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Constitutional Revision in Florida

Planning, Politics, Policy, and Publicity

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Contemporary state constitutions are not static documents and nowhere is this more true than in Florida where citizens have adopted a variety of methods for modifying their basic law. The Florida constitution contains five types of reform mechanisms: constitution revision commission, legislative proposal, citizen initiative, convention, and a commission for taxation and budget reform. While many states utilize citizen initiatives, legislative amendments and conventions to change their constitutions, Florida is the only state that provides for a regular review of its constitution by a revision commission, a body that is empowered to take its proposals directly to the people without legislative review.

Article XI of the Florida constitution provides for the regular review of the state's basic law by mandating that a constitution revision commission (CRC) meet to "examine the constitution of the state, hold public hearings, and file . . . its proposal, if any, of a revision of this constitution or any part of it" (sec. 2). Proposed revisions are then submitted to the electorate for approval at the next general election (sec. 5). Adopted in 1968, Article XI called for the first review to take place ten years after its adoption and every twenty years hence. Florida has since witnessed two iterations of the revision commission process, in 1977–78 and 1997–98, and the outcomes of each were quite different. The first commission failed to get public approval on any of its proposed revisions while the latter commission saw eight of its nine proposals adopted by the electorate.

What accounts for the differing experiences of the two CRCs in Florida is the focus of this chapter. A comparative analysis of the two commissions provides an opportunity to identify factors that likely contribute

to the success of this unique reform process. Using commission documents and state records as well as observations from key members of each commission, my research suggests that planning, politics and procedures, policy and publicity are critical elements in the successful reform of state constitutions by autonomous commissions. The experiences in Florida also teach us that measuring the success of these commissions only in terms of electoral support for revision proposals fails to recognize the value of the revision process to the body politic on a much broader level. Constitution revision commissions play an important role in formalizing a policy agenda outside the traditional political arena, and their deliberative processes are inherently valuable to the public's knowledge and perceptions of state constitutions, and to public discourse.

The first section of this chapter examines the historical background of the constitution revision process and its inclusion in the 1968 Florida Constitution followed by a sketch of the general procedural framework employed by the Florida commissions. The balance of the chapter is organized into four sections that focus on planning, politics and procedures, policy, and publicity, factors that contributed significantly to the variance in outcomes between the 1977–78 CRC and the 1997–98 CRC. Examining the histories of each commission with the lens of these variables allows us to see distinct differences that undoubtedly contributed to the electoral success or failure of Florida's autonomous constitution revision process.

THE CONSTITUTION REVISION COMMISSION IN FLORIDA

Floridians have had an active history of constitution writing and reform, witnessing six constitutions since 1839. Like many states, Florida regularly tinkered with its basic law. The Constitution of 1885, for example, was amended 147 times between 1885 and 1968.² Florida had also seen a legislatively appointed revision commission, an experience that may have laid the groundwork for the autonomous constitution revision commission that exists today. The current constitution was adopted in 1968, but has its roots in the mid-1940s when the state bar association made revision a priority, publishing two draft proposals for a new constitution. However, the first serious effort to revise the 1885 constitution took place in 1955 when the death of Governor Dan McCarty not only highlighted ambiguities in the constitutional order of succession, but opened the door

to an “enlightened conservative” governor, Leroy Collins, who led the charge for reform.³ At the urging of Collins, the Florida Constitution Advisory Commission was established by the legislature in 1955. While proposals were generated by the Commission and subsequently adopted by the legislature, the state’s high court nullified them on technical grounds.⁴

It was several more years before reform actually took place. Talbot D’Alemberte, a leading scholar of constitutional legal history in Florida and key player in constitutional reform in the 1970s, suggests that the revision of the Florida constitution in the 1960s was rooted in both the national push for reapportionment of state legislatures that gained viability with the “one man, one vote” mandate in the 1962 U.S. Supreme Court case of *Baker v. Carr* and in the broader-based reform efforts of other states.⁵ In 1964, Florida voters approved a constitutional amendment offered by a more demographically representative legislature “that allowed revision of the constitution without a constitutional convention.”⁶ In amending Article XVII of the 1885 constitution, Floridians agreed that

either branch of the legislature, at any regular session, or at any special or extraordinary session called for the purpose, may propose by joint resolution a revision of the entire constitution or a revision or amendment of any portion or portions thereof and may direct and provide for an election thereon.⁷

With this amendment, the citizenry of Florida transformed their history of constitutional conventions and legislative amendments into a new era of revision commissions.⁸

Backed by public support, the legislative will for constitutional reform came in the form of a statutory revision commission (SRC) that met during 1965–66. In late 1966, it submitted its proposals for significant constitutional change to the legislature. The legislature adopted most of the SRC’s suggestions, included its own revisions, and put the revised version of the constitution before the voters. On November 5, 1968, Floridians adopted their current constitution and led the country in crafting one of the most liberal endorsements for future constitutional reform.

What was new to Florida in the 1968 constitution was the addition of two reform processes, the citizen initiative and the revision commission, to the traditional menu of constitutional change by convention and

legislative amendment. The citizen initiative process permits the electorate to place single-subject amendments directly on the ballot after securing a constitutionally defined number of signatures from fellow citizens. It is the most restrictive of the reform mechanisms and was used sparingly during the first twenty years of the new constitution. More recently, however, initiatives in Florida have become a frequent tool of narrow, special interests that employ the process as a way to end-run a legislative or executive branch that has refused their demands.⁹

The 1968 constitution also made Florida the first state to institute a unique, deliberative process of reform. It called for the establishment of an autonomous revision commission that would take its proposals directly to the electorate without legislative approval or review.¹⁰ The constitution mandated that the commission be assembled at future established times, thus, institutionalizing a wholesale review of the state's basic document.

Within thirty days after the adjournment of the regular session of the legislature convened in the tenth year following that in which this constitution is adopted, and each twentieth year thereafter, there shall be established a constitution revision commission.¹¹

Made up of the Attorney General and thirty-six other members appointed by each of the branches (fifteen by the governor, nine each by the house speaker and the senate president, and three by the chief justice of the supreme court), the commission is constitutionally charged to "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 its proposal, if any, of a revision of this constitution or any part of it."¹² Those proposals are then put on the ballot at the next general election and require a simply majority for adoption.

Since the ratification of the 1968 constitution, two revision commissions have proposed changes to the state's constitution. The first commission, organized in the tenth year after the adoption of the 1968 constitution, failed to persuade the electorate to support a single proposal it put on the 1978 general election ballot. Yet two years later when the state legislature proposed abolishing the revision commission process, voters were unwilling to dismantle the process and rejected the legislature's constitutional amendment that would have done so. Subsequently, the legislature

proposed yet another mechanism of constitutional reform—a topical revision commission to address only tax and budget reform, which resembles in form the constitution revision commission. Citizens supported the institution of a Taxation and Budget Reform Commission in 1988, and it became the fifth tool for constitutional revision in Florida. The three proposals that were placed on the ballot by this specialized commission were adopted by the electorate in 1992.¹³

In 1997, Florida's second constitution revision commission got underway. The electoral failures experienced by the commissioners and staff of the first commission were certainly warnings to government leaders as they began thinking about appointing commissioners to examine Florida's constitution a second time. But the success of the Taxation and Budget Reform Commission in 1992 was a good omen. Ultimately, the 1997–98 CRC saw eight of its nine revisions adopted by the Florida electorate.

The history of Florida suggests that this state typically embraces constitutional change. Chesterfield Smith, the chair of the 1965–66 SRC, who is recognized as the master craftsman of the 1968 constitution that included these multiple paths for reform has said, "It is my own personal judgment that above all other matters, the new provisions in the 1968 Constitution authorizing means for further constitutional changes are the most important things in the new constitution."¹⁴ Floridians have now learned how to make good use of these tools for change; it simply took a little practice. The development and practice of the constitution revision process in Florida, and the differences between the two commissions are the focus of the balance of this chapter.

THE COMMISSION PROCESS

Florida's 1968 Constitution includes several clear mandates regarding the constitution revision process. It defined who would select members of the commission and how many appointments they would each have, when the commission would meet, what the commission would do (review the constitution, hold public hearings, draft revisions, if any), and by when it must complete its work. Beyond these parameters, it has been through practice that a logical process of reform has developed.

The commissions have used the State Capitol in Tallahassee as their home base and meet in the senate chambers. With the space in the Senate has also come the resources of that body in terms of the active participation