

April 2000

The Need to Revise the Florida Constitutional Revision Commission

Joseph W. Little

Follow this and additional works at: <https://scholarship.law.ufl.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Joseph W. Little, *The Need to Revise the Florida Constitutional Revision Commission*, 52 Fla. L. Rev. 475 (2000).

Available at: <https://scholarship.law.ufl.edu/flr/vol52/iss2/9>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact jessicaejoseph@law.ufl.edu.

THE NEED TO REVISE THE FLORIDA CONSTITUTIONAL REVISION COMMISSION

Joseph W. Little*

I. INTRODUCTION 475
II. LEGACY 492

I. INTRODUCTION

So far, Florida’s experiment with independent constitutional revision commissions has not satisfied the expectations of its proponents. By “independent,” I mean a commission that places proposals to amend the Florida Constitution directly upon the ballot with no intervening scrutiny or adjustment by the Legislature. This separates Florida’s two article XI constitutional revision commissions¹ (that is, 1978 and 1998) and the 1991 Taxation and Budget Reform Commission (TBRC)² from two earlier and notably more successful commissions—the 1868 convention that produced the 1868 Florida Constitution and the 1968 commission that produced the 1968 Florida Constitution. I refer to these two commissions as the “successful commissions,” meaning that their products were of genuine political importance to constitutional governance in Florida.

The two successful commissions were driven by relatively cataclysmic forces of necessity. The immediate post-Civil War Congress had demanded that Florida and other “rebel” states from the recently concluded war between the states revise their constitutions and governments as a condition of resuming full status in the political structure of the national government.³ Congress deemed the 1865 Florida Constitution, which had been hastily adopted to supplant the 1861 secession constitution, to be inadequate.⁴ Hence, the 1868 commission was driven by forces not unlike

* J.D., 1963, Michigan; M.S., 1961, Worcester Poly. Inst.; B.S., 1957, Duke University.

1. FLA. CONST. art. XI, § 2 (1999).

2. FLA. CONST. art. XI, § 6 (1999).

3. The Act of March 2, 1867, Chapter CLIII, found that no “legal state governments” then existed in Florida and other seceded states and placed them under military rule, pending the adoption of revised constitutions in convention, subject to Congress’s approval. 14 U.S. Stat. 428-29 (1867). This statute also required states to ratify the Fourteenth Amendment to the United States Constitution as a condition of restoration of representation in Congress. See id.

4. Congress enacted the Act of March 23, 1867, Chapter VI, authorizing the military governor to oversee the creation of a convention. See 15 U.S. Stat. 2 (1867). This convention produced the 1868 Florida Constitution.

those that drove the great Philadelphia convention of 1787. In short, the status quo would no longer work (if it ever did)—albeit for different reasons.

While the conditions that stimulated the Florida Legislature to set the 1968 constitution revision commission to work were hardly as dire or as compelling as those confronting the 1787 (national) and 1868 (Florida) conventioners, they were nonetheless of true constitutional import. For almost 200 years, democratic governance in the United States (and since 1845 in Florida) was based largely upon equal representation of political units within the states (that is, counties). In an abrupt volte-face, the civil rights era United States Supreme Court (roughly 1960 to 1970) handed down a series of decisions that retooled the theory of American democracy to focus upon the individual rather than political entities as the basic unit of representation.⁵ The day of “one man-one vote” had arrived and, with it, a compelling outside stimulus to reconsider Florida’s basic governing document.⁶ In response, the Florida Legislature enacted⁷ a statute creating the 1968 constitution revision commission.⁸ From this emerged the

5. See, e.g., *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964).

6. An additional stimulus was the fact that the 1885 constitution had been amended upwards of one hundred times and was deemed by the Legislature to be “outmoded.” 1967 Fla. Laws ch. 1739.

7. In fact, the commission did its work in 1966 and its product formed the basis of what became the 1968 Constitution.

8. See 1967 Fla. Laws ch. 65-561. The “1968” commission actually did its work in 1966. The sequence of official acts that transpired to produce the 1968 revision proposal was extended. In 1963, the Florida House of Representatives proposed an “additional method of revising or amending” the entire constitution by creating a revision proposal in a regular or special session of the Legislature. H.R.J. Res. 368 (Fla. 1963). This proposal was adopted in 1964. A year later, the Florida Senate proposed making a constitutional revision convention by election of the people. See S.J. Res. 115 (Fla. 1965). This proposal was adopted in 1965. In the meantime, the Legislature enacted Chapter 65-561, Laws of Florida, which created the constitution revision commission and charged it to “prepare and submit to the governor and to the members of the legislature and the cabinet at least sixty (60) days prior to the convening of the 1967 session of the legislature its reports and recommendations for revisions of the Constitution of Florida.” 1967 Fla. Laws ch. 65-561, § 2. The 1968 constitution revision commission is reported to have done its work in “a three-week convention in Tallahassee,” ending on December 16, 1966. *Commission Drafts Constitution*, 41 FLA. BAR J. 28 (1967) (setting forth the 1968 commission’s proposed judicial article). The Legislature received the commission’s proposal in a specially called session on January 9, 1967. See *id.* at 29. Moreover, a joint legislative resolution requested the governor to call the Legislature into special session on Monday, July 24, 1967 “for the purpose of considering constitutional revision.” S. Con. Res. 1739 (Fla. 1967). The Legislature convened in a “joint meeting” on July 31, 1967 “for the purpose of a presentation of Concepts of Constitutional Revision.” H. R. Con. Res. 2-xxx (Fla. 1967). A subsequent joint resolution requested the governor to reconvene the Legislature on August 21, 1967 to complete the work on the proposal that was adopted as the 1968 constitution. See S. Con. Res. 10-xxx (Fla. 1967).

proposal⁹ that became the 1968 Florida Constitution, but not before the Legislature reviewed it and made revisions.¹⁰

The 1968 revised Florida Constitution incorporated numerous “good government” ideas of the reform minded commission, one of which called for periodic review of the constitution by a group of reviewers whose proposals would be submitted directly to the voters free of revision or countermand by the Legislature.¹¹ Somehow the 1968 commission and the reviewing Legislature deemed such a procedure to be free of the “politics” that muddles and often taints or skews the Legislature’s thinking. This quaint notion of “politics-neutral” politics apparently captivated and partially beguiled the critics of the time. The fact that the constitutional revision commission plan that emerged reposed exclusive power to name the presumably politically-neutral members of the review commissions in the most powerful politicians of the state¹² was slipped by or gobbled down by the electorate without a hiccup. In any event, the ordinarily multifaceted political forces that normally work in the Legislature—with the ultimate political accountability diffused throughout the state among all of the political constituencies—congealed upon the anointed few (that is, the governor, et al.), one of whom is not elected (the chief justice).¹³ In short, what was conceived of and sold to the people of Florida as a politics-free review mechanism was in fact a gift of a rich political plum to the politicians who happened to be the incumbents in the designated offices when the time for appointing a constitutional revision commission rolled around.

In hindsight, the workings of such a system are highly predictable. The few elite appointers tend to appoint members who will support the appointers’ agendas. The governor tends to protect the office of governor; the chief justice, the judiciary; and, the speaker and president, the legislature. Beyond that, each of the few appointers tend to make appointments in line with whatever current political horse the appointer is then riding (that is, for or against abortion, school vouchers, and the like).

9. H.R.J. Res. 1-2x (Fla. 1968); S.J. Res. 4-2x (Fla. 1968); S.J. Res. 5-2x (Fla. 1968).

10. The 1968 president of The Florida Bar (Marshall Criser) urged adoption of the revised Constitution as proposed by the Legislature in a summer 1968 special session, but also noted that the Legislature’s proposal is “not as fine a work product as was produced by the Florida Constitution Revision Commission.” *Constitutional Revision*, 42 FLA. B. J. 1034 (1968). President Criser also opined, “it is a better constitution than we have now.” *Id.*

11. See FLA. CONST. art. XI, § 5.

12. See FLA. CONST. art. XI § 2(a) (stating that the governor, the president of the senate, the speaker of the house of representatives, and the chief justice of the supreme court shall appoint members—with the attorney general attaining membership *ex officio*).

13. At the time the 1968 constitution was initially adopted, all justices were subject to popular election. A 1976 amendment abrogated popular elections in favor of gubernatorial appointments and retention elections. See FLA. CONST. art. V, §§ 10, 11.

Missing from all this is any built in force to seat persons who are well prepared professionally to assess how well the existing state constitution serves its proper fundamental purposes. Those purposes are to create a governmental structure, to allocate powers among the departments, and to limit the power of all governmental entities. The proper persons should be well-prepared to adjudge what amendments might be beneficial, and should be generally unencumbered with a narrow political agenda.

The 1998 Constitution Revision Commission (CRC) exemplified how commissions appointed under the current process are likely to go astray. Its members were generally appointed in line with the partisan views of the few appointers. Once appointed, far from starting from a profound critique of the existing document, the CRC went on a tour of public hearings around the state to give the citizens an opportunity to vent. Much, if not most, of this venting had little to do with proper issues of constitutional dimension but, instead, extolled narrow ideological goals or expressed frustrations with the Legislature's failure to enact the laws or institute the programs the various speakers desired. In short, ordinary members of the public readily took the opportunity to speak their minds with little or no thought about its constitutional content. This is the nub of the defect in Florida's constitutional revision commission plan. The touted "free of legislative oversight" feature has transmogrified the ideal of an independent, deliberative and expert evaluation of the basic governing document of Florida into occasional super-legislative opportunities to "one-up" the Legislature by constitutionalizing non-constitutional issues. The revision commissions may accomplish this by proposing what amounts to ordinary legislation through constitutional amendments designed to overrule the Legislature's decisions and indecisions. Making things worse in the case of the 1998 CRC, the Legislature provided the commission itself enough money to permit it to serve as the chief public lobbyist for the measures it proposed. So much for a politically neutral revision mechanism.

In the American sense of a constitution, the proper purposes of a state constitution are but three: to organize a form of government, to allocate powers and functions among its departments; and, to place limits on its powers to protect the rights of the people collectively and individually. Any legitimate mechanism for revising a state constitution must be directed toward these ends. In addition, proposed revisions of a state constitution—and the constitution of the State of Florida in particular—should be conceived in the context of the most basic premise of state constitutional law; namely, that the state constitution is not a grant of power but is a *limitation* on the power of the state, primarily the

legislature.¹⁴ Under this theory, a most basic state constitution would do no more than create a legislature and vest it with the lawmaking power of the state. By virtue of its ancestry in the evolution of the English Parliament,¹⁵ such a legislature would be possessed of inherent and unlimited authority to enact laws to organize the remainder of the government as it saw fit. From the premise that the people's duly elected legislature possesses plenary law making power follows the corollary principle that every additional provision added to a state constitution has the direct or indirect effect of limiting the power of the Legislature. These limits operate to deprive the Legislature of the power to do some things it might otherwise choose to do (that is, enact an income tax on the income of natural persons);¹⁶ or, to deny the Legislature the power to ban a public policy it would otherwise oppose (for example, requiring members of the Legislature to make public disclosure of their finances);¹⁷ or, to limit the processes the Legislature may invoke to exercise its law making powers (that is, limits on the use of special laws).¹⁸ These limits are imposed either by directly curtailing the Legislature's powers,¹⁹ by creating constitutional offices and assigning them powers,²⁰ and by constitutionalizing principles of law,²¹ thereby placing them beyond the power of the legislature, the executive, or the courts to modify or abridge (absent repudiation by the United States Constitution). Given a third premise of state constitutional law, that is, to prescribe one means of doing a thing in a constitution deprives the Legislature of the power to do it any other way.²² Constitutional provisions such as those that prescribe a structure of government or a procedure for accomplishing governmental tasks (such as enacting laws) deprive the Legislature of the power to repeal the constitutional structure²³ or to change the mandated procedures.²⁴

Because of these constitutional premises, proposals to revise a mature,

14. See, e.g., *Smathers v. Smith*, 338 So. 2d 825, 827 (Fla. 1976).

15. See, e.g., *Ponder v. Graham*, 4 Fla. 23 (Fla. 1851); 1851 WL 1091, *6 (Fla.).

16. See FLA. CONST. art. VII, § 5(a) (1999).

17. See FLA. CONST. art. II, § 8 (1999).

18. See FLA. CONST. art. III, §§ 10, 11 (1999).

19. See FLA. CONST. art. I (1999) (as in the limitations imposed by, the Declaration of Rights).

20. See FLA. CONST. art. IV, § 1 (regarding the governor); FLA. CONST. art. V, § 1 (1999) (regarding the courts).

21. See FLA. CONST. art. VII, § 5(a) (1999) (no tax shall be imposed on the incomes of natural persons).

22. See, e.g., *Dickinson v. Board of Pub. Instruction of Dade County*, 217 So. 2d 553, 558 (Fla. 1968).

23. See FLA. CONST. art. V, § 1 (1999) (prescribing the structure of courts in Florida, thereby depriving the Legislature of the power to create new courts or eliminate those prescribed).

24. See FLA. CONST. art. III, § 7 (1999) (prescribing the procedures the Legislature must invoke to make valid laws).

well-developed state constitution tend to fall into two categories: 1) those that seek to deprive the Legislature (or some entity created by it or by the constitution) of the power to do something someone does not like,²⁵ and 2) those that go over the Legislature's head and force it to do something (or render it powerless to stop something) that it had previously declined to enact laws to accomplish.²⁶ This state of political reality permits constitutional revisers, including constitutional revision commissions, to go over the head of the Legislature by constitutionalizing issues of legislative character in the form of constitutional restrictions on legislative power. Often, these measures are packaged to be nigh irresistible to the voters. One of the first initiated amendments to the 1968 constitution exemplifies this. It was a measure sponsored by then Governor Reuben Askew to override the Legislature's unwillingness to enact an effective statute requiring public officers and candidates for public office to disclose their finances to the public.²⁷ The effect of this amendment is straight forward. Prior to its adoption, the Legislature possessed the power to require financial disclosure or not, in its discretion. After adoption, it had no power to repeal the constitutional standard.

To lay the ground work to evaluate the efforts of Florida's post-1968 constitution revision commissions, the reader must be supplied one additional body of information. Embodied in the 1968 Florida Constitution is a long standing policy that deprives the Legislature of the power to impose a tax on the income of natural persons.²⁸ Despite the apparent satisfaction that this "no personal income tax" constitutional policy registers with the Florida electorate, some presumably "progressive" citizens believe the lack of a personal income tax deprives Florida of a well balanced tax structure. This vacancy stands in the way of adequately funding favored governmental services including, most notably, public schools. It would not be off the mark to infer that some persons of this view favored creating "politically-neutral" constitutional revision commissions possessing power to place their proposals directly on the ballot without legislative overview in the hope that "politics" would not

25. See FLA. CONST. art. VII, § 6 (1999) (taxing homestead properties); FLA. CONST. art. VII, § 6 (1999) (invading privacy of citizens).

26. See FLA. CONST. art. II, § 8 (1999) (providing for financial disclosure by government officials); FLA. CONST. art. II, § 7 (1999) (providing adequate protection for natural resources).

27. In 1976 Governor Ruben Askew sponsored a citizen's amendment that added the "Ethics in government" amendment to the constitution. See FLA. CONST. art. II, § 8 (1999).

28. See FLA. CONST. art. VII, § 5(a) (1999). As initially proposed by and adopted as an amendment to the 1885 constitution, this provision stated: "No tax upon inheritances or upon the income of residents or citizens of this state shall be levied by the State of Florida, or under its authority. . . ." S.J. Res. 135 (Fla. 1923). Initially, the measure prohibited *all* income taxes but the prohibition on corporate income taxes was partially lifted by an amendment sponsored by Governor Askew. See FLA. CONST. art. VII, § 5(b) (1999).

deter them from proposing to eliminate the prohibition against taxing personal income. If this were true, the work of the first “politics-free” CRC, convened in 1978, proved to be a disappointment. Although the 1978 CRC proposed a measure to assure that no tax on the income of natural persons—if such a tax should ever be permitted—would be imposed upon income from the sale of property that resulted from capital gains that accrued after a specified date in 1971,²⁹ it offered no proposal to lift the ban on taxing personal income.

Despite this, the desire to see to a “non-political” revamping of taxing powers permitted by the Florida Constitution did not abate. Although the Legislature itself remained unwilling to propose a constitutional amendment to lift the personal income tax ban, both houses did approve a joint resolution in 1988 to propose a constitutional amendment to create a second “politically neutral” revision commission.³⁰ The voters approved this measure and amended the Florida Constitution to create the Taxation and Budget Reform Commission (TBRC).³¹ Like the CRCs created in the 1968 constitution, the TBRC is appointed by current incumbent officials.³² Unlike the CRCs, four non voting ex officio members are appointed from among incumbents then serving in the Legislature (two appointed by the speaker and two by the president). The constitution prescribes the jurisdiction and functions of the TBRCs to include the authority to examine the tax structure and funding needs of the state.³³ The mission

29. This measure was intended to avoid a repetition of the Florida Supreme Court’s decision in *Department of Revenue v. Leadership Housing, Inc.*, 343 So. 2d 611 (Fla. 1977), which had permitted taxation of earlier accrued capital gains under the amendment that lifted the prohibition on taxes on the income of corporations. *See id.* at 615. The corporate income tax amendment was adopted by the voters in 1971, thereby adding article VII, section 6(b) of the Florida Constitution (1999). Former Governor Askew was the chief proponent of the amendment.

30. *See* H.R.J. Res. 1616 (Fla. 1988).

31. *See* FLA. CONST. art. XI, § 6 (1999).

32. *See id.* at §6(a). Eleven members are appointed by the governor: seven each by the speaker and the president; none by the chief justice.

33. *See id.* at § 6(d). This section provides:

- (d) The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state’s needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state’s comprehensive planning, budgeting and needs

statement purports to confine the jurisdiction of the TBRCs to constitutional issues, while no similar language confines the scope of the work of CRCs.³⁴

The first TBRC was convened in 1990 and subsequent commissions are slated to be reestablished “each twentieth year thereafter.”³⁵ Like a CRC, a TBRC is empowered to place proposals for “a revision of the Constitution or any part of it dealing with taxation or the state budgetary process” directly on the ballot for vote by the state’s electorate.³⁶ Unlike a CRC, a TBRC is empowered to refer proposals concerning taxation and budgetary matters to the Legislature for statutory implementation.³⁷ These optional avenues for placing proposals either before the Legislature or the electorate provide the TBRCs a legitimate scope of authority to propose non-constitutional measures to the Legislature, but do not justify proposing statutory measures in the guise of constitutional amendments.

The same constitutional amendment that created the TBRC³⁸ also amended the jurisdiction of the CRCs to deprive them of the power to propose revisions pertaining to “matters relating directly to taxation or the state budgeting process that are to be reviewed by the taxation and budget reform commission.”³⁹ In short, the initial TBRC plan called for granting the TBRCs exclusive revision-commission authority to propose revisions to the budget and taxation portions of the constitution.⁴⁰ As things worked

assessment processes to determine whether the resulting information adequately supports a strategic decision making process.

Id.

34. *See id.*

35. FLA. CONST. art. XI, § 6(a) (1999).

36. FLA. CONST. art. XI, § 6(e) (1999). This section provides:

- (e) The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall issue a report of the results of the review carried out, and propose to the legislature any recommended statutory changes related to the taxation or budgetary laws of the state. Not later than one hundred eighty days prior to the general election in the second year following the year in which the commission is established, the commission shall file with the secretary of state its proposal, if any, of a revision of this constitution or any part of it dealing with taxation or the state budgetary process.

Id.

37. *See id.*

38. *See* H.R.J. Res. 1616 (Fla. 1988).

39. FLA. CONST. art. XI, § 3(c) (1999).

40. That is, exclusive of the power of the CRCs; not exclusive to the powers of the Legislature or popularly initiated amendments pursuant to article XI, sections 1 and 3 of the Florida Constitution (1999).

out, however, the product of the initial (1990) TBRC proved to be such a flop that the Legislature proposed an amendment⁴¹ to remove this restriction on the jurisdiction of the CRCs and to restore the entire constitution to their purview. The voters adopted this measure in 1996.⁴²

Consequently, as the Florida Constitution now stands, proposals to revise taxation and budget provisions of the constitution may emerge every twentieth year from CRCs (organized in calendar years ending in 2) and every tenth year from TBRCs (organized in calendar years ending in 8).⁴³ The fact remains, however, that the first three cracks at reform⁴⁴ did not produce a proposal to end the constitutional prohibition against taxing the income of natural persons.

With the constitutional structure of the revision commissions described, the effects of the commissions' thin efforts can now be reviewed. To date, what have these "politics-free" commissions produced? The 1978 CRC proposed eight separate ballot measures of varying degrees of importance, composed in most instances of proposals to revise multiple sections of the constitution. Revision No. 1 (1978),⁴⁵ which purported to pertain to the "basic document," propounded revisions to nine separate articles of the constitution and provided a schedule pertaining to implementation. Of these, only a few were of legitimate constitutional status. These few included a guarantee of binding arbitration in public employment wage disputes, a right to assistance of counsel for any person called to testify before a grand jury, a free standing right of privacy, and a constitutional waiver of sovereign immunity as to certain tort and contract claims against the state. Revision No.1 (1978) was rejected by the voters.

Revision No. 2 (1978)⁴⁶ proposed to add one word to the constitution. The word "sex" as a personal characteristic would be protected against state discrimination.⁴⁷ This was the era in which the failure of the proposed Equal Rights Amendment to the United States Constitution was still

41. S.J. Res. 210 (Fla. 1996).

42. Amending article XI, section 2 of the Florida Constitution to eliminate the restraints on the scope of work available to CRCs.

43. CRCs shall convene in years ending in 7 commencing in 2017. *See* FLA. CONST. art. XI, § 2 (1999).

44. The 1978 and 1998 CRCs and the 1990 TBRC.

45. CONSTITUTIONAL REVISION COMM'N, REVISION 1 (1978) (on file with Florida Secretary of State). The 1998 CRC amendments abolish the office of secretary of state as a cabinet officer and transfer the functions of the office to the "custodian of public records," and provided that the former duties of the secretary of state "shall be as provided by law." FLA. CONST. art. XII, § 24(b) (1999) (effective January 7, 2003). To this date, the Legislature has enacted no statutes pertaining to the custodian of public records and the office has no existence, except as indicated in the constitution.

46. CONSTITUTIONAL REVISION COMM'N, REVISION 2 (1978) (on file with Florida Secretary of State).

47. That is, "[n]o person shall be deprived of any right because of race, religion, sex, or physical handicaps." *Id.*

smarting its proponents. Revision No.2 (1978) was rejected by the voters.

Revision No. 3 (1978)⁴⁸ referred solely to reapportionment of the Legislature. This measure was of genuine constitutional importance in that it proposed to transfer reapportionment authority away from the Legislature into a Reapportionment Commission to be appointed by the governor, in part from nominees submitted by the speaker, the president and minority legislative leaders.⁴⁹ Revision No.3 (1978) was rejected by the voters.

Revision No. 4 (1978)⁵⁰ proposed to eliminate the elective cabinet (that is, secretary of state, attorney general, comptroller, treasurer, commissioner of agriculture, and commissioner of education).⁵¹ This was perhaps the most aggressive constitutional revision proposal made by any of the post-1968 commissions. It would have reinstated a strong governor for Florida like none seen since the 1868 Constitution was supplanted by its 1885 successor.⁵² Revision No.4 (1978) was rejected by the voters.

Revision No. 5 (1978)⁵³ proposed to create a constitutional public service commission and public counsel in the executive branch of government. This would have displaced the statutory public service commission and public counsel that function as agencies of the legislative branch under the 1968 Constitution.⁵⁴ The apparent purpose was to deprive the Legislature of the power to tinker with the regulatory operations of the public service commission. Revision No. 5 (1978) was rejected by the voters.

Revision No. 6 (1978)⁵⁵ proposed to eliminate popular elections of trial judges (circuit and county courts) and replace them with the merit selection

48. CONSTITUTIONAL REVISION COMM'N, REVISION 3 (1978) (on file with Florida Secretary of State).

49. *See id.*

50. CONSTITUTIONAL REVISION COMM'N, REVISION 4 (1978) (on file with Florida Secretary of State).

51. FLA. CONST. art. IV, § 4(a) (1999).

52. The 1868 Constitution vested "supreme executive power of the state" in the Governor. FLA. CONST. art. V, § 1 (1868). The 1868 constitution provided a cabinet of administrative officers to "assist" the Governor, "consisting of a Secretary of State, Attorney General, Comptroller, Treasurer, Surveyor General, Superintendent of Public Instruction, Adjutant General, and Commissioner of Immigration." Unlike the 1968 constitution, these officers were appointed by the Governor and possessed no power to participate in collegial decisions in the administration of the general departments of government. *See id.* at § 17.

53. CONSTITUTIONAL REVISION COMM'N, REVISION 5 (1978) (on file with Florida Secretary of State).

54. *See, e.g.,* FLA. STAT. § 350.001, *et seq.* (1999); *see also* State *ex rel. Lee v. Kiesling*, 632 So. 2d 601, 603 (Fla. 1994) (acknowledging "The Public Service Commission is an entity of the legislative branch.").

55. CONSTITUTIONAL REVISION COMM'N, REVISION 6 (1978) (on file with Florida Secretary of State).

and retention plan adopted in 1976 for justices.⁵⁶ Hostility to the election of judges was evinced by both the 1978 and 1998 CRCs (and also by the 1968 revision commissions). Revision No.6 (1978) was rejected by the voters.

Revision No. 7 (1978)⁵⁷ proposed to modify the structure of ad valorem tax exemptions and also proposed to permit the Legislature to authorize assessments of historic properties and solar energy installations on a basis different from the “fair market value” standard that applies to all other properties (except those in agricultural usage).⁵⁸ This revision would have also provided a safeguard against subjecting capital gains to property accrued prior to the effective date of any future amendment that might lift the restriction against taxing income of natural persons to such an income tax. It would also have added a measure that, by operation of law, would have regularly increased the portion of the value of homestead property that is exempt from ad valorem taxation in accordance with the rate of inflation in the economy.⁵⁹ Revision No.7 (1978) was rejected by voters.

Revision No. 8 (1978)⁶⁰ pertained solely to education. It would have added this statement of purpose to the existing guarantee of a uniform system of free public schools: “to develop the ability of each student to read, communicate and compute and to provide an opportunity for vocational training.”⁶¹ The measure also proposed to strip the governor and cabinet of the collegial power to act as the “state board of education” and to transfer the function and name to a nine person board appointed by the governor and confirmed by the senate.⁶² It also proposed to elevate the state university system to constitutional status and to provide it with a nine person governing board whose members would have been appointed by the governor and confirmed by the senate.⁶³ Revision No.8 (1978) was rejected by the voters.

As noted above, all eight of the 1978 CRC’s measures suffered defeat at the hands of the voters. In part, this may have been caused by an overly ambitious program that overwhelmed the voters.

Thereafter, the constitution was amended as described above to create

56. See S.J. Res. 49, 81 (Fla. 1976) (amending FLA. CONST. art. V, § 10(a)).

57. CONSTITUTIONAL REVISION COMM’N, REVISION 7 (1978) (on file with Florida Secretary of State).

58. FLA. CONST. art. VII, § 4(a). Article VII, section 4 has subsequently been amended to permit “use” assessments on designated non-agricultural grounds.

59. As of November 1999, the portion of the assessed value of homestead property that is exempt from ad valorem taxation is \$25,000. See FLA. CONST. art. VII, § 6 (1999).

60. CONSTITUTIONAL REVISION COMM’N, REVISION 8 (1978) (on file with Florida Secretary of State).

61. *Id.*

62. *Id.*

63. See *id.*

the TBRCs. The initial TBRC was organized in 1990 and placed four separate proposals upon the 1992 general election ballot. TBRC revision No. 1 proposed a massive measure prescribing details of how the Legislature should go about budgeting for the state government, including subsections with these headings: "Annual budgeting," "Appropriations Bills format," "Appropriations Review process," "Seventy-two hour public review period," "Final Budget Report," "Budget Stabilization Fund," and "State Planning Document and Department and Agency Planning Document Process."⁶⁴ This provision was approved by the voters and has been incorporated into the constitution.⁶⁵ Although this measure may embrace many "good ideas," few, if any of them could be said to be of constitutional importance. In toto the massive verbosity constitutes little more than a constitutionalized statute. It seems too bad that the 1990 TBRC did not glean out the one or two constitutional nuggets, if there were any, from its proposal, and recommend the remaining bulk to the Legislature for statutory enactment.

TBRC Revision No. 2 is the unfortunate "Taxpayers' Bill of Rights."⁶⁶ It was adopted by the voters and incorporated into the declaration of rights.⁶⁷ The measure states: "By general law the legislature should prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and governments responsibilities to deal fairly with taxpayers under the laws of this state"⁶⁸ This provision places no substantive limit on the power of the state, but is a mere precatory plea to the Legislature of no legally enforceable consequence. The "Taxpayers' Bill of Rights" statute the Legislature enacted is equally flaccid.⁶⁹ It provides very little, if anything, in the way of individual liberties beyond the ordinary requirements of due process of law.⁷⁰ Nevertheless, the truly unfortunate aspect of this measure is not that it is flaccid, but that it was placed in the Declaration of Rights article of the constitution rather than in the Taxation Article (article VII). The Florida Supreme Court has stated that every provision of the Declaration of Rights stands on equal footing with every other one.⁷¹ If

64. TAXING AND BUDGET REFORM COMM'N, REVISION 1 (1990) (on file with Florida Secretary of State).

65. See FLA. CONST. art. II, § 19 (1999).

66. TAXING AND BUDGET REFORM COMM'N, REVISION 2 (1990) (on file with Florida Secretary of State).

67. See FLA. CONST. art. I, § 25 (1999).

68. *Id.*

69. See FLA. STAT. §§ 219.015, .018 (1999).

70. See *id.*

71. See *Traylor v. State*, 596 So. 2d 957, 963 (Fla. 1992) ("Under our Declaration of Rights, each basic liberty and each individual citizen has long been held to be on equal footing with every other. Every particular section of the Declaration of Rights stands on an equal footing with every

true, the constitutional pabulum of the vaunted “Taxpayers’ Bill of Rights”⁷² is entitled to equal dignity—no more or less—than the rights protecting speech,⁷³ religion,⁷⁴ and trial by jury.⁷⁵

TBRC Revision No. 3 proposed to devolve constitutional authority upon Florida counties and municipalities to impose a one percent sales and use tax upon “taxable transactions,” subject to an approving vote of the local electors.⁷⁶ This exemplifies measures of the kind that express dissatisfaction with the Legislature in not having authorized such a tax, as it plainly possesses the power to do so.⁷⁷ This measure would have been the first step in decentralizing taxing authority in the state. It ran counter to a policy to centralize taxing authority in the Legislature, which was a primary objective of the taxation article of the 1968 revision. TBRC Revision No.3 was rejected by the voters.

TBRC Revision No. 4⁷⁸ would have mandated that leasehold interests in governmental real property created after November 5, 1968 be subjected to ad valorem taxes as real property; whereas, leaseholds of that sort created before November 5, 1968 would be subjected to taxation as intangible personal property.⁷⁹ This measure was of constitutional status only because the existing constitution makes a distinction between the taxation of intangible personal property (only by a state),⁸⁰ and taxation of real property and tangible personal property (only by local governments).⁸¹ TBRC Revision No. 4 was removed from the ballot by the Florida Supreme Court upon a finding that it possessed a defective ballot summary.⁸² This is the only constitutional revision commission proposal that has suffered this indignity, although some of the 1998 measures may

other section.”).

72. An example of a taxpayer’s Bill of Rights with true constitutional significance is COLO. CONST. art. 10, § 20. This measure requires voter approval of state and local tax increases. *See id.* It was added by citizen’s initiative. *See also* James F. Ford, *Local Government*, 27 RUTGERS L.J. 1243, 1252, n.45 (1996).

73. *See* FLA. CONST. art. I, § 4 (1999).

74. *See* FLA. CONST. art. I, § 3 (1999).

75. *See* FLA. CONST. art. I, § 22 (1999).

76. TAXING AND BUDGET REFORM COMM’N, REVISION 3 (1990) (on file with Florida Secretary of State).

77. *See* FLA. CONST. art. VII, §§ 1(a), 9(a) (1999).

78. *See* TAXING AND BUDGET REFORM COMM’N, REVISION 4 (1990) (on file with Florida Secretary of State).

79. How leaseholds created on November 5, 1968, if any, would have been treated for tax purposes was unstated. This distinction determines whether the tax revenue could be available to support state governments (i.e., intangible property taxes) or local governments (i.e., tangible personal property). *See* FLA. CONST. art. VII, § 1 (1999).

80. *See* FLA. CONST. art. VII, § 1(a) (1999).

81. *See* FLA. CONST. art. VII, § 1(a) (1999).

82. *See* Smith v. American Airlines, Inc., 606 So. 2d 618 (Fla. 1992).

have been susceptible to it if they had been challenged.⁸³

The sum total of the 1990 TBRC's efforts was to add pabulum and nonconstitutional detail to the basic document of our state. After it dissolved, the constitution was amended, as described above, to restore power to CRCs to propose revisions to budgetary and taxation provisions of the constitution.

While the 1978 CRC was no slacker, the 1998 CRC was the most ambitious of all the post-1968 constitutional revision commissions. Rearmed with the authority to review budget and taxation matters as well as everything else, the 1998 CRC produced thirteen ballot proposals covering every article of the constitution.⁸⁴ Many of these proposals contained revisions to multiple articles and sections, most of which were house keeping or window dressing. Not only was the 1998 CRC the most prolific in the protection of proposals but it was also the most successful in obtaining voter approval.⁸⁵

The 1998 CRC organized its ballot proposals according to substantive content, grouping what it considered to be similar items under each ballot question. It also produced a "wildcard" measure containing what it considered to be only "miscellaneous matters and technical revisions" scattered throughout the constitution.⁸⁶

Revision No. 5 (1998) proposed measures pertaining to "Conservation of Natural Resources and Creation of Fish and Wildlife Conservation Commission."⁸⁷ This measure was adopted by voters. Its primary constitutional effect is to expand the law making and executive functions of the former Game and Freshwater Fish Commission to include marine animals. It did this by redesignating the commission to be the "Fish and Wildlife Conservation Commission" and extending its regulatory authority to "marine life."⁸⁸ Its former domain extended only to *freshwater* fish. On the surface this is a "sensible" enlargement of jurisdiction. Below the

83. Particularly, the proposal that amended article V.

84. These were ballot question five through thirteen on the 1996 general election ballot. See SANDRA B. MORTHAM, SECRETARY OF STATE, PROPOSED CONSTITUTIONAL AMENDMENTS AND REVISIONS TO BE VOTED ON NOVEMBER 3, 1998 (1998) [hereinafter MORTHAM].

85. Why the somewhat similar lineups of ballot proposals in 1998 and the 1978 met such different fates at the hands of the electorate must be of genuine interest to political scientists. In both instances this author perceived a public sensibility toward the respective elections that was fairly predictive of their respective outcomes. In short, public distrust of anything bearing a governmental character seemed much more pronounced in 1978. Why is not known, but factors such as the cold war, galloping inflation, energy shortages and uncertainties, and relatively high joblessness may have been at work in a negative way in 1978. All these factors were reversed in direction or scope in 1998.

86. For example, rendering the language of the constitution gender neutral was a general goal of the proposed "technical revision."

87. MORTHAM, *supra* note 84, at 10-12.

88. FLA. CONST. art. IV, § 9 (1999).

surface, however, the structure and powers of the Fish and Wildlife Commission make it a curious anomaly in a democratic constitution. The anomaly arises from how members of the commission are selected and the strange combination of governmental powers it possesses. First, it is unelected.⁸⁹ Second, it possesses law making powers that are not subject to the approval or repeal of the Legislature.⁹⁰ Third, it possesses the executive power to enforce the laws it makes.⁹¹ In short, the structure and powers of the commission not only derogate the tenet that only elected representatives should possess the power to make laws, but they also violate the separation of powers principle otherwise imposed upon the state government of Florida.⁹² This revision also adopted a measure that imposes special restraints upon the alienation of lands held by the state for “natural resource conservation purposes.”⁹³

Revision No. 6 (1998) proposed to add these statements to the constitution; “the education of children is a fundamental value of the state of Florida [and] a paramount duty of the state is to make adequate provision for the education of all children residing within its borders.”⁹⁴ This provision was adopted, revising Article IX, Section 1 of the Florida Constitution. Shortly prior to the creation of this proposal, the Florida Supreme Court had held that Florida’s long standing constitutional mandate that “adequate provision” be made for a “uniform system of free public schools” did not provide a juridical basis to review the adequacy of the amount of school funding provided by the Legislature.⁹⁵ This measure is apparently intended to provide a constitutional standard to which the judiciary may hold the Legislature accountable.⁹⁶

Revision No. 7 (1998) proposed a “Local option for selection of judges and funding of state courts.”⁹⁷ This measure was adopted.⁹⁸ A primary consequence is to permit localities to eliminate popular election of circuit and county judges in favor of an appointment and retention plan that now

89. *See id.*

90. *See id.*

91. *See id.*

92. *See* FLA. CONST. art. II, § 2 (1999).

93. FLA. CONST. art. X (1999). This measure requires a super majority vote to divest the government of these properties.

94. MORTHAM, *supra* note 84, at 13.

95. Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400 (Fla. 1996).

96. From the author’s point of view, this would constitute a regrettable intrusion of an unelected judiciary into the political decisions of the elected Legislature and an erosion of the separation of powers premise of article II, section 3 of the Florida Constitution.

97. MORTHAM, *supra* note 84, at 14.

98. Revision 7 amended article V, sections 10, 11, 12, and 14 of the Florida Constitution.

applies only to appellate judges.⁹⁹ This measure was coupled in a single ballot question with a dissimilar measure that purports to impose the “funding for the state court system” on revenues appropriated by the Legislature.¹⁰⁰ Less touted by its proponents, this measure also imposes a constitutional obligation upon county taxpayers to build court houses and to “pay reasonable and necessary salaries, costs, and expenses of the state court system to meet local requirements as determined by general laws.”¹⁰¹ Hence, the 1998 CRC “log rolled” one provision that it particularly wanted (that is, elimination of judicial elections) with another that it thought would appeal to local taxpayers as voters (that is, state funding of the judicial system). What CRC did not trumpet was the constitutionalization of the obligation of local taxpayers to supply the court houses. Most of this provision is of non-constitutional character and has the effect of restraining the Legislature in funding options.

Revision No. 8 (1998) proposed to restructure the state cabinet.¹⁰² This measure was adopted.¹⁰³ Its primary effect is to reduce the number of elected cabinet members from six (that is, secretary of state, attorney general, comptroller, treasurer, commissioner of agriculture, and commissioner of education)¹⁰⁴ to three (that is, attorney general, chief financial officer, and commissioner of agriculture.)¹⁰⁵ A presumed goal of this change was to “strengthen” the office of governor by reducing the number of cabinet members voting in executive decisions made by the governor and cabinet sitting as a collegial body. In fact, however, the true beneficiaries of additional power may turn out to be the three surviving cabinet officers.¹⁰⁶ Paradoxically, the 1998 CRC proposed no revision to the existing measure that permits the Legislature to strip the governor of virtually all power to administer executive departments of government by assigning their administration to other officials.¹⁰⁷ Revision No. 8 also stripped “the governor and the members of the cabinet” of the role of “state board of education” and transferred that function to a newly created seven

99. This proposal reflects a continuing hostility to the idea of electing judges. This hostility commenced in the commission created under the 1965 statute. *See Commission Drafts Constitution*, 41 FLA. B. J. 28 (1967).

100. FLA. CONST. art. V, § 14(a) (1999).

101. FLA. CONST. art. V, § 14(c) (1999).

102. *See* MORTHAM, *supra* note 84, at 21-29.

103. Revision 8 revised numerous subsections; particularly article V, section 4 of the Florida Constitution.

104. *See* FLA. CONST. art. IV, § 4 (1997).

105. *See* FLA. CONST. art. IV, § 4 (1999).

106. The revision attempts to mitigate this with this provision: “In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.” FLA. CONST. art. IV, § 4(a) (as amended in 2003).

107. *See* FLA. CONST. art. IV, § 6 (1999).

member board to be appointed by the governor and confirmed by the senate.¹⁰⁸ This, plus the enlargement of the jurisdiction of the unelected Game and Fish Commission and the measure permitting retention rather than contested elections for trial judges, indicates a recurring distrust of accountability through elections.

Revision No. 9 (1998) proposed to add an “ERA” tone to the equal protection statement in the declaration of rights by adding the term “female and male alike” to make it read: “All natural persons, male and female alike, are equal before the law. . . .”¹⁰⁹ This proposal was adopted.¹¹⁰ The same measure added “national origin” as a category protected against arbitrary deprivation of rights, and designated “physical disability” as a protected category in the place of “physical handicap.”¹¹¹ At this stage of the evolution of constitutional protections of civil rights, these modifications are cosmetic.

Revision No. 10 (1998) proposed to modify the power of the Legislature to grant ad valorem exemptions to leasehold interests in governmental property, and also proposed an unrelated measure pertaining to the decisionmaking practices of local governmental officials.¹¹² These measures were intended to cure recent and unfortunate decisions of the Florida Supreme Court.¹¹³ This proposal was rejected by the voters, making it the only 1998 proposal to suffer defeat.

Revision No. 11 (1998) proposed various changes pertaining to suffrage and elections.¹¹⁴ This measure was adopted. One portion permits candidates for governor to run in primary elections prior to having selected a lieutenant governor.¹¹⁵ Another measure permits all voters, without regard to party affiliation, to vote in a party primary election on any occasion in which only one political party has offered candidates to fill the particular office.¹¹⁶ A third measure constitutionalizes the existing statutory

108. FLA. CONST. art. IX, § 2 (1999).

109. MORTHAM, *supra* note 84, at 30.

110. Revision 9 amended article I, § 2 of the Florida Constitution (1999).

111. MORTHAM, *supra* note 84, at 30.

112. *See* MORTHAM, *supra* note 84, at 31-32.

113. *See generally* Canaveral Port Authority v. Department of Revenue, 690 So. 2d 1226 (Fla. 1996) (holding that special districts are not immune to ad valorem taxes); Board of County Comm’rs of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993) (pertaining to the nature of local government zoning decisions); Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448 (Fla. 1993) (not approving the measure).

114. MORTHAM, *supra* note 84, at 33-35.

115. *See* FLA. CONST. art. IV, § 5(a) (1999). The purpose is to permit primary winners in gubernatorial elections to choose primary opponents as general election running mates.

116. *See* FLA. CONST. art. VI, § 5(b) (1999). For example, if only Democratic candidates qualified to run for governor, then all voters would be permitted to vote in the Democratic primary. The rationale is that non-Democrats would otherwise have no opportunity at the polls to voice a preference among the actual candidates for office.

plan for providing public financing of political campaigns for state wide offices.¹¹⁷ The measure made other minor revisions to suffrage and election provisions.¹¹⁸

Revision No. 12 (1998) proposed to authorize county governments to enact ordinances requiring sellers of firearms to check the criminal records of firearm purchasers and to impose waiting periods on the sale of firearms.¹¹⁹ This measure was adopted.¹²⁰ It exemplifies the use of constitutional amendments to make (or “authorize”) laws that the Legislature (and county governments) possess the power to enact but had declined to exercise. If the 1998 CRC believed the “Right to bear arms” provision of the declaration of rights¹²¹ deprives the Legislature of the power to enact (or authorize counties to enact) these regulations, then it would have been appropriate to amend the “bear arms” provision to remove the restriction on the Legislature’s power. If the unamended “bear arms” provision denies the Legislature that power, then the 1998 amendment creates yet another constitutional anomaly; that is, the amended constitution now permits counties to enact regulations that would be beyond the power of the Legislature to enact. This is a regrettable anomaly in the structure of the Florida Constitution.

Revision No. 13 (1998) is the “miscellaneous matters and technical revisions” provision referred to above.¹²² This measure was adopted, making slight revisions in the wording of provisions scattered throughout the constitution.

II. LEGACY

What is the legacy of the first three “politics-free” commissions as measured against the substantive changes to the Florida Constitution? The 1978 CRC produced no change, and the 1990 TBRC produced a mass of words mostly constituting constitutional pabulum. Furthermore, even though the 1998 CRC successfully tinkered with many sections of the constitution, few of its products are of genuine constitutional significance.

117. See FLA. STATS. §§ 106.32, *et seq.* (1999). After the 1998 amendments are all effective, the state wide offices will be: governor; attorney general; chief financial officer; and commissioner of agriculture.

118. See generally FLA. CONST. art. IX, § 4(a) (1999) (designating school board elections as non-partisan); FLA. CONST. art. VI, § 2 (1996) (lowering the voting age from 21 to 18); FLA. CONST. art. VI, § 1 (putting restrictions on the Legislature’s power to put disadvantageous ballot access requirements on unaffiliated candidates and those from minor parties). Because the 25th Amendment to the United States Constitution guarantees citizens eighteen years of age and older the right to vote, the voting age matter is wholly cosmetic.

119. See MORTHAM, *supra* note 84, at 13.

120. See FLA. CONST. art. VIII, § 5(b) (1999).

121. FLA. CONST. art. I, § 8 (1999).

122. MORTHAM, *supra* note 84, at 37-50.

Of these few, the 1998 revision to Article IV (reducing the number of cabinet offices from six to three) and the corollary creation of an appointed state board of education, may have lasting political consequences. But as noted above, those changes do not create a “strong” governor, and do not diminish the Legislature’s power to denude the office of governor of power to administer most of the executive branches of government.¹²³ They also perpetuate the constitutional basis for fractioning executive power between the governor and members of the cabinet, thus continuing to provide only attenuated political accountability between these officials and the electorate.

The 1998 “local option” provision for selection and retention of trial judges may also prove to be politically important. Nevertheless, adopting this measure avoided, at least for the time being, consideration of different judicial reforms better designed to create connections—not disconnections—between the judiciary and the people. These could include single member election districts and limited (or, perhaps, extended) judicial terms. Finally, although many of the “tidy-up” measures adopted in 1998 may prove beneficial within their limited scopes, all could have been put on the ballot by the Legislature, and none justifies the convening of a constitutional revision commission. In sum, the cumulative product of all these commissions is modest and, in some instances, regrettable.

What did the commission fail to do? It failed to make proposals on some well-known issues of pure constitutional significance that many of the electorate would have wished to have seen on the ballot. For example, nobody proposed to create a truly strong governor. No one proposed to remove the constitutional prohibition against a personal income tax. And no member proposed a procedure to permit the electorate to enact state statutes by initiative and referendum. Consideration of this latter point was particularly germane in 1998. In the past two decades, Florida citizens have made ample recourse to the initiative and referendum process to attempt to amend the constitution,¹²⁴ but many of these initiated amendments are often last resorts to “go over the head” of the Legislature to obtain statutory objectives through constitutional amendments.¹²⁵ Proposing a constitutional mechanism to permit the people to adopt state statutes with a less daunting initiative and referendum procedure and with less permanency for the product would have satisfied a well manifested public demand.¹²⁶

123. See FLA. CONST. art. IV, § 6 (1999).

124. See FLA. CONST. art. XI, § 3 (1999).

125. See Joseph W. Little, *Does Direct Democracy Threaten Constitutional Governance in Florida?*, 24 STETSON L. REV. 393, 409 (1995).

126. See Richard B. Collins & Dale Oesterle, *Structuring the Ballot Initiative: Procedures that Do and Don't Work*, 66 U. COLO. L. REV. 47, 129, n.10 (citing at least eight states which permit

So what needs to be done? First, the method for selecting commission members needs to change. Here, two somewhat inconsistent imperatives clash. One is the need for expertly prepared members whose main interest is the integrity of the constitution as the basic political document of the state. The other is a selection process that does not favor incumbent political elites. Inconsistency arises from a clash between the need for expert commissioners and the evening potential of a broadly democratic selection process. One might doubt, for example, that the general population possesses the will or capacity to select impartial experts. As a compromise, I would start with a proposal for a twenty member revision commission, one selected from paired, adjacent senatorial districts. The incumbent legislators from the paired districts would select a member from the paired districts, each legislator having an equal vote in whatever local selection process the Legislature might choose to employ.

Second, the scope of each revision commission's work should be limited. History reflects that the current "every word in the constitution is fair game for change" authority (particularly of CRCs) results in a "knight errant" scatter gun search for minutia. Each revision commission should be forced to concentrate its effort by limiting the scope of its output. Although calling for a limit is much easier than formulating a workable plan, I would say that each commission should be authorized to propose no more than three primary proposals, plus necessary subsidiary revisions that are strictly necessary to effectuate the primary proposals. Any proposal that could sensibly stand alone with the aid of only subsidiary proposals would be deemed to be a primary proposal.

Third, and related to the second, the same "one subject" requirement that applies to initiated amendments¹²⁷ should apply to commission proposals. The 1998 CRC blatantly rolled disparate subjects (the bitter and the sweet) into single ballot questions and then "politic'd" the voters on the merits of the "sweet."¹²⁸ This practice should not be permitted.¹²⁹

Fourth, each proposal of a revision commission should be approved by the Legislature prior to being placed on the ballot. I would not permit the Legislature to modify proposals; after all, it possesses the power to initiate proposals by joint resolution¹³⁰—but it should be empowered to block measures deemed wholly unacceptable to a super majority of both houses.

initiated statutes—Alaska, California, Colorado, Idaho, Maine, Utah, Washington, and Wyoming). A relative virtue of initiated statutes is that, after a prescribed period of time, they may become subjects of legislative (or initiated) amendments.

127. FLA. CONST. art. XI, § 3 (1999).

128. The article V amendments proposed by Revision No. 7 exemplified this.

129. See Kelly H. Armitage, *Constitutional Revision Commissions Avoid Log Rolling, Don't They?*, 73 FLA. B.J. 62 (1998).

130. See FLA. CONST. art. XI, § 1 (1999).

Adoption of one or more of the foregoing proposals would lessen the importance of this measure, but it is worthy of inclusion.

So what is to become of the fabled political neutrality and free scope of the revision commissions? As to scope, history has shown that a lack of restraints leads to fractionated attention, a multitude of proposals, and a tendency to trivialize the dignity of the constitution. Focus should produce fewer, but more disciplined and principled proposals.

Finally, to the extent the Florida Constitution “needs” a free booting independent review from time to time, the existing provision for a constitutional convention¹³¹ supplies an as yet unexecuted mechanism. Although I see no need to call a convention within the foreseeable future, the Legislature might wisely enact legislation to prescribe a means to finance such a convention should it ever be convened. In the meantime, the recurring constitution revision commissions (CRCs and TBRCs) should be reined in to make their work more beneficial to the state. Their practice of functioning as free-wheeling unelected super-legislatures should be stopped.

131. See FLA. CONST. art. XI, § 4 (1999).

