A HISTORICAL COMPARISON OF CERTIORARI REVIEW STANDARDS IN FLORIDA'S APPELLATE COURTS

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I. INTRODUCTION

The standard of certiorari review in Florida's appellate courts has more or less evolved as Florida's court system has evolved. Prior to 1957, the Florida Constitution provided the Florida Supreme Court with the power to issue writs of certiorari in cases emanating from Florida's trial courts.[1]

In 1956, the Florida Legislature proposed, and the general electorate of Florida adopted in the general election of November 6, 1956, an amendment to the Florida Constitution that established the Florida district courts of appeal.[2] With the adoption of this amendment, the Florida Constitution provided the Florida Supreme Court with jurisdiction to review, by certiorari, decisions of the district courts of appeal deemed to be of "great public interest" or decisions in conflict with another district or the Supreme Court and to "issue writs of certiorari to commissions established by law."[3] This amendment also provided the district courts of appeal with jurisdiction to issue writs of certiorari,[4] and as the Third District Court of Appeal explained, "The [1957] amendment was intended to define and confine the powers and jurisdiction of the [S]upreme [C]ourt in order to avoid the danger of the district courts of appeal becoming way stations on the road to the [S]upreme [C]ourt."[5]

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1. Fla. Const. art. V, § 5 (1885) (superseded 1957 by Fla. Const. art. V, § 4).
2. Fla. Const. art. V, § 5 (1957) (superseded 1973 by Fla. Const. art. V, § 4).
3. *Id.* at art. V, § 4(2).
4. *Id.* at art. V, § 5(3).
5. *State v. G.P.*, 429 So. 2d 786, 788 n. 6 (Fla. 3d Dist. App. 1983), *aff'd*, 476 So. 2d 1272 (Fla. 1985).

In 1980, the Florida Legislature proposed, and the general electorate of Florida adopted in the special presidential primary election on March 11, 1980, an amendment to the Florida Constitution that reined in the jurisdiction of the Florida Supreme Court, particularly by eliminating its certiorari review.[6] After this amendment, only the district courts of appeal and circuit courts possessed jurisdiction to issue writs of certiorari.[7]

This Article examines the standard used in certiorari review as the jurisdiction of Florida's courts has changed. First, this Article explores certiorari review prior to 1957, when the Florida Constitution granted the Florida Supreme Court jurisdiction to review by certiorari cases emanating from Florida's trial courts.[8] Second, this Article analyzes certiorari review after 1957, but prior to 1980, when the Florida Constitution provided certiorari review jurisdiction to both the Florida Supreme Court and the district courts of appeal.[9] Finally, this Article examines certiorari review after the 1980 amendment to the Florida Constitution in which certiorari review jurisdiction was limited to Florida's district courts of appeal.[10]

II. CERTIORARI IN THE FLORIDA SUPREME COURT BEFORE 1957

Prior to 1957, the Florida Constitution vested the circuit courts with final appellate authority.[11] The Florida Constitution

6. Fla. Sen. Jt. Res. 20-C, Reg. Sess. 1980 (Mar. 1980) (available at http://www.law.fsu.edu/crc/conhist/1980amen-mar.html); *In re Emerg. Amends. to R. of App. P.*, 381 So. 2d 1370, 1371–1372 (Fla. 1980). For a discussion on the development of the 1980 amendment, see *Jenkins v. State*, 385 So. 2d 1356, 1360–1363 (Fla. 1980) (England, C.J., concurring specially).

7. Fla. Const. art. V, §§ 4(b)(2), 5(b) (1981).

8. Fla. Const. art. V, § 5 (1885) (superseded 1967 by Fla. Const. art. V, § 4).

9. Fla. Const. art. V, § 4 (1957) (superseded 1973 by Fla. Const. art. V, § 4).

10. Fla. Const. art. V, §§ 4(b)(2), 5(b) (1981).

11. Article V, Section 11 of the 1885 Florida Constitution provided as follows:

> The Circuit Courts shall have exclusive original jurisdiction in all cases in equity, also in all cases at law, not cognizable by inferior courts, and in all cases involving the legality of any tax, assessment, or toll; of the action of ejectment and of all actions involving the titles or boundaries of real estate, and of all criminal cases not cognizable by inferior courts; and original jurisdiction of actions of forcible entry and unlawful detainer, and of such other matters as the Legislature may provide. They shall have final appellate jurisdiction in all civil and criminal cases arising in the County Court, or before the County Judge, of all misdemeanors tried in Criminal Courts, of judgments or sentences of any Mayor's Court, and of all cases arising before Justices of the Peace in counties in which there is no County

also enabled the Florida Supreme Court to exercise supervisory jurisdiction over inferior courts through the power to issue writs of certiorari, prohibition, and mandamus.[12] Specifically, Article V, Section 5 of the 1885 Florida Constitution provided:

> The Supreme Court shall have appellate jurisdiction in all cases at law and in equity originating in Circuit Courts, and of appeals from the Circuit Courts in cases arising before Judges of the County Courts in matters pertaining to their probate jurisdiction and in the management of the estates of infants, and in cases of conviction of felony in the criminal courts, and in all criminal cases originating in the Circuit Courts. The Court shall have the power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and also all writs necessary or proper to the complete exercise of its jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or any Justice thereof, or before any Circuit Judge.[13]

Before the 1939 Amendment, "a petition for writ of certiorari involved a two-stage proceeding" similar to other writs.[14] In the first stage, the reviewing court "determined whether it had jurisdiction to review the order."[15] Then, the court "received additional briefing and decided whether the order departed from the essential requirements of the law," essentially proceeding on the merits.[16]

The power of the Florida Supreme Court to issue writs of certiorari (prior to 1957) has been described as enabling the Court

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Court; and supervision and appellate jurisdiction of matters arising before County Judges pertaining to their probate jurisdiction, or to the estates and interests of minors, and of such other matters as the Legislature may provide. The Circuit Courts and Judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, habeas corpus and all writs proper and necessary to the complete exercise of their jurisdiction.

12. Fla. Const. art. V, § 5 (1885) (amended 1957).

13. *Id.*

14. *Parkway Bank v. Ft. Myers Armature Works, Inc.*, 658 So. 2d 646, 649 (Fla. 2d Dist. App. 1995); William A. Haddad, *The Common Law Writ of Certiorari in Florida*, 29 U. Fla. L. Rev. 207, 208 (1977).

15. *Parkway Bank*, 658 So. 2d at 649.

16. *Id.* The two-stage petition for writ of certiorari process "was changed by the adoption of Supreme Court Rule 28 in 1939." Haddad, *supra* n. 14, at 208.

> to exercise supervisory jurisdiction over other courts, in conformity with the command of [S]ection 4 of the organic Declaration of Rights that "all courts in this State shall be open, so that every person for any injury done him in his lands, goods, person or reputation shall have remedy, by due course of law, and right and justice shall be administered without sale, denial or delay."[17]

But the Florida Supreme Court also limited this seemingly open-ended avenue for jurisdiction, stating, for example,

> While a writ of certiorari lies from the Supreme Court to judgments of the circuit courts rendered in causes appealed to the circuit courts from civil courts of record, such writs of certiorari issued from the Supreme Court do not authorize a review of the circuit court judgments as on writ of error. Such a procedure would conflict with the purpose of the Constitution to give to the circuit courts "final appellate jurisdiction" in all cases arising in courts that are inferior to the circuit courts, with exceptions.[18]

The Florida Supreme Court additionally stated that this "supervisory" certiorari jurisdiction was not intended to permit a second appeal.[19]

In addition to the constitutional amendments, the Florida Supreme Court further limited its pre-1957 certiorari jurisdiction through several decisions. For example, in the early case of *Edgerton v. Mayor & Alderman of Green Cove Springs*,[20] the Florida Supreme Court held that a writ of certiorari

> does not serve the purpose of a writ of error or appeal with a bill of exceptions as known to our practice, and that if the [c]ircuit [c]ourt has jurisdiction, and there is no irregularity or illegality in the procedure, the record of which is brought to this [C]ourt, the *certiorari* must be quashed.[21]

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17. *Mut. Ben. Health & Accident Ass'n v. Bunting*, 183 So. 321, 324 (Fla. 1938).

18. *Id.* at 325 (citing *Edwards v. Knight*, 132 So. 459 (Fla. 1931)).

19. *See Benton v. State*, 76 So. 341, 342 (Fla. 1917) (stating that "[t]he common[ ]law writ of certiorari cannot be made to serve the purpose of an appellate proceeding in the nature of a writ of error with a bill of exceptions").

20. 18 Fla. 528 (Fla. 1882).

21. *Id.* at 530.

In a later opinion, the Florida Supreme Court wrote, in denying the application for a writ of certiorari,

> The power of this [C]ourt to review and quash, on the common[ ]law writ of certiorari, the proceedings of an inferior tribunal, when it proceeds in a cause without jurisdiction, or when its procedure is illegal, or is unknown to the law, or is essentially irregular, is, we think, clear; but, while such power does exist, it must be remembered that its exercise is not a matter of right, but rests in the sound legal discretion of the court, and when the writ is granted it will not serve the purpose of a writ of error or appeal with a bill of exceptions.[22]

In *Benton v. State*,[23] the Florida Supreme Court, on writ of certiorari, reviewed a circuit court judgment affirming a man's Walton County criminal conviction for selling liquor in a dry county.[24] The *Benton* Court stated,

> Under the Constitution of this [S]tate, the supervisory power of the Supreme Court on a certiorari to a circuit court as an appellate court is restricted to an examination into the external validity of the proceedings had in the circuit court, and cannot be exercised to review the judgment of that court as to its intrinsic correctness, where the record discloses that a cause of action existed; the court of original jurisdiction had jurisdiction of parties and subject-matter, and the appellate court acquired jurisdiction according to the forms prescribed by law.[25]

The *Benton* Court denied the writ of certiorari, noting that to review the evidence taken by the county court and determine its sufficiency to support the verdict, including reviewing the admissibility of evidence offered during trial and to quash the affirmance of the circuit court, "would be to confound the supervisory power of [the] court with its appellate jurisdiction."[26]

Later, in *Mutual Benefit Health & Accident Ass'n v. Bunting*,[27] the Florida Supreme Court again noted that "such writs of

22. *Jacksonville, T. & K. W. Ry. Co. v. Boy*, 16 So. 290, 291 (Fla. 1894).
23. 76 So. 341.
24. *Id.* at 341–342.
25. *Id.* at 343.
26. *Id.*
27. 183 So. 321.

certiorari issued from the Supreme Court do not authorize a review of the circuit court judgments as on writ of error."[28] The *Bunting* Court acknowledged that using a writ of certiorari to review on a writ of error "would conflict with the purpose of the Constitution to give to the circuit courts 'final appellate jurisdiction' in all cases arising in courts that are inferior to the circuit courts."[29] The Court provided the following standard for certiorari jurisdiction:

> [T]he Supreme Court, on writs of certiorari to judgments of the circuit courts, rendered in causes appealed to the circuit courts from the civil courts of record, should review and adjudicate such matters as may properly be determined on writs of certiorari as their appropriate scope and use under the law, have been or may be developed by the decisions of the Supreme Court. The purpose in issuing such writ of certiorari is to determine in each case whether the judgment sought to be reviewed is illegal or is essentially irregular or prejudicial and materially harmful to the party duly complaining; to the end that the commands, prohibitions and limitations of controlling law may prevail in the administration of the law.[30]

In the 1940s, the Florida Supreme Court was faced with the issue of what to do when "an attorney files a notice of appeal from a non-appealable order which might be reviewable by certiorari."[31] In response, the Court set forth Rule of Practice 34, which "provid[ed] for review of interlocutory orders in equity by certiorari."[32] The practice of filing such notices of appeal continued, and the Florida Supreme Court "treated these notices of appeal as petitions for certiorari."[33] After this practice continued, the Court in a 1947 case finally "warned that in the future, on motion, it would dismiss appeals which should have been brought by certiorari under Rule 34."[34] The Florida Legislature reacted to the Court's warning by enacting Florida Statutes Section 59.45, which provided:

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28. *Id.* at 325.
29. *Id.*
30. *Id.*
31. Haddad, *supra* n. 14, at 216.
32. *Id.*
33. *Id.*
34. *Randall v. Randall*, 29 So. 2d 238, 242 (Fla. 1947); Haddad, *supra* n. 14, at 216–217.

> If an appeal be improvidently taken where the remedy might have been more properly sought by certiorari, this alone shall not be a ground for dismissal; but the notice of appeal . . . shall be regarded and acted on as a petition for certiorari.[35]

Notably, however, the Florida Supreme Court concluded that Florida Statutes Section 59.45 does not apply "when an order sought to be reviewed by certiorari [was] properly the subject of a plenary or interlocutory appeal."[36]

III. CERTIORARI IN FLORIDA COURTS: 1957–1979

After the 1956 amendment to the Florida Constitution that established the district courts of appeal, the Florida Supreme Court's jurisdiction to review judgments by certiorari was as follows:

> The [S]upreme [C]ourt may directly review by certiorari interlocutory orders or decrees passing upon chancery matters which upon a final decree would be directly appealable to the [S]upreme [C]ourt. In all direct appeals and interlocutory reviews by certiorari, the [S]upreme [C]ourt shall have such jurisdiction as may be necessary to complete determination of the cause on review.[37]

The 1956 amendment provided district courts of appeal with jurisdiction to "issue writs of mandamus, certiorari, prohibition, and quo warranto, and also all writs necessary or proper to the complete exercise of its jurisdiction."[38] The 1956 amendment further provided that circuit courts and judges had the jurisdiction "to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction."[39]

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35. Fla. Stat. § 59.45 (1949); Haddad, *supra* n. 14, at 216–217; *see also Atlantic Coast Line R. Co. v. U.S. Sugar Corp.*, 47 So. 2d 513, 514 (Fla. 1950) (applying Florida Statutes Section 59.45 to agree to review, by certiorari, a final order of the Florida Railroad and Public Utilities Commission).

36. Haddad, *supra* n. 14, at 217; *see also Bartow Growers Processing Corp. v. Fla. Growers Processing Coop.*, 71 So. 2d 165, 166 (Fla. 1954) (holding that Florida Statutes Section 59.45 "does not provide that a petition for certiorari improvidently filed may be treated as a notice of appeal").

37. Fla. Const. art. V, § 4(2) (1957).

38. *Id.* at § 5(3).

39. *Id.* at § 6(3).

Shortly thereafter, the Constitutional Revision Commission proposed an amendment to the Florida Constitution that would have further altered the Florida Supreme Court's certiorari jurisdiction by adding the following to what was previously permitted under the 1956 amendment:

> The [S]upreme [C]ourt may review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, or that passes upon a question certified by the district court of appeal to be of great public interest, or that is in direct conflict with a decision of another district court of appeal or of the [S]upreme [C]ourt on the same point of law, and may issue writs of certiorari to commissions established by law.[40]

The decisions that followed the 1956 amendments reflect the Florida Supreme Court's caution in exercising its certiorari jurisdiction, and the decisions further demonstrate that the Court no longer had the power to issue common law writs of certiorari. For example, in *Lake v. Lake*,[41] the petitioner asked the Court to review, by certiorari, a per curiam affirmed decision from the Second District Court of Appeal.[42] The Court outlined in its decision the process and reasoning for the creation of the district courts of appeal—namely, to "solve the problem of congestion in all the courts."[43] As noted by the Court, it was the judgment of the Judicial Council

> that the formation of district courts of appeal could be conscientiously recommended to the people if the *powers* and *jurisdiction* of the Supreme Court were so defined and confined that there would be no danger of the district courts of appeal becoming way stations on the road to the Supreme Court.[44]

To that end, the Court held that

> [s]ustaining the dignity of decisions of the district courts of appeal must depend largely on the determination of the Supreme Court not to venture beyond the limitations of its

40. Fla. H. Jt. Res. 810, 1955 Legis., Reg. Sess. 1042 (May 27, 1955).
41. 103 So. 2d 639 (Fla. 1958).
42. *Id.* at 640.
43. *Id.*
44. *Id.* at 641–642 (emphasis in original).

> own *powers* by arrogating to itself the right to delve into a decision of a district court of appeal primarily to decide whether or not the Supreme Court agrees with the district court of appeal about the disposition of a given case.[45]

After noting the categories of Florida Supreme Court certiorari jurisdiction added after the original 1956 amendment, the *Lake* Court held that certiorari "was never purposed to provide the review which petitioner now seeks."[46] Instead, the *Lake* Court held the following:

> If in a particular case an opinion is rendered by a district court of appeal that prima facie conflicts with a decision of another district court of appeal or of the Supreme Court on the same point of law, the writ of certiorari may issue and, after study, may be discharged, or the decision of the district court of appeal may be quashed or modified to the end that any conflict may be reconciled.[47]

The *Lake* Court, in discharging the writ of certiorari, stated that to allow certiorari review in this case, given the Florida Constitution's provision of jurisdiction in the district courts of appeal, "would be distorted so that a suitor who had had one day in the appellate court would have a second."[48] It further stated that

> if the Supreme Court undertakes to go behind a judgment on the tenuous theory that it must see that justice is done instead of giving to the judgment the verity it deserves and assuming that justice *has been done* the system that has been overwhelmingly approved by the people will be undermined and weakened.[49]

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45. *Id.* at 642.
46. *Id.*
47. *Id.* at 643.
48. *Id.*
49. *Id.* (emphasis in original). In subsequent decisions, the Florida Supreme Court determined that the Florida Constitution provided the Court with jurisdictional power to review per curiam district court decisions rendered without opinion if conflict with another decision could be discerned from the "record proper." *E.g. Foley v. Weaver Drugs, Inc.*, 177 So. 2d 221 (Fla. 1965) (discussing the Court's treatment of per curiam opinions that directly conflict with another decision).

In *Robinson v. State*,[50] the Florida Supreme Court similarly held that "this Court no longer has extensive power to issue so-called 'common law writs of certiorari' to review judgments of lower courts."[51] Instead, Article V, Sections 5 and 6 of the Florida Constitution now gives the district courts of appeal and circuit courts the power to issue these writs.[52] The *Robinson* Court explained certiorari jurisdiction as follows:

> In situations in which review of a judgment or decree of a lower court is not otherwise provided for, the [d]istrict [c]ourts of [a]ppeal are endowed with powers of review limited to a determination of whether the judgment constitutes a deviation from the essential requirements of the law. In a general way, this is the type of so-called common[ ]law certiorari power exercised by this Court prior to the effective date of amended Article V, on July 1, 1957.[53]

The *Robinson* Court expressly held that a district court of appeal was the only court that was authorized to issue a writ of certiorari "to review directly the decisions of a circuit court sitting as an appellate court."[54] In describing certiorari review at the district court of appeal level, the *Robinson* Court stated

> that [a district court of appeal] may then properly consider the proposition that the circuit court, in the exercise of its appellate jurisdiction . . . exceeded its constitutional power and, therefore, deviated from the essential requirements of the law. Any judgment rendered by the court of appeal may then be tendered to us for review under those provisions of Article V, Section 4, Florida Constitution, which authorizes us to review decisions of courts of appeal.[55]

District courts of appeal exercised their certiorari jurisdiction in a fashion similar to the Florida Supreme Court pre-1957. For example, in *State v. Katz*,[56] Mr. Katz was tried and convicted, and

50. 132 So. 2d 3 (Fla. 1961).
51. *Id.* at 5.
52. *Id.*
53. *Id.*
54. *Id.* at 6.
55. *Id.*
56. 108 So. 2d 60 (Fla. 3d Dist. App. 1959).

after trial, the circuit court reversed the conviction on appeal.[57] The State thereafter sought reversal of the circuit court decision, via certiorari, in the Third District Court of Appeal.[58] The *Katz* court noted that "[d]ue regard for the plain language of the constitution prevents this appellate court from entertaining a second appeal. The common law writ of certiorari was not meant for and may not be diverted to such purpose."[59] Instead, the court held that it "must restrict [its] consideration within those limits which have been well defined by the Supreme Court."[60] The court reviewed earlier decisions of the Florida Supreme Court concerning certiorari, such as *Benton*,[61] in determining that its certiorari jurisdiction did not permit the court to review a circuit court order made in the exercise of its appellate jurisdiction; rather, the court's jurisdiction "is restricted to an examination into the external validity of the proceedings had in the circuit court, and cannot be exercised to review the judgment of that court as to its intrinsic correctness."[62] The *Katz* court also noted another Florida Supreme Court decision concerning the Court's certiorari jurisdiction prior to 1957:

> Generally stated, a writ of certiorari may, in the discretion of the [C]ourt, be issued where it is duly made to appear, at least prima facie, that the record of a lower court shows that the proceedings in a cause have violated established principles of law, or that the adjudication in the cause is a palpable miscarriage of justice, and that the result is a substantial injury to the petitioner, who has no other remedy, and seeks a writ of certiorari.[63]

The court held that these previous decisions of the Florida Supreme Court were "now applicable to this court in the exercise of its appellate jurisdiction conferred by amendment to the consti-

57. *Id.* at 60–61.
58. *Id.* at 61.
59. *Id.* (citing *Townsend v. State*, 97 So. 2d 712, 713 (Fla. 1st Dist. App. 1957)).
60. *Id.*
61. 76 So. at 342–343 (examining the Florida Supreme Court's proper scope of certiorari review, which was "restricted to an examination into the external validity of the proceedings had in the circuit court, and cannot be exercised to review the judgment of that court as to its intrinsic correctness").
62. 108 So. 2d at 61 (quoting *Benton*, 76 So. at 343).
63. *Id.* (quoting *Am. Ry. Express Co. v. Weatherford*, 93 So. 740, 742 (Fla. 1922)).

tution creating and making operative this court as of July 1, 1957."[64]

In *State v. Mobley*,[65] Mr. Mobley was tried and convicted of a "violation of a rule or regulation of the Game and Fresh Water Fish Commission of Florida" despite the fact that the State failed to offer into evidence a certified copy of the rule or regulation allegedly violated; instead, the trial court considered a bench copy of the Rules and Regulations of the Game and Fresh Water Fish Commission, took judicial notice of the bench copy, and denied Mr. Mobley's motion for a directed verdict.[66] The circuit court, sitting in its appellate capacity, reversed and held that the trial court took improper judicial notice of the bench copy of the Rules and Regulations of the Game and Fresh Water Fish Commission.[67] The Second District Court of Appeal, on certiorari from the state, contemplated its jurisdiction, stating,

> [The] court is empowered to review and quash on the common[ ]law writ of certiorari the orders and proceedings of subordinate courts when they proceed in a cause without jurisdiction, or when their procedure is essentially irregular and not according to the essential requirements of law, and when there exists no appeal or direct method of reviewing the order or proceedings. Since the [S]tate has available to it no right of appeal or other direct method of review, the only avenue left to it is that of the common[ ]law writ of certiorari; and under the circumstances delineated, the remedy is properly invoked.[68]

The court held "that the trial judge was empowered to apply the doctrine of judicial notice as he did[, and it] follows that the order of reversal entered by the circuit court upon appeal was a departure from the essential requirements of law."[69]

In 1972, after a special election, the general electorate of Florida amended the Florida Constitution to authorize certiorari review in the Florida Supreme Court as follows:

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64. *Id.* at 62.
65. 133 So. 2d 334 (Fla. 2d Dist. App. 1961).
66. *Id.* at 334.
67. *Id.* at 334–335.
68. *Id.* at 335 (citing *Cacciatore v. State*, 3 So. 2d 584 (Fla. 1941)).
69. *Id.* at 336.

> [A]ny decision of a district court of appeal that 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 is in direct conflict with a decision of any district court of appeal or of the [S]upreme [C]ourt on the same question of law, and any interlocutory order passing upon a matter which upon final judgment would be directly appealable to the [S]upreme [C]ourt; and may issue writs of certiorari to commissions established by general law having statewide jurisdiction.[70]

This additional form of "constitutional" certiorari in the Florida Supreme Court also differed from common law certiorari. This "scope of review" did not include the consideration of "'irreparable injury' [or] 'departure from the essential requirements of law'" that had developed as part of common law certiorari review[71] and that was effectively abrogated by the 1957 amendments.[72] Under this form of constitutional certiorari, the Supreme Court could review a district court of appeal's decision that fell within the categories enunciated in the 1957 and 1972 amendments.[73]

For example, in *Rinker Materials Corp. v. City of North Miami*,[74] the Florida Supreme Court exercised its conflict certiorari jurisdiction because "[i]n failing to apply the plain and ordinary meaning and common usage of the language of the ordinance in determining intent, the district court misapplied the established decisional rules of statutory construction. Such misapplication is a clear basis of conflict."[75]

In *Brown v. State*,[76] the Florida Supreme Court also exercised its conflict certiorari jurisdiction, noting a conflict between a First District Court of Appeal decision and a Florida Supreme Court decision.[77] In these decisions, the Florida Supreme Court first inquired into whether a conflict existed "and, if so, whether the

70. Fla. Const. art. V, § 3(b)(3) (1973) (superseded 1981 by Fla. Const. art. V, § 3).

71. Haddad, *supra* n. 14, at 210 (citations omitted).

72. *Id.*; *see also Robinson*, 132 So. 2d at 5 (noting that the power of review in certain situations is equitable to the common law certiorari power the Florida Supreme Court exercised prior to the 1957 amendment to Article V).

73. Haddad, *supra* n. 14, at 210–211.

74. 286 So. 2d 552 (Fla. 1973).

75. *Id.* at 553.

76. 206 So. 2d 377 (Fla. 1968).

77. *Id.* at 379.

decision of the district court was in error."[78] If the Florida Supreme Court found a conflict, it could quash an erroneous decision of the district court of appeal "even if such error does not amount to a departure from the essential requirements of law."[79] Similarly, if the Florida Supreme Court found that a decision met any of the other bases for constitutional certiorari, it could proceed to review the district court of appeal's decision for error.[80]

IV. CERTIORARI IN FLORIDA COURTS AFTER 1980

After ratification by the people of Florida in 1980, Florida Constitution Article V, Section 3 was substantially revised. Among other things, the revision eliminated reference to certiorari jurisdiction in the Florida Supreme Court.[81] Although previous amendments effectively eliminated common law certiorari in the Florida Supreme Court, the 1980 revision explicitly did so by specifically removing the mention of certiorari jurisdiction from its jurisdictional grant.[82] In *Jenkins v. State*,[83] the Florida Supreme Court stated:

> The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new [A]rticle embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State,

78. Haddad, *supra* n. 14, at 210.

79. *Id.*; *see also N & L Auto Parts Co. v. Doman*, 117 So. 2d 410, 412 (Fla. 1960) (stating that the Court's concern is with the "decision under review as legal precedent" and uniformity throughout the courts). In *N & L Auto Parts Co.*, the Court held:

> The question of a conflict is of concern to this Court only in those cases where the opinion and judgment of the district court announces a principle or principles of law that are in conflict with a principle or principles of law of another district court or this Court. Our concern is with the decision under review as a legal precedent to the end that conflicts in the body of the law of this State will be reduced to an absolute minimum and that the law announced in the decision of the appellate courts of this State shall be uniform throughout.

Id.

80. *See generally e.g. Korash v. Mills*, 263 So. 2d 579 (Fla. 1972) (reviewing a decision certified by the district court of appeal as being of great public importance); *Richardson v. State*, 246 So. 2d 771 (Fla. 1971) (reviewing a decision of the district court of appeal affecting a class of constitutional or state officers).

81. Fla. Const. art. V, § 3 (1981).

82. Philip J. Padovano, *Florida Appellate Practice* § 30:5 (2013 ed., West 2012).

83. 385 So. 2d 1356 (Fla. 1980).

> exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.[84]

The result, according to the *Jenkins* Court, was an appellate structure in Florida that included "these features":

> (1) a supreme court having constitutionally limited, as opposed to unlimited, discretionary review of intermediate appellate court decisions; and (2) finality of decisions in the district courts of appeal, with further review by the [S]upreme [C]ourt 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.[85]

The 1980 amendment to the Florida Constitution clarified what was already clear: common law certiorari jurisdiction was to be available only in the district courts of appeal and the circuit courts.[86] Such certiorari jurisdiction in the district courts of appeal is guided by Florida Supreme Court decisions concerning the Court's common law certiorari jurisdiction that predate the 1957 amendment.

For example, in a more recent opinion, the Florida Supreme Court explained common law certiorari as follows:

> The common law writ of certiorari is a special mechanism whereby an upper court can direct a lower tribunal to send up the record of a pending case so that the upper court can "be informed of" events below and evaluate the proceedings for regularity. The writ functions as a safety net and gives the upper court the prerogative to reach down and halt a miscarriage of justice where no other remedy exists. The writ is dis-

84. *Id.* at 1357–1358.

85. *Id.* at 1363.

86. *See Vetrick v. Hollander*, 464 So. 2d 552, 553 (Fla. 1985) (holding that the Florida Supreme Court "does not have common law certiorari jurisdiction"). Circuit court jurisdiction to issue common law writs of certiorari is established in Article V, Section 5(b) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(c)(2). Circuit courts, in their review capacity, can issue common law writs of certiorari "to review non-final orders of lower tribunals other than as prescribed by [Florida Rule of Appellate Procedure] 9.130." Fla. R. App. P. 9.030(c)(2). Circuit courts also possess the authority to review quasi-judicial decisions of local governments or agencies not governed by the Administrative Procedure Act. *Id.* at 9.100(c).

> cretionary and was intended to fill the interstices between direct appeal and the other prerogative writs. The writ never was intended to redress mere legal error, for common law certiorari—above all—is an extraordinary remedy, not a second appeal.[87]

In limited circumstances, a party may seek a writ of certiorari in a district court of appeal after a circuit court enters an order that does not fall within the very narrow category of appealable, non-final orders enumerated in Florida Rule of Appellate Procedure 9.130.[88] In such a case, the Florida Supreme Court enunciated the following:

> A non-final order for which no appeal is provided by Rule 9.130 is reviewable by petition for certiorari only in limited circumstances. The order must depart from the essential requirements of law and thus cause material injury to the petitioner throughout the remainder of the proceedings below, effectively leaving no adequate remedy on appeal.[89]

A district court has discretion to permit certiorari review when certain requirements are met.[90] A court's authority is limited to quashing an order that departs from the essential requirements of the law.[91] As the Florida Supreme Court described:

> the departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. A district court should exercise its discretion to grant certiorari review *only* when there has

87. *Broward Co. v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001) (footnotes omitted) (citations omitted).

88. *See* Tracy E. Leduc, *Certiorari in the Florida District Courts of Appeal*, 33 Stetson L. Rev. 107, 107–108 (2003) (explaining that the common law writ of certiorari is a unique mechanism for a district court of appeal to address an error made by a trial court when there is no other "remedy by way of direct appeal, authorized non[-]final appeal, or a different writ").

89. *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1099 (Fla. 1987) (citing *Brooks v. Owens*, 97 So. 2d 693 (Fla. 1957); *Kilgore v. Bird*, 6 So. 2d 541 (Fla. 1942)).

90. *ABG Real Est. Dev. Co. of Fla., Inc. v. St. John's Co.*, 608 So. 2d 59, 64 (Fla. 5th Dist. App. 1992).

91. *Id.* at 63–64.

> been a violation of a clearly established principle of law resulting in a miscarriage of justice.[92]

District courts of appeal have exercised their discretion to conduct certiorari review in cases in which denying review would result in a material injury to the parties involved. Examples include:

> disclosure of materials or communications protected by Florida's various statutory privileges[,] . . . disclosure of materials relating to claims that are not yet properly before the court[,] pretrial orders excluding evidence at trial, orders severing parties or counts for trial, orders denying a stay of litigation, orders granting or dissolving lis pendens[,] . . . orders granting a "quick taking" in condemnation proceedings[,] order[s] dispensing with a statutorily mandated presuit procedure[,] . . . orders requiring counties to pay attorney's fees, orders disqualifying attorneys in various proceedings, and orders granting motions to conduct postverdict jury interviews.[93]

Certiorari is also available in the district courts of appeal when seeking review of a final decision rendered by an administrative agency not governed by Florida's Administrative Procedure Act[94] or a decision of a local government acting in a quasi-judicial role when review is not otherwise available under general law.[95] For these decisions, certiorari review in the circuit court is akin to a traditional appeal, with subsequent review in the district court of appeal—also known as second-tier certiorari—being much more limited.[96]

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92. *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 889 (Fla. 2003) (emphasis in original) (citing *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 682 (Fla. 2000)).

93. Leduc, *supra* n. 88, at 109–111.

94. Fla. Stat. Ch. 120 (2012).

95. *See* Fla. R. App. P. 9.100(c)(2) (explaining when a petition to review quasi-judicial action of agencies that may be subject to certiorari review but that "is not directly appealable under any other provision of general law" must be filed); *see also Broward Co.*, 787 So. 2d at 843 (noting that Florida courts have certiorari jurisdiction to review "local agency action that is not otherwise subject to review under the Administrative Procedure Act" but only if that action is quasi-judicial).

96. *Haines City Community Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). In *Heggs*, the Florida Supreme Court noted that the standard of review in "second-tier" certiorari cases "is limited to [determining] whether the circuit court afforded procedural due process and whether the circuit court applied the correct law." *Id.*

A district court of appeal may also use certiorari to review decisions of circuit courts acting in their appellate capacity.[97] The district court may grant certiorari only in those instances in which it can be shown that the circuit court departed from the essential requirements of law in rendering its decision on appeal.[98] In *Combs v. State*,[99] the Florida Supreme Court addressed the scope of certiorari review:

> the phrase "departure from the essential requirements of law" should not be narrowly construed so as to apply only to violations which effectively deny appellate review or which pertain to the regularity of procedure. In granting writs of common law certiorari, the district courts of appeal should not be as concerned with the mere existence of legal error as much as with the seriousness of the error. Since it is impossible to list all possible legal errors serious enough to constitute a departure from the essential requirements of law, the district courts must be allowed a large degree of discretion so that they may judge each case individually. The district courts should exercise this discretion only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.
>
> It is this discretion which is the essential distinction between review by appeal and review by common law certiorari.[100]

V. CONCLUSION

Prior to 1957, and through numerous amendments and revisions to the Florida Constitution, the Florida courts have exercised and applied a limited certiorari jurisdiction to supervise lower tribunals.[101] The Florida Supreme Court, prior to 1957, exercised this certiorari jurisdiction to review and quash "the proceedings of an inferior tribunal . . . when it proceed[ed] in a cause without jurisdiction, or when its procedure [was] illegal, or [was] unknown to the law, or [was] essentially irregular."[102] After 1957,

97. Fla. R. App. P. 9.030(b)(2).

98. Sylvia H. Walbolt & Leah A. Sevi, *The "Essential Requirements of the Law"—When Are They Violated?* 85 Fla. B.J. 21, 21 (Mar. 2011).

99. 436 So. 2d 93 (Fla. 1983).

100. *Id.* at 95–96.

101. *See supra* pt. II (describing the history of certiorari review in Florida courts).

102. *Jacksonville, T. & K. W. Ry. Co.*, 16 So. at 291.

when the Florida Constitution established the district courts of appeal, the district courts of appeal and circuit courts were provided certiorari jurisdiction.[103] The Florida Supreme Court's certiorari jurisdiction was changed so that the Court could review by certiorari interlocutory orders that, upon a final decree, would be directly appealable to the Supreme Court. The Court also had certiorari "jurisdiction as may be necessary to complete determination of the cause on review."[104] During this time, the decisions of the Florida Supreme Court reflected that it no longer possessed the power to issue common law writs of certiorari,[105] and the district courts of appeal exercised their certiorari jurisdiction in a manner similar to the Florida Supreme Court's jurisdiction prior to 1957.[106]

In 1972, the Florida Constitution was again amended to authorize certiorari review of district courts of appeal decisions in the Florida Supreme Court on a limited basis, but this form of "constitutional" certiorari differed from common law certiorari. This form of review did not contain the limits and constraints that had developed in the common law certiorari jurisprudence. If a district court of appeal's decision fell within the categories enunciated in the Florida Constitution, the Florida Supreme Court could review the decision and determine if the decision was made in error.[107]

In 1980, the Florida Constitution was amended again to eliminate any mention of certiorari as part of the Florida Supreme Court's jurisdiction.[108] This amendment limited the Florida Supreme Court's jurisdiction, and subsequent certiorari jurisdiction was to be available only in the district courts of appeal and the circuit courts.[109] The decisions of the district courts of appeal that concern the exercise of certiorari jurisdiction after the 1980 amendment to the Florida Constitution continue to reflect those certiorari pronouncements of the Florida Supreme Court prior to

103. Fla. Const. art. V, §§ 5(3), 6(3) (1957).

104. *Id.* at art. V, § 4.

105. *See Lake*, 103 So. 2d at 640–643 (outlining the process and reasoning for the creation of the district courts of appeal, highlighting the limited categories of Florida Supreme Court certiorari jurisdiction, and determining that the Court had no jurisdiction in the case at hand).

106. *E.g. Katz*, 108 So. 2d 60.

107. Fla. Const. art. V, § 3(b)(3) (1973) (superseded 1981 by Fla. Const. art. V, § 5).

108. Fla. Const. art. V, § 3(b) (1981).

109. *Id.* at art. V, §§ 4(b)(3), 5(b).

1957.[110] Since the 1980 amendment, Florida's district courts of appeal have reviewed those non-final orders for which no appeal is provided under Florida Rule of Appellate Procedure 9.130 that depart from the essential requirements of law and thus cause material injury throughout the remainder of the proceedings below, effectively leaving no adequate remedy on appeal.[111]

110. *Martin-Johnson, Inc.*, 509 So. 2d at 1099.
111. *Id.*