

tions did not include the costs of fulfilling the constitution's requirement that all proposed amendments (not just the commission's) be published in one newspaper in each county of the state prior to the general election; those funds were a separate line item in the state budget. Even considering inflation, the fiscal resources enjoyed by the 1997–98 CRC far surpassed the shoestring budget that Executive Director Uhlfelder managed twenty years earlier. As Douglass noted in his review of the 1997–98 CRC, "This was unprecedented and laid the foundation for the Commission to begin its work immediately."³⁹

The Steering Committee was authorized to exist until the day the constitution revision commission first met. While it was strictly advisory in nature, its work was critical to the efficient operation of the commission and it relieved the commissioners from distractions not essential to their substantive work. As I discuss later, the planning process also formulated issue agendas for the commissioners that facilitated their work. Of all of the factors that I examined, the difference between the two commissions with respect to planning was the most glaring distinction. But even the best laid plans may fail, and this first steering committee knew well that it would take more than planning to guarantee a positive constitutional reform experience in Florida.

POLITICS AND PROCEDURES

Nowhere in the Florida constitution is it suggested that the revision commission should be divorced from politics. In fact, that its commissioners are chosen by the state's governmental leaders to examine a document that allocates political power virtually guarantees that issues of politics will be the subtext to all discussion. From the selection of commissioners to the adoption of the rules to the substance of the revisions, politics is the heart and soul of constitutional reform. In this section I examine some of the key differences between the two revision commissions, differences that stem from issues of political power and procedures.

When the 1977–78 CRC was assembled, all of its members were appointed by officials in the Democratic party save the judicial appointments (and even they necessarily fell at that end of the political spectrum). Many of the commissioners who served on the 1977–78 CRC were either sitting politicians, former politicians, or attorneys. While several commissioners came from fields like medicine or education, they

were typically activists or scholars who knew well the political arena because of their careers and their connections. All of them were able to take time away from their careers and to serve uncompensated. With no coordination between the political leaders making the appointments, the commission was a fairly homogeneous group that did not reflect the increasing diversity of the state.

Much would change in the political climate of Florida over the intervening twenty years. In 1996, Florida was living under divided government. Both bodies of the state legislature were in Republican hands, the governor and the elected attorney general were Democrats, and the Supreme Court may have been the most liberal (by Florida standards) of the three branches. The implementation of a steering committee that brought the appointing authorities together early to discuss and plan the upcoming commission combined with the political realities of state government guaranteed that the 1997–98 commission would be more diverse, a fact anticipated by Uhlfelder and Buzzett in an article written in advance of the 1997–98 appointments.⁴⁰ Chairman Douglass acknowledged that the appointing authorities were “cautioned . . . to be sensitive to the needs of all Floridians and to create a commission that was inclusive and representative of the state’s diverse population.”⁴¹ And they did.

The membership of the 1997–98 CRC had more women and reflected the racial and ethnic diversity of the state more so than its predecessor. Every region was represented and the membership brought to the table the full range of political perspectives from the very conservative Kenneth Connor of Tallahassee (appointed by the speaker) to the feminist attorney Ellen Freidin of Miami (appointed by the governor). Because of this diversity, the 1997–98 CRC was necessarily more tempered in its directions and deliberations. Consensus had to be reached in order for this body to be successful; as a result, moderation prevailed on matters of both substance and form.

Conventional wisdom tells us that the rules employed when governing bodies make decisions are important to the outcomes. Revision commissions in Florida were given constitutional authority to adopt their own rules and procedures and are required only to hold public hearings and to submit proposals, if any, within a certain time frame. Thus, CRCs are subject to no other state laws beyond the dictates of the constitution unless they choose to hold themselves to other standards. This autonomy was established early by the Supreme Court’s 1977 advisory opinion to

the governor.⁴² It was reinforced in an opinion issued by the Attorney General in response to an inquiry from Chair D'Alemberte as to whether the state's Administrative Procedure Act applies to the CRC proceedings. The Attorney General ruled that it did not.

The commission . . . has been granted the constitutional authority to establish its own rules of procedure . . . in order to ensure that the commission be independent and free from interference from any branch of government. . . . To permit one branch of government to impose rules of procedure upon another coordinate constitutional branch or entity would destroy the constitutional independence of such branch or entity.⁴³

Therefore one of the first acts of the commission must be to adopt the rules and procedures that will govern its work.

The 1977–78 commission modeled its rules on three sources: the rules used by the 1965–66 SRC, Roberts' Rules of Order and the procedures governing Florida's legislative bodies. When the Florida legislature drafts amendments to the state constitution, it must do so by joint resolution with the support of two-thirds of the members in each house. This supermajority requirement was imbedded in the draft rules provided to the 1977–78 CRC. It sparked "vigorous debate" and a discussion that touched on philosophical considerations of political power, the influence of majorities and minorities, and acknowledgments of Florida's propensity to amend its constitution regularly⁴⁴. Ultimately, the first commission settled on requiring only a simple majority (19 votes) to adopt revision proposals. But as the 1977–78 CRC tried to finish its work in April 1978, it realized that the rule was problematic and subsequently amended it. The new rule required a two-thirds majority for amendments to the proposals that had already been adopted and for final adoption of each revision.⁴⁵

The experience of the 1977–78 CRC and the repeated advice of its executive director combined with the political diversity of the 1997–98 CRC meant that the adoption of something more than a simple majority voting rule was virtually a given in the subsequent commission. The key player in framing the rules for the second commission was Judge Barkdull who had more experience with constitutions and commissions than any of the members. As a senior statesman of sorts, he gently prodded and occasionally lectured his colleagues to see their roles as different than mere

lawmakers. His philosophy of the commission process was expressed passionately during the critical stages of the decision-making process and is worthy of restatement here.

We need to look to the Constitution's basic principles. We must give up personal preferences in exchange for the ability to offer to the people of Florida needed changes in our state's basic structure of government. We each should give our support for a proposal only if we truly believe it is needed to effect constitutional change, and not merely to satisfy a personal desire.

As we have begun to take our definitive votes of this commission, I hope you will also [*sic*] examine [the proposals] to determine which you believe are truly needed for constitutional change, and leave to the Legislature the further consideration of those proposals that might be the subject of general law or merit additional constitutional review.⁴⁶

It was this philosophy that eventually found its way into the rules of the 1997–98 CRC.

The commissioners required twenty-two votes in order to adopt a proposal for inclusion in the revision package. The majority-plus rule was also applied to the packaging of those revisions, a process critical to selling the revisions to the public. This meant that throughout the meaningful voting stages of their work commissioners had to work toward consensus. The legislatively appointed commissioners, for example, could not dominate the revision process without the support of at least four other members. The gubernatorial appointees needed to secure at least seven other votes, which meant that they had to reach beyond the court's commissioners and the attorney general. The decision rule encouraged early bargaining and compromise as proposals advanced to the ballot.

One of the problems faced by both commissions stemmed from the way in which the revisions were presented to the public. Rather than addressing only those articles that needed to be changed, the earlier commission saw as its task a total revision of the constitution. The 1997–98 CRC took a more conservative approach, offering revisions limited to particular sections of the constitution as deemed necessary. But the politics of logrolling—a ploy common to legislative activity—was employed by both revision commissions. Logrolling is essentially a strategy whereby one desirable policy is tied to a less desirable one in order to secure the

passage of both. “The voter is left with the unappetizing position of weighing his or her aversion for one (or more) against his or her attraction to the others in the grouping.”⁴⁷

Commissioners know that how the ballot is ordered and the way in which revisions are packaged or bundled can make or break the proposal on election day. The 1997–98 CRC carefully placed several measures as “stand-alone” issues. Gun control, for example, has long been a divisive issue and the commission had adopted two proposals that affected gun sales and background checks. Rather than subject several proposals to the unpredictable vote on the gun measure, the commission opted to let the matter go to the voters as a single issue. Yet in what they called the “Ballot Access, Public Campaign Financing, and Election Process Revisions,” there was a little something for every political perspective. The package protected third parties and independents from discriminatory practices; instituted campaign financing for those who agree to spending limits; opened the primary process to voters who lived in districts dominated by one party; and standardized school board election practices across the state by making them nonpartisan. It also contained a statement setting the voting age at eighteen in order to bring the Florida constitution in line with federal law.

While the bundling of proposals was far more excessive in the 1977–78 CRC, the 1997–98 CRC did not eliminate it entirely. But it does seem that their packaging decisions were made a bit more strategically and thoughtfully. With the exception of the “technical revision” (a catchall that included everything from literary changes to gender neutral language throughout the constitution to clarification of previous constitutional enactments that needed “adjustment”), the contents of each package ultimately contained elements that were, in fact, related to each other thematically.

A final observation on the political aspects of the two commissions comes from issues regarding lobbying and lobbyists. Former Executive Director Uhlfelder warned the steering committee in September 1996 that it needed to find a way to regulate lobbyists; he even suggested that the commission meet away from Tallahassee as a way to avoid the attention of those who, unsuccessful in plying the legislative waters, would seek out favors through the commission process.⁴⁸ In his end-of-commission review, which appeared in a special edition of the *Florida State University Law Review*, Uhlfelder specifically noted the colloquy of Commissioner Don Reed who called for the abolition of the CRC process. “I will

guarantee you that there is a large portion of the membership of this Commission that does not decide the questions for themselves.”⁴⁹ Perhaps in response to Uhlfelder’s warning, the 1997 Legislature revised the statute regulating lobbyists to include those who would lobby constitution revision commissions.⁵⁰ CRC members were also subject to the state’s ethics provisions that mandate reporting of gifts of \$25 or more, bars gifts in excess of \$100 from special interests and lobbyists, but permits commissioners to engage in social lobbying (wining and dining). However, the admonition by Uhlfelder and adherence to the “letter of the law” did not keep the 1997–98 commission out of trouble in their first months of work.

In July 1997, as commissioners headed across the state to listen to citizens comment on the constitution, the body made a major faux pas in accepting invitations to three parties sponsored by key lobbyists. One reception was hosted by an automobile dealership owned by a former state Democratic Party chairman and by BellSouth, the largest local telephone company in the state. The others were sponsored by state trial lawyers, major law firms, and a high-powered lawyer/lobbyist. While some other receptions were low-key events, these three merited the media’s attention due to the glitz and glamour of the locations and the menus, which fed into the perception of blatant lobbying.⁵¹

When the story broke in late July 1997, Chairman Douglass was quoted as saying that “the parties are harmless events where members mingle with local leaders.” In fact, the soirees were part of a publicity package put together by the commission leadership as a way of introducing the commissioners to the local elite of the state’s major population centers. But in the face of mounting negative press, Douglass reconsidered his assessment and on August 1, issued a letter that ended receptions sponsored by special interests.⁵² Within a week the commission had hired a public relations manager. However, Douglass attributed the hiring to a decision made weeks earlier based on his perception of declining media interest in the commission process.⁵³ His statement suggests that the public relations expert was already hard at work.

Politics and procedures are critical to the constitution revision process and while the ongoing struggles for power cannot be expunged from this forum, how those struggles are managed is important to the success of the reform process. One way to manage the political tug-of-wars is to adopt rules that are transparent and encourage bargaining, negotiation, and consensus. It may also behoove commissioners to recognize and act as

though they are an ad hoc coordinate branch of government and expect to feel the pressures exerted by special interests, lobbyists, and the other branches. But commissioners are also expected by the public and the press to maintain the highest ethical standards and to appear un beholden to special interests.

POLICY: SUBSTANCE MATTERS

The policy concerns buried in each of the revisions proposed by the two commissions were undoubtedly critical to the eventual adoption or rejection of the revision measures by the voters. Anticipating what the majority of the state's voting population would support in terms of substantive policy is necessarily a central concern of the commission's work. Members might wholeheartedly and even unanimously support a particular constitutional reform, but they must recognize that it is the public who must ultimately agree to the revision in the voting booth. Additionally, policy issues and events beyond the control of the CRC may impact the outcome of the commission's work. In short, substance matters.

The 1977–78 CRC met during a period of unsettled politics in Florida. While there is probably no ideal time to consider constitutional change, the late 1970s were probably the least desirable period to divine the direction of the state. Major social issues on the political scene cast an ominous shadow over the commission's work. Florida was grappling with women's rights and the ratification of the federal Equal Rights Amendment. Anita Bryant had just completed a successful referendum campaign against gay rights in Dade County. Racial tensions were still an undertone in a state where educational integration was slow to take hold and those tensions were further complicated by the growing ethnic diversity of South Florida. Crime was an issue across the state and many parts of Florida were trans-shipment points for illegal drugs. To make matters worse for the 1977–78 commissioners, a "citizen" initiative to allow casino gambling in parts of the state had garnered the requisite signatures and would be placed next to the commission's proposals on the November 1978 ballot.

The ultimate failure of the CRC proposals in 1978 has repeatedly been linked to the casino gambling initiative.⁵⁴ Consider that Governor Askew took a public stand against the initiative and focused the power and stature of his office on persuading the public to vote "no" on casinos.

With such a significant “vote no” message sent to the voters, some believe that the citizens of the state simply voted “no” on all of the constitutional measures, unable or unwilling to examine each proposal independently. The campaign in support of casino gambling was exceptionally well-funded and the issue simply dominated the entire election season.

Casinos were not the only problem. Askew, who earlier in the process seemed devoted to the commission’s work, publicly criticized the commission in May when it finalized its proposals. He alleged that special interests influenced one of the ballot packaging decisions by tying tax breaks for business (pro-business) to increased homestead exemptions (pro-homeowner). A month later, Askew used his line item veto to eliminate a provision in the state budget for \$750,000, monies necessary to advertise the CRC proposals.⁵⁵ Askew, incidentally, was a lame-duck governor and the gubernatorial race between Jack Eckerd (R) and Bob Graham (D) probably captured more of the citizens’ attention than the revision proposals during the 1978 campaign.

The substance of the revisions also evoked opposition from expected and unexpected quarters. Revision 1, an omnibus proposal of over 50 changes to the constitution, included a personal right to privacy that generated support from gay rights groups despite explicit statements by commissioners that the proposal was not intended to protect sexual activity of this nature. Anita Bryant, a born-again Christian and nationally recognized entertainer known for her orange juice industry advertisements, was fresh from her success in “saving” Dade County by leading the campaign that overturned a gay rights ordinance (the Bryant campaign was titled “Save the Children”). Bryant focused her attention not on Revision 1 in 1978, but on Revision 2, which included the “little ERA,” an attempt to ban sex discrimination. Bryant argued that the provision would open the door to gay marriages in the state. The League of Women Voters raised over \$200,000 to support the revision, seeing it as a referendum on the future ratification of the federal ERA.

Even revisions that addressed structural changes to government organization and improvements in operations met resistance. The effort to revise the politicized nature of reapportionment process was contested by members of the legislature who had the most to lose by a “neutral” redistricting process. Florida’s elected cabinet, historically cast as a device to keep the larger population areas from exerting too much control over the executive, was the focus of a revision designed to streamline the executive branch and eliminate some of the elected positions. The officeholders and

their clientele groups mounted a vigorous campaign against the proposal, warning that it would place too much power in the hands of the governor. Chair D'Alemberte publicly accused groups of misrepresenting the substance and intended effects of the revisions to the public.⁵⁶

In their retrospective analysis of the 1978 revisions, Uhlfelder and McNeely observe that while each of the CRC revisions were rejected by the voters at the ballot box, many were ultimately included in the state's constitution or adopted as statutes following the 1978 election. They suggest that the commission served as an important "blueprint for change" that "highlighted many significant public policy issues that had not been discussed or considered in Florida before."⁵⁷ One might liken the commission process to an incubator, where difficult policy issues are initially placed on the public agenda by the commission and despite a lack of support by the electorate, allowed to percolate until they are reintroduced later by either the state legislature, as a citizen initiative, or even by a subsequent revision commission. Thus, several of the public policy issues considered in 1978 remained on the state's agenda when the next constitution revision commission met twenty years later.

The 1997–98 CRC's substantive agenda was developed well in advance of its actual meetings. Unlike its predecessor, scholars, lawyers and people who had worked on the previous commission anticipated the second CRC and many offered ideas for revisions through articles, interviews, and discussions. The *Florida Bar Journal*, for example, ran a special edition in April 1997 that included an orientation to the revision process followed by ten articles that addressed potential topics for revision that ranged from funding the state court system to modifying the citizen initiative process.⁵⁸ The steering committee of the CRC, during its planning stages, gathered information and sought out research on issues that were ripe for revision. And articles appeared in law reviews across the state suggesting areas of the constitution in need of reform well in advance of the first commission meeting.⁵⁹

The 1997–98 CRC ultimately grappled with some of the subjects that its predecessor (and even the 1965–66 SRC) had attempted to resolve. The establishment of a neutral reapportionment committee for redistricting in Florida was a personal favorite of Chair Douglass.⁶⁰ It had been considered by the two previous commissions, but the political implications of such a proposal prevented it from reaching the final stage of the commission's process despite surviving well into March 1998. State court funding was also on the agendas of the 1977–78 CRC and the Article V

Task Force. In 1998, this measure was included on the ballot as Revision 3 and adopted by the voters as part of a judicial reform package that provided a local option for selecting lower court judges using merit selection in lieu of elections. The judicial selection issue had also been one of the 1978 revisions rejected by the voters.

One other persistent reform measure that made the ballot in 1998 was the reorganization of the executive branch and the elimination of some of the elected cabinet officials. Revision 4 reduced the cabinet from six elected members (Commissioners of Education and Agriculture, Secretary of State, Attorney General, Comptroller, and Treasurer) to three (Chief Financial Officer, Attorney General, and Commissioner of Agriculture). Because Floridians had adopted term limits for its state officials in 1992 and in light of the precarious balance of power between the parties in the state, the 1997–98 CRC had a much easier time persuading the voters to support such a measure. More important, the governor and the affected cabinet officials offered no resistance and some even expressed open support for the reorganization. That the Secretary of Agriculture remained an elected cabinet official also meant, however, that the revision would not be challenged by the well-funded commercial farming and rural interests.

Related to the cabinet reorganization and the elimination of the Secretary of Education was a revision package on education that included a “feel good” measure that no rational citizen should have voted against. The ballot language of Revision 2 explained the proposal:

Declares the education of children to be a fundamental value of the people of Florida; establishes adequate provision for education as a paramount duty of the state; and provides for the adequate provision for a uniform system of free public education as an efficient, safe, secure, and high quality system.

While most of the revision was aspirational, the standards and goals suggested by the revision have served as the underpinning of Governor Jeb Bush’s revolutionary reorganization of public education in Florida in 2000–2001.

Two other measures worthy of mention are Revision 1 and Revision 5. Revision 1 proposed the merger of two state commissions, the Game and Fresh Water Fish Commission and the Marine Fisheries Commission, into a single organization—the Fish and Wildlife Conservation

Commission. It also removed some of the legislature's regulatory authority over marine resources and gave those powers to the proposed commission. The idea was not new. It had been conceived originally as a citizen's initiative petition, but was removed from the 1998 ballot by the Supreme Court when the justices determined that the proposed ballot language did not fulfill the statutory requirements for clarity and accuracy.⁶¹ When the CRC included the reform as one of its proposals it also inherited the resources of the political action committee that had backed the original idea. The Fish and Wildlife Conservation Committee spent over \$500,000 to secure the passage of the CRC's revision after the Supreme Court had removed their initiative measure from the ballot. While some of the commercial fishermen opposed the measure, there was little negative response to an exceptionally well-organized public information campaign. It is not surprising that Revision 1 received the highest level of voter support (72.3%) of the nine measures put forward by the 1997–98 CRC.⁶²

Equality on the basis of sex once again found its way onto the ballot in 1998 in Revision 5. The proposal has resulted in probably one of the most awkward wordings of sexual equality found in any state constitution. With the commission's proposed changes in italics, article 1, section 2 of the Florida constitution now states, in relevant part:

Basic Rights.—All natural persons, *female and male alike*, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. . . . No person shall be deprived of any right because of race, religion, *national origin*, or physical *disability* [replacing “handicap”].

The particular phrasing, “female and male alike,” was selected carefully to avoid even the most remote suggestion or implication that gay rights or gay marriages would be protected under the Florida's constitution. As discussed earlier, the political diversity of the membership of the 1997–98 CRC meant that conservative commissioners were wary of any attempt, intentional or not, to include homosexuals in the state's constitution. Including “sex” or “gender” in the nondiscrimination phrase of the basic rights provision would not have been acceptable due to the various judicial interpretations that have ensued in other states.