

Constitutional reform is an important activity that keeps state government abreast of the changes in contemporary political society. Rooted in principles of republican democracy, Florida's autonomous revision commissions have shown that this regular and deliberative process can avoid the institutional politics of the legislature, the political agendas of the executive and the blatant pressures of special interest groups. As a result, the commission process provides the citizens of the state with a comprehensive examination of their basic law and offers the voters appropriate suggestions for reform.

## NOTES

1. W. Brooke Graves. "State Constitutional Law: a Twenty-Five Year Summary." *William and Mary Law Review* 8 (1966): 3.

2. While the 1885 document survived its first five years virtually untouched, at every general election from 1890 through 1968 voters were asked to consider one or more amendments, and in each decade of this time period at least ten amendments to the 1885 constitution were adopted, with an all-time high of 12 proposals offered and accepted at the election of 1966. Overall, Floridians adopted nearly 70 percent or 147 of the 211 proposed amendments. See Talbot D'Alemberte, *The Florida State Constitution: A Reference Guide* (Westport, Conn.: Greenwood Press. 1991), p. 9.

3. William C. Havard, "Notes on a Theory of State Constitutional Change: The Florida Experience." *The Journal of Politics* 21 (February 1959): 89–90.

4. *Rivera-Cruz v. Gray*, 104 So. 2d 501 (Fla. 1958).

5. D'Alemberte, *Florida State Constitution*, p. 10, and John Dinan, "'The Earth Belongs Always to the Living Generation': The Development of State Constitutional Amendment and Revision Procedures." *The Review of Politics* 62 (2000): 645–74.

6. D'Alemberte, *Florida State Constitution*, p. 11.

7. "Constitution Revision Commission (of 1998) Home Page." May-August 2001. <http://www.law.fsu.edu/crc/>.

8. Not unheard of in other states, the commission method was employed as early as 1872 in New York and Georgia. See Robert F. Williams, "Are State Constitutional Conventions Things of the Past? The Increasing Role of the Constitutional Commission in State Constitutional Change," *Hofstra Law and Policy Symposium* 1 (1996): 1–26.

9. Critics have warned that the narrow economic or social rights issues that are raised in the form of initiatives threaten to make the constitution "a state constitutional junkyard." See Daniel R. Gordon, "Protecting Against the State Constitutional Law Junkyard: Proposals to Limit Popular Constitutional Revision in Florida," *Nova Law Review* 20 (1995): 413–35.

10. Williams, "Constitutional Conventions," p. 15.
11. Florida Constitution, article XI, section 2a. In 1996 the Legislature proposed, and the citizens adopted an amendment to article XI, section 2, which required the establishment of the commission within thirty days after the adjournment of the 1997 legislature rather than, as expected, after the adjournment of the 1998 legislature. The change is discussed in detail later in this chapter.
12. Florida Constitution, article XI, section 2c. Because of the executive reorganization adopted by the 1998 revisions, the office of Secretary of State was eliminated in 2003. Thus one of the revisions proposed by the 1998 CRC transformed relevant constitutional language referring to this office as subsequently the "custodian of the records" on the effective date of reorganization.
13. The first Taxation and Budget Reform Commission (TBRC) originally placed four revision proposals on the 1992 ballot. One was removed by the Supreme Court because the ballot summary was not sufficiently clear—see *Smith v. American Airlines*, 606 So.2d 618 (Fla. 1992). This commission is scheduled to meet again in 2007, having had its schedule adjusted by a revision of the 1998 CRC. Under the original design of the TRBC, it was to meet every ten years starting in 1990. It will now meet every twenty years, between CRCs.
14. D'Alemberte, *Florida State Constitution*, p. 13.
15. Steven J. Uhlfelder, "The Machinery of Revision," *Florida State University Law Review* 6 (Summer 1978): 575–88, and W. Dexter Douglass, "The 1997–98 Constitution Revision Commission: Valuable Lessons from a Successful Commission." *Florida Law Review* 52 (2000): 275–83.
16. Steven J. Uhlfelder and Robert A. McNeely, "The 1978 Constitution Revision Commission: Florida's Blueprint for Change." *Nova Law Review* 18 (1994): 1491.
17. Douglass, "Constitution Revision Commission," p. 282.
18. Florida Constitution, article XI, section 5.
19. *In re: Advisory Opinion of the Governor Request of November 19, 1976 (Constitution Revision Commission)*, 343 So. 2d 17 (Fla. 1977), at 20–21.
20. *Ibid.*, at 21–22.
21. *Ibid.*, at 22.
22. *Ibid.*, at 18.
23. *Ibid.*, at 23–24.
24. Uhlfelder, "Machinery of Revision," p. 576. A similar effort was made in the 1978 legislative session and also failed. Additionally, a resolution that would have eliminated the constitution revision process was introduced that year, but was not approved.
25. Laws of Florida. "Constitution Revision Commission; powers of chair; assistance by state and local agencies." Chapter 77–201 and chapter 95–148, codified at 19 F.S. §286.035. 2000. 1997.
26. Telephone interview, Steven A. Uhlfelder, 23 July 2001.

27. Uhlfelder, "Machinery of Revision," p. 587.
28. Robert L. Shevin, "Report and Recommendations of Attorney General Robert L. Shevin to the 1978 Constitution Revision Commission." (June 1977). Tallahassee, Florida.
29. Uhlfelder, "Machinery of Revision," p. 587.
30. Uhlfelder, "Machinery of Revision; Steven J. Uhlfelder and Billy Buzzett, "Constitution Revision Commission: A Retrospective and Prospective Sketch." *The Florida Bar Journal* LXXI (April 1997): 22–29; Uhlfelder and McNeely, "The 1978 Constitution Revision Commission," and *Journal of the 1997–1998 Constitution Revision Commission*, pp. 19–20.
31. "Governor's Constitution Revision Steering Committee." Executive Order 96–194 (Fla.). 1996.
32. Douglass, "Constitution Revision Commission," p. 277.
33. Billy Buzzett, "The Article V Task Force: A Mini-Constitutional Revision Commission." *The Florida Bar Journal* (July/Aug 1995): 49.
34. "Minutes of the Constitution Revision Commission (of 1998) Steering Committee," August 20, 1996. 2001. <http://www.aif.com/CRC/Minutes/CRC001.HTM> through [/CRC003.HTM](http://www.aif.com/CRC/Minutes/CRC003.HTM)).
35. Ibid.
36. Laws of Florida. "An act relating to the Constitution Revision Commission." chapter 97-7. 1997. This bill also directed the Joint Legislative Management Committee to provide support for the commission. W. Dexter Douglass reports that \$100,000 was provided to the steering committee in 1996; \$400,000 to the CRC in 1997; and \$1.2 million in 1998—see Douglass, "Constitution Revision Commission," p. 277, footnote 12. I have scanned each bill and believe the data reported in my text are correct.
37. Laws of Florida. "Appropriations—General." Chapter 97–152 (see especially Item 1495A). 1997.
38. Laws of Florida. "Appropriations—General." Chapter 98–422 (see especially Items 1575, 2139, and section 13). 1998.
39. Douglass, "Constitution Revision Commission," p. 277.
40. Uhlfelder and Buzzett, "Constitution Revision Commission," p. 24.
41. W. Dexter Douglass, "The 1997–98 Constitution Revision Commission: A Progress Report," *The Florida Bar Journal* 72 (June 1998): 14.
42. *In re: Advisory Opinion of the Governor Request of November 19, 1976 (Constitution Revision Commission)*, 343 So. 2d 17 (Fla. 1977).
43. *Opinion of the Attorney General of the State of Florida: Constitution Revision Commission*, July 5, 1977, Op. Atty. Gen. Fla. 144 (1977), at 144.
44. Uhlfelder, "Machinery of Revision," pp. 582–83.
45. Ibid., at 584–85.

46. "Constitution Revision Commission (of 1998) Home Page." May-August 2001. <http://www.law.fsu.edu/crc/>: CRC Proceedings, 3/17/98, at 13-14.
47. Kelley H. Armitage, "Constitution Revision Commissions Avoid Logrolling, Don't They?" *The Florida Bar Journal* 72 (November 1998): 63.
48. "Minutes of the Constitution Revision Commission (of 1998) Steering Committee," August 20, 1996. 2001. <http://www.aif.com/CRC/Minutes/CRC001.HTM> through /CRC003.HTM).
49. Uhlfelder, "Machinery of Revision," p. 586.
50. Laws of Florida. "An act relating to regulation of lobbyists." Chapter 97-12, codified at 10 F.S. §112.3215. 2000. "Lobbyists before the executive branch or the Constitution Revision Commission." 1997.
51. Diane Rado and Peter Wallsten. "Constitution panel sought backers." *St. Petersburg Times*. 1 August 1997: 1B.
52. David Cox, "State Panel No Longer to Be Wined, Dined," *Tampa Tribune*, 2 August 1997: Fla./Metro 6.
53. Grady A. Epstein, "Constitution Panel Hires Image Help," *Tampa Tribune*, 7 August 1997: Fla./Metro 6.
54. Rebecca Mae Salokar, "Creating a State Constitutional Right to Privacy: Unlikely Alliances, Uncertain Results." *Constitutional Politics in the States*. Ed. G. Alan Tarr. Westport, CT: Greenwood Press, 1996. 73-97; Albert L. Strum, "The Development of American State Constitutions." *Publius* 12 (Winter 1982): 57-98; Uhlfelder and McNeely, "The 1978 Constitution Revision Commission," and Uhlfelder and Buzzett, "Constitution Revision Commission."
55. *Information Bank Abstracts: Miami Herald*. New York: The New York Times Company, 16 (24 June 1978).
56. *Information Bank Abstracts: Miami Herald*. New York: The New York Times Company, 27 (22 Oct. 1978).
57. Uhlfelder and McNeely, "The 1978 Constitution Revision Commission," p. 1507.
58. W. Dexter Douglass and Billy Buzzett. "Constitution Revision Commission: Planning the Process." *The Florida Bar Journal* 71 (April 1997): 16-21, and John F. Harkness, Jr., "The Florida Bar's Proper Role in the Constitution Revision Process." *Florida Bar Journal* 72 (October 1998): 10.
59. D'Alemberte, *Florida State Constitution*; Gordon, "Protecting Against State Constitutional Law Junkyard"; and Uhlfelder and McNeely, "The 1978 Constitution Revision Commission."
60. Following the completion of the CRC process, Douglass initiated a citizen initiative petition to create an independent nonpartisan commission that would reapportion both state legislative and congressional seats, stripping that power away from the legislature.

61. *Advisory Opinion to the Attorney General Re: Fish and Wildlife Conservation Commission: Unifies Marine Fisheries and Game and Fresh Water Fish Commissions*, 705 So. 2d 1351 (Fla. 1998).

62. The 1998 voting data beg for analysis on measures of turnout and ballot roll-off especially in light of the gubernatorial race, as well as comparative work on CRC proposals that appeared after four other constitutional amendments on the 1998 ballot.

63. Uhlfelder, "Machinery of Revision."

64. Alaine S. Williams, "A Summary and Background Analysis of the Proposed 1978 Constitutional Revisions." *Florida State University Law Review* 6 (1978): 1115–71.

65. Robert L. Floyd, "President's Page: Constitutional Revision." *The Florida Bar Journal* 52 (October 1978): 585.

66. *Ibid.*

67. W. Dexter Douglass, "Con: Merit Retention—Another Assault on the Elective Process," *The Florida Bar Journal* 52 (October 1978): 645–46.

68. Margaret Talev, "Constitution Revisions Do Well in Poll." *Tampa Tribune* 28 July 1998: Fla/Metro 6.

69. Peter Wallsten, "Poll Shows Voters Not Informed on Issues." *St. Petersburg Times* 29 July 1998: 1B.

70. *Ibid.*

71. David Cox, "Proposed Constitutional Amendment May Affect Suit." *Tampa Tribune*, 28 October 1998: Fla./Metro 1; and Curtis Krueger, "Voters Will Decide War of the Words." *St. Petersburg Times* 4 October 1997: 1B.

72. The four other amendments were all legislatively sponsored initiatives: Historic Property Tax Exemption and Assessment; Preservation of the Death Penalty, United States Supreme Court Interpretation of Cruel and Unusual Punishment; Additional Homestead Tax Exemption; and a measure permitting Recording of Instruments in Branch Offices.

73. "Florida Department of State, Division of Elections, November 3, 1998 General Election Official Results: Constitutional Amendment." 2001. <http://election.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/3/1998&DATAMODE=>

74. Mark A. Smith, "The Contingent Effects of Ballot Initiatives and Candidate Races on Turnout." *American Journal of Political Science* 45 (July 2001): 700–06.

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# Constitutional Revision in California

## The Triumph of Amendment over Revision

Bruce E. Cain

Constitutional revision has never been easy to achieve in California. Of the various alternative ways to reform a constitution, the most politically difficult path is by convention. Between 1879 (i.e., the date the current California constitution was adopted) and 1934, there were four failed attempts to convene new constitutional conventions. Prior to 1993, the experience with constitutional revision commissions had been somewhat more encouraging. Commissions were formed in 1929 and 1963, the latter leading to the highly important (but now controversial) proposal to create a professional, full-time legislature.

But if revision has been infrequent, constitutional amendment in California has been common. From 1879 to the mid-nineties, California ranked first in the nation in proposed amendments (812) and second in adopted ones (485), averaging 4.29 per year.<sup>1</sup> While there is in principle an important legal distinction between a revision and an amendment with respect to the quantity and quality of proposed changes, the reality is that the California courts have not been very concerned about enforcing the line between them. When, for instance, Proposition 140 imposed term limits on the state legislature and cut its budget by 40 percent, the state Supreme Court did not even seriously review the merits of the argument that this was a revision and not a mere amendment. And yet, there are many who would argue that term limits is the most significant change in postwar California government.

Hence, there is an odd puzzle in California. It is easy to amend, but almost impossible to revise the state constitution. Why is this the case? Does it matter? If major changes can be accomplished through the initiative

process, then perhaps it is of no consequence that constitutional revisions are difficult to achieve. On the other hand, if a constitutional convention or a revision commission provides a more integrated perspective, then the shift away from revision and toward amendment may be misshaping California state structure in important and predictable ways.

In this chapter, I will consider the problems of constitutional revision in the light of the experiences of the 1993–96 California Constitutional Revision Commission.<sup>2</sup> This Commission undertook a comprehensive look at California governance and ultimately proposed some far-reaching and imaginative ideas. But in the end, these recommendations never got to a vote in the legislature, let alone a place on the ballot. While the prospects of constitutional revision in California in the immediate future are dim, new amendments continue to surface every two years. In the first section of the chapter, I contrast the obstacles Constitutional Revision faces as compared with those faced by Initiative Constitutional Amendments (ICAs) and Legislative Constitutional Amendments (LCAs). In the second section, I discuss the possible implications of sequential changes by amendment versus a more comprehensive revision.

### THE VARYING PATHS OF REVISION AND AMENDMENT

California provides for several methods of constitutional change.<sup>3</sup> Revisions, intended as substantial changes in quantity or quality, can be proposed by a constitutional convention and then placed on the ballot directly. Another alternative is to form a constitutional revision commission whose recommendations are subsequently considered by the legislature and the voters. Constitutional amendments can be passed out of the legislature (LCAs) and placed on the ballot, or can go on the ballot directly in the form of a citizen's initiative (ICAs). As one might imagine, the politics of these procedures vary in important ways.

In the constitutional revision process, there are effectively three veto points. First, depending on the composition of the commission, proposals can be terminated inside the commission itself. For instance, the 1993 Commission was initially intrigued with the idea of a unicameral legislature. Given that the apportionment revolution had placed both the upper and lower houses on an equal population share basis, and that the requirement of deliberation by two houses often delayed the passage of bills significantly (and sometimes led to game playing and secret deals in confer-



ence committees), three prominent California state legislators strongly pushed for the adoption of either a parliamentary system (Senators Alquist and Keene) or at least a Nebraska-style unicameral legislature (Senator Lucy Killea). Others felt that there might be political value in linking what was likely to be the popular idea of unicameral reform (i.e., because it would save money) with the less popular idea of lengthening California's comparatively strict term limits to twelve years (which many legislators and insiders thought was far more important). Eventually, however, the idea died in the commission before it issued its final report. Enough of them feared that the idea was too controversial and would doom the rest of their proposals.<sup>4</sup>

A second veto point occurs when the legislature reviews the Commission's recommendation and decides whether and how to vote for them. In order for a revision commission's proposals to be placed on the ballot, they need the approval of two-thirds of the state legislature. The key interests at this stage are those of the legislators and the powerful interest groups that lobby and deal with the legislature regularly.

A good example of how legislator interests factored into the 1996 outcome was the Commission's proposal to reduce the number of statewide elected officials. While the conception of a plural executive was built into the original 1879 framework, the number of elected officials had expanded in recent years. Proposition 103 had made the office of Insurance Commissioner elected, and an earlier initiative, the so-called Big Green, had tried to create an elected Commissioner of the Environment.<sup>5</sup>

The allure of elected executive offices is that they enhance popular control, but many Commissioners and some scholars felt that they blurred the lines of accountability and opened the door to special interest influence. As evidence on this point, there was a subsequent insurance scandal in California, in which the elected Insurance Commissioner, Charles Quackenbush, created special political accounts for insurance companies to contribute to in lieu of making larger settlement payments. The problem with elections as a form of control is that in order to get the funds necessary to win votes elected executives can end up being more beholden to special interests and less responsive to the needs of consumers than appointed officials. With this in mind, the Revision Commission recommended that three statewide elected officials be appointed (the insurance commissioner, the treasurer, and the superintendent of public instruction).

To be sure, the case for elected versus appointed officials can be argued either way on purely rational grounds, but the reality is that it was doomed from the start for crassly political reasons; namely, in a term limits era, state legislators did not want to close off options for running for a statewide office. Whatever this reform might do for clearing up lines of accountability and making decisions more efficient, it had the unfortunate political byproduct of leaving three fewer opportunities for those who wanted to continue their political careers.

Another example of legislative self-interest was the opposition to the unicameral legislature. Many in the State Senate were opposed to the Commission's unicameral idea, because they perceived that a single house would put them in a less prestigious position. Those in leadership positions could not be sure that they would retain them in a single house structure (e.g., would the leadership of the upper or the lower house control the new single house). Some did not like the idea of only being one of 120 members, representing significantly smaller districts. Still others thought that they would get less staff resources if they were part of a larger house.

Legislators, it should be said, did not oppose everything that the Commission came up with. Many of them were frustrated with the supermajority vote needed to pass the state budget and favored its abolition. They welcomed the recommendation for two-year budgets, the call for a four-year capital outlay plan, and the adoption of long-term budgetary goals and performance measures. And any loosening of the harsh term limitations would receive majority approval in the California legislature. Since initiatives were a constant source of problem for the legislature, they favored the Commission's mild reforms in this area as well. But the critical question was how much the legislature was willing to swallow to get what they wanted. In the end, the answer proved to be not as much as the Commission was asking for, especially given significant opposition from their key interest and constituency groups.

Interest groups of many different varieties figured prominently in the second stage of constitutional revision. Local government officials and teachers, for instance, were important players in the constitutional revision drama. Both liked the idea that they would get more opportunity to supplement revenue to local schools either through a two-thirds vote on property tax increases or a majority sales tax vote, but both objected strenuously to other aspects of the Commission's report. Special district officials feared that the Commission's Community Charter proposal would lead to widespread consolidations of their districts. Teachers feared that

the elimination of the elected superintendent of schools would place too much power in the hands of the governor and his State Board of Education. In retrospect, this fear was highly colored by the fact that the sitting governor was a Republican who had crossed swords frequently with the teachers' unions while the Superintendent of Schools was a more sympathetic Democrat. This illustrates the predictable point that where people stand in the Constitutional Reform debate often depends upon where other people sit.

Also active in the revision discussions were the taxpayer groups. Elements of the Commission's proposals were clearly designed to court their support, for example, a requirement that the state's budget be balanced or that the state should maintain a 3 percent general fund reserve. But the taxpayer groups did not like the fact that the Commission tried to restore local control over local taxes under a simple majority vote or that it provided for supplemental school funding.

Clearly, all types of constitutional reform (i.e., revisions or amendments) will often have to overcome opposition by key interest and constituency groups. But, processes vary in terms of how and when interest group intervention occurs. A constitutional revision commission provides several opportunities: at the time commissioners are appointed, when the legislature takes up the commission's proposals, and then later in the electoral battle. At the point that the proposals reach the legislature, the most important power is negative; that is, the ability to block undesirable proposals by putting pressure on key legislators to kill the offending measures before they are placed on the ballot.

Finally, there is the electoral stage. Assuming the whole package, or at least some part of it, emerges from the legislature, it must be sold to the voters. Here again, elected officials and interest groups have some influence over the final outcome since they help run and finance the campaign for the proposition. They can also work against a measure, or allow it to die by not giving it the support it needs to win.

By comparison, constitutional change by amendment has fewer hurdles and veto points. A group of citizens can hire a consultant to help draft the changes they want. With the help of a professional signature gathering firm and a little financial support, the measure can gain enough signatures to go on the ballot with legislative approval. The key to success is winning the public's approval.

Opinion is divided as to whether the popular initiative process has been captured by special interests or not. Journalists like Peter Schrag and