

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.

The issues that did not reach the voters may be as important as the ones that did in 1998. Briefly, proposals to modify or eliminate the citizen initiative process were introduced and discussed, but not adopted. Hot-button topics like abortion, sexual preference, religious freedom, equal opportunity, and medical marijuana use were referred to committee with the support of at least ten members, but failed to garner the majority-plus support of twenty-two commissioners on the floor. Some of these proposals were clearly controversial in their own right and they sparked divided support among the commissioners. However, I suspect that there were other measures that might well have had the personal support of more than twenty-two commissioners, but the failure to ballot them lies in understanding “the big picture of revision.”

The 1997–98 CRC took its lessons on policy matters and substance from the election of 1978, and the debate on casino gambling. This latter commission knew that highly salient and controversial topics could send mixed messages to voters; those messages had the potential to spill over to the less controversial and more necessary revisions. And while the CRC cannot control substantive issues placed on the ballot by the legislature or the citizen initiative process, it could well ensure that its own revisions did not distract the voters from the serious work of reform. For the good of the entire revision process, commissioners approached their work strategically and found the necessarily middle road to successful reform.

PUBLICITY: MARKETING THE PROCESS AND THE PRODUCT

The final variable on which there was a vast difference between the 1977–78 and 1997–98 commissions is publicity. How each commission made the public aware of the revision process and “sold their bill of goods” to the voters varied so significantly that this difference probably shaped (or misshaped) the policy perceptions of the voters at the polls. Certainly, some of the distinctions between the two commissions on this issue are related to the well-considered planning process by the later 1997–98 CRC. However, differences can also be attributed to a philosophy of full disclosure and open debate that prevailed at the time of the first CRC and the simple absence of a role model for commissioners in marketing their product.

The 1977–78 CRC enjoyed little opportunity to plan its work and had only the experiences of the 1965–66 SRC as guidance in defining the

process of constitutional revision. On matters like rules and procedures, looking to the SRC as a model was useful. But when it came to the phase of the constitutional revision process where proposals moved out of the commission and into the broader public arena for consideration, the 1977–78 CRC had no point of reference for what it should do and how it should do it. The SRC had pitched its proposals directly to the state legislature and not to the public. While a few of the SRC commissioners stumped for the revised constitution during the election of 1968, most were uninvolved in a public campaign that took its lead from legislators and a supporting governor. Thus, when the 1977–78 CRC concluded its scheduled meetings and submitted their revisions to the Secretary of State there was no precedent for mounting a public education campaign or pitching revisions to the voters. And as noted earlier, in 1978 the governor was consumed with the casino initiative, disenchanted with some of the commission's results, and had vetoed the funding of a publication that might have provided voters with some explanation of the CRC's revisions. Beyond the authorized and constitutionally mandated publication of the ballot language in newspapers across the state, little commission or government-sponsored information would reach the general voting public in Florida in 1978.

The 1977–78 CRC managed to get some coverage of its proposed revisions in several publications likely to be read by the state's lawyers. A special edition of the *Florida State Law Review* came out in the summer of 1978 with a series of articles on the major revisions, the commission's work generally,⁶³ and a summary and background analysis of each of the proposed revisions.⁶⁴ Unfortunately, the publication was neither physically available to the voting public nor intellectually accessible to the average citizen.

The other major discussion of the proposed revisions appeared in the *Florida Bar Journal*, which devoted its October issue to the constitutional revisions with an article by D'Alemberte on the revision process, followed by a series of articles that were juxtaposed in a Pro-Con format. In the comments of the Bar President that preceded the substantive articles, Robert Floyd explained the difficulty the Bar's Board of Governors was having in taking a position on the proposed revisions. The Board had decided not to examine most of the revisions, deciding to "consider only those areas which come within the ambit of the Preamble to Integration Rule and not try to be experts (as an official Board) in all areas."⁶⁵ This meant that only two proposals were looked at closely by the Bar in a formal way: the

Omnibus Proposal or Revision 1, which included 57 changes, and Revision 6, recommending the merit selection and retention method for judges on the state's trial courts. And Floyd specifically noted the difficulties with the Omnibus Proposal: "It covers so many different articles and such a wide variety of subject matter that it is going to pose a real problem for even those who have had time to digest it carefully to know whether to vote for or against."⁶⁶ The Constitution Committee of the Florida Bar voted 5–5 on the revision, a more favorable outcome than what the public rendered in November when it defeated the revision by over a 2-to-1 margin (71% opposed). The merit selection measure came the closest to being adopted of the eight revisions, rejected by just over half (50.8%) of the voters.

The pro-con format of the special issue of the *Florida Bar Journal* reflects the adversarial nature of the legal profession generally and may have been perceived to be a more open and fair way of presenting the commission's proposals. But it certainly did nothing to insure the passage of the revisions. What is more curious is that at least one of the "con" articles, written in opposition to the extension to the merit selection process, was prepared by a member of the 1977–78 CRC—and the future chair of the 1997–98 CRC—W. Dexter Douglass.⁶⁷ Twenty years later, the 1998 special issue of the *Florida Bar Journal* on constitutional revisions did not employ a Pro-Con approach to the CRC's proposals; Chairman Douglass wrote instead an article in support of the cabinet restructuring revision.

While efforts were made to keep the media and the public informed of the commission's work throughout the 1977–78 CRC, the coverage was limited primarily to the public hearing stages and the final days of decision making when the commission voted on its recommended proposals. There was little management of a public relations campaign after the commission disbanded in May and what press appeared about constitutional reform seemed to be sparked by the independent campaigns launched by opponents to the revisions (i.e., Anita Bryant) and the ever-persistent casino initiative. Three weeks before the election the state's largest newspaper, the *Miami Herald*, launched a series of nine articles that examined each revision proposed by the commission. Between November 1 and 3, the *Miami Herald* issued its editorial endorsements and supported all of the revisions save Revision 1 (the Omnibus Proposal) and Revision 7 (taxation and finance revision). But the *Miami Herald* was not a good gauge of Florida politics in the late 1970s.

As table 1.2 indicates, all of the commission's proposals were defeated and many by significant margins. The cabinet reorganization revision

TABLE 1.2
November 7, 1978 Election Results on Constitution Revision Commission Proposals

<i>Revision</i>	<i>% Approval</i>	<i># Votes Cast</i>
Omnibus Proposal (56 changes)	29.2	2,135,809
Declaration of Rights (mini-ERA)	43.1	2,325,876
Legislative: Single-Member Districts and Reapportionment Commission	46.9	2,096,141
Executive/Cabinet Restructuring	25.1	2,155,609
Executive: Public Service Commission and Public Counsel	35.9	2,147,614
Judiciary: Merit selection of trial court judges	49.1	2,154,330
Finance and taxation	36.3	2,147,735
Education	36.3	2,125,268

Source: Florida Department of State, Division of Elections, November 7, 1978 General Election Official Results.

fared the worst followed by the “can of worms,” as critics called the Omnibus Proposal. The revision to appoint a nonpartisan reapportionment commission and the judicial selection revisions fared the best, but still failed to secure enough votes to be adopted. In the governor’s race (an open seat), 2.53 million citizens cast their vote. Some ballot roll-off is apparent on the constitution revision issues where the highest number of votes cast was on the mini-ERA provision (2.32 million). But over 430,000 voters apparently showed up to the polls and chose not to make a decision on the commission’s proposed legislative revision.

The casino initiative that confounded the work of the 1977–78 CRC and consumed the governor’s attention appeared after the CRC proposals on the ballot. Voters had to go through a minimum of thirteen other ballot questions to get to the casino question, but there is no doubt that they found it. The casino initiative failed to get even 30 percent of the vote (71.4% opposed), but over 2.4 million voters cast a vote on the issue. Only the governor’s race received more attention on November 7, 1978.

That the 1997–98 CRC benefited from the lessons of the 1977–78 CRC when it came to marketing its proposed revisions to the voters would be an understatement of the way in which publicity was viewed by the most recent commission. Combined with its ability to engage in planning, the 1997–98 CRC developed a public relations strategy that went beyond simply selling the voters on revisions. Instead, the steering committee and the staff of the CRC dedicated themselves to educating all of the citizens about the Florida constitution, the processes of constitutional

reform in the state, the work of the commission, its procedures and public hearings, and finally, its proposed revisions. By design, the 1997–98 CRC was perhaps one of the most open governmental processes ever seen in the State of Florida; the planners believed that if you could educate the citizens and provide them with clear options they too would recognize the value of meaningful reform.

Starting with the steering committee's work and ending with the November vote on the proposed revisions, an Internet site provided citizens with ongoing information about their constitution revision commission. A citizen's guide was developed by the Collins Center for Public Policy, a nonpartisan research center at Florida State University, entitled "You and Florida's Constitution Revision Commission." The guide was available online and distributed in print throughout the state. Staff members developed lesson plans and activities (puzzles, games, quizzes) for elementary and secondary school programs, and put out a "Kids Page" that was also available in print and online. When the commission was in session, transcripts of the proceedings were posted to the official web site usually within 24 hours and the commission's official journal was also available to the public on the web site. Between October 1996 and December 1997, the CRC web site had been visited over 12,000 times.

Traditional public relations strategies were also deployed. Staff and leadership were regular visitors to chamber of commerce meetings, civic groups, and classrooms around the state even before the commission began its work. For the broader public, the commission published a series of monthly newsletters, "Revision Watch," which included profiles of commissioners, factoids about Florida, and summaries of recent newspaper articles. As noted earlier, the commission also hired a public relations manager who worked with the commission in getting its news into the major media markets in the state.

In July 1998, the CRC leadership commissioned a statewide survey of 800 likely voters. For all of the public relations work that had been done during the previous thirteen months since the commission was sworn, the poll results were probably a bit disheartening to the staff. The survey showed that 88 percent of likely voters had not "seen, read, or heard" about any of the amendments and only 10 percent knew anything specific about the revisions despite the CRC's public campaign strategies.⁶⁸ But about 25 percent of those polled had heard about the constitution revision process. More optimistically, the results indicated healthy support for most of the revisions once voters were made aware of them. The most controversial issues of gun con-

trol and gender equality (which was once again the subject of a negative campaign despite the careful ballot language) had strong support among the public. The cabinet reorganization and the judicial selection revision proved to be the most likely to be opposed by potential voters, but they were also the items that elicited the highest “don’t know” responses.⁶⁹

The poll also generated some publicity of its own. The twenty-five-minute telephone survey cost \$45,000 and elicited harsh Republican criticism over spending tax dollars in support of the revisions. The *St. Petersburg Times* reported the Republican Party’s spokesman as saying, “The commission has done its job. We don’t think they should be out there as spinners or advocates at that level.”⁷⁰ Negative comments, however, could only generate more interest by the media and thus, more attention by the citizens. And if the poll was accurate, citizens simply needed to know what the revisions were in order to support them.

Commissioners from the 1997–98 CRC assumed various levels of responsibility in campaigning for (and in very few instances, against) the revisions. Commissioner Ellen Freidin was the sponsor and a visible proponent of the gender equality provision while Commissioner Ken Connor, who had negotiated the awkward language of the revision, persistently tried to scare the public into believing that the revision would open the door to gay rights and gay marriages.⁷¹ Commissioner Katherine Fernandez-Rundle, the elected public prosecutor from Miami-Dade County, was a strong advocate for the gun control measure in the face of a well-funded campaign by the National Rifle Association. At the continued urging of Chair Douglass who worked actively for all of the revisions until election day, the 1997–98 CRC commissioners generally presented a united, bipartisan front even after they left Tallahassee in May.

The results of the long public education effort paid off for the constitution revision commission and the state of Florida on Election Day 1998. Curiously, the November 3 election resulted in the lowest voter turnout at a general election since 1962. Only 49 percent of the state’s registered voters went to the polls in an election that sent U.S. Senator Bob Graham back to Washington, elected representatives to Congress, the state house, senate and six cabinet officials, and saw a relatively close race for the governor’s mansion. Four amendments to the constitution appeared on the ballot above the nine CRC revisions.⁷² Citizens seemed to be in an accepting mood adopting all but one of the constitution revisions proposed by the CRC by a margin greater than 55 percent (table 1.3). The education, conservation and gun control revisions mustered over 70 percent support.

TABLE 1.3
November 3, 1998 Election Results on Constitution Revision Commission Proposals

<i>Revision</i>	<i>% Approval</i>	<i># Votes Cast</i>
Conservation and Creation of Fish and Wildlife Conservation Commission	72.3	3,638,579
Public Education	71.0	3,696,295
Judicial Selection and Funding of State Courts	56.9	3,564,688
Restructuring State Cabinet	55.5	3,512,545
Basic Rights (Gender Equality)	66.3	3,647,007
Local and Municipal Tax Exemptions/Citizen Access to Local Officials	49.8	3,521,237
Ballot Access, Public Campaign Financing and Election Process Revisions	64.1	3,492,757
Firearms Purchases: Local Option for Criminal History Records Check and Waiting Period	72.0	3,688,030
Miscellaneous Matters and Technical Revisions	55.0	3,399,994

Source: Florida Department of State, Division of Elections, November 3, 1998 General Election Official Results.

Rejected by the voters was a revision that had the *T* word in it—*tax*. In a state with a constitutional prohibition against an income tax and an increasing will to eliminate the intangibles tax, any proposal with the word *tax* in its title is likely to get a careful look. And if voters fail to understand the provision, it is likely to go down to defeat or barely pass muster. The only constitutional amendment that failed in 1998 was the CRC revision titled, “Local And Municipal Property Tax Exemptions and Citizen Access to Local Officials.” Had voters understood the provision and its money-saving benefits to cities and towns, they probably would have supported it. In similar fashion, the first constitutional amendment on the ballot (proposed by legislative initiative) was a measure providing tax exemptions for historic properties. It squeaked through with 54.5 percent support.⁷³

In sum, the ways in which each commission advertised its work to persuade the undereducated, largely inattentive and generally disinterested public to reform the state’s constitution were very different. Experience, planning and technological advancements in information management gave the most recent commission a distinct advantage in capturing the general public’s attention. That the CRC extended their publicity campaign beyond simply the revision “products” to matters of basic constitutional education contributed not only to the reform process, but to

the development of more informed citizens in the state of Florida. The rewards of this educational effort may be seen when the next generation of Floridians goes to the polls to vote on the constitution revision commission proposals of 2018.

CONCLUSION

Florida's experiment with an autonomous revision commission has become a successful method of constitutional reform. While the differences between the 1977–78 and the 1997–98 processes are many, my examination of the two iterations suggests that the degree of planning, the nature of state politics and the craftsmanship of procedures, the policies impacted by proposed constitutional reforms, and an effective public relations campaign explain why one commission succeeded in gaining the voter's approval of its work while the other failed. The Florida experience also teaches us that revision commissions serve as agenda-setters whose influence can extend beyond their formal life span. Uhlfelder and McNeely's Monday-morning analysis of the 1977–78 CRC proposals points to the fact that over 40 percent of the significant revisions on the 1978 ballot were subsequently adopted either by the legislature as statutes or proposed as initiatives and put back before the voters as constitutional amendments that were successfully adopted. That percentage climbed even higher since the 1997–98 CRC successfully revived the gender equity issue, partially extended merit selection to trial judges, and managed to finally persuade the public to reduce the number of elected cabinet officials.

Revision commissions, whether autonomous constitutional bodies or statutorily constructed entities, might be considered by other states seeking an alternative to conventions and the traditional amendment process. Conventions typically involve significantly more participants than commissions, have the potential to be costly and time-consuming, and are perceived to be less predictable in terms of policy outcomes. While the election of delegates to conventions is certainly more democratic in form, appointed commissioners are able to represent both political elite and broader citizen interests. Due to their smaller size, commissions may also encourage deliberation and consensus-building that may not be as easily obtained through the convention process.

Revision commissions can also undertake reform on a broader scale than that available through the traditional legislative amendment process.

Legislative reform is generally piecemeal in nature; commissions are able to take a comprehensive view of the constitution, make changes where necessary, and promote internal consistency within the document. The commission process, with its public hearings, also provides for more citizen input than traditionally seen in the legislative amending process. Finally, most commissioners are not subject to the demands of electoral accountability faced by elected officials in the state and are therefore more free to take on politically sensitive topics and deliberate toward a consensual result that may be in the best interests of the state, as a whole.

States that consider invoking a revision commission process should pay heed to the lessons learned in Florida over the past three decades, but also recognize what we do not yet know about this method of reform. Further research needs to examine several aspects of the commission process in greater detail. How citizens get their information on revisions and the most effective means for delivery is directly related to the success of the reform process and merits scholarly examination. Research in this vein is also needed to improve our understanding of voting behavior on revisions, ballot roll-off, ballot ordering, and the language used to describe measures to the voters.⁷⁴ One might even go so far as to compare three sets of voters on a variety of measures: those who get messages of endorsement on legislative initiatives; those who vote on measures stemming from the legislative approval of a commission process; and Florida voters who, due to the autonomous nature of the revision process, must typically depend on the diligence of unelected and nonremunerated commissioners to mount a public information campaign in the absence of interest group activity.

Comparisons of the two types of revision commission processes, the autonomous and statutorily based, would also be valuable in order to determine whether the proposals of each vary as to substance or whether the willingness of commissioners to tackle highly salient or controversial issues varies. It may well be that a commission that must submit its proposals to a state legislature will act more constrained than an autonomous commission that might view itself as less constrained by the public. One way to detect such behavior would be through an analysis of the floor and committee deliberations of the statutorily based commission in search of language that anticipates legislative approval. Alternatively, the autonomous commission might also be constrained by the voting public and thus, visibly engage in anticipating voter reaction or interest group activity in its deliberations.

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.