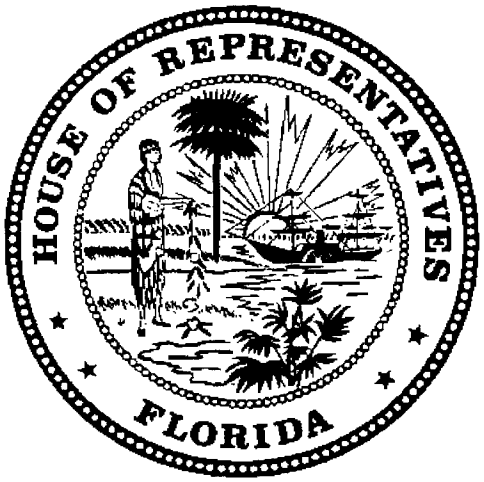
Background Materials for the Workshop on the Appropriate Scope of the Florida Constitution



January 25, 2006

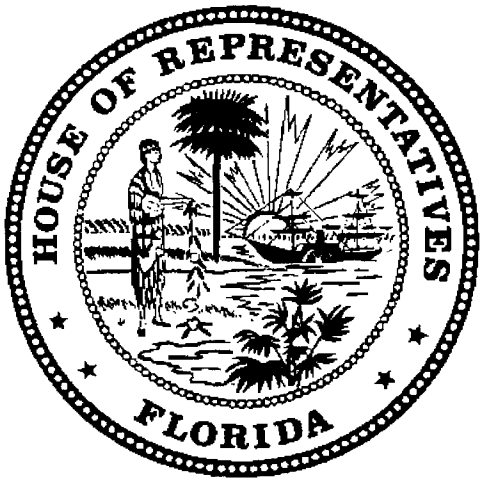
Judiciary Committee
Rep. David Simmons, Chair

Tom Thomas
Staff Attorney

Stephen Hogge
Staff Director

Tanesha Williams
CAA

Background Materials for the Workshop on the Appropriate Scope of the Florida Constitution



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A

SUMMARY OF PROPOSALS BY REVISION COMMISSIONS

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1992 FLORIDA TAXATION AND BUDGET REFORM COMMISSION PROPOSALS

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1978 CONSTITUTIONAL REVISION COMMISSSION PROPOSALS

Summary of Proposals

Revision No. 1 - **FAILED**

Proposing a revision of the Florida Constitution, generally described as the Basic Document, embracing the subject matter of Articles I (Declaration of Rights), II (General Provisions), III (Legislature), IV (Executive), V (Judiciary), VI (Suffrage and Elections), VIII (Local Government), X (Miscellaneous), XI (Amendments) and XII (Schedule), except for other revisions separately submitted for a vote on this ballot.

Revision No. 2 - **FAILED**

DECLARATION OF RIGHTS (SEX)

Proposing a revision of the Florida Constitution to provide that no person will be deprived of any right because of sex.

Revision No. 3 - **FAILED**

LEGISLATIVE (SINGLE-MEMBER DISTRICTS AND REAPPORTIONMENT COMMISSION)

Proposing a revision of the Florida Constitution to require single-member legislative districts, and to establish reapportionment standards and a commission to prepare a reapportionment plan for legislative and congressional districts.

Revision No. 4 - **FAILED**

EXECUTIVE (CABINET)

Proposing a revision of the Florida Constitution to eliminate the cabinet composed of the secretary of state, the attorney general, the comptroller, the treasurer, the commissioner of agriculture and the commissioner of education in January 1983; and to provide, in such event, that the governor, acting jointly with at least one officer, as provided by law, shall be responsible for the investment of state funds, the management of bond debt and the acquisition and disposition of state lands; and to provide that other cabinet duties shall be transferred by law.

Revision No. 5 - **FAILED**

EXECUTIVE (PUBLIC SERVICE COMMISSION AND PUBLIC COUNSEL)

Proposing a revision of the Florida Constitution to provide for a five-member public service commission, each member to be appointed by the governor from a list not fewer than three persons submitted by a nominating commission, and that such members shall be confirmed by the senate; and to establish a public counsel to represent the people of the state before the public service commission.

Revision No. 6 - **FAILED**

JUDICIARY (SELECTION AND RETENTION OF CIRCUIT AND COUNTY JUDGES)

Proposing a revision of the Florida Constitution to provide that circuit and county judges submit themselves for retention or rejection by the electors in a general election every six years; to provide that the governor shall fill vacancies occurring by rejection or otherwise from a list of at least three names submitted by the appropriate nominating commission; and to increase the terms of county court judges from four to six years.

Revision No. 7 - **FAILED**

FINANCE AND TAXATION

Proposing a revision of the Florida Constitution to provide that property owned by a municipality and held for municipal purposes shall be exempt from taxation; to extend the personal property tax exemption to all natural persons, and to extend to widowers the property tax exemption of not less than five hundred dollars; to provide for ad valorem tax exemptions for leasehold interests created prior to January 1, 1978, in government owned property; to provide that leasehold interests in government property leased for public purposes in connection with air, water or ground transportation may be exempt from taxation as provided by law; to permit adjustments to tax assessments relating to stock in trade and livestock, historic property and solar energy systems; to permit the revaluation of property every two years; to authorize the use of tax abatement and increment for redevelopment of slum and blighted areas; to provide that corporate income tax may not be levied against the appreciation of property value occurring prior to November 2, 1971; to permit an annual adjustment to the homestead exemption to maintain a constant value using 1979 as a base year and providing for replacement of revenues to local governments; revising provisions relating to state bonds.

Revision No. 8 - **FAILED**

EDUCATION

Proposing a revision of the Florida Constitution to provide that the state board of education shall be appointed by the governor and confirmed by the senate, and shall be responsible for the management and coordination of the state system of public education; to provide that the commissioner of education shall be appointed by the board in the event the office of elected commissioner is abolished; and to provide for a board of regents, appointed by the governor and confirmed by the senate, which shall govern the state university system.

1992 FLORIDA TAXATION AND BUDGET REFORM COMMISSION PROPOSALS

Summary of Proposals

IMPROVING ACCOUNTABILITY AND PUBLIC REVIEW IN SPENDING TAXPAYERS' MONEY AND MAINTAINING A BALANCED BUDGET - **ADOPTED**

A revision requiring: 72-hour public review for appropriation bills; a budget stabilization fund; performance measurement and productivity programs; a state planning document and department ad agency planning processes; appropriation bills format; appropriations review; annual state budgeting and planning processes; processes for creating and sunsetting trust funds; and a final budget report. Providing executive authority to maintain a balanced budget and to direct planning and budgeting. Expanding use of educational capital outlay funds.

AD VALOREM TAXATION OF GOVERNMENT LEASEHOLDS - **ADOPTED**

Subjects leaseholds in government owned property entered into since 1968 to ad valorem taxation. All leaseholds in government owned property entered into prior to 1968, and subsequent renewal options and extensions provided in the initial lease, shall be taxed as intangible personal property.

AUTHORIZING MUNICIPALITIES AND COUNTIES TO LEVY A ONE-CENT SALES TAX WITH LOCAL VOTER APPROVAL - **FAILED**

The proposal authorizes counties and municipalities to levy up to a one-cent sales tax, if approved by the voters of the county or municipality, to be used for local government services. The referendum vote shall be called for by an ordinance of the county or municipality, and the one-cent sales tax, if approved, shall be based on the state sales and use tax as defined by the Legislature, with certain exceptions.

LEASEHOLD INTERESTS IN GOVERNMENTAL REAL PROPERTY SUBJECT TO AD VALOREM TAXES - **REMOVED BY COURT – NOT ADOPTED**

Subjects leaseholds in government owned property entered into since 1968 to ad valorem taxation. All leaseholds in government owned property entered into prior to 1968, and subsequent renewal options and extensions provided in the initial lease, shall be taxed as intangible personal property.

1998 CONSTITUTIONAL REVISION COMMISSSION PROPOSALS

Summary of Proposals

REVISION 5 - **ADOPTED**

CONSERVATION OF NATURAL RESOURCES AND CREATION OF FISH AND WILDLIFE CONSERVATION COMMISSION

Requires adequate provision for conservation of natural resources; creates Fish and Wildlife Conservation Commission, granting it the regulatory and executive powers of the Game and Fresh Water Fish Commission and the Marine Fisheries Commission; removes legislature's exclusive authority to regulate marine life and grants certain powers to new commission; authorizes bonds to continue financing acquisition and improvement of lands for conservation, outdoor recreation, and related purposes; restricts disposition of state lands designated for conservation purposes.

REVISION 6 - **ADOPTED**

PUBLIC EDUCATION OF CHILDREN

Declares the education of children to be a fundamental value of the people of Florida; establishes adequate provision for education as a paramount duty of the state; expands constitutional mandate requiring the state to make adequate provision for a uniform system of free public schools by also requiring the state to make adequate provision for an efficient, safe, secure, and high quality system.

REVISION 7 - **ADOPTED**

LOCAL OPTION FOR SELECTION OF JUDGES AND FUNDING OF STATE COURTS

Provides for future local elections to decide whether to continue electing circuit and county judges or to adopt system of appointment of those judges by governor, with subsequent elections to retain or not retain those judges; provides election procedure for subsequent changes to selection of judges; increases county judges' terms from four to six years; corrects judicial qualifications commission term of office; allocates state courts system funding among state, counties, and users of courts. < /P>

REVISION 8 - **ADOPTED**

RESTRUCTURING THE STATE CABINET

Merges cabinet offices of treasurer and comptroller into one chief financial officer; reduces cabinet membership to chief financial officer, attorney general, agriculture commissioner; secretary of state and education commissioner eliminated from elected cabinet; secretary of state duties defined by law; changes composition of state board of education from governor and cabinet to board appointed by governor; board appoints education commissioner; defines state board of administration, trustees of internal improvement trust fund, land acquisition trust fund.

REVISION 9 - **ADOPTED**

BASIC RIGHTS

Defines "natural persons," who are equal before the law and who have inalienable rights, as "female and male alike;" provides that no person shall be deprived of any right because of national origin; changes "physical handicap" to "physical disability" as a reason that people are protected from being deprived of any right.

REVISION 10 - **FAILED**

LOCAL AND MUNICIPAL PROPERTY TAX EXEMPTIONS AND CITIZEN ACCESS TO LOCAL OFFICIALS

Broadens tax exemption for governmental uses of municipal property; authorizes legislature to exempt certain municipal and special district property used for airport, seaport, or public purposes; permits local option tax exemption for property used for conservation purposes; permits local option tangible personal property tax exemption for attachments to mobile homes and certain residential rental furnishings; removes limitations on citizens= ability to communicate with local officials about matters which are the subject of public hearings.

REVISION 11 - **ADOPTED**

BALLOT ACCESS, PUBLIC CAMPAIGN FINANCING, AND ELECTION PROCESS REVISIONS

Provides ballot access requirements for independent and minor party candidates cannot be greater than requirements for majority party candidates; allows all voters, regardless of party, to vote in any party's primary election if the winner will have no general election opposition; provides public financing of campaigns for statewide candidates who agree to campaign spending limits; permits candidates for governor to run in primary elections without lieutenant governor; makes school board elections nonpartisan; corrects voting age.

REVISION 12 - **ADOPTED**

FIREARMS PURCHASES: LOCAL OPTION FOR CRIMINAL HISTORY RECORDS CHECK AND WAITING PERIOD

Authorizes each county the option of requiring a criminal history records check and waiting period of 3 to 5 days in connection with the "sale" of any firearm; defines "sale" as the transfer of money or other valuable consideration for a firearm where any part of the transaction occurs on property open to public access; does not apply to holders of a concealed weapons permit when purchasing a firearm.

REVISION 13 - **ADOPTED**

MISCELLANEOUS MATTERS AND TECHNICAL REVISIONS

Removes gender-specific references; allows prison sentences in court-martial actions; consolidates ethics code provision; specifies time for veto message consideration; clarifies that legislature gives designated officials final general appropriations bills 72 hours before passage; allows direct appeal of courts-martial to specified state court and advisory opinions from federal military courts; requires earlier constitution revision commission appointments; changes tax and budget reform commission voting procedures and meetings from every 10 to every 20 years.

1978 CONSTITUTIONAL REVISION COMMISSSION TEXT OF PROPOSALS

B

Florida Department of State
Division of Elections

Basic Document

Reference:
Articles I, II, III, IV, V, VI, VIII, X, XI and XII

Summary: (Full text not available)
Proposing a revision of the Florida Constitution, generally described as the Basic Document, embracing the subject matter of Articles I (Declaration of Rights), II (General Provisions), III (Legislature), IV (Executive), V (Judiciary), VI (Suffrage and Elections), VIII (Local Government), X (Miscellaneous), XI (Amendments) and XII (Schedule), except for other revisions separately submitted for a vote on this ballot.

Sponsor:
Constitution Revision Commission

Status: ***Defeated***

Made Ballot:	
Ballot Number:	1
Election Date:	11/07/1978
Votes For:	623,703
Votes Against:	1,512,106

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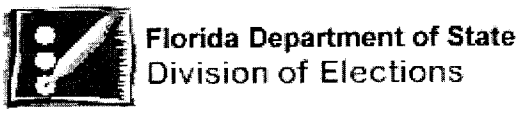


Declaration of Rights (SEX)

Reference:
Article I, Section 2

Summary: View Full Text (pdf)
Proposing a revision of the Florida Constitution to provide that no person will be deprived of any right because of sex.

Sponsor:
Constitution Revision Commission

Status: ***Defeated***

Made Ballot:	
Ballot Number:	2
Election Date:	11/07/1978
Votes For:	1,002,479
Votes Against:	1,323,497

Reference:

Article I, Section 2

Ballot Title:

Declaration of Rights (SEX)

Ballot Summary:

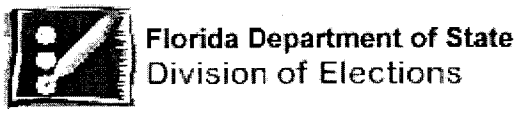
Proposing a revision of the Florida Constitution to provide that no person will be deprived of any right because of sex.

Full Text:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 2. Basic rights.-All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, sex, or physical handicap.



Legislative (Single-Member Districts and Reapportionment Commission)

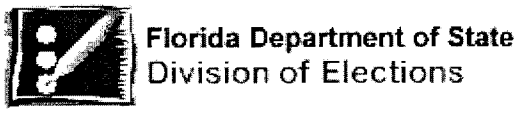
Reference:
Article III, Section 16

Summary: (Full Text Not Available)
Proposing a revision of the Florida Constitution to require single-member legislative districts, and to establish reapportionment standards and a commission to prepare a reapportionment plan for legislative and congressional districts.

Sponsor:
Constitution Revision Commission

Status: ***Defeated***

Made Ballot:	
Ballot Number:	3
Election Date:	11/07/1978
Votes For:	982,847
Votes Against:	1,113,394



Executive (Cabinet)

Reference:
Revision of Article IV, Subsections1(g), 3, 4, 5, 6, 8(a); Article XI, Section 2

Summary: View Full Text (pdf)
Proposing a revision of the Florida Constitution to eliminate the cabinet composed of the secretary of state, the attorney general, the comptroller, the treasurer, the commissioner of agriculture and the commissioner of education in January, 1983; and to provide, in such event, that the governor, acting jointly with at least one officer, as provided by law, shall be responsible for the investment of state funds, the management of bond debt and the acquisition and disposition of state lands; and to provide that other cabinet duties shall be transferred by law.

Sponsor:
Constitution Revision Commission

Status: ***Defeated***

Made Ballot:	
Ballot Number:	4
Election Date:	11/07/1978
Votes For:	540,979
Votes Against:	1,614,630

Reference:

Article IX, Sections 1(g), 3, 4, 5, 6, 8(a); Article XI, Section 2

Ballot Title:

Executive (Cabinet)

Ballot Summary:

Proposing a revision of the Florida Constitution to eliminate the cabinet composed of the secretary of state, the attorney general, the comptroller, the treasurer, the commissioner of agriculture and the commissioner of education in January 1983; and to provide, in such event, that the governor, acting jointly with at least one officer, as provided by law, shall be responsible for the investment of state funds, the management of bond debt and the acquisition and disposition of state lands; and to provide that other cabinet duties shall be transferred by law.

Full Text:

ARTICLE IV

EXECUTIVE

SECTION 1. Governor.-

(g) The governor, acting jointly with at least one officer as may be provided by law, shall be responsible for:

(1) the investment and reinvestment of all trust and agency funds and for making purchases, sales or exchanges for and on behalf of such funds, subject to any limitations of a trust agreement relating to a trust fund for as provided by law;

(2) bond debt service management, approving the issuance or refunding of bonds and any other functions relating thereto as provided by law;

(3) the purchasing, selling, leasing, transferring or otherwise disposing of all state lands as provided by law.

SECTION 3. Succession to office of governor; acting governor.-

(a) Upon vacancy in the office of governor, the lieutenant governor shall become governor. Further succession to the office of governor shall be prescribed by law. A successor shall serve for the remainder of the term.

(b) Upon impeachment of the governor and until completion of trial thereof, or during his physical or mental incapacity, the lieutenant governor shall act as governor. Further succession as acting governor shall be prescribed by law. Incapacity to serve as governor shall be determined by the supreme court in a manner prescribed by law. ~~Incapacity to serve as governor may be determined by the supreme court upon due notice after docketing of a written suggestion thereof by four cabinet members, and in such case restoration of capacity shall be similarly determined after docketing of~~

~~written suggestion thereof by the governor, the legislature or four cabinet members.~~ Incapacity to serve as governor may also be established by certificate filed with such officer provided by law ~~the secretary of state~~ by the governor declaring his incapacity for physical reasons to serve as governor, and in such case restoration of capacity shall be similarly established.

~~SECTION 4. Cabinet.-~~

~~(a) There shall be a cabinet composed of a secretary of state, an attorney general, a comptroller, a treasurer, a commissioner of agriculture and a commissioner of education. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law.~~

~~(b) The secretary of state shall keep the records of the official acts of the legislature and executive departments.~~

~~(c) The attorney general shall be the chief state legal officer.~~

~~(d) The comptroller shall serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state.~~

~~(e) The treasurer shall keep all state funds and securities. He shall disburse state funds only upon the order of the comptroller, countersigned by the governor. The governor shall countersign as a ministerial duty subject to original mandamus.~~

~~(f) The commissioner of agriculture shall have supervision of matters pertaining to agriculture except as otherwise provided by law.~~

~~(g) The commissioner of education shall supervise the public education system in the manner prescribed by law.~~

SECTION 5. Election of governor~~,~~ and lieutenant governor; ~~and cabinet members;~~ qualifications; terms.-

(a) At a state-wide general election in each calendar year the number of which is even but not a multiple of four, the electors shall choose a governor and a lieutenant governor ~~and members of the cabinet each~~ for a term of four years beginning on the first Tuesday after the first Monday in January of the succeeding year. In the general election and in party primaries, if held, all candidates for the offices of governor and lieutenant governor shall form joint candidacies in a manner prescribed by law so that each voter shall cast a single vote for a candidate for governor and a candidate for lieutenant governor running together.

(b) When elected, the governor~~,~~ and lieutenant governor ~~and each cabinet member must~~ shall each be an elector not less than thirty years of age who has resided in the state for the preceding seven years. The chief state legal officer ~~attorney general~~ must have been a member of the bar of Florida for the preceding five years. No person who has, or but for resignation would have, served as governor or acting governor for more than six years in two consecutive terms shall be elected governor for the succeeding term.

SECTION 6. Executive departments.-All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for

or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, ~~the governor and cabinet, a cabinet member,~~ or an officer or board appointed by and serving at the pleasure of the governor, except:

(a) When provided by law, confirmation by the senate ~~or the approval of three members of the cabinet~~ shall be required for appointment to or removal from any designated statutory office.

(b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for limited terms, subject to removal only for cause.

SECTION 8. Clemency.-

(a) Except ~~in cases of treason and~~ in cases where impeachment results in conviction, the governor may, by executive order ~~filed with the secretary of state~~, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days ~~and, with the approval of three members of the cabinet~~, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

SCHEDULE WITH REGARD TO ABOLITION OF CABINET.-

(a) Unless otherwise provided herein, all powers, duties, and functions of cabinet officers provided for in the 1968 constitution or by law shall be transferred to agencies prescribed by law and the heads of such agencies shall be appointed by the governor and confirmed by the senate. They shall serve at the pleasure of the governor. All powers, duties, and functions of the cabinet officers relating to power plant siting, dredge and fill permits, rules and orders of water management districts, and developments of regional impact shall be transferred to a board appointed by the governor, and confirmed by the senate.

(b) Officers who were appointed by the governor and approved by three members of the cabinet, or who were appointed by the governor and cabinet, shall be appointed by the governor and shall be subject to confirmation by the senate.

(c) In the event the revision to Article IV, Section 4 abolishing the cabinet, is adopted, and the revision of Article IX, Section 2, creating an appointed state board of education, is not adopted, Article IX, Section 2 of the 1968 constitution, providing that the governor and cabinet shall constitute the State Board of Education, shall become a statute subject to modification or repeal as are other statutes.

(d) In the event the revision to Article IV, Section 4, abolishing the cabinet, is adopted, and the revision to Article III, Section 16 of the constitution of 1968, creating a reapportionment commission, is not adopted, the words "the attorney general" shall be deleted from that section and the phrase "officer designated by law and" shall be substituted on the effective date of the revision to Article IV, Section 4.

(e) The responsibility for settling and approving accounts of the state shall be assigned by law to an officer who is not the chief fiscal officer responsible for disbursing state funds and keeping securities.

(f) Except as otherwise provided in this constitution, revisions to Sections 1 (g), 3, 4, 5, 6, and 8 (a) of Article IV and this schedule shall be effective on January 4, 1983.

(g) The state board of administration provided for in Article XII, Section 9 of the constitution of 1968 and in Article IX, Section 16 of the constitution of 1885, as amended, and incorporated herein by reference, shall consist of such successor agency designated by law.

(h) Any reference to comptroller in the constitution of 1885, as amended, and incorporated herein by reference, shall mean the chief fiscal officer responsible for disbursing state funds and keeping securities or such other officer designated by law.

(i) Any references to attorney general in the constitution of 1885, as amended, and incorporated herein by reference, shall mean the chief state legal officer, or such other officer designated by law.

(j) In the event the revision to Article IV, Section 4, abolishing the cabinet, is adopted, then, on the effective date of that section, the following changes shall be made in the following sections of the constitution prior to its promulgation and publication.

(1) Article II, Section 2: The words "cabinet members" in the first sentence shall be deleted.

(2) Schedule to Article II, Section 7; Article III, Section 8 (b); Article IV, Section 7 (a); Article VIII, Section 1; and Article XI, Sections 2, 3, 4 and 5: The phrase "the secretary of state" shall be deleted and the phrase "such officer designed by law" shall be substituted.

(3) In the event the revision of Article III, Section 16, relating to legislative and congressional reapportionment, is not adopted, then the phrase "the secretary of state" in Article III, Section 16 (f) shall be deleted and the phrase "such officer designed by law" shall be substituted.

(4) Article XII, Section 9 (c) (5):; The phrase "and which is continued as a body corporate for the life of this subsection 9 (c)" shall be deleted and the phrase "or its successor" shall be substituted.

ARTICLE XI

AMENDMENTS

SECTION 2. Revision commission.-

(a) Within thirty days after the adjournment of the ~~regular~~ organization session of the legislature convened in 1996 ~~the tenth year following that in which this constitution is adopted~~, and each twentieth year thereafter, there shall be established a constitution revision commission composed of the following thirty-seven members:

~~(1) the attorney general of the state;~~

(1)~~(2)~~ fifteen members selected by the governor;

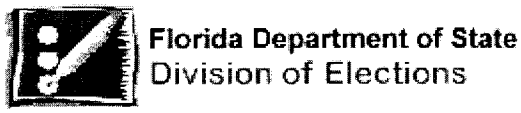
(2)~~(3)~~ nine members selected by the speaker of the house of representatives and nine members selected by the president of the senate; and

(3)~~(4)~~ four ~~three~~ members selected by the chief justice of the supreme court of Florida with the advice of the justices.

(b) The governor shall designate one member of the commission as its chairman. Vacancies in the

membership of the commission shall be filled in the same manner as the original appointments.

(c) Each constitution revision commission shall convene at the call of its chairman, adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the secretary of state is proposal, if any, of a revision of this constitution or any part of it.



Executive (Public Service Commission and Public Counsel)

Reference:
Revision of Article IV, Section 10; Article V, Section 3(b)(3)

Summary: View Full Text (pdf)
Proposing a revision of the Florida Constitution to provide for a five-member public service commission, each member to be appointed by the governor from a list of not fewer than three persons submitted by a nominating commission, and that such members shall be confirmed by the senate; and to establish a public counsel to represent the people of the state before the public service commission.

Sponsor:
Constitution Revision Commission

Status: ***Defeated***

Made Ballot:	
Ballot Number:	5
Election Date:	11/07/1978
Votes For:	772,066
Votes Against:	1,375,548

Reference:

Article IV, Section 10; Article V, Section 3(b)(3)

Ballot Title:

Executive (Public Service Commission and Public Counsel)

Ballot Summary:

Proposing a revision of the Florida Constitution to provide for a five-member public service commission, each member to be appointed by the governor from a list of not fewer than three persons submitted by a nominating commission, and that such members shall be confirmed by the senate; and to establish a public counsel to represent the people of the state before the public service commission.

Full Text:

ARTICLE IV

EXECUTIVE

SECTION 10. Public service commission and public counsel.-

(a) There shall be a public service commission, composed of five members, appointed by the governor subject to confirmation by the senate for staggered terms of six years. The governor shall fill each vacancy on the commission by appointing one of not fewer than three persons nominated by a nominating commission established by law. A commissioner shall assume office only after confirmation by the senate. The qualifications, compensation, and residency requirements of members of the commission and powers, duties and administrative procedures of the commission shall be provided by general law. A chairperson shall be selected by the members of the commission from its membership. The commission shall regulate such public utilities as may be provided by general law. It shall also regulate such other entities as may be provided by general law, Judicial review of commission actions shall be taken directly to the supreme court by certiorari.

(b) There shall be an appointed public counsel, as prescribed by law, who shall provide legal representation for the people of the state relating to matters contained in this section in proceedings before the commission as prescribed by law.

Schedule to Article IV, Section 10.-

(a) This section shall be deemed to be deleted from this Constitution ten (10) years from its becoming effective and will become a general law which may thereafter be amended by law.

(b) The public service commissioner elected in November, 1976 shall become a member of the public service commission created herein, and shall serve a term to expire January 1, 1981.

(c) The public service commissioners elected in November, 1978 shall become members of the public service commission created herein, sand shall serve terms to expire January 1, 1982.

(d) The terms of the original appointees to the public service commission shall expire as follows:

(1) One member's term shall expire on January 1, 1983.

(2) One member's term shall expire on January 1, 1984.

(e) This section shall become effective January 4, 1979, and the appointments required under this section shall be made prior to March 1, 1979, and shall not be subject to a nominating commission unless one has been established by law.

ARTICLE III

LEGISLATURE

SECTION 13. Term of office.-

(a) No office shall be created the term of which shall exceed four years except as provided herein.

(b) The terms of office of public service commission members shall be exempt from the limitations of this section, provided that their terms shall not exceed six years.

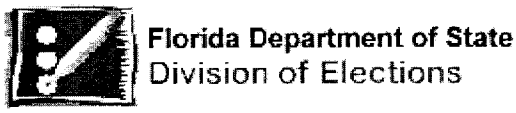
ARTICLE V

JUDICIARY

SECTION 3. Supreme court.-

(b) JURISDICTION.-The supreme court:

(3) May review by certiorari any 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 supreme court on the same question of law, and any interlocutory order passing upon a matter which upon final judgement would be directly appealable to the supreme court; and may issue writs of certiorari to the public service commission or commissions having statewide jurisdiction established by general law ~~having statewide jurisdiction~~.



Judiciary (Selection and Retention of Circuit and County Judges)

Reference:

Revision of Article V, Subsection 10 and 11(a) and (b)

Summary: View Full Text (pdf)

Proposing a revision of the Florida Constitution to provide that circuit and county court judges submit themselves for retention ro rejection by the electors in a general election every six years; to provide that the governor shall fill vacancies occurring by rejection or otherwise from a list of at least three names submitted by the appropriate nominating commission; and to increase the terms of county court judges from four to six years.

Sponsor:

Constitution Revision Commission

Status: ***Defeated***

Made Ballot:	
Ballot Number:	6
Election Date:	11/07/1978
Votes For:	1,058,574
Votes Against:	1,095,736

Reference:

Article V, Sections 10 and 11(a) and (b)

Ballot Title:

Judiciary (Selection and Retention of Circuit and County Judges)

Ballot Summary:

Proposing a revision of the Florida Constitution to provide that circuit and county court judges submit themselves for retention or rejection by the electors in a general election every six years; to provide that the governor shall fill vacancies occurring by rejection or otherwise from a list of at least three names submitted by the appropriate nominating commission; and to increase the terms of county court judges from four to six years.

Full Text:

ARTICLE V

JUDICIARY

SECTION 10. Retention; election and terms.-

~~(a)~~ Any justice of the supreme court or any judge of a district court of appeal, circuit court, or county court may qualify for retention by a vote of the electors in the general election next preceding the expiration of his term in the manner prescribed by law. If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. When a justice of the supreme court or a judge of a district court of appeal, circuit court, or county court so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge) (name of justice or judge) ... of the (name of the court) be retained in office?" If a majority of the qualified electors voting on the question of retention within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years commencing on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting on the question of retention within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

~~(b) Circuit judges and judges of county courts shall be elected by vote of the qualified electors within the territorial jurisdiction of their respective courts. The terms of circuit judges shall be for six years. The terms of judges of county courts shall be for four years.~~

SECTION 11. Vacancies.-

(a) The governor shall fill each vacancy on the supreme court, ~~or~~ on a district court of appeal, on a circuit court, or on a county court by appointing, for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nominated by the appropriate judicial nominating commission.

~~(b) The governor shall fill each vacancy on a circuit court or on a county court by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election, one of not fewer than three persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.~~

~~(c)~~(b) The nominations shall be made within thirty days from the occurrence of a vacancy or from the acceptance of a resignation by the governor, whichever is sooner, unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to him.

Florida Department of State
Division of Elections

Finance and Taxation

Reference:

Revision of Article VII; Article X, Section 12(h)

Summary: View Full Text (pdf)

Proposing a revision of the Florida Constitution to provide that property owned by a municipality and held for municipal purposes shall be exempt from taxation; to extend the personal property tax exemption to all natural persons, and to extend to widowers the property tax exemption of not less than five hundred dollars; to provide for ad valorem tax exemption for leasehold interests created priopr to January 1, 1978 in government owned property; to provide that leasehold interests in government property leased for public purposes in connection with air, water or ground transportation may be exempt from taxation as provided by law; to permit adjustments to tax assessments relating to stock in trade and livestock, historic property and solar energy systems; to permit the revaluation of property every two years; to authorize the use ot tax abatement and increment for redevelopment of slum and blighted area; to provide tha corporate income tax may not be levied against the appreciation of property value occuring prior to November 2, 1971; to permit an annual adjustment to the homestead exemption to maintain a constant value using 1979 as a base year and providing for replacement of revenue to local governments; to provide that state bonds may be used to finance water facilities and may be combined for sale; to provide that revenue bonds may only be issued for fixed capital outlay projects, to place limitations on revenue bonds and bond anticipation notes issued by local governments; and to provide that revenue bonds may be issued for housing and related facilities.

Sponsor:

Constitution Revision Commission

Status: ***Defeated***

Made Ballot:	
Ballot Number:	7
Election Date:	11/07/1978
Votes For:	779,389
Votes Against:	1,368,346

Get Adobe Reader

Reference:

Article VII; Article X, Section 12(h)

Ballot Title:

Finance and Taxation

Ballot Summary:

Proposing a revision of the Florida Constitution to provide that property owned by a municipality and held for municipal purposes shall be exempt from taxation; to extend the personal property tax exemption to all natural persons, and to extend to widowers, the property tax exemption of not less than five hundred dollars; to provide for ad valorem tax exemptions for leasehold interests created prior to January 1, 1978 in government owned property; to provide that leasehold interests in government property leased for public purposes in connection with air, water or ground transportation may be exempt from taxation as provided by law, to permit adjustments to tax assessments relating to stock in trade and livestock, historic property and solar energy systems; to permit the revaluation of property every two years; to authorize the use of tax abatement and increment for redevelopment of slum and blighted areas; to provide that corporate income tax may not be levied against the appreciation of property value occurring prior to November 2, 1971; to permit an annual adjustment to the homestead exemption to maintain a constant value using 1979 as a base year and providing for replacement of revenues to local governments; to provide that state bonds may be used to finance water facilities and may be combined for sale; to provide that revenue bonds may only be issued for fixed capital outlay projects, to place limitations on revenue bonds and bond anticipation notes issued by local governments; and to provide that revenue bonds may be issued for housing and related facilities.

Full Text:

ARTICLE VII

FINANCE AND TAXATION

SECTION 1. Taxation; appropriations; state expenses. No change.

SECTION 2. Taxes; rate. No change.

SECTION 3. Taxes; exemptions.-

(a) All property owned by a municipality and held or used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominately for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

(b) There shall be exempt from taxation, cumulatively, ~~to every head of a family residing in this state~~ to every natural person, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

(c) All leasehold interests created prior to January 1, 1978 in property owned by the United States, the state, or any political subdivision, municipality, authority, district, agency or public body corporate shall be exempt from ad valorem taxes when:

(1) The leasehold interests were created pursuant to legislation or lease agreements which exempted, or which covenanted to exempt, such leasehold interests from ad valorem taxes or which covenanted to indemnify or hold harmless the lessee from any ad valorem taxes levied in respect of the leased premises, or

(2) The property is leased for use in connection with providing air, ground or water transportation, or is leased for use in connection with providing services to the public engaged in air, ground or water transportation; provided however, no leasehold interest shall be exempted by the provisions of this paragraph (2) if, prior to January 1, 1978, there shall have been a voluntary payment of ad valorem taxes levied in respect of such leasehold interest.

(d) All leasehold interests in property owned by the United States, the state, or any political subdivision, municipality, authority, district, agency, or public body corporate may be exempted from ad valorem taxation as provided by law when the property is leased for a public purpose for use in connection with providing air, ground, or water transportation, whether or not for private profit, or is leased for a public purpose for use in connection with providing services, whether or not for private profit, to the public engaged in air, ground, or water transportation.

(e) The exemption of leasehold interests from ad valorem taxation provided by subsections (c) and (d) shall not be granted to any lessee who discriminates in its membership, services or other activities on account of race, religion, sex or physical handicap.

SECTION 4. Taxation; assessments.-By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided;

(a) Agricultural land or land used exclusively for non-commercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law:

(1)~~(b) Pursuant to general law~~ T~~t~~angible personal property held for sale as stock in trade and livestock may e valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(2) The legislature may prescribe procedures for the valuation of historic property at a specified percentage of its assessed value.

(3) The legislature, until December 31, 1988, may exclude from the assessed value of real property any increases in value attributable to the installation of a solar energy system.

(4) The legislature, by a two-thirds vote of the membership of each house, may prescribe that real property located in an area designated by a county, municipality or authority created pursuant to general or special law as a slum or blighted area for purposes of redevelopment, be valued at a specified percentage of its value for a period of time not to exceed twenty-five years, upon such terms, conditions, and restrictions as may be prescribed by such law; provided that the assessed value of such property during such period shall not be less than the assessed value of the land,

exclusively of improvements, in the year immediately prior to the year in which the area was designed as a slum or blighted area for purposes of redevelopment.

SECTION 5. Estate, inheritance and income taxes.-

(a) NATURAL PERSONS. No tax upon estates or inheritances or upon the income of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.

(b) OTHERS. No tax upon the income of residents and citizens other than natural persons shall be levied by the state, or under its authority, in excess of 5% of net income, as defined by law, or at such greater rate as is authorized by a three-fifths (3/5) vote of the membership of each house of the legislature or as will provide for the state the maximum amount which may be allowed to be credited against income taxes levied by the United States and other states. There shall be exempt from taxation not less than five thousand dollars ($5,000) of the excess of net income levied by the United States and other states.

~~(c) EFFECTIVE DATE. This section shall become effective immediately upon approval by the electors of Florida.~~

(c) No tax upon, or measured by, income shall be levied by this state, or under its authority, in respect of the unrealized appreciation in value of any property which occurred prior to November 2, 1971. Absent convincing evidence to the contrary, appreciation in the value of property shall be considered to have occurred ratably over its holding period.

Schedule to Article VII, Section 5.-Subsection 5 (c) shall take effect on November 7, 1978, and shall not reduce any tax liability in respect of taxable years ending prior to such date.

SECTION 6. Homestead exemptions.-

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the exemption may be increased up to an amount not exceeding ten thousand dollars of the assessed value of the real estate if the owner has attained age sixty-five or is totally and permanently disabled.

(d) By general law, the amount of any exemption provided for in this section may be annually adjusted to maintain the constant value of the exemption in the base year of 1979. Such adjustment

shall be made only after provision has been made for restitution to the respective taxing authorities for revenue lost by such adjustment.

SECTION 7. Allocation of pari-mutuel taxes. No change.

SECTION 8. Aid to local governments. No change.

SECTION 9. Local taxes.-

(a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

(b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors ~~who are the owners of freeholds therein not wholly exempt from taxation~~, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors, ~~who are owners of freeholds therein not wholly exempt from taxation~~. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

SECTION 10. Pledging credit.-Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:

(a) the investment of public trust funds;

(b) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities;

(c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. If any project, or part thereof, ~~so~~ financed under subsection (c) (2) ~~or any part thereof,~~ is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing authority ~~body~~, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property, provided that an interest created under subsection (c) (1) may be exempted from taxation.

(d) a municipality, county, special district, or agency of any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or

person.

SECTION 11. State bonds; revenue bonds.-

(a) (1) State bonds pledging the full faith and credit of the state may be issued only to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, upon approval by a vote of the electors; provided state bonds issued pursuant to this subsection (a) may be refunded without a vote of the electors at a lower ~~net~~ average net interest cost rate. The total outstanding principal of state bonds issued pursuant to this subsection (a) shall never exceed fifty per cent of the total tax revenues of the state for the two preceding fiscal years ,excluding any tax revenues held in trust under the provisions of this constitution.

~~(b)~~ (2) Moneys sufficient to pay debt service on state bonds as the same becomes due shall be appropriated by law.

(b) Any state bonds pledging the full faith and credit of the state issued under this section or any other section of this Constitution may be combined for purposed of sale.

(c) Revenue bonds may be issued by the state or its agencies without a vote of the electors only to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived from sources other than state tax revenues or rents or fees paid from state tax revenues.

12. SECTION 12. Local bonds.-
13. (a) Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:
14. (1) ~~(a)~~ to finance or refinance fixed capital outlay projects authorized by law, and purposed incidental thereto, and only when approved by vote of the electors ~~who are owners of freeholds therein not wholly exempt from taxation~~; or
15. (2) ~~(b)~~ to refund outstanding bonds and interest and redemption premium thereon at a lower ~~net~~ average net interest cost rate.

(b) Revenue bonds payable from sources other than ad valorem taxation may be issued by local governmental bodies, without a vote of the electors, only to finance or refinance fixed capital outlay projects authorized by law, and purposed incidental thereto.

(c) Tax or revenue anticipation certificates maturing twelve months or less after issuance, including all renewals thereof, may be issued by local governmental bodies for any purpose authorized by law, without a vote of the electors; provided that neither such certificates nor the interest thereon shall be paid from the proceeds of subsequent issues of tax or revenue anticipation certificates.

(d) Notes maturing five years or less after issuance, including all renewals thereof, may be issued by local governmental bodies in anticipation of the receipt of the proceeds of revenue bonds or of bonds which have been approved by the vote of electors, only to finance or refinance fixed capital outlay projects authorize by law, and purposes incidental thereto.

SECTION 13. Relief from illegal taxes. No change.

SECTION 14. Bonds for pollution control and abatement facilities.-

(a) When authorized by law, state bonds pledging the full faith and credit of the state may be issued without an election to finance or refinance the construction of air and water pollution control and abatement and solid waste disposal facilities, or other water facilities authorized by law, (herein referred to as "facilities") to be operated by any municipality, county, district or authority, or any agency thereof of Florida. Such bonds shall be secured by a pledge of and shall be payable primarily from all or any part of revenues to be derived from operation of such facilities, special assessments, ~~rentals~~ payments to be received under ~~lease purchase~~ agreements herein provided for, any other revenues that may be legally available for such purpose, including revenues from other facilities, or any combination thereof (herein collectively referred to as "pledged revenues"), and shall be additionally secured by the full faith and credit of the State of Florida.

(b) No such bonds shall be issued unless a state fiscal agency, ~~created~~ designated by law, has made a determination that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed seventy-five per cent of the pledged revenues. The term pledged revenues shall not include amounts required to pay debt service on prior lien obligations, and such prior lien debt service requirements shall not be included in the determination provided for by this subsection (b).

(c) The state may lend money derived from the sale of such bonds ~~lease~~ to finance any of such facilities ~~to~~ for any local governmental agency, under ~~lease purchase~~ agreements for such periods and under such other terms and conditions as may be mutually agreed upon. The local governmental agencies may pledge the revenues derived from such leased facilities or any other available funds for the ~~payment of rentals~~ payments thereunder; and, in addition, the full faith and credit and taxing power of such local governmental agencies may be pledged for ~~the payment of such rentals~~ such payments without any vote of the electors ~~election of freeholder electors or qualified electors~~.

~~(d) The state may also issue such bonds for the purpose of loaning money to local governmental agencies, for the construction of such facilities to be owned or operated by any of such local governmental agencies.~~ Such loans shall bear interest at not more than one-half of one percent per annum greater than the last preceding issue of state bonds pursuant to this section~~, shall be secured by the pledged revenues, and may be additionally secured by the full faith and credit of the local governmental agencies.~~

~~(e)~~ (d) The total outstanding principal of state bonds issued pursuant to this section 14 shall never exceed fifty per cent of the ~~total~~ tax revenues of the state for the two preceding fiscal years~~.~~, excluding any tax revenues held in trust under the provisions of this Constitution.

SECTION 15. Revenue bonds for ~~scholarship~~ student loans.-

(a) When authorized by law, revenue bonds may be issued to establish a fund to make loans to students determined to be eligible as prescribed by law and who have been admitted to attend any public or private institutions of higher learning, junior colleges, health related training institutions, or vocational training centers, which are recognized or accredited under terms and conditions prescribed by law. Revenue bonds issued pursuant to this section shall be secured

by a pledge of and shall be payable primarily from payments of interest, principal, and handling charges to such fund from the recipients of the loans and, if authorized by law, may be additionally secured by student fees and by any other moneys in such fund. There shall be established from the proceeds of each issue of revenue bonds a reserve account in an amount equal to and sufficient to pay the greatest amount of principal, interest, and handling charges to become due on such issue in any ensuing state fiscal year.

(b) ~~Interest moneys~~ Moneys in the fund established pursuant to this section, not required in any fiscal year for payment of debt service on then outstanding revenue bonds or for maintenance of the reserve account, may be used for educational loans to students determined to be eligible therefor in the manner provided by law, or for such other related purposes as may be provided by law.

SECTION 16. Revenue bonds for housing and related facilities.-

(a) When authorized by law, revenue bonds may be issued without an election to finance or refinance housing and related facilities in Florida.

(b) The revenue bonds shall be secured by a pledge of and shall be payable from all or any part of revenues to be derived from the financing, operation or sale of such facilities, mortgage or loan payments, or any other revenues or assets that may be legally available for such purposes derived from sources other than ad valorem taxation, including revenues from other similar facilities, or any combination thereof. All mortgages or loans derived from the proceeds of such revenue bonds shall be insured or guaranteed by an agency of the United States or shall be secured by the deposit by a lending institution of approved collateral obligations in an amount sufficient to pay the principal and interest of such loans, No state housing agency established by law shall make mortgage loans directly from any mortgagor.

(c) No revenue bonds shall be issued unless a state fiscal agency, designated by law, has made a determination that in no state fiscal year will the debt service requirements of the bonds proposed to be issued and all other bonds secured by the same pledged revenues exceed the pledged revenues available for payment of such debt service requirement.

SECTION 17. Redevelopment of slum or blighted areas.- Redevelopment of slum or blighted areas is a public purpose. Pursuant to general law passed by two-thirds vote of the membership of each house, a county, municipality, or authority created pursuant to general or special law may designate an area as a slum or blighted area and, with respect to such area, may:

(a) Provide for the redevelopment of such area for residential, recreational, commercial, or industrial uses;

(b) Acquire by eminent domain or otherwise, for purposes of redevelopment, property located in such area;

(c) Sell or transfer property acquired in such area to any private person or public entity; and

(d) Allocate tax increments to finance or refinance the redevelopment of such area and issue, without approval by vote of the electors, revenue bonds payable from the increment in taxes or revenues derived from redevelopment projects to finance or refinance such redevelopment. A tax increment shall consist of that portion of the ad valorem tax revenues, for any or all taxing

authorities, coll3ected each year from property located in a designated slum or blighted area, which exceeds the tax revenues that would have been collected at the current year's millage had such property been assessed at its value shown on the assessment roll in the year immediately prior to the year in which the area was designated as a slum or blighted area.

ARTICLE X

MISCELLANEOUS

SECTION 11 ~~12~~. Rules of construction.- Unless qualified in the text the following rules of construction shall apply to this constitution.

(h) The term "historic property" in Article VII, Section 4 (b) (2) refers only to those locations that meet the criteria for listing in the National Register of Historic Places in effect on January 1, 1978.

Florida Department of State
Division of Elections

Education

Reference:
Revision of Article IX

Summary: View Full Text (pdf)
Proposing a revision of the Florida Constitution to provide that the state board of education shall be appointed by the governor and confirmed by the senate, and shall be responsible for the management and coordination of the state system of public education; to provide that the commissioner of education shall be appointed by the board in the event the office of elected commissioner is abolished; and to provide for a board of regents, appointed by the governor and confirmed by the senate, which shall govern the state university system.

Sponsor:
Constitution Revision Commission

Status: ***Defeated***

Made Ballot:	
Ballot Number:	8
Election Date:	11/07/1978
Votes For:	771,282
Votes Against:	1,353,626

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Reference:

REVISION OF ARTICLE IX

Ballot Title:

EDUCATION

Ballot Summary:

Proposing a revision of the Florida Constitution to provide that the state board of education shall be appointed by the governor and confirmed by the senate, and shall be responsible for the management and coordination of the state system of public education; to provide that the commissioner of education shall be appointed by the board in the even the office of elected commissioner is abolished; and to provide for a board of regents, appointed by the governor and confirmed by the senate, which shall govern the state university system.

Full Text:

ARTICLE IX

EDUCATION

1. SECTION 1. System of public education.-

2. (a) Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

(b) The primary purpose of elementary and secondary education in this state shall be to develop the ability of each student to read, communicate and compute and to provide an opportunity for vocational training. By general law, provision may be made for special instruction to aid disadvantaged students with special learning needs.

SECTION 2. State board of education.-

(a) There shall be ~~The governor and the members of the cabinet shall constitute~~ a state board of education, which shall be a body corporate and have the responsibility for the management, supervision, and coordination of the state system of public education as prescribed by law and not inconsistent with the provisions of Article IX, Section 7 ~~such supervision of the system of public education as is provided by law~~.

(b) The board shall consist of nine electors, who shall be appointed by the governor and confirmed by the senate for staggered six-year terms. The governor shall designate a member as chairperson who shall serve in such capacity at the pleasure of the governor.

(c) In the event the constitutional office of elected commissioner of education is abolished, the board shall appoint a commissioner of education who shall serve at the pleasure of the board.

(d) The commissioner of education shall administer the board's policies and rules; manage the

education program under the jurisdiction of the board; and perform such other duties and exercise such powers as are provided by law.

Schedule to Article IX, Section 2.-

(a) The terms of the original members of the state board of education shall expire as folows:

1. The terms of three members shall expire on January 1, 1981;
2. The terms of three members shall expire on January 1, 1983; and
3. The terms of three members shall expire on January 1, 1985.

(b) In the event the revision to Article IV, Section 4, abolishing the cabinet, is adopted at the 1978 general election, the commissioner of education elected in November 1978 shall on the effective date of this constitution also become one of the members and chairperson of the board for a term of four years, and shall, in addition, have the powers and duties of the commissioner of education provided in this section until a new commissioner if appointed by the board. The appointee of the board shall be known as the director of education until the term of the elected commissioner ends.

(c) Until changed by law, and except as otherwise provided in this article, the state board of education shall continue to have the powers, duties, and responsibilities granted the state board of education established under Article IX, Section 2 in effect on the date of adoption of this revision.

SECTION 3. Terms of appointive board members. No change.

SECTION 4. School districts; school boards. No change.

SECTION 5. Superintendent of schools. No change.

SECTION 6. State school fund. No change.

SECTION 7. State university system.-

(a) There shall be a single state university system comprised of all public four-year, upper level, and graduate institutions of higher learning. The state university system shall be governed by a board of regents.

(b) The board of regents shall operate, regulate, control, and be fully responsible for the management of the state university system, subject to the overall coordinative responsibilities of the state board of education and subject to general law, except on matters relating exclusively to the educational policy of the state university system.

(c)The board of regents shall be a body corporate composed of nine members. Eight members shall serve staggered six-year terms, and one member shall serve a two-year term. The qualifications of the member serving a two-year term shall be provided by law. The members of the board of regents shall be appointed by the governor subject to confirmation by the senate.

Schedule to Article IX, Section 7.-The members of the board of regents in office on the date of this revision becomes effective shall continue in office until their terms end due to death, removal, resignation, succession to another office or their terms expire. The person appointed to the first vacancy occurring after August 31, 1979 shall be appointed to serve the two-year term provided for in

this section.

SUMMARY OF 1885 CONSTITUIONAL PROVISIONS THAT BECAME STATUTES PURSUANT TO ARTICLE XII, SECTION 10 OF THE 1968 CONSTITUTION

C

SUMMARY OF 1885 CONSTITUIONAL PROVISIONS THAT BECAME STATUTES PURSUANT TO ARTICLE XII, SECTION 10 OF THE 1968 CONSTITUTION

Article XII, § 10. **Preservation of existing government**

All provisions of Articles I through IV, VII and IX through XX of the Constitution of 1885, as amended, not embraced herein which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes.

TABLE - Showing where provisions of the Constitution of 1885 were made statutory law, either in part or in their entirety, pursuant to the authorization contained in this section.

Constitution of Florida, 1885	Florida Statute Sections
Art. 3, § 2	11.012
As to publications of notice on special and local bills.	
Art. 3, § 5	11.132
Forbidding appointment of member of legislature, before expiration of his term, to any civil office created by legislature while he was member thereof.	
Art. 3, § 9	11.143(3)(c)
Either house during the session may punish by fine or imprisonment any person not a member who has been guilty of disorderly or contemptuous conduct in its presence or of a refusal to obey its lawful summons, but such imprisonment must not extend beyond the final adjournment of the session.	
Art. 3, § 19	283.121
Repealed - 85-76, LOF.	
Art. 3, § 21	11.021
Evidence of publication of notice.--The evidence that such notice has been published shall be established in the Legislature before such bill shall be passed, and such evidence shall be filed or preserved with the bill in the Department of State in such manner as the Legislature shall provide.	
Art. 4, § 14	113.051
Grants and commissions.--All grants and commissions shall be in the name and under the authority of the State of Florida, sealed with the great seal of the state, signed by the Governor, and countersigned by the Secretary of State.	
Art. 4, § 21	15.03(2)(a)
The Department of State shall be the custodian of the great seal of the state.	

Art. 4, § 22 ..... 16.101

Supreme Court reporter.--The Attorney General shall be the reporter for the Supreme Court.

Art. 4, § 27 ..... 11.013

Repealed - 95-196, LOF.

Art. 8, § 6A ..... 230.321(2)

Repealed - 2002-387, LOF.

Art. 9, § 13 ..... 320.015

Taxation of mobile homes.

Art. 12, § 3 ..... 229.771

Repealed - 2002-387, LOF.

Art. 12, § 4 ..... 228.151

The authority of the State of Florida Board of Trustees of the Internal Improvement Trust Fund to distribute 25% of the proceeds from the sale of state-owned land to the State School Trust Fund extends to the proceeds from the sale of all state lands.

Art. 12, § 9 ..... 236.24(1)(b)

Repealed - 2002-387, LOF.

Art. 14, § 3 ..... 250.422

Repealed - 73-93, LOF.

Art. 16, § 3 ..... 111.045

Requiring that judge's salaries be duly paid.

Art. 16, § 4 ..... 125.171

Repealed - 71-14, LOF.

Art. 16, § 6 ..... 25.041(2)

No judgment of the Supreme Court shall take effect until the decision of the court in such case shall be filed with the clerk of said court.

Art. 16, § 11 ..... 215.425

Extra compensation claims prohibited.--No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made….

Art. 16, § 12 ..... 15.011

Repealed in 1971, no cite given.

Art. 16, § 13 ..... 113.071

Sureties upon official bonds.--The sureties upon the official bonds of all state, county, and municipal officers shall be residents of, and have sufficient visible property unencumbered within the state….

Art. 16, § 21 ..... 92.121

Repealed - 76-237, LOF.

Art. 18, § 14 ..... 100.041(4)

The term of office of each county and each district officer not otherwise provided by law shall commence on the first Tuesday after the first Monday in January following his or her election.

Florida History of Adopted Constitutional Amendments

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Florida History of Adopted Constitutional Amendments

November 7, 1976 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Senate Joint Resolution 1061)	Article VII, Section 9 Authorizing and Limiting Local Taxes for Water Management Purposes	**735,174**	600,066
#2 (Initiative)	Article II, Section 8 Sunshine Amendment	**1,765,626**	461,940
#3 (CS for Senate Joint Resolution 49 & 81)	Article V, Sections 3, 10, 11 Retention of Judges	**1,600,944**	527,056
#4 (House Joint Resolution 1709)	Article V, Section 12 Discipline of Judges	**1,514,623**	564,441
#9 (House Joint Resolution 291)	Article X Retirement System	**1,254,413**	756,043

March 11, 1980 Special Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Senate Joint Resolution 1-B)	Article VII, Section 6 Homestead Exemption	**1,088,729**	475,834
#2 (Senate Joint Resolution 20-C)	Article V, Section 3 Modify Jurisdiction of the Supreme Court	**940,420**	460,266

October 7, 1980 Special Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Senate Joint Resolution 15-E)	Article VII, Section 3 and Creation of Article XII, Section 18 Tax Exemption	**1,042,685**	347,766
#2 (Senate Joint Resolution 6-E)	Article VII, Section 16 and Article XII, Section 18 Bonds for Housing	**826,742**	618,694
#3 (Senate Joint Resolution 9-E)	Article VII, Section 3 Ad Valorem Taxation	**916,043**	541,630
#4 (Senate Joint Resolution 4-E)	Article VII, Sections 6 and 8 Ad Valorem Taxation	**1,251,096**	289,620
#5 (Senate Joint Resolution 12-E)	Article VII, Section 4 Ad Valorem Taxation	**1,003,979**	442,386

November 4, 1980 General Election			
Amendment Number	**Subject**	**For**	**Against**
#2 (CS/House Joint Resolution 387)	Article I, Section 23 Right of Privacy	**1,722,987**	1,120,302
#3 (Senate Joint Resolution 1349)	Article III, Section 7 Passage of Bills	**1,763,624**	873,211
#4 (House Joint Resolution 1471)	Article VII, Section 14 State Bonds for Water Facilities	**1,826,026**	899,906
#5 (Senate Joint Resolution 824)	Article XII, Section 9 Second Gas Tax	**1,498,801**	1,195,483

Florida History of Adopted Constitutional Amendments

November 2, 1982 General Election			
Amendment Number	**Subject**	**For**	**Against**
#2 (Legislative)	Article I, Section 12 Searches and Seizures	**1,440,523**	828,571
#3 (Legislative)	Article I, Section 14 Pretrial Release and Detention	**1,412,269**	917,092

November 6 1984 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Legislative)	Article X, Section 4 Exemption of Homestead and Personal Property From Forced Sale	**2,766,516**	734,785
#2 (Legislative)	Article IV, Section 4 Disbursement of State Funds	**2,467,025**	919,675
#3 (Legislative)	Article V, Section 11 Procedures of Judicial Nominating Commissions	**2,720,297**	590,960
#5 (Legislative)	Article VIII, Section 1 Election of County Commissioners	**2,150,510**	1,195,654
#6 (Legislative)	Article V, Section 8 Eligibility to be County Court Judge	**2,529,436**	823,219
#7 (Legislative)	Article VII, Section 11 Bonds for State Capital Projects	**2,095,916**	1,109,900
#8 (Legislative)	Article XII, Section 9 Public Education Capital Outlay Bonds	**2,553,332**	778,114

November 4, 1986 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (House Joint Resolution 386)	Article IV, Section 4; Article V, Section 17 Authority of Attorney General to Appoint a Statewide Prosecutor	**2,168,701**	811,122
#4 (House Joint Resolution 71)	Article IV, Section 10 Article V, Section 3 Supreme Court Opinion on Proposed Initiatives	**1,988,841**	759,691
#5 (Initiative)	Article X, Section 15 State Operated Lotteries	**2,039,437**	1,168,858

Florida History of Adopted Constitutional Amendments

November 8, 1988 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Senate Joint Resolution 459)	Article III, Section 17 Impeachment of County Court Judges	**2,840,296**	1,085,751
#2 (Senate Joint Resolution 135)	Article I, Section 16 Rights of Victims of Crime	**3,629,963**	394,617
#3 (House Joint Resolution 214)	Article VII, Section 4 Assessment of High Water Recharge Lands	**2,423,783**	1,187,303
#4 (Senate Joint Resolution 391)	Article VII, Section 17 Bonds for Acquisition of Property for State Roads or for Constructing Bridges	**2,141,987**	1,602,965
#5 (Senate Joint Resolution 318 and 356)	Article VII, Section 3 Property Tax Exemption for Widowers	**3,415,074**	593,913
#6 (House Joint Resolution 1616)	Article II, Section 5; Article XI, Sections 2, 5 and 6 Taxation and Budget Reform Commission	**2,111,320**	1,538,470
#8 (House Joint Resolution 1608)	Article V, Section 1 Civil Traffic Hearing Officers	**2,736,373**	1,147,126
#9 (House Joint Resolution 290)	Article IV, Sections 11 and 12 Departments of Veterans Affairs and Elderly Affairs	**2,723,848**	1,225,915
#11 (Initiative)	Article II, Section 9 English is the Official Language of Florida	**3,457,039**	664,861

November 6, 1990 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Senate Joint Resolution 380)	Article III, Section 3 Regular Legislative Sessions	**2,615,449**	513,970
#2 (Senate Joint Resolution 43)	Article I, Section 8 Three-Day Waiting Period for Handgun Purchases	**2,840,912**	522,248
#3 (House Joint Resolutions 139 and 40)	Article VII, Section 18 Laws Affecting Local Governmental Expenditures or Ability to Raise Revenue or Receive State Tax Revenue	**2,031,557**	1,140,745
#4 (Senate Joint Resolutions 1990 and 2)	Article III, Section 4 Open Government	**2,795,784**	392,323

Florida History of Adopted Constitutional Amendments

November 3, 1992 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Senate Joint Resolution 162)	Article VI, Section 5 Emergency Suspension or Delay of General Election	**3,369,416**	1,337,284
#2 (CS for House Joint Resolutions 1727, 863 & 2035)	Article I, Section 24; Article XII, Section 20 Access to Public Records and Meetings	**3,883,617**	793,229
#3 (Senate Joint Resolution 152)	Article VII, Section 3 Historic Preservation Ad Valorem Tax Exemption	**2,908,730**	1,752,480
#4 (Tax and Budget Reform Commission)	Creating Article III, Section 19; State Budgeting, Planning, and Appropriations Processes; Revising Article IV, Section 1; Governor, Creating Article IV, Section 13; Revenue Shortfalls; Revising Article XII, Section 9; Bonds Improving Accountability and Public Review in Spending Taxpayers' Money and Maintaining a Balanced Budget	**3,815,541**	796,462
#5 (Tax and Budget Reform Commission)	Creating Article I, Section 24 Taxpayers' Bill of Rights	**4,258,422**	472,324
#8 (Senate Joint Resolution 2-H)	Article XII, Section 9 Bonds for the Construction of Educational Facilities	**3,089,042**	1,461,429
#9 (Initiative)	Article VI, Section 4 Limited Political Terms in Certain Elective Offices	**3,625,500**	1,097,127
#10 (Initiative)	Article VII, Section 4 Homestead Valuation Limitation	**2,493,742**	2,154,747

November 8, 1994 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Legislative)	Article III, Section 3 Start of Regular Sessions of the Legislature	**2,713,189**	955,223
#2 (Legislative)	Article VII, Section 1, Article XII, Section 21 Limitation on State Revenue Collections	**2,182,411**	1,489,268
#3 (Initiative)	Article X, Section 16 Limiting Marine Net Fishing	**2,876,091**	1,135,110
#4 (Initiative)	Article XI, Section 3 Revenue Limits: May People's Amendments Limiting Government Revenue be Allowed to Cover Multiple Subjects?	**2,167,305**	1,560,635

Florida History of Adopted Constitutional Amendments

November 5, 1996 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Initiative)	Article XI, Section 7 Tax Limitation	**3,372,915**	1,497,485
#2 (Legislative)	Article XI, Section 2 Constitution Revision Commission	**2,733,993**	1,720,193
#3 (Legislative)	Article V, Section 11 and 12 Judiciary	**3,436,753**	1,153,367
#5 (Initiative)	Article II, Section 7 Responsibility for Paying Costs of Water Pollution	**3,397,286**	1,594,175
#6 (Initiative)	Everglades Trust Fund	**2,825,819**	2,108,286

Florida History of Adopted Constitutional Amendments

November 6, 1998 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (House Joint Resolution 969)	Article VII, Section 3 & 4, Article XII, Section 22 Historic Property Tax Exemption and Assessment	**1,970,419**	1,646,069
#2 (House Joint Resolution 3505)	Article I, Section 17 Preservation of the Death Penalty, United States Supreme Court Interpretation of Cruel and Unusual Punishment	**2,676,043**	1,002,043
#3 (House Joint Resolution 3151)	Article VII, Section 6 Additional Homestead Tax Exemption	**2,560,979**	1,180,341
#4 (House Joint Resolution 125)	Article VIII, Section 1 Recording of Instruments in Branch Offices	**2,540,872**	887,999
#5 (Constitution Revision Commission)	Article II, Section 7(a); Article IV, Section 9; Article VII, Section 11(e)-(f); Article X, Section 18; Article XII, Section 22 Conservation of Natural Resources and Creation of Fish and Wildlife Conservation Commission	**2,630,674**	1,007,905
#6 (Constitution Revision Commission)	Article IX, Section 1 Public Education of Children	**2,623,889**	1,069,406
#7 (Constitution Revision Commission)	Article V, Subsections 10, 11(a)-(b), 12(a), (f), 14; Article XII, Section 22 Local Option for Selection of Judges and Funding of State Courts	**2,028,165**	1,536,523
#8 (Constitution Revision Commission)	Article II, Section 8(h)(1); Article III, Subsections 8(b), 16(b) and (f), 19(f)(3); Article IV, Subsections 3(b), 4, 7(a) and (8)(a); Article VIII, Section 1(l); Article IX, Section 2; Article XI, Subsections 2(c), 3, 4, 5(a) and (6)(e); Article XII, Subsections 9(c)(5) and 22 Restructuring the State Cabinet	**1,950,311**	1,562,234
#9 (Constitution Revision Commission)	Basic Rights	**2,416,324**	1,230,683
#11 (Constitution Revision Commission)	Article IV, Section 5(a); Article VI, Subsections 1, 2, 5, 7; Article IX, Section 4(a) Ballot Access, Public Campaign Financing, and Election Process Revisions	**2,239,607**	1,253,150

November 6, 1998 General Election continued			
Amendment Number	**Subject**	**For**	**Against**
#12 (Constitution Revision Commission)	Article VIII, Section 5 Firearms Purchases; Local Option for Criminal History Records Check and Waiting Period	**2,655,010**	1,033,020
#13 (Constitution Revision Commission)	Article I, Subsections 4, 9, 16(a), 18, 23; Article II, Subsections 5(b), 8(g)-(i); Article III, Subsections 3(f), 8(a)-(b), 17(b)-(c), 18, 19(d); Article IV, Subsections 1(a) and (c), 2, 3(b), 4(e), 7(a); Article V, Subsections 1, 2(a) and (b), 3(a), 8, 10(a), 11(c), 17, 18, 20(c)(6) and (9), 20(d)(8), 20(e)(I); Article VII, Subsections 4(b) and 6(b); Article IX, Section 5; Article X, Subsections 3 and 4(a); Article XI, Subsections 2 and 6 Miscellaneous Matters and Technical Revisions	**1,869,111**	1,530,883

November 7, 2000 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Initiative)	Article X, Section 19 Florida Transportation Initiative for statewide high speed monorail, fixed guideway or magnetic levitation system	**2,900,253**	2,607,495

Florida History of Adopted Constitutional Amendments

November 5, 2002 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Legislative)	Amending Article I, Section 17 Excessive Punishment	**3,169,542**	1,377,678
#2 (Legislative)	Article XI, Section 5 Economic Impact Statements for Proposed Constitutional Amendments or Revisions	**3,583,379**	1,010,254
#4 (Legislative)	Article I, Section 24 Laws Providing Public Records or Meetings Exemptions; Two-Thirds Vote Required	**3,474,978**	1,059,183
#6 (Initiative)	Article X, Section 20 Protect People from the Health Hazards of Second-Hand Tobacco Smoke by Prohibiting Workplace Smoking	**3,501,161**	1,431,966
#7 (Legislative)	Article VII, Section 4 Exemption for Construction of Living Quarters for Parents or Grandparents	**3,206,142**	1,557,694
#8 (Initiative)	Article IX, Section 1 Voluntary Universal Pre-Kindergarten Education	**2,868,500**	1,974,408
#9 (Initiative)	Article IX, Section 1 Florida's Amendment to Reduce Class Size	**2,550,201**	2,317,671
#10 (Initiative)	Article X, Section 19 Animal Cruelty Amendment: Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy	**2,608,996**	2,155,911
#11 (Initiative)	Article IX, Section 7 Local Trustees and Statewide Governing Board to Manage Florida's University System	**2,813,145**	1,834,816

Florida History of Adopted Constitutional Amendments

November 2, 2004 General Election			
Amendment Number	**Subject**	**For**	**Against**
#1 (Legislative)	Article X, Section 22 Parental Notification of a Minor's Termination of Pregnancy	**4,639,635**	2,534,910
#2 (Legislative)	Article IV, Section 10 and Article XI, Section 5 Constitutional Amendments Proposed by Initiative	**4,574,361**	2,109,013
#3 (Initiative)	Article I, Section 26 The Medical Liability Claimant's Compensation Amendment	**4,583,164**	2,622,143
#4 (Initiative)	Article X, Section 19 Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities	**3,631,261**	3,512,181
#5 (Initiative)	Article X Florida Minimum Wage Amendment	**5,198,514**	2,097,151
#6 (Initiative)	Article X, Section 19 Repeal of High Speed Rail Amendment	**4,519,423**	2,573,280
#7 (Initiative)	Article X, Section 22 Patients' Right to Know About Adverse Medical Incidents	**5,849,125**	1,358,183
#8 (Initiative)	Article X, Section 20 Public Protection from Repeated Medical Malpractice	**5,121,841**	2,083,864

FOREWORD: 1999 FLORIDA CONSTITUTION REVISION SYMPOSIUM

BY ROBERT F. WILLIAMS

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Florida Law Review
April, 2000

1999 Florida Constitution Revision Symposium

*249 FOREWORD: IS CONSTITUTIONAL REVISION SUCCESS WORTH ITS POPULAR SOVEREIGNTY PRICE?

Robert F. Williams [FNa1]

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Constitutional revision is not for the faint of heart. It is not a Sunday drive in the mountains. It is an incredibly difficult, sometimes tedious, sometimes exhilarating, always a challenging undertaking requiring the cooperation of the leadership of all three branches of state government, of counties and municipalities, of local school boards, of the business community and the labor community, of public interest groups and private interest groups, of people inside the government and people outside the government-in short, it requires the cooperation of just about everybody. In fact, with apologies for the hyperbole, I almost would go so far as to say that the confluence of factors needed to bring about the ratification of a new state constitution approaches that needed for the creation of life itself!

Georgia Governor George D. Busbee (1983) [FN1]

*250 All political power is inherent in the people. [FN2]

I am honored to write this Foreword to the Law Review's symposium on the recent adoption of the Constitution Revision Commission's suggested changes to the Florida Constitution. The faculty at the University of Florida College of Law and the editors of the Law Review must be commended for taking on this important and timely topic. After all, as Professor Richard Kay of the University of Connecticut School of Law has observed:

The transformation of a law school from an institution of vocational competence into one of intellectual excellence is often associated with an increased attention to legal subjects that are national in scope. . . .

It is also true, however, that this broadening of interest need not be accompanied by an abandonment of a special concern for the legal issues and problems that are peculiar to a law school's home. [FN3]

Florida constitutional law has long interested me, as a student, [FN4] as a participant in Florida constitutional revision, [FN5] as a commentator [FN6] on Florida Constitutional Law, and as a speaker to this most recent Commission. [FN7]

The members of the 1997-98 Constitution Revision Commission (Commission) were certainly not persons who were "faint of heart." The Commission succeeded in achieving a number of important revisions to Florida's constitution. These changes were accomplished through the process described above by Governor Busbee. Members of the Commission will agree, I am sure, that the work was "incredibly difficult, *251 sometimes tedious, sometimes exhilarating, always challenging. . . ." [FN8] The Commissioners' participation reflected a tremendous commitment to public service. In Florida, of course, it could never have been a "Sunday drive in the mountains."

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Throughout the history of our country, the states have been experimenting both with the processes by which state constitutions are drafted, adopted, amended, and revised, as well as with the content of state constitutions. The recent Florida state constitutional revisions are a product of the latest in a continuing series of experiments with the processes of state constitutional change. The substantive content of the new changes will have to be subjected to the tests of time and judgements of history, illuminated from the beginning, to be sure, by the light shed on them by the articles in this symposium.

The standard approach to revising American state constitutions has been the constitutional convention. This is a mechanism that makes the maximum use of popular sovereignty or the voters' expressed will. As I have said elsewhere, "the use of a constitutional convention usually relies on three expressions of popular will: deciding the question whether there should be a convention, electing the delegates, and voting on whether to ratify the convention's recommendations." [FN9] Thus, conventions used to have a high degree of popular legitimacy. As the Tennessee Supreme Court noted:

It must be remembered that the Convention method, whether limited or unlimited, is subjected to two votes by the people, the ultimate repository of all power. The primary purpose of the call vote is to determine whether or not the people are willing to permit a convention to consider altering, amending or abolishing the whole Constitution, or specified parts thereof. An affirmative vote for a convention, for limited or unlimited purposes, is a grant by the people to a historic deliberative body to write constitutional, fundamental law as distinguished from statutory law. Imperfection in the call, such as affirmative proposals exceeding the limits heretofore defined, does not invalidate the amending process. The second vote ratifies or rejects the word for word end result of the Convention's deliberative effort. The final validating step by the people is the most significant action in the entire amending process. [FN10]

***252** If Governor Busbee of Georgia was correct in 1983 when he said, based on his experience; "Constitutional revision is not for the faint of heart," [FN11] then Floridians are the least fainthearted people in the United States when it comes to state constitutional revision. Florida is generally considered to have the most easily changed state constitution in the country. [FN12] This is because, in addition to the more common mechanisms of constitutional convention, legislatively-proposed amendment, and citizen initiative, Florida also utilizes its unique, appointed Constitution Revision Commission which may put its proposals directly on the ballot. [FN13] Although this mechanism was invented in 1968, the 1978 Commission's proposals were rejected at the polls, making this most recent experience the first successful utilization of the full Commission mechanism.

People differ, of course, on whether they believe that it is better for a state constitution to be easily amended or more difficult to amend. For most people, this question will even depend on the nature of the proposal itself that is being considered. In other words, rarely do people speculate on this question in the abstract, but rather wait to confront it when they are faced with a proposal they either support or oppose. It is in that context that the question of ease of amending state constitutions usually arises.

***253** The Florida Constitution Revision Commission operates with many of the attributes of a state constitutional convention, but it does not have the first two expressions of popular will described above. It could, therefore, be viewed as having less popular legitimacy than a convention. There can be no prior restraint, imposed by the people, on the consideration of state constitutional revision; the only limits come through the Commission's own self-imposed restraint. [FN14] The commissioners are not, technically, "representatives." [FN15] Voting Rights Act [FN16] and one-person-one-vote issues, [FN17] arguably applicable to constitutional conventions, do not arise with respect to the choice of the Commission's members. Florida's Commission is a reflection, albeit a unique manifestation, of a much larger national trend in state constitutionalism. As noted by Alan Tarr, the earlier reliance on popular sovereignty and state constitutional conventions has been giving way to an increased influence of professional reformers and political elites, thus reflecting probably "the most striking trend" in twentieth century state constitutional politics. [FN18]

In some ways, it is even a misnomer to refer to the Florida body as a "commission." The word itself connotes a principal/agent relationship of some sort, and until Florida's new invention in 1968, constitutional commissions had served their creators rather than acting independently, like constitutional conventions. Commissions had only been used:

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1) in conjunction with constitutional conventions, either to help implement their work after a failure at the polls, or through background study and analysis to lay the groundwork ***254** for such conventions; 2) as devices for assisting legislatures in avoiding conventions, and thus retaining control of constitutional change; [or] 3) to work together with the legislative branch in studying and recommending state constitutional change . . . . [FN19]

Under none of these circumstances could a commission place its recommended changes directly on the ballot. It was, rather, implementing its commission, direction, or mandate, from another body or officer that would review its work. Certainly the Florida Commission is not subject to such review and cannot be accused of being beholden to the Legislature! [FN20] Further, Florida's new innovation does not rely on either of the justifications for use of commissions in the past: expertise and efficiency. [FN21]

Still, however, as noted above, the Commission has a number of attributes of an unlimited constitutional convention. I told the Commission, in an introductory address:

***255** You should consider yourselves a constitutional convention because you will operate from here forward with all of the attributes of a constitutional convention in the traditional sense, except that you don't have an elective constituency. Maybe that's a good thing, for a lot of you it's probably a relief. Each one of you now has a statewide constituency which in other respects is only shared by the Governor, the Cabinet members and the United States Senators from Florida. [FN22]

The unique Florida Commission mechanism, which was premised on the need felt in the 1960s for a periodic reconsideration of the state constitution, is thus made more effective by a corresponding reduction in the role of popular sovereignty. This model "operates to shift the burden of political inertia away from the status quo and toward the possibility of change." [FN23] The Commission's mandate is unlimited, and, apparently, unlimitable. [FN24] This is evidence of the optimistic faith in future generations exhibited by the framers of the 1968 Constitution and the voters who ratified it. The 1997-98 Commission's work was characterized by prudence and a spirit of compromise, both self-imposed limitations.

Florida's choice in 1968 to embark on a new experiment with an automatic, appointed revision commission was a practical response to the real problem of experience with constitutional rigidity, rather than a response based on theory. The commission idea, though, was not only based on concern about past rigidity; it was grounded as well on optimism concerning future possibilities in coming generations, unattainable in 1968, such as judicial and cabinet reform. The 1968 innovation was a leap of faith into the future, a license to later generations with no guarantees as to the substantive outcomes that would flow from the new process. [FN25] At the operational level, it binds future generations to consider state constitutional revision without mandating that any change actually be approved.

The 1968 Florida Constitution, with its important new content and ***256** constitutional change processes, was one of the outcomes of the change in the Florida Legislature following the one-person-one-vote revolution. [FN26] Earlier attempts to stimulate the malapportioned Legislature to consider state constitutional change had failed. [FN27] The automatic, appointed commission idea is the logical outgrowth of the periodic, automatic referendum on whether to call a constitutional convention. Although this idea has apparently been considered for adoption in a few other states, so far none has emulated Florida's experiment. [FN28] The following excerpts from the debates in the 1967 New York Constitutional Convention illustrate some of the concerns about such commissions:

MR. SHAPIRO: Mr. President and gentlemen: This matter was very carefully considered by the members of the Committee on the Legislature. We have before us a number of proposals similar in character, although not in every detail as the Cooper proposal . . . . We went through them very, very thoroughly and the members came to the conclusion that it would be a very dangerous practice to have a commission not elected by the people and over whom they had no control to propose amendments and then necessarily have those go on the ballot to be voted upon by the people without any choice by anybody as to whether they should go or should not go without any veto power.

* * * *

MR. COOPER: Mr. President, I would just like to make the following brief comments on the criticisms. First of all, I am very happy that at least it has focused [sic] some attention on what I consider to be a problem in the minds of most of us here.

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With respect to some of the comments made by Judge Shapiro, I think you ought to be aware that the people who would be responsible for the commission would be the elected public officials, except for the case of the Board of

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Regents. These elected public officials would be charged with the responsibility and would be answerable to the people that they selected to this commission, and in the final analysis, nothing that the commission would have done would have been without the approval of the people finally when it came to ratifying the work of this commission. [FN29]

The Florida appointed commission process has worked now twice this generation, after the "failed" [FN30] 1978 Commission. The Tax and Budget Reform Commission, modeled directly on the Constitution Revision Commission, successfully met and proposed revisions which were adopted in 1992. [FN31] Florida has, thus, been relatively successful in updating its constitution over the past several generations. Professor Little's article, however, disagrees with this assessment. [FN32]

Other states, by contrast, have had difficulty in the past generation stimulating public support for a process of even considering state constitutional change. Most recently, in 1997, despite strong bipartisan support, [FN33] New Yorkers voted against calling a state constitutional convention in a referendum held automatically every 20 years. [FN34] Illinois ***258** voters, in a similar automatic referendum, rejected a convention in 1988. [FN35] Florida's periodic Commission, however, is constituted automatically every 20 years, without preliminary input from the current generation. The 1968 ratification of this idea by those voters, its source of popular legitimacy, continues in force until changed.

There has developed what Gerald Benjamin and Thomas Gais call "conventionphobia" in this country. [FN36] This resistance to a constitutional convention is not just a national phenomenon, resisting a federal constitutional convention, but also manifests itself at the state level, leading to resistance to state constitutional conventions. As noted above, even states with an automatic vote on whether to call a convention have not had recent success. "In the quarter century between 1960 and 1985 automatic convention calls were approved only in New Hampshire, Rhode Island and Alaska. . . . In each of four states that provided for an automatic convention call during the early 1990s-Alaska, New Hampshire, Ohio and Michigan-majorities have rejected the opportunity." [FN37] This resistance to the calling of conventions has been occurring at the same time that widespread dissatisfaction with state government has been increasing. The public seems to view the possibility of a constitutional convention as political business as usual by the "government industry." [FN38] Constitutional conventions seem to have lost their legitimacy in the public mind.

Under these circumstances, in states like Florida that permit the state constitution to be amended through the initiative, that avenue is likely to be seen by the public as having more popular legitimacy than a convention. But the initiative lacks the possibility of deliberation. [FN39] Gais and Benjamin ***259** conclude:

What we need instead are constitutional revision procedures that are deliberative as well as legitimate-procedures that command legitimacy by providing for direct citizen participation and control, but that also generate and assess alternative proposals, take into account the best available information about their likely effects, consider the interactions between the proposed changes and the rest of the constitutional structure, and afford opportunities for discussion and accommodation among significant political interests. [FN40]

Interestingly, this sounds like a description of Florida's Constitution Revision Commission process, both in 1978 and in 1997-98. Is Florida's solution the answer other states are looking for? Do these attributes, fostering widespread deliberation in the modern information and transportation age, compensate for reduced popular sovereignty (legitimacy?) at the outset of the process?

Gais and Benjamin called for another characteristic for meaningful, publicly acceptable state constitutional revision: independence. [FN41] The initiative method also provides independence but, as mentioned before, does not provide for deliberation. Based on this, I suggested to the Florida Commission:

***260** The question, I think, is quite clearly whether you as a Commission can operate in a way that will convince the public that you are independent of the regular processes of government. I think you have the potential to do that. Gerald Benjamin says, "To channel the public discontent now targeted at state governments we need a method of constitutional revision which is independent of existing governmental institutions."

* * * *

Try, if you can, to distance yourself somewhat from your current, regular constituency. You do have a statewide constituency now. If you can, distance yourself from your appointing authority, at least in some respects. You need

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to do this to make the inside job work, to be able to work together over the next year in this process. It's going to go beyond the next year if you think about the ratification campaign, if you suggest any changes. You need to have independence to work inside this chamber together and also to present an independent face to the public. Selling your product to the public is your outside job. [FN42]

Apparently, looking back at the process, the Commission was able to operate in a way that did not present merely a "government industry" picture to the Florida voters. The makeup of the Commission did, in fact, include a number of individuals who were not governmental officials, although they were appointed by government officials. [FN43]

So, the question to be asked by Floridians, as well as those in other states who are watching Florida's experiment in the processes of state constitutionmaking, is whether the very expansive deliberative record of the commission, its arguable independence, and its success in convincing the voters to accept its proposals make up for its seemingly reduced legitimacy on account of its appointed, rather than elected, membership. Clearly the Commission seems to have met the central challenge of state constitutional revision, delineated by the leading scholars of state constitutional conventions:

In short, constitutional revision potentially polarizes state communities, or the attentive portions of them, along predictable lines. Change and reform must win acceptance ***261** against groups and points of view that are latent in every state and, experience has shown, are readily mobilized. Thus the politics of the constitutional revision pose the central problem of achieving enough reform to satisfy those who favor and work for such efforts, but at the same time not so much as to frighten or alienate too many vested interests or too many of the potential opponents in the citizenry. [FN44]

The Commission seems, as well, to have been able to mesh the politics of state constitutional revision with ongoing Florida and national politics. [FN45]

The processes of preparing for and carrying through the Commission's mandate is explained in a revealing fashion in the article by Chairman W. Dexter Douglass. [FN46] Of particular interest is the importance of the Commission's self-imposed super-majority rule, [FN47] and the preparatory work performed by the Constitution Revision Commission's Steering Committee that was created by Governor Chiles' Executive Order. [FN48] This Steering Committee adopted a draft of rules of procedure, made provisional staffing decisions, and prepared and submitted a budget to the legislature for the Commission's work.

The new gun control amendment, and particularly the political process leading to its adoption, is explained in the article by Katherine Rundle and Paul Mendelson. [FN49] This provision, a compromise permitting counties to impose restrictions on firearms sales at gun shows, builds upon an earlier 1991 amendment to the constitution. [FN50] The new amendment functions, in effect, to overrule a statute withdrawing authority over such regulations from counties. [FN51] An extremely interesting technique used by the proponents ***262** of the amendment was to utilize a public opinion poll during the deliberations of the Commission to convince the membership that such an amendment was politically palatable to the voters. [FN52] This is reminiscent of a suggestion made by Benjamin and Gais for the use of "deliberative opinion polls." [FN53] The entire area of gun control has been one where there has been increasing activity at the state constitutional level in recent years. [FN54]

The amendment bringing at least partial reform [FN55] to the Cabinet is analyzed in historical and political context by Deborah Kearney. [FN56] These changes, also clearly reflecting compromise, could be seen as at least partially rewarding the optimism of the architects of the 1968 Constitution. Importantly, it seems clear that the political groundwork for this recent change in the Cabinet was laid by the earlier amendment applying term limits to the Cabinet officers. [FN57] Thus, none of the elected Cabinet officials had an incentive to oppose the amendment vigorously because they were disqualified from succeeding themselves. [FN58]

The two articles on the new Conservation Amendment reflect the range of analysis that can be brought to bear on state constitutional change. The article by Clay Henderson [FN59] provides a careful look at the state-specific context-historical, political, and legal-in which the new Conservation Amendment fits. By contrast, John Tucker's article [FN60] places Florida's new provision in broad, comparative context, within the American state constitutional realm, in comparison to environmental provisions in the constitutions of other countries, and within international law. [FN61] The new ***263** "amendment" is a wide-reaching set of related provisions building upon the 1968

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environment clause. [FN62] Both articles raise the important question of whether such provisions are self-executing. [FN63]

Professor Tucker asserts that the adoption of the Conservation Amendment reflects society's adoption of an "environmental ethic." [FN64] This illustrates a general point made a number of years ago by Willard Hurst, that "the constitutional provisions merely registered an already formed public opinion whose weight, rather than the force of law, changed the operations of government." [FN65]

The wide variety of provisions brought together under the Conservation Amendment illustrate a very important distinction between constitutional amendments proposed by the initiative, on the one hand, and amendments proposed by constitutional conventions or the Constitution Revision Commission on the other hand: the single-subject rule does not apply. The rationale for this distinction is, most likely, that the convention or Commission process permits deliberation and accommodation, whereas the initiative process does not. As the Florida Supreme Court observed:

Under article XI, Florida Constitution, a thirty-seven member Constitution Revision Commission is required to convene, adopt rules of procedure, examine the constitution, hold public hearings, and prepare a report on proposed revisions. The report is published to the electorate prior to election. No single-subject requirement is imposed because this process embodies adequate safeguards to protect against logrolling and deception. [FN66]

The absence of a single-subject restriction on the Commission's proposals forms the basis for one of Professor Little's major criticisms of the commission process. [FN67] This is a criticism that merits some serious consideration. On the merits, it remains to be seen whether the various provisions in the Conservation Amendment "measure up" [FN68] in practical ***264** terms as well as those set forth by thoughtful academic commentators. [FN69]

The areas of school finance and measures of adequate school performance have provided one of the most important, significant, and enduring areas of state constitutional litigation since the 1973 United States Supreme Court decision to leave the matter to the states. [FN70] Recent litigation in Florida on these issues resulted in an inconclusive decision by the Florida Supreme Court in 1996. [FN71] The recent amendment to the Florida constitution, however, seems to be the first textual change in a state constitution aimed at these problems. The exhaustive article by Jon Mills and Timothy McLendon analyzes the Florida amendment in light of the litigation in other states and the texts contained in other state constitutions. [FN72] The recent Florida changes seem to respond to both the equity and adequacy concerns that had been raised about school funding and performance over the last generation. [FN73] A new round of litigation will test Florida's school system against the new state constitutional provisions.

The judicial changes successfully proposed by the Commission, also the product of deliberation and compromise, are ably analyzed by Martha Barnett. [FN74] These changes also reward the optimism of the 1968 designers of the commission mechanism.

Although not covered in these pages, the Commission's suggested change in the nature of a "state equal rights amendment" promises to raise interesting questions as to whether it will "make a difference." [FN75] New ***265** Jersey adopted a similar provision back in 1947. [FN76]

Professor Joseph Little concludes that neither the process nor results of Florida's commission model compare favorably with earlier constitution revision commissions that reported to the legislature. [FN77] Based on a number of grounds, his criticism is at least partially based on his view that the state constitution should legitimately limit itself to provisions structuring and allocating governmental powers, and limiting those powers to protect the people. [FN78] This is, of course, the dichotomy between fundamental constitutional material, on the one hand, and mere legislative detail on the other hand. [FN79] While this distinction is always extremely important, and was clearly on the minds of the members of the Commission, it must be considered in light of the political situation and the specific constitutional context within a state. Professor Frank P. Grad noted:

Recognition must, of course, be given in such an endeavor, first, to the need for inclusion of certain "core" subjects which common experience and tradition support as basic for the proper functioning of state government, and second, to the practical necessity-depending on the particular circumstances in a state at a given time-of

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including other matters so important to the state as to call for constitutional treatment. [FN80]

Practical necessities and specific Florida constitutional context would certainly have influenced the Commissioners to retain a constitutional agency for environmental regulation, to utilize the constitution to "overrule" a statute removing county authority to regulate gun sales, and such other provisions as could be subject to the charge that they are not ***266** necessarily "fundamental" constitutional material. In fact, there has been a major shift in the idea of what the function of a state constitution should be, and what matters are important enough to be contained therein. Christian Fritz noted this shift in the attitudes of constitution makers during the nineteenth century as the American society and economy became more complex, particularly with the rise of powerful corporations. These constitutionmakers believed that they needed to include more material in state constitutions, even if it was in areas that could, theoretically, be governed by legislation. [FN81] Professor Fritz concluded:

The key to explaining the growing length of nineteenth-century constitutions lies in the delegates' understanding of the purpose of constitutions. There was common agreement that the nature and object of constitutions extended beyond fundamental principles to what delegates called constitutional legislation. Delegates willingly assumed an institutional role that occasionally supplanted the ordinary legislature.

* * * *

Restraining corporations and limiting governmental debt provided the most dramatic expression of the rule of the conventions acting in lieu of legislatures. In the case of controlling corporate power, including the railroad companies, conventions claimed that legislatures were institutionally unable to respond. Moreover, many delegates regarded the control of corporations and debt as matters on which the people had given conventions a mandate to act. [FN82]

The Florida Commission, of course, can claim no mandate from the people in the same way a constitutional convention could, but it is supported by the mandate of the people in 1968. [FN83] In any event, the limitation of a state constitution to "fundamental" matters is inevitably subject to political reality, constitutional past practice within the state, and the acknowledged additional function of a state constitution as a "tool of lawmaking." [FN84]

Professor Little's other criticisms of both the Commission process and its accomplishments deserve careful consideration. Perhaps his most significant, albeit controversial, recommendation is that Commission ***267** proposals be submitted to the legislature before they are placed on the ballot. [FN85] This is a response to the popular sovereignty and legitimacy questions, discussed herein, that arise with respect to the Commission mechanism. Adoption of such a change, of course, would end the most unique aspect of Florida's 30- year experiment with this new form of state constitutional revision.

This Commission's success completes an effective generation of state constitutional change at the close of the millennium, via commissions, but the question remains whether this set of accomplished changes was worth the price of reduced popular sovereignty. Once again, one's answer to this process question may depend on what one thinks of the content of the successful proposals. This, of course, may even be a mixed opinion. In any event, Florida seems to have embraced the Jeffersonian, rather than the Madisonian, theory that state constitutions should be reviewed and repaired periodically so as to serve as the constitution of the living generation. [FN86]

For Madison tradition and stability gave foundational principles their force; periodic revision would "engender pernicious factions" and "agitate the public mind more frequently and more violently than might be expedient." In other words, the best-designed constitutions are created once and then avoid later public scrutiny. Madison endorsed this program primarily because he worried that public tampering would affect the security of rights, especially property rights. . . . Of course, Madison recognized that popular sovereignty was one of the important principles constitutions aver, but he clearly gave it secondary status. . . . This Madisonian approach to constitutionalism leans toward a traditionally liberal understanding of good government, wherein rights and standing law take precedence over popular sovereignty.

During America's formative years, not everyone wanted ***268** foundational documents to establish such an explicit value hierarchy. Thomas Jefferson opposed Madison's ideal and spoke disparagingly of those who "look[ed] to constitutions with sanctimonious reverence, and deem[ed] them like the ark of the covenant, too sacred to be touched." Although Jefferson explicitly denied that he was "an advocate for frequent and untried changes in laws and institutions," he explicitly recommended that constitutions and their imbedded principles be subject to regular popular scrutiny, knowing full well that this would facilitate evolutionary change. . . . However, the force of his case derived from his simple belief that "each generation . . . has . . . a right to choose for itself the form of government it

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believes most promotive of its own happiness." For Jefferson, lawmaking-even the writing of constitutional laws-belonged to the living. . . . This Jeffersonian approach to constitutionalism endorses a far more populist sense of good government, wherein the people's reasoned understanding of the good state guides-and if necessary takes precedence over-rights and standing law.

Jefferson and Madison offered two different ways of balancing America's allegiance to private rights and popular sovereignty. Jefferson tipped the scales toward self-government whereas Madison tipped them toward rights. [FN87]

Florida, since 1968, has followed the Jeffersonian view of the need for periodic reconsideration, which did not rely on popular sovereignty as a stimulus for the study of state constitutional revision. Possibly, as we have seen in modern times, the study of state constitutional revision will not take place if it is dependent on popular sovereignty. Maybe the public ***269** discontent discussed by Benjamin and Gais would prevent the adoption of a such a mechanism now. [FN88] The optimism of 1968 stands in stark contrast to the current public dissatisfaction that seems to block efforts to call state constitutional conventions. Of course, as Madison and Jefferson understood, content and process are intertwined, and their differing views on constitutional stability were based on pragmatic concerns as well. The judgements of history on whether the Florida commission idea was a good one will likewise be based on practical, rather than theoretical, assessments. [FN89]

A Florida-style commission relies on popular sovereignty as a check on the commission's proposals, rather than as a stimulus for them. After all, the voters did reject one of the Commission's proposals. [FN90] This certainly constitutes an expression of the "consent of the governed," comporting with Locke's view of constitutionalism. [FN91] Also, we have learned that the "failed" 1978 Constitution Revision Commission was really not a failure. Its efforts were initially checked by the electorate, but the agenda was set for useful, piecemeal constitutional change, approved by the electorate, over the next generation. [FN92] A future commission that "fails" because the electorate exercises its checking function may still have a similar constructive agenda-setting impact.

Is only one expression of assent by the electorate to state constitutional change adequate as we begin the twenty-first century? Is a retrospective popular check enough, or do we need a prospective popular stimulus as well? Certainly the voters who wish to obtain information have greater access now than ever before. The media and on-line interactive sources of receiving and offering information are greater than ever, and were utilized effectively by the recent Florida Commission. These efforts began even before the Commission was formed. [FN93] A citizen's guide was published and ***270** disseminated. [FN94] The Commission published a free newsletter, including a "Kids Page," [FN95] and a Web site. [FN96] Dozens of public hearings were conducted around the state. Commission Chairman Dexter Douglass reported the following process:

Over the past nine months I have traveled across the state with the 37 members of the Constitution Revision Commission in an effort to ensure that citizens of Florida do, indeed, have a voice in making changes to our state's basic document. Our travels took us more than 2,000 miles for 15 public hearings. We heard more than 100 hours of testimony, from nearly 1,000 speakers.

At the public hearings last summer we considered about 600 proposals. Then the commission diligently studied the issues, wrote them into official proposals, examined them further in committees, voted numerous times on their merits, and finally approved the nine revisions to go on the ballot. [FN97]

It is probably safe to say that Florida conducted the most open and accessible review of a state constitution in the history of our country. This is the source of the Commission's legitimacy with the living generation, even in the absence of prospective authorization by the current generation. Chairman Douglass would no doubt agree with Georgia governor Busbee about the rigors of state constitutional revision! [FN98] Popular participation and deliberation have taken the place of popular stimulus in Florida constitutional revision. Is this an adequate substitute?

There has been an explosion in interest group representation, both public interest and private interest, even since the 1978 Commission met. [FN99] ***271** These organizations play an important two-way role in alerting and educating their members to the possibilities of state constitutional change and then in bringing their collective views to the Commission. By contrast, New Jersey's quite successful 1947 Constitutional Convention met during the summer in a college gymnasium, in relative secret. [FN100] Such changed circumstances and new attitudes toward, and technologies for, public information and participation support a rethinking of state constitutional revision processes.

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Florida's "experimental laboratory" [FN101] of state constitutionmaking, ***272** though, continues to operate without any other states adopting it. Once again, the climate of the times may make it impossible for the public to exhibit the spirit of optimism underpinning the 1968 commission idea. In any event, the substantive product of this most recent Commission has now passed from the Commission through the voters, to the three branches of state government and the people of Florida. Most importantly, the new substantive provisions are in the hands of the judicial branch which will most certainly be called upon to apply and interpret them.

Interestingly, one of the most important judicial doctrines in interpreting the state constitution provides direct recognition of the role of popular sovereignty in state constitutionmaking. The maxim is that the "presumption is in favor of the natural and popular meaning in which the words are usually understood by the people who have adopted them." [FN102] This judicial doctrine places emphasis only on the final expression of popular sovereignty in state constitutional adoption, revision, or amendment; the checking function. [FN103] It is not predicated on any other expression of voters' will, such as that authorizing a constitutional convention or electing delegates (popular authorization). As noted earlier, the Florida commission process relies only on this final involvement of the voters, as a check on Commission proposals. This can be seen as a check on both the legitimacy of the process and the content of the proposals. Maybe it is time to acknowledge that this is the most important expression of popular sovereignty in the process of modern state constitutionmaking, if that process includes public deliberation and widespread public information and access.

Florida has hit on a new balance between Jefferson's concern with the living generation being able to form its own constitutional norms and Madison's concern with instability of rights and the influence of public ***273** "passion" rather than "reason." [FN104] Madison was even concerned that the process of state constitutional revision itself would inflame passions and stimulate the formation of factions. [FN105] Could the Florida Commission's appointed structure actually shield it from the extremes of democratic passion that seem to underlie the modern "conventionphobia" while, at the same time, facilitating a deliberative, independent, periodic review of the state constitution? Does this filtering function come at too high a cost in terms of legitimacy arising from actual public authorization, and are open information, access, and deliberation inadequate substitutes for popular sovereignty, serving as mere justifications for elite and professional domination of the state constitution revision process? It must be remembered that Florida's Commission does not supplant, but rather merely supplements, the more familiar processes for state constitutional amendment and revision.

These are the kinds of questions Floridians and others around the country should be asking themselves. The answers lie both in theory and in practice.

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[FN1]. George D. Busbee, An Overview of the New Georgia Constitution, 35 Mercer L. Rev. 1, 1-2 (1983).

[FN2]. Fla. Const. art. I, § 1.

[FN3]. Richard S. Kay, The Jurisprudence of the Connecticut Constitution, 16 Conn. L. Rev. 667, 667 (1984).

[FN4]. See generally **Robert F. Williams**, Note, Property Tax Exemptions Under Article VII, Section 3(a) of the Florida Constitution of 1968, 21 U. Fla. L. Rev. 641 (1969).

[FN5]. See **Robert F. Williams**, A Generation of Change in Florida State Constitutional Law, 5 St. Thomas L. Rev. 133, 136-39 (1992) [hereinafter A Generation of Change]; Stephen T. Maher, The Conference on the Florida

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Constitution, 68 Fla. B.J., Dec. 1994, at 66, 67 n.10; **Robert F. Williams**, The Anatomy of Law Reform: Dissecting a Decade of Change in Florida In Forma Pauperis Law, 12 Stetson L. Rev. 363, 385-86 (1982) [hereinafter Anatomy of Law Reform].

[FN6]. See **Robert F. Williams**, Introduction: The Stories of State Constitutional Law, 18 Nova L. Rev. 715 (1994) (introducing the Symposium on Florida Constitutional Law).

[FN7]. See **Robert F. Williams**, The Florida Constitution Revision Commission in Historic and National Context, 50 Fla. L. Rev. 215 (1998) (address to Commission). The original address was published in the Journal of the 1997-1998 Constitution Revision Commission 14 (Tuesday, June 17, 1997).

[FN8]. See supra note 1, at 1.

[FN9]. **Robert F. Williams**, Are State Constitutional Conventions Things of the Past? The Increasing Role of the Constitutional Commission In State Constitutional Change, 1 Hofstra L. & Pol'y Symp. 1, 3 (1996).

[FN10]. Snow v. City of Memphis, 527 S.W.2d 55, 63-64 (Tenn. 1975), appeal dismissed, 423 U.S. 1083 (1976).

[FN11]. See supra note 1, at 1.

[FN12]. See Talbot D'Alemberte, The Florida State Constitution: A Reference Guide 146 (1991) ("The Constitution of Florida has more processes for amendment and revision than any other state constitution."); see also Joseph W. Little & Julius Medenblik, Restricting Legislative Amendments to the Constitution, 60 Fla. B.J., Jan. 1986, at 43; Albert L. Sturm & Janice C. May, State Constitutions and Constitutional Revision: 1980-81 and the Past 50 Years, in 24 The Book of the States 1982-83, at 115, 116-18 (1982). Interestingly, one can make the argument that the easier it is to amend a state's constitution, the more rigid its court's adherence should be to the doctrine of stare decisis for decisions interpreting the state constitution. Justice Brandeis' famous defense of a reduced weight of stare decisis for United States Supreme Court interpretations of the federal constitution was based on the difficulty of overruling such interpretations. See Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 409 n.5 (1932) (Brandeis, J., dissenting). Brandeis, however, specifically excluded state constitutional interpretations from his argument, stating that "[t]he policy of stare decisis may be more appropriately applied to constitutional questions arising under the fundamental laws of those States whose constitution may be easily amended. The action following the decision in Ives v. South Buffalo Ry. Co., 201 N.Y. 271, . . . shows how promptly a state constitution may be amended to correct an important decision deemed wrong." Id. No Florida court appears to have addressed this point. See generally Thad B. Zmistowski, Note, City of Portland v. DePaolo: Defining The Role of Stare Decisis in State Constitutional Decisionmaking, 41 Me. L. Rev. 201(1989). But see James C. Rehnquist, The Power that Shall Be Vested in a Precedent: Stare Decisis, the Constitution and the Supreme Court, 66 B.U. L. Rev. 345, 351-52 (1986) (arguing that other factors than just ease of amendment should support reduced weight of precedent in constitutional interpretation).

[FN13]. See D'Alemberte, supra note 12, at 15-16; Steven J. Uhlfelder, The Machinery of Revision, 6 Fla. St. U. L. Rev. 575 (1978).

[FN14]. See infra note 24 and accompanying text.

[FN15]. See generally Robert S. Friedman & Sybil L. Stokes, The Role of Constitution-Maker as Representative, 9 Midwest J. Pol. Sci. 148 (1965), reprinted in Joseph F. Zimmerman, Subnational Politics: Readings In State and Local Government 76 (2d ed. 1970).

[FN16]. See Richard Briffault, The Voting Rights Act and the Election of Delegates to a Constitutional Convention, in Decision 1997: Constitutional Change in New York 445 (Gerald Benjamin & Henrik N. Dullea eds., 1997).

[FN17]. See id. at 456-57; Priest v. Polk, 912 S.W.2d 902 (Ark. 1995) (concluding that the one-person-one-vote principle was inapplicable to state constitutional conventions).

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[FN18]. G. Alan Tarr, Understanding State Constitutions 170 (1998) ("Perhaps the most striking trend is toward the professionalization of state constitutional change. Illustrative of this shift is the decline of the constitutional convention. In the nineteenth century, conventions served as a mechanism for popular influence on politics, often called by reluctant officials in response to popular pressures. But in the twentieth century far fewer conventions have been called, and their character has changed. Typically, it has been political elites and professional reformers who have campaigned for constitutional revision, with the populace reduced to rejecting convention calls and proposed constitutions to register its distrust of a process that it no longer feels it controls. The professionalization of state constitutional change is also evident in the increasing use of constitutional commissions, expert bodies established without popular input, to set the agenda of constitutional change, identifying the problems that deserve attention and the appropriate solutions to those problems.").

[FN19]. Williams, supra note 9, at 4.

[FN20]. James Henretta made the following criticisms of other legislatively-created commissions:

In many other states, such as Georgia in the 1940's and Kentucky and California in the 1960s, legislatures dispensed completely with a constitutional convention. To meet the pressing need for the reform of outmoded constitutional structures, the legislatures appointed commissions to consider revisions and to report their recommendations. These commissions were not democratic bodies responsible to the people. Their proposals came before the voters only after being carefully reviewed and revised by legislators, governors, and other state officials.

* * * *

Whatever the gloss . . . the commission revision process . . . represented a diminution of activist popular sovereignty. In a carefully calculated fashion, these maneuvers removed power from the hands of the citizenry. The result was a constitution revised as much through administrative procedures as through constitutional debate and political compromise.

James A. Henretta, Foreword: Rethinking the State Constitutional Tradition, 22 Rutgers L.J. 819, 830-31 (1991). For excellent analysis of the origins of the importance of popular sovereignty in state constitutionalism, see Christian G. Fritz, Alternative Visions of American Constitutionalism: Popular Sovereignty and the Early American Constitutional Debate, 24 Hastings Const. L.Q. 287 (1997).

[FN21]. See Williams, supra note 9, at 9:

The constitutional commissions came into being in New York and New Jersey based on the justifications of efficiency and expertise, neither of which were regarded, according to Galie's analysis, as attributes of the constitutional convention ("cumbersome") or the legislative amendment process ("ad hoc"). The commission, under these circumstances, served as a research and study group (expertise) and as a technique for agenda-setting in the legislature (efficiency).

[FN22]. Williams, supra note 7, at 222. For a comprehensive analysis of the politics of state constitutional conventions, see Elmer E. Cornwell et al., State Constitutional Conventions: The Politics of the Revision Process in Seven States (1975).

[FN23]. Williams, supra note 7, at 222.

[FN24]. See id. at 223 ("Yours is an unlimited commission. I think that's good and bad. You have an open mandate. But it means you'll have to focus; you'll have to set priorities. You'll probably have to limit yourselves."). This unlimited quality is one of Professor Little's major criticisms. See Joseph W. Little, The Need to Revise the Constitution Revision Commission, 52 Fla. L. Rev. 475 (2000).

[FN25]. Professor Little provides a different assessment, concluding that the Revision Commission idea was "slipped by or gobbled down by the electorate without a hiccup." Little, supra note 24, at 477.

[FN26]. See D'Alemberte, supra note 12, at 12; A Generation of Change, supra note 5, at 135. This was part of a national trend:

[S]tate legislatures have once again become relatively democratic and representative bodies as a result of the reapportionment revolution begun in 1962 by Baker v. Carr. Not accidentally, that decision spurred a wave of constitutional revision. No fewer than thirteen states revised their basic charters between 1963 and 1976, reviving at

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least in part, the tradition of activist popular sovereignty.
Henretta, supra note 20, at 839.

[FN27]. See, e.g., William C. Havard, Notes on a Theory of State Constitutional Change: The Florida Experience, 21 J. Pol. 80 (1959). See generally Albert L. Sturm, The Procedure of State Constitutional Change-With Special Emphasis on the South and Florida, 5 Fla. St. U. L. Rev. 569 (1977).

[FN28]. See John Dinan, "'The Earth Belongs Always to the Living Generation:' A Reevaluation of the American State Constitutional Tradition," Paper delivered at 1999 American Political Science Association Meeting, at 17 n.50 (on file with author).

[FN29]. 3 Proceedings of the Constitutional Convention of the State of New York 28-29 (1967); see also 2 Proceedings of the Constitutional Convention of Hawaii, 1978, at 109-12 (1980) (proposal for an appointed commission with authority to put proposals directly on the ballot rejected in committee). I am indebted to Dr. John Dinan not only for pointing out the existence of the debates on this question, but also for locating them and sending me copies.

[FN30]. The failure was short-lived. See generally D'Alemberte, supra note 12, at 15; Steven J. Uhfelder & Robert A. McNeely, The 1978 Constitution Revision Commission: Florida's Blueprint for Change, 18 Nova L. Rev. 1489 (1994); infra note 92 and accompanying text. For a complete analysis of the 1978 Commission's proposals, see Symposium on the Proposed Revisions to the Florida Constitution, 6 Fla. St. U. L. Rev. 565 (1978).

[FN31]. See Fla. Const. art. XI, § 6. See generally Donna Blanton, The Taxation and Budget Reform Commission: Florida's Best Hope for the Future, 18 Fla. St. U. L. Rev. 437 (1991); A Generation of Change, supra note 5, at 137 n.23.

[FN32]. See generally Little, supra note 24.

[FN33]. See Mario N. Cuomo & Gerald Benjamin, New Yorkers Need a Constitutional Convention, N.Y. Times, July 3, 1997, at A22; Alan Finder, Gridlocked State Government Needs an Overhaul, Panel Says, N.Y. Times, Feb. 25, 1995, at 25; Richard Perez-Pe a, Scorn for Albany Unites Forces Urging a New Constitution, N.Y. Times, Oct. 26, 1997, at 31.

[FN34]. See Richard Perez-Pe a, Voters Refuse to Take Chances on Bond Act and Convention, N.Y. Times, Nov. 6, 1997, at B3; Gerald Benjamin & Thomas Gais, Constitutional Conventionphobia, 1 Hofstra L. & Pol'y Symp. 53, 70 (1996) (describing opposition to convention). See generally Janice C. May, Amending State Constitutions, 1996-97, 30 Rutgers L.J. 1025 (1999).

[FN35]. See Janice C. May, State Constitutions and Constitutional Revision: 1988-89 and the 1980s in 28 The Book of the States 1990-91, at 20, 22-23 (1991). The Illinois Constitution had undergone a major revision in 1970, and many thoughtful people concluded there was no need for a convention.

[FN36]. Benjamin & Gais, supra note 34, at 70.

[FN37]. Id. at 69. Benjamin and Gais had observed a year earlier:

The number of active constitutional conventions has also dropped from seven between 1968 and 1969, to just two between 1978 and 1979, to none between 1990 and 1991. Moreover, all of the convention calls that some states are required to put on their ballots have gone down to defeat in recent years: New Hampshire, Alaska, and Montana placed such questions before the voters between 1990 and 1992, but all were defeated, as was Michigan's in 1994.

Thomas Gais & Gerald Benjamin, Public Discontent and the Decline of Deliberation: A Dilemma in State Constitutional Reform, 68 Temp. L. Rev. 1291, 1303 (1995) [hereinafter Public Discontent].

[FN38]. Public Discontent, supra note 37, at 1304; Benjamin & Gais, supra note 34, at 71.

[FN39]. See Public Discontent, supra note 37, at 1301:

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A more important question is whether the constitutional initiative is a deliberative process, one that involves discussion, learning, and accommodation among all citizens or their representatives regarding common problems. Deliberation is crucial in settling constitutional questions. If we want people to view a constitution as legitimate, we must be sure they believe the rules and institutions it prescribes to be reasonable and fair. That is not an easy task, particularly now, when government institutions must often make decisions which many citizens and interest groups oppose.
Id. For a critical evaluation of the initiative process, see Harry N. Scheiber, Foreword: The Direct Ballot and State Constitutionalism, 28 Rutgers L.J. 787 (1997); see also Eric Lane, Men Are Not Angels: The Realpolitik of Direct Democracy and What We Can Do About It, 34 Williamette L. Rev. 579 (1998). For critiques aimed specifically at Florida, see Thomas C. Marks, Jr., Constitutional Change Initiated By The People: One State's Unhappy Experience, 68 Temp. L. Rev. 1241 (1995); Joseph W. Little, Does Direct Democracy Threaten Constitutional Governance in Florida?, 24 Stetson L. Rev. 393 (1995). For a more neutral analysis, see Jim Smith, So You Want to Amend the Florida Constitution? A Guide to Initiative Petitions, 18 Nova L. Rev. 1509 (1994).

[FN40]. Public Discontent, supra note 37, at 1303.

[FN41]. Public Discontent, supra note 37, at 1299.

[FN42]. Williams, supra note 7, at 226, 228.

[FN43]. See W. Dexter Douglass, The 1997-98 Constitution Revision Commission: Valuable Lessons from a Successful Commission, 52 Fla. L. Rev. 275, 277 n.12 (2000). Professor Little sees this as a major defect in the commission mechanism, concluding that the appointees follow the political agenda and government branch loyalty of their respective appointing authorities. See Little, supra note 24, at 477-78.

[FN44]. Cornwell et al., supra note 22, at 206.

[FN45]. See Cornwell et al., supra note 22, at 192: The first point we stressed is that constitutional revision is a political process. As such it does tap the full range of motives and interests called into play by the other political subprocesses at the state level. And like these other forms of state politics, it varies from jurisdiction to jurisdiction in response to local differences in political culture and style.See generally Constitutional Politics in the States: Contemporary Controversies and Historical Patterns (G. Alan Tarr, ed., 1996).

[FN46]. Douglass, supra note 43, at 275; see also Talbot D'Alemberte, Essay, The 1997-98 Constitution Revision Commission: Reflections and Commentary from the Commission's First Chairman, 25 Fla. St. U. L. Rev. 19 (1997).

[FN47]. See Douglass, supra note 43, at 278.

[FN48]. See Douglass, supra note 43, at 276-78.

[FN49]. See Katherine Fernandez Rundle & Paul Mendelson, Closing The Deadly Loopholes in the Firearms Laws: The History and Impact of Amendment 12, 52 Fla. L. Rev. 457 (2000).

[FN50]. See Fla. Const. art. I, § 8(b).

[FN51]. See Rundle & Mendelson, supra note 49, at 458, n.1.

[FN52]. See Rundle & Mendelson, supra note 49, at 457; Williams, supra note 7, at 226-27.

[FN53]. Public Discontent, supra note 37, at 1313 (describing "deliberative opinion poll").

[FN54]. See, e.g., Davil B. Kopel et al., A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts, 68 Temp. L. Rev. 1177 (1995).

[FN55]. But see Little, supra note 24, at 490.

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[FN56]. See Deborah K. Kearney, The Florida Cabinet in the Age of Aquarius, 52 Fla. L. Rev. 425 (2000). See Henretta, supra note 20, at 822-23 (tracing the growth of plural state executives); Tarr, supra note 18, at 121- 22.

[FN57]. See Fla. Const. art. VI, § 4; Williams, supra note 6, at 722-23; P.C. Doherty, A Quodlibet, a Mumpsimus, and the Rule of Infield Flies: The Unfinished Business of Term Limits in Florida, 18 Nova L. Rev. 921 (1994).

[FN58]. See Kearney, supra note 56, at 427-32.

[FN59]. See Clay Henderson, The Conservation Amendment, 52 Fla. L. Rev. 285 (2000).

[FN60]. See John C. Tucker, Constitutional Codification of an Environmental Ethic, 52 Fla. L. Rev. 299 (2000).

[FN61]. Interestingly, even state constitutions in other countries contain environmental provisions. See, e.g., Peter E. Quint, The Imperfect Union: Constitutional Structures of German Unification 93 (1997) ("Environmental provisions were particularly important in Thuringia which, like Mecklenburg-Vorpommern, contains areas of great natural beauty."); Christian Starck, The Constitutions of the New German L nder and their Origin: A Comparative Analysis 31 (1995).

[FN62]. See Fla. Const. art. II, § 7(a).

[FN63]. See Henderson, supra note 59, at 288-89; Tucker, supra note 60, at 309-11. See generally Jose L. Fernandez, State Constitutions, Environmental Rights Provisions, and the Doctrine of Self-Execution: A Political Question?, 17 Harv. Envtl. L. Rev. 333 (1993).

[FN64]. Tucker, supra note 60, at 326 ("The constitutionalization of an environmental ethic is being driven by society.").

[FN65]. James Willard Hurst, The Growth of American Law: The Lawmakers 246 (1950).

[FN66]. Charter Review Comm'n of Orange County v. Scott, 647 So. 2d 835, 837 (Fla. 1994).

[FN67]. See Little, supra note 24, at 494; see also Kelly H. Armitage, Constitutional Revision Commissions Avoid Logrolling, Don't They?, 72 Fla. B.J., Nov. 1998, at 62.

[FN68]. See J.B. Ruhl, The Metrics of Constitutional Amendments: And Why Proposed Environmental Quality Amendments Don't Measure Up, 74 Notre Dame L. Rev. 245 (1999).

[FN69]. See, e.g., Barton H. Thompson, Jr., Environmental Policy and State Constitutions: The Potential Role of Substantive Guidance, 27 Rutgers L.J. 863 (1996) (focusing on how state constitutions should address various environmental and natural resource issues).

[FN70]. See San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

[FN71]. See Coalition for Adequacy & Fairness in Sch. Funding, Inc. v Chiles, 680 So. 2d 400 (Fla. 1996). See E. John Wagner, Comment, Florida Constitutional Law: What is the Legislature's Duty to Provide for the State's Educational System, 49 Fla. L. Rev. 339 (1997); Barbara J. Staros, School Finance Litigation in Florida: A Historical Analysis, 23 Stetson L. Rev. 497 (1994).

[FN72]. See Jon Mills & Timothy McLendon, Setting A New Standard for Public Education: Revision 6 Increases the Duty of the State to Make "Adequate Provision" for Florida Schools, 52 Fla. L. Rev. 329 (2000).

[FN73]. See, e.g., Michael Heise, Schoolhouses, Courthouses, and Statehouses: Educational Finance, Constitutional Structure, and the Separation of Powers Doctrine, 33 Land & Water L. Rev. 281 (1998); Michael Heise, State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy, 68 Temp. L. Rev. 1151

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(1995).

[FN74]. See Martha W. Barnett, The 1997-98 Florida Constitution Revision Commission Judicial Election or Merit Selection, 52 Fla. L. Rev. 411 (2000); see also Joseph W. Little, An Overview of the Historical Development of the Judicial Article of the Florida Constitution, 19 Stetson L. Rev. 1 (1989).

[FN75]. Wolfgang P. Hirczy de Mi o, Does an Equal Rights Amendment Make a Difference? 60 Albany L. Rev. 1581 (1997) (analyzing what difference the Texas ERA has made); Paul Benjamin Linton, State Equal Rights Amendments: Making a Difference or Making a Statement?, 70 Temp. L. Rev. 907 (1997) (measuring the significance of the state equal rights provisions).

[FN76]. See **Robert F. Williams**, The New Jersey Equal Rights Amendment: A Documentary Sourcebook, 16 Women's Rts. L. Rptr. 69, 70 (1994).

[FN77]. See Little, supra note 24, at 475.

[FN78]. See Little, supra note 24, at 478-79.

[FN79]. See Frank P. Grad, The State Constitution: It's Function and Form For Our Time, 54 Va. L. Rev. 928, 945 (1968):

[A] consideration of the problems and criteria of constitutional inclusion and exclusion must concern itself with a balancing of the purposes of the constitution and the needs of government, rather than with an attempt to supply a fixed meaning for the valuative terms "fundamental" and "legislative." It is argued here that although there is a more or less agreed upon "core" area of constitutional content, criteria of inclusion and exclusion must take account of the needs of government as conditioned by time and place.

Id.

[FN80]. Id. at 946.

[FN81]. See Christian G. Fritz, The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth-Century West, 25 Rutgers L.J. 945, 964-71 (1994); Christian G. Fritz, Book Review, Rethinking the American Constitutional Tradition: National Dimensions in the Formation of State Constitutions, 26 Rutgers L.J. 969 (1995).

[FN82]. Fritz, supra note 81, at 964-65, 968.

[FN83]. But see Little, supra note 24, at 477-78.

[FN84]. See **Robert F. Williams**, State Constitutional Law Processes, 24 William & Mary L. Rev. 169, 175-77 (1983); see also Anatomy of Law Reform, supra note 5, at 386 n.127.

[FN85]. See Little, supra note 24, at 478.

[FN86]. See Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816), in Thomas Jefferson, Writings 1395, 1402 (Library of America ed., 1984). Jefferson's letter is quoted in Albert L. Sturm, The Development of American State Constitutions, 12 Publius: The Journal of Federalism 57, 66 n.24 (1982). For a complete analysis of Jefferson's attitudes toward constitutional change, see John R. Vile, The Constitutional Amending Process In American Thought 59- 78 (1992); see also Sanford Levinson, "Veneration" and Constitutional Change: James Madison Confronts the Possibility of Constitutional Amendment, 21 Tex. Tech. L. Rev. 2443 (1990); Merrill D. Peterson, Mr. Jefferson's "Sovereignty of the Living Generation," 52 Va. Q. Rev. 437 (1976). On the need for amending constitutions, see Responding to Imperfection: The Theory and Practice of Constitutional Amendment (Sanford Levinson, ed., 1995). For a thorough consideration of Jefferson's constitutional philosophy, see David N. Mayer, The Constitutional Thought of Thomas Jefferson 295-319 (1994).

[FN87]. Laura J. Scalia, America's Jeffersonian Experiment: Remaking State Constitutions 1820-1850, at 4-5

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(1999). For another thoughtful consideration of the Jefferson-Madison debate, including the ideas of Thomas Payne and others, see Stephen Holmes, Precommitment and the Paradox of Democracy, in Constitutionalism and Democracy 195 (Jon Elster & Rune Slagstad eds. 1988). Holmes argues that constitutionalism can reinforce democracy, rather than always producing conflict:

Their disagreement neatly represents the quarrel-if I can put it this way-between democrats who find constitutions a nuisance and constitutionalists who perceive democracy as a threat. Some theorists worry that democracy will be paralyzed by constitutional straitjacketing. Others are apprehensive that the constitutional dyke will be breached by a democratic flood. Despite their differences, both sides agree that there exists a deep, almost irreconcilable tension between constitutionalism and democracy. Indeed, they come close to suggesting that "constitutional democracy" is a marriage of opposites, an oxymoron.

Id. at 197.

[FN88]. See supra notes 34, 36-41 and accompanying text.

[FN89]. See supra notes 34, 36-41 and accompanying text.

[FN90]. See Douglass, supra note 43, at 282.

[FN91]. See, e.g., James A. Gardner, Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution, 52 U. Pitt. L. Rev. 189, 192-213 (1990).

[FN92]. See supra note 30. This phenomenon clearly has taken place in other states. See Dan Friedman, Magnificent Failure Revisited: Modern Maryland Constitutional Law from 1967 to 1998, 58 Md. L. Rev. 528, 529 (1999) ("This Article assesses the success or failure of the Maryland Constitutional Convention in light of the later adoption-by constitutional amendment, statute, or regulation-of many of the important innovations proposed in the 1967-1968 constitution."); G. Theodore Mitau, Constitutional Change by Amendment: Recommendations of the Minnesota Constitutional Commission in Ten Years' Perspective, 44 Minn. L. Rev. 461 (1960).

[FN93]. See Mark D. Killian, Constitution Steering Panel Launches Education Effort, 23 The Florida Bar News 1 (Nov. 1, 1996) (reporting the early efforts of the foundation to educate Floridians about the revision process and to encourage public involvement).

[FN94]. See The Collins Center for Public Policy, You and Florida's Constitution Revision Commission: A Citizen's Guide to Proposing Changes For 1997-1998 (1996).

[FN95]. See Revision Watch 1 (Florida Constitution Revision Commission, Tallahassee, Fla.), Sept. 1997.

[FN96]. Florida Constitution Revision Commission Web site, <http:// www.law.fsu.edu/crc> (visited Feb. 27, 2000).

[FN97]. W. Dexter Douglass, 1997-98 Constitution Revision Commission: A Progress Report, 72 Fla. B.J., June 1998, at 14; see also Douglass, supra note 43, at 275. Douglass' positive role as Chair of the Commission can not be overemphasized. See Cornwell et al., supra note 22, at 177 ("The key roles played by the presidents of the various conventions emerged unmistakably. All that we know descriptively about convention behavior underscores the vital importance of the role of the presiding officer.").

[FN98]. See supra note 1.

[FN99]. See A Generation of Change, supra note 5, at 138-39:

The 1977-78 Florida Constitution Revision Commission proceeded . . . to engage in one of the most open, far-reaching examinations of a state constitution, and proposals for its change, in American history. Its proceedings were extraordinarily well documented.

Id. On the documentation of the 1978 Commission's work, see L. Harold Levinson, Interpreting State Constitutions By Resort to the Record, 6 Fla. St. U. L. Rev. 567 (1978).

[FN100]. See Richard J. Connors, The Process of Constitutional Revision in New Jersey: 1940-1947, at 132-33,

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184-85 (1970).

[FN101]. New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting):

To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

Id. at 311.

Interestingly, in a case eleven years before Justice Brandeis' famous statement, Justice Holmes, in a similar context, dissented from a decision striking down a state statute. See Truax v. Corrigan, 257 U.S. 312, 344 (1921) (Holmes, J., dissenting). He stated, using the now-familiar metaphor:

There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several States, even though the experiments may seem futile or even noxious to me and to those whose judgement I most respect.

Id. (emphasis added); see also David L. Shapiro, Federalism: A Dialogue 85- 86 (1995); Maeva Marcus, Louis D. Brandeis and the Laboratories of Democracy, in Federalism and the Judicial Mind 75 (Harry N. Scheiber ed., 1992). See generally Samuel Krislov, Oliver Wendell Holmes and the Federal Idea, in Federalism and the Judicial Mind, supra at 37. Justice Brandeis also dissented in the case, but his opinion said nothing about experiments. Eleven years later he used the "states-as-laboratories" metaphor in the way we all now recognize. Truax, 257 U.S. at 354 (Brandeis, J., dissenting).

Professor James Gardner joins Earl Maltz in suggesting that the experimental model does not really further the objectives of federalism. See James A. Gardner, The "States-As-Laboratories" Metaphor in State Constitutional Law, 30 Val. U.L. Rev. 475 (1996); Earl M. Maltz, Lockstep Analysis and the Concept of Federalism, 496 Annals Am. Acad. Pol. & Soc. Sci. 98, 100-01 (1988); see also Earl M. Maltz, False Prophet--Justice Brennan and the Theory of State Constitutional Law, 15 Hastings Const. L.Q. 429 (1988). Still, the laboratory metaphor is a powerful one. See David Osborne, Laboratories of Democracy: A New Breed of Governor Creates Models for National Growth (1988).

[FN102]. City of Jacksonville v. Continental Can Co., 151 So. 488, 489- 90 (Fla. 1933) (emphasis added). See Levinson, supra note 99, at 568-69:

The cases and literature on state constitutional interpretation seem to reflect a strong consensus that original intent must be ascertained and respected. The ultimate success in this endeavor would be achieved if the original intent of the people who adopted the constitutional provision could be ascertained. If the language of the constitutional text is clear on its face, this plain language is deemed to have been understood by the people, and their intent is deemed to coincide with that plain meaning. If, however, the constitutional text does not yield a plain meaning, resort may be had to other sources in order to find the original intent of the people.

Id.

[FN103]. See supra note 10 and accompanying text.

[FN104]. Holmes, supra note 87, at 216 (quoting Federalist No. 49). Apparently, Madison also worried about dislocation and uncertainty if periodic review meant a complete rethinking of the entire constitution. See id. at 217-18. Florida's Commission is certainly not required, and is unlikely, to engage in such a zero-based constitutional revision.

[FN105]. See id. at 217-18.

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