Crotty	Jennings	Moffitt	Thompson
Danson	Johnson, A. E.	Morgan	Tygart
Davis	Johnson, B. L.	Myers	Upchurch
Deratany	Johnson, R. C.	Nergard	Ward
Dunbar	Jones, C. F.	Muckolls	Warner
Dyer	Jones, D. L.	Ogden	Watt
Easley	Kelly	O'Malley	Weinstock
Evans	Kershaw	Pajcic	Williams
Ewing	Kirkwood	Patchett	Woodruff
Flinn	Kiser	Patterson	Young
Flynn	Kutun	Plummer	

Nays—1

Burrall

Votes after roll call:

Yeas—Malloy, Allen, Hodes, Hector
Yeas to Nays—Flynn

So the joint resolution passed by the required Constitutional three-fifths vote of the membership and was immediately certified to the Senate.

The Honorable J. Hyatt Brown, Speaker

I am directed to inform the House of Representatives that the Senate has passed by the required constitutional three-fourths vote of all members elected to the Senate SB 21-C, and requests the concurrence of the House.

Joe Brown, Secretary

By the Committee on Judiciary-Civil—

SB 21-C—A bill to be entitled An act relating to a special election to be held on March 11, 1980, pursuant to Section 5 of Article XI of the State Constitution, for the approval or rejection by the electors of a joint resolution amending Section 3 of Article V of the State Constitution relating to the judiciary; providing for publication of notice and for procedures; providing an effective date.

—was read the first time by title. On motions by Mr. Thompson, the rules were waived and SB 21-C was read the second time by title and the third time by title. On passage, the vote was:

Yeas—113

The Chair	Deratany	Hazouri	Lippman
Alien	Dunbar	Healey	Lockward
Bankhead	Dyer	Hector	Mann
Barrett	Easley	Hieber	Margolis
Batchelor	Eckhart	Hodes	Martin
Beard	Evans	Hodges	Martinez
Bell	Ewing	Hollingsworth	McCall
Boles	Flinn	Jennings	McPherson
Brantley	Flynn	Johnson, A. E.	Meek
Burnsed	Foster	Johnson, B. L.	Melby
Burrall	Fox	Johnson, R. C.	Mica
Bush	Gallagher	Jones, C. F.	Mills
Campbell	Gardner	Jones, D. L.	Mitchell
Carlton	Gersten	Kelly	Moffitt
Carpenter	Girardeau	Kershaw	Morgan
Conway	Gustafson	Kirkwood	Myers
Cox	Haben	Kiser	Nergard
Crady	Hagler	Kutun	Nuckolls
Crawford	Hall	Lehman	Ogden
Crotty	Hattaway	Lewis, J. W.	O'Malley
Danson	Hawkins, L. R.	Lewis, T. F.	Pajcic
Davis	Hawkins, M. E.	Liberti	Patchett

Patterson	Sample	Smith. L. J.	Warner
Plummer	Shackelford	Spaet	Watt
Price	Sheldon	Thomas	Weinstock
Richmond	Silver	Thompson	Williams
Robinson	Smith, C. R.	Upchurch	Woodruff
Rosen	Smith, J. H.	Ward	Young
Ryals			

Votes after roll call:

Yeas—Malloy

So the bill passed by the required Constitutional three-fourths vote of the memberhsip and was immediately certified to the Senate

APPENDIX C

JOURNAL OF THE SENATE

November 28, 1979

SJR 20-C—A joint resolution proposing an amendment to Section 3, Article V of the State Constitution, relating to the organization and jurisdiction of the Supreme Court.

—was read the second time.

The Committee on Judiciary-Civil offered the following amendment which was moved by Senator Hair and failed:

Amendment 1—On page 2, line 9, after the word *"Commission"* insert: *, or its successor,*

Senator Hair moved the following amendment which was adopted:

Amendment 2—On page 2, strike all of line 9 and insert: *review action of statewide agencies*

Legislative Intent

At the request of Senator Myers, by direction of the President the following statements were published in the Journal:

Senator Myers: To clarify the term "statewide agency" so that we have a clear expression of legislative intent in the record on this, I want to ask Senator Hair a question so that he can give me the answer and perhaps put that in the Senate Journal.

Mr. President: Does Senator yield?

Senator Hair: I yield.

Senator Myers: Senator Hair, to clarify the matter, is it true that the term "statewide agency" will comport with the term "state agency" in chapter 120 insofar as review of orders of the Public Service Commission are concerned to the District Court of Appeal now that you are changing it, or to the Supreme Court with respect to electric, telephone and gas cases?

Senator Hair: That's correct.

Senator Myers: So that even though you have a difference of terminology between "statewide agency" in the constitutional language and the definition designated as "state agency" in chapter 120, insofar as review of Public Service Commission orders are concerned to respective courts they are one and the same.

Senator Hair: That's correct.

Senator Myers: I would respectfully request that this be shown in the Senate Journal as a direct statement of legislative intent, so we have a clear understanding, since there is a difference in terminology between "statewide agency" as used in this Constitutional amendment, and the definition "state agency" under Chapter 120.

The Committee on Judiciary-Civil offered the following amendment which was moved by Senator Hair and adopted:

Amendment 3—On page 2, lines 11 and 12, strike *"and shall review agency action of the Florida Commission on Ethics"*

Senator Hair moved the following amendment which was adopted:

Amendment 4—On page 2, line 16, strike "~~that effects a class of constitutional or state officers,~~" and insert: *, or* that *expressly* affects a class of constitutional or state officers,

On motion by Senator Hair, by two-thirds vote SJR 20-C as amended was read the third time in full as follows:

A joint resolution proposing an amendment to Section 3, Article V of the State Constitution, relating to the organization and jurisdiction of the Supreme Court.

[The full text is printed in appendix A, *supra*.]

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE V, SECTION 3

Proposing an amendment to the State Constitution to modify the jurisdiction of the Supreme Court.

On motion by Senator Hair, SJR 20-C as amended passed by the required constitutional three-fifths vote of the membership and was certified to the House. The vote on passage was:

Yeas—34

Mr. President	Grizzle	McKnight	Thomas
Anderson	Hair	Neal	Tobiassen
Barron	Henderson	Peterson	Trask
Chamberlin	Hill	Poole	Vogt
Childers, D.	Holloway	Scarborough	Ware
Childers, W. D.	Jenne	Scott	Williamson
Fechtel	Johnston	Skinner	Winn
Frank	MacKay	Steinberg	
Gorman	Maxwell	Stuart	

Nays—2

Carlucci	Gordon

Votes after roll call:

Yea—Dunn, McClain, Myers, Spicola

SB 21-C—A bill to be entitled An act relating to a special election to be held on March 11, 1980, pursuant to Section 5 of Article XI of the State Constitution, for the approval or rejection by the electors of a joint resolution amending Section 3 of Article V of the State Constitution relating to the judiciary; providing for publication of notice and for procedures; providing an effective date.

—was read the second time by title. On motion by Senator Hair, by two-thirds vote SB 21-C was read the third time by title, passed by the required constitutional three-fourths vote of the membership and was certified to the House. The vote on passage was:

Yeas—34

Mr. President	Grizzle	McKnight	Thomas
Anderson	Hair	Neal	Tobiassen
Barron	Henderson	Peterson	Trask
Chamberlin	Hill	Poole	Vogt
Childers, D.	Holloway	Scarborough	Ware
Childers, W. D.	Jenne	Scott	Williamson
Fechtel	Johnston	Skinner	Winn
Frank	MacKay	Steinberg	
Gorman	Maxwell	Stuart	

Nays—1

Carlucci

Votes after roll call:

Yes—Dunn, McClain, Myers, Spicola

APPENDIX D

September 13-15, 1979

The statement of principles adopted is set forth below.

Statement of Principles approved by the Board of Governors
of The Florida Bar, Saturday, September 15, 1979, in principle

1. The burden of decision making imposed by the current jurisdiction of the Supreme Court is intolerable and this jurisdiction should be modified.
2. The committee would recommend consideration of support of a constitutional amendment providing for mandatory jurisdiction for the Supreme Court to include no more than the following:
   a. When provided by general law, review of bond validation proceedings;
   b. Review of cases where the death penalty is imposed;
   c. Review of decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.
3. The committee would recommend support of a constitutional amendment providing for discretionary review by the supreme court of the following categories of cases:
   a. Decisions of a district court of appeal expressly construing a provision of the federal or state constitution;
   b. Decisions certified by the district court of appeal as conflict cases, cases of great public importance, or cases affecting the proper administration of justice;
   c. Orders or judgments of the circuit or county court certified by the chief judge of a circuit to be of great public importance or to affect the proper administration of justice and to require an immediate resolution;
   d. Decisions of a district court of appeal in which the opinion articulates a rule of law in

conflict with the decision of another district court or the supreme court. (This would contemplate no review of per curiam affirmances.)

e. Decisions of the district court of appeal which substantially affect the general public interest or the proper administration of justice throughout the state.

4. It is contemplated and recommended that the court by rule:

a. Sharply restrict the format and presentation of petitions for certiorari;

b. Require as a prerequisite to a petition for conflict cert that the question of conflict be expressly raised in the district court of appeal;

c. Provide for en banc panels of the district courts.

Note: this statement of principles assumes adoption of the balance of the court's original proposal for amendment of the other provisions of Article V, Section 3. The provision contained in this statement will be substituted for subsections 3(b)(1) through (3) and (7) of the court's original proposal.

APPENDIX E

COMMISSION ON FLORIDA'S APPELLATE COURT STRUCTURE MINUTES

October 12, 1978

The Commission on Florida's Appellate Court Structure met at 9:00 a.m. in the Collier Room of the Host International Motel in the Tampa International Airport on October 12, 1978.

Members present: Justice Ben F. Overton, Chairman, Chief Judge Guyte P. McCord, Jr., Chief Judge Stephen H. Grimes, Judge Philip A. Hubbart, Chief Judge James C. Downey, Judge Parker Lee McDonald, Judge Donald E. Stone, Judge Morton L. Abram, Commissioner Arthur C. Canaday, Representative Arnett E. Girardeau, Representative William E. Sadowski, Mr. William H. Adams, III, Mr. Thomas A. Clark, Mr. Charles B. Edwards, Mr. Jack Kassewitz, Mr. Robert J. Pleus, Jr., and Mr. Tobias Simon.

Members not present: Senator Mattox Hair and Dean Richard Julin.

Others present: Sylvia Alberdi, Richard Cox, and Eleanor Mitchell.

COMMISSION BUSINESS

1. The Chairman stated that he believed the appropriate approach to the work of the Commission was for the full commission to make the necessary policy determinations and then divide up into subcommittees for the purpose of drafting the specific constitutional, statutory or rule changes necessary to implement the policy.

2. In response to questions which arose concerning the position of the Supreme Court on the matters under consideration by the Commission, the Chairman indicated that he would attempt to get a consensus of the Court's position prior to the next meeting, and that standing invitations to meet with the Commission have been issued to each Supreme Court justice.

3. Mr. Simon stated that there were questions about policy which should be answered prior to the collapse of the system. He noted that the Supreme Court was overloaded with an error-correcting function which unnecessarily impeded the Court's more appropriate role of policy maker.

4. The Commission discussed the respective roles of the Supreme Court and District Courts of Appeal in light of the *Hoffman v. Jones* decision and the general philosophy of the Supreme Court in the exercise of its certiorari jurisdiction.

5. Judge Grimes stated that the district courts should be given the right to sit *en banc* for the purpose of avoiding internal inconsistency. The Commission, while noting that there is some question over the constitutional right at the present time for the district courts to sit *en banc*, agreed that the courts should possess such power.

6. The Commission next discussed the concept of the present system of certiorari jurisdiction in contrast to a completely discretionary certiorari system. The Chairman indicated that there has always existed differing views within the Supreme Court concerning the concept of

conflict jurisdiction and the function of such jurisdiction. Mr. Simon stated that the Supreme Court should be given certiorari jurisdiction similar to that possessed by the United States Supreme Court; that is, jurisdiction to decide significant and important cases. Judge Grimes was of the opinion that discretionary certiorari may make the district courts less final. There was disagreement among the members concerning the short and long term effects of such a change in certiorari jurisdiction.

7. The Commission decided to review Supreme Court jurisdiction provision-by-provision, noting that the tentative votes taken in relation to the matters discussed were subject to change based on either a rethinking of the matter or consideration of the juridictional problems in the other courts in the system.

8. The Commission tentatively voted or agreed:

(a) to make no recommendations for changes in the present Supreme Court appellate jurisdiction over death cases;

(b) to recommend that the Supreme Court's appellate jurisdiction over decisions passing on the validity of a state or federal statute be limited to those cases in which the state or federal statute is declared invalid. (Cases in which the validity of the statute is upheld would proceed along the normal appellate route; that is, to either the district court of appeal or the circuit court, depending on the court of origin.);

(c) to recommend no change in the constitutional provision allowing appellate jurisdiction for decisions construing the state or federal constitution, in light of the fact that the number of cases in the category was so small;

(d) to wait until after the proposed constitution revision vote in November before making any recommendation on the appellate jurisdiction of the Supreme Court over life sentences imposed in capital cases;

(e) to recommend that bond validations remain within the Supreme Court appellate jurisdiction;

(f) not to recommend changes in the certiorari jurisdiction of the Supreme Court in cases involving a class of constitutional officers;

(g) to recommend that the Supreme Court retain certiorari jurisdiction over questions certified by district courts to be of great public interest;

(h) to recommend no changes in the certiorari jurisdiction of the Supreme Court over interlocutory orders which upon becoming final would be directly appealable to the Supreme Court.

(i) to remove from the Supreme Court's certiorari jurisdiction Industrial Relations Commission (workmen's compensation) cases, if a viable alternative procedure for judicial review of such cases is found;

(j) to remove Public Service Commission certiorari jurisdiction from the Supreme Court if a viable alternative judicial review procedure for such cases is found, after a lengthy discussion of the distinction between Public Service Commission cases of state-wide import and those of local concern only.

9. The Chairman indicated that the matters on the agenda which were not covered at this meeting would be discussed at the next meeting which was scheduled for October 26 in Tampa. The Chairman also tentatively established November 16 and November 30 as future meeting dates for the Commission.

MEMORANDUM RE
RECOMMENDATIONS OF APPELLATE STRUCTURE COMMISSION

Sept. 5, 1979

The Appellate Structure Commission reviewed the proposal by the Supreme Court for its jurisdiction as contained in Appendix C of the Chief Justice's Report on the Florida Judiciary and made the following recommendations:

1. The Commission had no objection to the proposed modification of the organization of the Court as set forth in subparagraph (a) of section 3.

With reference to the specific jurisdiction of the Supreme Court, the Commission would modify the proposal in the following manner:

MANDATORY JURISDICTION

1. Shall hear appeals from final judgments of trial courts imposing the death penalty;

2. Shall hear appeals from decisions of district courts of appeal which declare invalid a state statute or a federal statute or treaty.

[It was the intent of the Commission that the Court should mandatorily review such holding of invalidity irrespective of whether such holding was by a written opinion or a per curiam affirmed opinion.]

3. When provided by general law, shall hear appeals from final judgments entered in proceedings for validation of bonds or certificates of indebtedness.

DISCRETIONARY OR PERMISSIVE JURISDICTION

1. May review by certiorari any decision of a district court of appeal which expressly upholds the validity of a state statute or federal statute or treaty or expressly construes a provision of the state or federal constitutions. The district court could if it deemed it appropriate certify, in advance of decision, issues dealing with the validity of a state or federal statute or a constitutional issue, and it would be discretionary in the Supreme Court whether it would accept such advance certification.

[It was the understanding of the Commission that the use of the term "expressly" required a written opinion by the district court.]

2. May review by certiorari any decision of a district court of appeal that passes upon a question certified by a district court of appeal.

[It was the Commission's intent to eliminate the specific finding that such a question be of great public interest. The Commission would eliminate the certification of direct conflict questions and leave the issue of direct conflict to be dealt with by the last provision in this recommendation.]

3. May review interlocutory orders passing upon a matter which, upon final judgment, would be directly appealable to the Supreme Court.

4. May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

5. May issue writs of mandamus and quo warranto to state officers and state agencies.

6. May or any justice may issue writs of habeas corpus returnable before the Supreme Court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

7. May review any order, judgment, or decision of a district court of appeal on an issue or issues which substantially affect the general public interest or the proper administration of justice throughout the state.

[It would be the intention of the Commission that this provision would afford the Court an opportunity to review conflicting decisions of the district courts of appeal, and the appropriate standard for review of such cases should be set forth in rules as previously proposed by the Commission to the Court. The Commission opposed the "reach-down" provision as proposed by the Court.]

APPENDIX F

IN THE SUPREME COURT OF FLORIDA
JULY TERM, 1978
WEDNESDAY, JULY 26, 1978
AMENDED: TUESDAY, AUGUST 15, 1978

IN RE:
COMMISSION ON THE FLORIDA
APPELLATE COURT STRUCTURE

ADMINISTRATIVE ORDER

In his 1978 Report on the State of the Judiciary, Chief Justice Ben F. Overton urged the formation of a commission to study the present appellate court structure of the state, with a

view to recommending changes that may be necessary to meet the needs of the future. The problems perceived by the Chief Justice earlier this year appear to be growing, and they require prompt attention. This order is promulgated to implement Justice Overton's recommendation.

(a) *Commission Members*

The following individuals are appointed to serve as the Commission on the Florida Appellate Court Structure:

Ben F. Overton, Justice, as Chairman
Supreme Court of Florida
Tallahassee

Guyte P. McCord, Jr., Judge
First District Court of Appeal
Tallahassee

Stephen H. Grimes, Judge
Second District Court of Appeal
Lakeland

Philip A. Hubbart, Judge
Third District Court of Appeal
Miami

James C. Downey, Judge
Fourth District Court of Appeal
West Palm Beach

Parker Lee McDonald, Judge
Ninth Judicial Circuit
Orlando

Donald E. Stone, Judge
Eleventh Judicial Circuit
Miami

Morton L. Abram, Judge
Broward County

Arthur C. Canaday, Commissioner
Industrial Relations Commission
Tallahassee

Mattox S. Hair, Senator
Jacksonville

Arnett E. Girardeau, Representative
Jacksonville

William E. Sadowski, Representative
Miami

William H. Adams III, Esq.
Jacksonville

Thomas A. Clark, Esq.
Tampa

Charles B. Edwards, Esq.
Fort Myers

Joseph R. Julin, Dean
Gainesville

Jack Kassewitz
Miami

Robert J. Pleus, Jr., Esq.
Orlando

Tobias Simon, Esq.
Miami

(b) *Commission Functions*

The Commission is directed to study the existing structure, case load, and operation of Florida's appellate courts, and to recommend as promptly as possible such measures as are deemed advisable to improve the quality of appellate justice and to promote the efficient disposition of cases in the appellate courts. To achieve these goals, the Commission is directed to review all relevant provisions of the Florida Constitution of 1968, as amended, all relevant provisions of the Constitution proposed for adoption in November, 1978, all statutes affecting the appellate jurisdiction of Florida's courts, and all relevant decisions defining or controlling the appellate jurisdiction of Florida's courts. In carrying out its analysis and forming its recommendations, the Commission is directed to evaluate the following subjects, along with any others it deems appropriate:

(1) With respect to the appellate jurisdiction of circuit courts;

(a) the amalgamation of circuit and county courts;

(b) the alteration of statutory boundaries distinguishing the two; and

(c) the creation of panels of circuit court judges to review county court decisions.

(2) With respect to the district courts of appeal:

(a) the establishment of a statewide court of specialized appeals or, alternately, the establishment of specialized appeals' divisions in the district courts of appeal;

(b) the alteration of the boundaries of the existing district courts of appeal or the establishment of one or more additional district courts of appeal;

(c) the creation of additional judgeships in some or all of the district courts of appeal; and

(d) the absorption of Industrial Relations Commissioners into one or more of the district courts of appeal, and the concomitant absorption of industrial claims judges into the circuit courts.

(3) With respect to the jurisdiction of the Supreme Court, the amendment or repeal of constitutional and statutory provisions affecting the Court's jurisdiction, in an effort to ensure that the district courts of appeal are courts of final appellate review as contemplated by Article V of the Constitution.

The Commission is directed to convene at the call of the chairman as promptly as possible; and is requested to report its recommendations not later than February 28, 1979. Coordinative staff support will be provided by the State Courts Administrator and the Administrative Assistant to the Chief Justice.

/s/ Arthur J. England, Jr.
Chief Justice

Attest:
/s/ Debbie Causseax
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1978
November 28, 1978

IN RE:

COMMISSION ON THE FLORIDA APPELLATE COURT STRUCTURE

ADMINISTRATIVE ORDER

The order of the Chief Justice originally establishing and setting forth the duties of the Commission on the Florida Appellate Court Structure and appointing members, dated July 26, 1978, as amended on August 15, 1978, is amended to remove Senator Mattox Hair, at his request, as a member of the Commission and to add Senator James A. Scott as a member of the Commission.

It is so ordered.

/s/ Arthur J. England, Jr.
Chief Justice

Attest:
/s/ Sid White
Clerk

ADDENDUM

The following developments occurred as this article went to the printer:

Footnote 117: The Court's proposed revision of § 26.012(1), Florida Statutes (1979) — creating a "statutory bypass" for the circuit courts in cases of county court invalidations — was passed by the 1980 Legislature effective July 9, 1980. H.B. 1670 (Reg. Sess. 1980).

Footnotes 148, 158, 162: A bill to conform the statutory review authority over utility matters to the 1980 amendment was passed by the 1980 Legislature effective July 1, 1980. S.B. 313 (Reg. Sess. 1980).

Footnotes 187-189 and accompanying text: The court held in *Dodi Publishing Co. v. Editorial America, S.A.*, No. 59,042 (Fla. July 3, 1980), that a "citation PCA" does not provide a sufficient basis for conflict jurisdiction under new section 3(b)(3). In a companion case, *Pena v. Tampa Fed. Sav. & Loan Ass'n*, No. 59,153 (Fla. July 3, 1980), the court held that a district court order summarily dismissing an appeal with a mere citation of authority also does not support conflict jurisdiction.

Footnotes 246 & 247 and accompanying text: In *Jenkins v. State*, No. 59,987 (Fla. June 26, 1980), the court held that it lacked jurisdiction under new section 3(b)(3) to review, for conflict purposes, district court per curiam decisions without opinion accompanied by a concurring or dissenting opinion. The 1980 amendment thus has abolished the concepts of "dissent conflict" and "concurrence conflict."