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Florida's Constitution Revision Commission [CRC]: Behind-the-Scenes Insights from Bob Butterworth, Florida's Former Attorney General and Member of the 1998 CRC

Alvan Balent Jr.

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ARTICLES

Florida’s Constitution Revision Commission [CRC]: Behind-the-Scenes Insights from Bob Butterworth, Florida’s Former Attorney General and Member of the 1998 CRC

ALVAN BALENT JR.*

Once every twenty years, the Florida Constitution mandates the convening of a thirty-seven-member body that is charged with reviewing the state constitution and submitting any recommended changes to the general public for approval. This entity is formally known as the Constitution Revision Commission, and between March 2017 and May 2018, it met for the third time in Florida’s history. Eight amendments, some with multiple parts, were proposed, and if any of these proposals are approved by 60% of the voters in the November 2018 general election, they will become “the supreme law of the land” for the State of Florida.

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* Alvan Balent Jr. graduated from Vassar College and received his juris doctorate, cum laude, from Florida State University College of Law. He serves as an assistant general counsel for the Eleventh Judicial Circuit Court of Florida and would like to thank Bob Butterworth, his friends and family, as well as the staff of this Journal for their much-appreciated assistance with this Article.

INTRODUCTION

Thomas Jefferson famously believed that “[e]very constitution . . . and every law, naturally expires at the end of [nineteen] years. If it be enforced longer, it is an act of force, and not of right.”¹ Accordingly, he argued that a constitution should “provide . . . for its revision at stated periods” so that “[e]ach generation” has the “solemn opportunity” to update the document “every nineteen or twenty years . . . so that it may be handed on, with periodical repairs, from generation to generation, to the end of time, if anything human can so long endure.”² For better or worse, the other Founding Fathers and all fifty states ignored Jefferson’s suggestion until 1968, when Florida added a Constitution Revision Commission to its state constitution.³

The CRC, as detailed below, is a tremendously powerful institution given its constitutional authority to propose any change it wants to the Florida Constitution and submit those amendments directly to the voters for approval.⁴ Public awareness of the CRC process, though, is particularly low as “research shows that only [ten] percent of Florida voters know anything about the CRC.”⁵ Even members of the Florida Bar, i.e. lawyers and judges, are relatively unaware of this phenomenon as only sixty-four percent of them “know what the CRC does.”⁶ Seeing that between March 20, 2017 and May 10, 2018, the CRC met and submitted several proposals to Florida’s

¹ Letter from Thomas Jefferson to James Madison (Sept. 6, 1789), <http://press-pubs.uchicago.edu/founders/documents/v1ch2s23.html>.

² Letter from Thomas Jefferson to Samuel Kercheval, (June 12, 1816), <http://teachingamericanhistory.org/library/document/letter-to-samuel-kercheval/>.

³ See Talbot “Sandy” D’Alemberte, Opinion, *D’Alemberte: Preparing for an Effective Constitution Revision Commission*, TAMPA BAY TIMES (Feb. 20, 2017), <http://www.tampabay.com/opinion/columns/dalemberte-preparing-for-an-effective-constitution-revision-commission/2313880>.

⁴ *Id.*

⁵ *Bar to Educate and Involve Lawyers and the Public in the Constitution Revision Process*, FLA. BAR NEWS (July 1, 2017), <http://www4.florida-bar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/7e7126c4820795af85258140006ce20a!OpenDocument> (revised Mar. 24, 2018) (quoting Sandy Diamond, member of the Board of Governors and chair of the Bar’s Special Committee on the 2017 Constitution Revision).

⁶ *Id.*

Secretary of State for the November 2018 ballot,⁷ these statistics are alarming. This Article seeks to explain the CRC process and to encourage people to study the CRC's proposed amendments before casting their votes on November 6, 2018.

I. THE CRC—WHAT IS IT?

Enshrined in Article XI, Section 2 of the Florida Constitution, the CRC is one of five ways to amend the document itself.⁸ The CRC is a thirty-seven-member body that meets every twenty years to review the Florida Constitution; its recommended changes, if any, are then placed on the November ballot for voter consideration, and if approved by sixty percent of the electorate, the CRC proposal becomes law.⁹ These amendments, in other words, go from the Commission to the voters without any interceding review/approval by the Florida Legislature, Governor, or the Florida Supreme Court as is required with some of the other ways to amend the Florida Constitution such as legislative proposals or ballot initiatives.¹⁰ There are also few restraints on what the Commission can propose like the single subject requirement.¹¹ “No other state has such a body,” and

⁷ *History*, FLA. CONST. REVISION COMM'N, <https://www.flcrc.gov/about/history> (last visited Nov. 12, 2017); *see also Public Hearings*, FLA. CONST. REVISION COMM'N, <http://flcrc.gov/Meetings/PublicHearings> (last visited Aug. 10, 2017).

⁸ FLA. CONST. art. XI, § 2. The other four methods are 1) amendment by proposal of the legislature, 2) amendment by a citizen ballot initiative, 3) amendment by constitutional convention, and 4) amendment by proposal of Florida's Taxation and Budget Reform Commission. *Id.* §§ 1, 3–4, 6. *See also* Paula Dockery, *Why You Should Care about Florida's Constitution Revision Commission*, TBO.COM (Jan. 7, 2016), <http://www.tbo.com/list/news-columns/why-you-should-care-about-floridas-constitution-revision-commission-20160107/>; AMENDING THE FLORIDA CONSTITUTION, FLA. TAXWATCH (2014), <http://www.floridataxwatch.org/resources/pdf/ConstAmends.pdf>.

⁹ *About the CRC*, FLA. CONST. REVISION COMM'N, <http://www.flcrc.gov/About> (last visited Feb. 5, 2018).

¹⁰ Talbot D'Alemberte, Opinion, *Don't Forget Sunshine in Florida Constitution Revision Commission*, ORLANDO SENTINEL (Mar. 17, 2017, 9:10 AM), <http://www.orlandosentinel.com/opinion/os-ed-add-sunshine-to-constitution-revision-commission-20170317-story.html>.

¹¹ *What is the Constitution Revision Commission (CRC) and Why is It Important?*, ASSOCIATED INDUS. OF FLA., <http://aif.com/crc/> (last visited Feb. 7, 2018).

in 2017 through 2018, it convened for the third time in Florida's history.¹²

II. WHO ARE THE THIRTY-SEVEN CRC COMMISSIONERS?

The state constitution establishes that the CRC shall be composed of the following thirty-seven members:

(1) the attorney general of the state; (2) fifteen members selected by the governor; (3) nine members selected by the speaker of the house of representatives and nine members selected by the president of the senate; and (4) three members selected by the chief justice of the supreme court of Florida with the advice of the justices.¹³

The governor “[designates] one member of the commission as its chair,” and any vacancies that arise on the commission “shall be filled in the same manner as the original appointments.”¹⁴ Because the Florida Constitution also requires that all CRC members be selected “[w]ithin thirty days before the convening of the . . . regular session of the legislature,”¹⁵ the 2018 Commissioners were announced in March of 2017.¹⁶

In addition to Florida Attorney General Pamela Jo Bondi, the Commission includes the following three members selected by Florida Supreme Court Chief Justice Jorge Labarga: 1) former Florida Bar President Hank Coxe, 2) former state Senator Arthenia Joyner, and 3) former U.S. Attorney Roberto Martinez.¹⁷ Florida Senate President Joe Negron chose: 1) former Florida Senate President Don Gaetz, 2) Florida attorney Anna Marie Hernandez Gamez, 3) CEO for the Foundation for Excellence in Education Patricia Levesque,

¹² D'Alemberte, *supra* note 3; *History*, *supra* note 7.

¹³ FLA. CONST. art. XI, § 2(a)(1)–(4).

¹⁴ *Id.* § 2(b).

¹⁵ *Id.* § 2(a).

¹⁶ Lloyd Dunkelberger, *Final Members Named to Constitution Revision Commission*, SUN SENTINEL (Mar. 7, 2017, 9:31 AM), <http://www.sun-sentinel.com/news/politics/fl-reg-corcoran-constitution-panel-20170307-story.html>.

¹⁷ Jim Rosica, *Jorge Labarga Names Three to Constitution Revision Commission*, FLA. POL. (Feb. 6, 2017, 11:20 AM), <http://floridapolitics.com/archives/231640-jorge-labarga-constitution-revision>.

4) former chair of the State Board of Community Colleges Sherry Plymale, 5) past Florida Bar President William “Bill” Schifino, Jr., 6) former state Senator Chris Smith, 7) Indian River County Commissioner Bob Solari, 8) former town of Sewall’s Point Mayor and City Commissioner Jacqui Thurlow-Lippisch, and 9) Clerk of the Circuit Court and Comptroller of Martin County Carolyn Timmann.¹⁸ Speaker of the Florida House of Representatives Richard Corcoran appointed: 1) former Florida Senate President Tom Lee, 2) state Senator Darryl Rouson, 3) former state Representative Jose Felix “Pepi” Diaz, 4) state Representative Jeanette Nuñez, 5) state Representative Chris Sprowls, 6) Collier County School Board member Erika Donalds, 7) Florida attorney John Stemberger, 8) Pasco County Sheriff Chris Nocco, and 9) Florida attorney and former federal prosecutor Rich Newsome.¹⁹

Finally, Florida Governor Rick Scott picked: 1) Dr. Jose “Pepe” Armas, 2) former state Senator Lisa Carlton, 3) Governor Scott’s former General Counsel Tim Cerio, 4) veteran law enforcement official Emery Gainey, 5) CEO of a political data analysis and fundraising firm Brecht Heuchan, 6) Chair of the Florida State Board of Education Marva Johnson, 7) former assistant attorney general for the Commonwealth of Massachusetts Darlene Jordan, 8) Florida insurance lawyer Fred Karlinsky, 9) Vice Chancellor of Keiser University Belinda Keiser, 10) Florida attorney Frank Kruppenbacher, 11) Dr. Gary Lester, 12) former state Representative Jimmy Patronis, 13) Florida Education Commissioner Pam Stewart, 14) former Associate Director of Governmental Relations for the State University Board of Governors Nicole Washington, and 15) former 2016 U.S. Senate candidate Carlos Beruff.²⁰ Governor Scott designated Mr. Beruff to be CRC Chairman and Jeff Woodman to be the CRC’s

¹⁸ Press Release, Florida Senate, President Negron Announces Appointments to Florida’s Constitution Revision Commission (Feb. 15, 2017), <https://www.flsenate.gov/Media/PressRelease/Show/2642>.

¹⁹ Dunkelberger, *supra* note 16.

²⁰ Jim Rosica, *Pam Stewart, Jimmy Patronis Among Rick Scott Constitutional Review Panel Picks*, FLA. POL. (Mar. 3, 2017, 11:04 AM), <http://floridapolitics.com/archives/233140-rick-scott-constitutional-review>.

executive director.²¹ He also named William Spicola, the governor's past general counsel, as the CRC's general counsel.²²

In case any of his appointees were unable to serve, the governor selected Chairman of the Board of Governors for the State University System of Florida Tom Kuntz, former Seminole County Sheriff Don Eslinger, and Judge John Stargel of Florida's Tenth Judicial Circuit Court as CRC alternates.²³ One such opening occurred. On June 26, 2017, Scott named Representative Patronis as Florida's Chief Financial Officer.²⁴ Patronis subsequently resigned from the CRC, but instead of promoting one of his pre-selected alternates, Scott named former state Representative Tom Grady as Patronis' replacement.²⁵

III. WHAT WILL THE CRC DO?

Once empaneled, it is unclear what exactly this powerful entity will do because in the words of Florida's former Attorney General Bob Butterworth, "there are no rules or laws dictating what the Commission does or does not do. It can be very active or inactive. It all depends on the Chair who is constitutionally vested with broad organizational control over the CRC."²⁶ More specifically, Article XI, Section 2, Subpart c, of the Florida Constitution states:

Each constitution revision commission shall convene at the call of its chair, adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days

²¹ *Id.*

²² *Personnel Note: Governor's Top Lawyer Joining Constitution Revision Commission*, FLA. POL. (Apr. 10, 2017, 6:40 PM), <http://floridapolitics.com/archives/235822-crc-spicola>.

²³ Rosica, *supra* note 20.

²⁴ *Governor Rick Scott Appoints Jimmy Patronis as Florida's Chief Financial Officer*, FLA. GOVERNOR RICK SCOTT (June 16, 2017), <http://www.flgov.com/2017/06/26/governor-rick-scott-appoints-jimmy-patronis-as-floridas-chief-financial-officer/>.

²⁵ Jim Rosica, *Rick Scott Names Tom Grady to Constitutional Review Panel*, FLA. POL. (July 13, 2017, 7:40 PM), <http://floridapolitics.com/archives/241490-rick-scott-names-tom-grady>.

²⁶ Telephone Interview with Robert "Bob" A. Butterworth, Jr., Former Fla. Att'y Gen. (Feb. 9, 2017) [hereinafter Telephone Interview with Butterworth].

prior to the next general election, file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it.²⁷

However, despite having seemingly limitless authority, there are “two unwritten rules” that strongly influence whether any CRC succeeds.²⁸ First, its Commissioners must recognize that “the CRC is a unique and momentous chance to address significant issues that are unlikely to be resolved legislatively for political reasons.”²⁹ The Commissioners should therefore “put partisanship aside and do what is best for Florida.”³⁰ During the 1998 CRC, for instance,

You generally could not tell the partisanship of the commissioners. It only came up when the topic of redistricting was discussed, but even then, everyone took this assignment very seriously, truly cared about government, and tried to do the right thing for the State. The Commissioners even disliked receiving any outside political pressure so much that some members publically denounced it.³¹

Partisanship, furthermore, can result in the CRC squandering its historic opportunity by causing the public to sour on its final proposals and discard them at the voting booth.³² It, for example, is believed that voters rejected all eight submissions from the 1978 CRC because they shared the ballot with a gambling initiative strongly opposed by then-Governor Reubin Askew, thus creating a “spillover effect.”³³

Second, CRC Commissioners must hold numerous public hearings and find other ways to encourage public participation in the constitutional amendment process. The public, after all, can provide commissioners with ideas for amendments and feedback on the

²⁷ FLA. CONST. art. XI, § 2(c).

²⁸ Telephone Interview with Butterworth, *supra* note 26.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*; *Revising Florida's Constitution*, FLA. TREND (Dec. 28, 2015), <http://www.floridatrend.com/article/19347/revising-floridas-constitution>.

CRC's actual proposals. Fortunately, prior CRCs have shown great deference to public opinion. For example,

The 1998 Commissioners took public feedback very seriously, and the public generally provided great ideas. Unfortunately, while interesting, most of these proposals had to be ignored because they simply could not be addressed at the constitutional level. Others were suggestions the CRC had already planned to discuss, so these comments ensured that the Commission would address them. The Commission's public hearings, many of which were attended by state and local officials, also helped generate media attention and input from newspaper editorial boards, and these reviews influenced the 1998 CRC's internal deliberations as well.³⁴

Of these two rules, Butterworth is confident that all CRC Commissioners will respect public feedback because the Florida Constitution gives Florida voters the final say on whether any CRC proposal becomes law.³⁵ In fact, respecting public opinion is more important for the 2018 and any future CRCs because unlike the 1978 and 1998 Commissions, the 2018 Commission is the first CRC that "will operate under the 2006 constitutional amendment that raised the threshold for voter approval of constitutional changes from a simple majority to 60 percent."³⁶

CRC service nevertheless "takes a lot of time and can be costly" because it involves "extensive travel to meetings that are located throughout the State."³⁷ Butterworth, for instance, recalls the 1998 CRC having approximately ten public hearings, plus numerous operational meetings in Tallahassee where the commissioners discussed issues, held committee meetings, and cast preliminary

³⁴ Telephone Interview with Butterworth, *supra* note 26.

³⁵ FLA. CONST. art. XI, § 2(c).

³⁶ Michael Carroll, *New Constitution Revision Commission Not Expected to Push for Aggressive Changes*, FLA. REC. (Mar. 13, 2017, 7:40 PM), <http://flarecord.com/stories/511088372-new-constitution-revision-commission-not-expected-to-push-for-aggressive-changes>.

³⁷ Telephone Interview with Butterworth, *supra* note 26.

votes.³⁸ Moreover, the 1998 CRC chair required “as many of the thirty-seven members as possible to attend the public hearings to both speak with and hear from the general public,” and although tobacco litigation prevented Butterworth from attending every meeting, most members were present.³⁹ Relatedly, the Commissioners regularly received phone calls, letters, and emails from the public because the Chair wanted people “to be involved and be heard.”⁴⁰ Reviewing these submissions added to the CRC’s overall time-commitment, but in Butterworth’s opinion, “anyone taking on this responsibility owes it to the public to always have their door open. The CRC, after all, can suggest major changes to the Florida Constitution.”⁴¹

The veracity of Butterworth’s last statement is keenly reflected in the proposals of prior CRCs, which also illuminate just how wide-ranging and significant the work of these commissions can be. For instance, the 1998 CRC put forth nine revisions that dealt with:

- Conservation of Florida’s natural resources and the creation of Florida’s Fish and Wildlife Conservation Commission;
- Public education of children and declared “the education of children is a fundamental value”;
- How local communities can select their circuit and county judges, and the overall funding of the state court system;
- The structure of the Governor’s cabinet and opting to reduce its size;
- How the Florida Constitution defined “natural persons,” which impacts the document’s overall scope;
- Local and municipal property tax exemptions and citizen access to local officials.;
- Ballot access, public campaign financing, and the overall election process;
- Firearms purchases by enabling local authorities to require waiting periods and background checks; and

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

- Miscellaneous matters such as removing gender-specific references and other technical revisions.⁴²

Many of these proposals were similar to the eight made by the 1978 CRC but were voted down by the public.⁴³ However, in 1998, the public only rejected the local taxes amendment.⁴⁴ The end result of the instant commission, though, will ultimately not be known until the electorate passes judgment in November 2018, and, as noted above, the CRC had to submit its proposals to Florida's Secretary of State by May 10, 2018.⁴⁵

IV. THE 2018 CRC

The 2018 CRC held an organizational meeting on March 20, 2017,⁴⁶ and it conducted a statewide listening tour titled, "Floridians Speak, We Listen," between March and May of 2017 to "get input from Florida families on the issues that matter to them."⁴⁷ These hearings were held in Orlando, Miami, Boca Raton, Tallahassee, Gainesville, Jacksonville, Panama City, Fort Myers, and Tampa.⁴⁸ The Commission also launched a website (flcrc.gov) through which the public was able to submit suggested constitutional amendments

⁴² FLA. CONST. REVISION COMM'N, *Nine Proposed Revisions for the 1998 Ballot*, FLA. ST. UNIV. L. RESEARCH CTR., <http://fall.fsulawrc.com/crc/ballot.html> (last visited Mar. 24, 2018).

⁴³ FLA. CONST. REVISION COMM'N, *Amendments, Election of 11-7-78: 8 by Constitution Revision Commission {Defeated}*, FLA. ST. UNIV. L. RESEARCH CTR., <http://fall.fsulawrc.com/crc/conhist/1978amen.html> (last visited Mar. 24, 2018).

⁴⁴ FLA. L. RELATED EDUC. ASS'N, INC., FLORIDA CONSTITUTION REVISION COMMISSION 2017–2018: A CITIZENS' GUIDE, <https://www.floridabar.org/wp-content/uploads/2017/04/ada-florida-constitution-revision-commission-brochure.pdf> (last visited Feb. 7, 2018).

⁴⁵ *History*, *supra* note 7.

⁴⁶ *Id.*

⁴⁷ Press Release, Fla. Const. Revision Comm'n, Chairman Beruff Announces Statewide "Floridians Speak, We Listen" Tour (Mar. 22, 2017), <https://www.flcrc.gov/media/pressreleases/show/43>; *Public Hearings*, *supra* note 7.

⁴⁸ *Public Hearings*, *supra* note 7.

until October 6, 2017.⁴⁹ The Commissioners themselves, though, were able to submit proposals through October 31, 2017.⁵⁰ In addition, the 2018 CRC adopted its governing rules on June 6, 2017,⁵¹ which included the 1998 CRC's "supermajority rule that required a 60 percent vote of approval in commission (i.e. twenty-two members) for any proposal to get onto the ballot."⁵² Because this rule helps to ensure that an idea has broad appeal, it likely contributed to the 1998 CRC's overall success as it "prevented outrageous ideas from going before the voters, who can sink the entire thing over one bad apple."⁵³

Then, on July 14, 2017, CRC Chairman Beruff assigned the Commissioners to Committees (see Attachment A).⁵⁴ This latter development was particularly important because "most of the CRC's work is conducted at the committee level,"⁵⁵ and committee meetings occurred between September 2017 and February 2018.⁵⁶ There were also some full commission meetings during this time,⁵⁷ and in February and March 2018, the CRC conducted its second statewide

⁴⁹ Press Release, Fla. Const. Revision Comm'n, CRC Committee Extends Recommended Public Proposal Deadline to October 6 (Sept. 25, 2017), <https://flcrc.gov/Media/PressReleases/Show/56>.

⁵⁰ *Oct 31 is the Deadline for CRC Commissioner Proposals*, FLA. B., <https://www.floridabar.org/news/october-6-is-deadline-for-public-proposals-for-the-crc/> (last visited Nov. 12, 2017).

⁵¹ Press Release, Fla. Const. Revision Comm'n, ICYMI: Constitution Revision Commission Adopts Rules (June 7, 2017), <http://flcrc.gov/Media/PressReleases/Show/41>; *see also* FLA. CONST. REVISION COMM'N, RULES OF THE CONSTITUTION REVISION 2017–2018, <https://www.flcrc.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/Rules.pdf> (last visited Mar. 24, 2018).

⁵² Telephone Interview with Butterworth, *supra* note 26.

⁵³ *Id.*; *see also* *Revising Florida's Constitution*, *supra* note 33 ("Politicos speculated that all eight lost because they appeared on the same ballot as an unpopular proposed amendment . . .").

⁵⁴ Press Release, Fla. Constitution Revision Comm'n, CRC Chairman Carlos Beruff Announces Committee Assignments (July 14, 2017), <http://flcrc.gov/Media/PressReleases/Show/44>.

⁵⁵ Telephone Interview with Butterworth, *supra* note 26.

⁵⁶ *2017–2018 Committee Meeting Schedule*, FLA. CONST. REVISION COMM'N, http://flcrc.gov/Meetings/Calendar/2017/Interim_Meeting_Schedule_2018-01-22_105622.PDF (last visited Feb. 18, 2018).

⁵⁷ Press Release, Fla. Const. Revision Comm'n, CRC Announces Committee Weeks Schedule (Aug. 9, 2017), <http://flcrc.gov/Media/PressReleases/Show/46>.

public hearing tour titled, “Road to the Ballot.”⁵⁸ This time, the CRC visited Fort Lauderdale, Melbourne, Jacksonville, Pensacola, and St. Petersburg to provide “Floridians the opportunity to shape proposed constitutional revisions before they are placed on the ballot.”⁵⁹

V. THE PROPOSED CONSTITUTIONAL AMENDMENTS

Finally, at the start of the CRC process, it was understood that the 2018 Commissioners would receive a long list of potential changes to the Florida Constitution. The 1978 CRC, after all, debated “more than 800 issues,”⁶⁰ and many ideas—such as establishing a statutory initiative process so that Floridians can change their laws without amending their constitution,⁶¹ and culling all obsolete language from the document⁶²—were suggested to the 2018 Commissioners well before they had even been named. In total, the general public submitted 2,012 proposals to the CRC⁶³—782 proposals through its website alone⁶⁴ and the others via means such as email

⁵⁸ Press Release, Fla. Const. Revision Comm’n, CRC Announces 2018 Public Hearing Schedule (Dec. 12, 2017), <https://www.flcrc.gov/Media/PressReleases/Show/1071>; Press Release, Fla. Const. Revision Comm’n, Media Advisory: CRC Announces South Florida Public Hearing in Fort Lauderdale (Jan. 30, 2018) <https://www.flcrc.gov/Media/PressReleases/Show/1076>.

⁵⁹ *Id.*

⁶⁰ Steven J. Uhlfelder & Billy Buzzett, *Constitution Revision Commission: A Retrospective and Prospective Sketch*, 71 FLA. B.J. 22, 24 (1997).

⁶¹ Tom Flanigan, *Constitution Revision Commission Still Seeking Members*, WFSU NEWS (Nov. 23, 2016), <http://news.wfsu.org/post/constitution-revision-commission-still-seeking-members>.

⁶² Gray Rohrer, *Former Lawmaker Gives Constitution Rewriters a Tip: Shed the Old Stuff*, ORLANDO SENTINEL (Nov. 2, 2015, 10:29 AM), <http://www.orlandosentinel.com/news/politics/political-pulse/os-dalemberte-constitution-commission-obsolete-post.html>.

⁶³ *CRC Takes Up Six Citizen Proposals*, FLA. BAR. NEWS (Nov. 15, 2017), <https://www.floridabar.org/news/tfb-news/?durl=%2Fdivcom%2Fjn%2Fjnnews01.nsf%2F8c9f13012b96736985256aa900624829%2F017174cf2cd2f7b852581cc0064d758>.

⁶⁴ *Public Proposals*, FLA. CONST. REVISION COMM’N, <http://flcrc.gov/Proposals/Public> (last visited Feb. 18, 2018).

and regular mail—and the Commissioners proposed another 103.⁶⁵ Before embarking on their second statewide tour, the Commissioners, in their respective committees, narrowed this list to thirty-seven.⁶⁶ Based on feedback from the public and other considerations, the CRC further widdled this number to twenty-five and sent these remaining proposals to its “Style and Drafting Committee” to be formatted for the ballot.⁶⁷ More specifically, per CRC Rules, this Committee is responsible for “clarifying, codifying, and arranging the proposals adopted by the Commission; the potential grouping of proposals; and the drafting of ballot title summaries.”⁶⁸ The Committee, therefore, edited and/or bundled the twenty-five initiatives into the following twelve revisions that address:⁶⁹

- 1) RIGHTS OF CRIME VICTIMS; JUDGES.—
Creates constitutional rights for victims of crime; requires courts to facilitate victims’ rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes. Requires judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency’s interpretation. Raises mandatory retirement age of state judges from seventy to seventy-five

⁶⁵ Christine Sexton, *Panel Eyes Vaping Restriction, Patient Rights*, NEWS SERV. FLA. (Nov. 22, 2017), <http://www.gainesville.com/news/20171122/panel-eyes-vaping-restriction-patient-rights>.

⁶⁶ *37 Proposals on the Way to the Full CRC*, FLA. BAR NEWS (Mar. 1, 2017), <https://www.floridabar.org/news/tfb-news/?durl=%2Fdivcom%2Fjn%2Fjnnews01.nsf%2F8c9f13012b96736985256aa900624829%2F28b58cc8a1491df385258236004bdf7e>.

⁶⁷ *Florida Constitution Revision Commission Picks 25 Proposals to Advance to Draft Committee*, PENSACOLA NEWS JOURNAL (Mar. 22, 2018), <https://www.pnj.com/story/news/2018/03/22/florida-constitution-revision-commission-picks-25-proposals-advance-draft-committee/449721002/>.

⁶⁸ Press Release, Fla. Const. Revision Comm’n, ICYMI: CRC Commits 25 Proposals to the Style & Drafting Committee (Mar. 22, 2018), <http://flcrc.gov/Media/PressReleases/Show/1096>.

⁶⁹ Jim Rosica, *Constitutional Review Panel’s “Style” Committee Wraps Up Work*, FLA. POL. (Apr. 5, 2018), <http://floridapolitics.com/archives/260586-constitutional-review-style-wraps>; The Constitution Revision Commission Committee Meeting Expanded Agenda, Style and Drafting (Apr. 5, 2018), http://www.flcrc.gov/PublishedContent/Committees/2017-2018/SD/MeetingRecords/MeetingPacket_195.pdf.

years; deletes authorization for judges to complete term if one-half of term has been served by retirement age.

2) **FIRST RESPONDER AND MILITARY MEMBER SURVIVOR BENEFITS; PUBLIC COLLEGES AND UNIVERSITIES.**—Creates mandatory payment of education and compensation benefits to qualifying survivors of certain first responders and military members who die performing official duties. Requires supermajority votes by university trustees and state university system board of governors to raise or impose all legislatively authorized fees if law requires approval by those bodies. Establishes existing state college system as constitutional entity; provides governance structure.

3) **SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS.**—Creates a term limit of eight consecutive years for school board members and requires the legislature to provide for the promotion of civic literacy in public schools. Currently, district school boards have a constitutional duty to operate, control, and supervise all public schools. The amendment maintains a school board's duties to public schools it establishes, but permits the state to operate, control, and supervise public schools not established by the school board.

4) **PROHIBITS OFFSHORE OIL AND GAS DRILLING; PROHIBITS VAPING IN ENCLOSED INDOOR WORKPLACES.**—Prohibits drilling for the exploration or extraction of oil and natural gas beneath all state-owned waters between the mean high water line and the state's outermost territorial boundaries. Adds vapor-generating devices to current prohibition of tobacco smoking in enclosed indoor workplaces with exceptions; permits more restrictive local ordinances.

5) **STATE AND LOCAL GOVERNMENT STRUCTURE AND OPERATION.**—Requires legislature to retain department of veterans' affairs. Ensures election of sheriffs, property appraisers, supervisors of elections, tax collectors, and clerks of court in all counties; removes

county charters' ability to abolish, change term, transfer duties, or eliminate election of these offices. Changes annual legislative session commencement date in even numbered years from March to January; removes legislature's authorization to fix another date. Creates office of domestic security and counterterrorism within department of law enforcement.

6) **PROPERTY RIGHTS; REMOVAL OF OBSOLETE PROVISION; CRIMINAL STATUTES.**—Removes discriminatory language related to real property rights. Removes obsolete language repealed by voters. Deletes provision that amendment of a criminal statute will not affect prosecution or penalties for a crime committed before the amendment; retains current provision allowing prosecution of a crime committed before the repeal of a criminal statute.

7) **LOBBYING AND ABUSE OF OFFICE BY PUBLIC OFFICERS.**—Expands current restrictions on lobbying for compensation by former public officers; creates restrictions on lobbying for compensation by currently serving public officers; provides exceptions; prohibits certain abuses of public office for personal benefit.

~~8) **INNOVATION SCHOOL DISTRICTS.**—Requires legislature to create process to designate high performing school districts as innovation school districts; school boards may seek designation; permits flexibility from certain laws.~~

~~9) **PRIMARY ELECTIONS.**—Currently, all qualified voters, regardless of party affiliation, may vote in primary elections when all candidates have the same party affiliation and there is no opposition, including write-in candidates, in the general election. This amendment provides that the presence of write-in candidates on the ballot will not prevent all qualified voters from voting in primary elections.~~

~~10) **EMPLOYMENT ELIGIBILITY VERIFICATION.**—Requires legislature to establish an employment eligibility verification process and to enact a random auditing program~~

~~to enforce the existing prohibition on unauthorized aliens working in Florida in violation of federal immigration law.~~

~~11) RESTRICTIONS ON NAMING OF GOVERNMENT PROGRAMS AND PROPERTY.—Prohibits governmental programs and government-owned facilities and land from being named for a sitting elected state or local official; prohibits a naming law or ordinance from containing any other subject.⁷⁰~~

12) DOG RACING.—Prohibits gaming or pari-mutuel entities from racing dogs in connection with wagering; eligibility of such entities to conduct other authorized pari-mutuel and gaming activities is not affected; prohibits wagering on outcome of in-state live dog races.

These twelve items were then returned to the full CRC, and on April 16, 2018, the Commission voted to send Proposals 1-7, and 12 to Florida's Secretary of State Ken Detzner for publication on the November 2018 election ballot.⁷¹ The public, though, is the final arbiter of these CRC proposals.

CONCLUSION

The 2018 general election will have a tremendous impact on Florida's future because not only will the governor, the state's executive cabinet, a U.S. senator, twenty-seven U.S. representatives, and various state legislative and judicial races be decided;⁷² the state constitution will be on the ballot. Between the eight CRC proposals and the five other constitutional amendments that were approved by

⁷⁰ While included for completeness purposes, Proposals 8 through 11 are "stricken" because they were not approved by the full Commission on April 16, 2018.

⁷¹ Press Release, Fla. Const. Revision Comm'n, CRC Approves Eight Revisions for the 2018 General Election Ballot (Apr. 16, 2018), <http://flcrc.gov/Media/PressReleases/Show/1099>.

⁷² *Candidate Listing for 2018 General Election*, FLA. DEP'T ST., <http://dos.elections.myflorida.com/candidates/Index.asp> (chose "2018 Election" under the "General Election" dropdown then click "view list.").

Florida Legislature or by ballot initiative,⁷³ the 2018 ballot will be long. But, as United States Chief Justice John Marshall aptly wrote, “we must never forget, that it is a *constitution* we are expounding,”⁷⁴ a document that “is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it.”⁷⁵ Floridians must therefore be fully engaged in this once-in-a-generation CRC process because “[t]he people made the constitution, and the people can unmake it. It is the creature of [our] will, and lives only by [our] will.”⁷⁶

⁷³ Rosica, *supra* note 69. These other amendments “include proposals to expand the homestead-exemption property tax break and limit property tax assessments, restore voting rights to former felons, give voters final authority in deciding whether to expand casino-style gambling, and require a supermajority vote of lawmakers to raise state taxes and fees.” *Id.*

⁷⁴ *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819) (emphasis in original).

⁷⁵ *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 387 (1821).

⁷⁶ *Id.* at 389.

ATTACHMENT A: 2017-2018 CRC Committee Assignments (12 Total)⁷⁷**Standing Substantive Committees**

<p><u><i>Declaration of Rights (Article I)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm’r Lisa Carlton • <i>Vice Chair</i>, Comm’r John Stemberger • Comm’r Erika Donalds • Comm’r Emery Gainey • Comm’r Marva Johnson • Comm’r Arthenia Joyner • Comm’r Gary Lester 	<p><u><i>General Provisions (Articles II, X, XI, and XII)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm’r Jacqui Thurlow-Lippisch • <i>Vice Chair</i>, Comm’r Emery Gainey • Comm’r Brecht Heuchan • Comm’r Fred Karlinsky • Comm’r Gary Lester • Comm’r Jeanette Nuñez • Comm’r Sherry Plymale
<p><u><i>Legislative (Article III)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm’r Jose Felix Diaz • <i>Vice Chair</i>, Comm’r Belinda Keiser • Comm’r Jose “Pepe” Armas • Comm’r Lisa Carlton • Comm’r Tom Lee • Comm’r Patricia Levesque • Comm’r Darryl Rouson 	<p><u><i>Executive (Article IV)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm’r Darlene Jordan • <i>Vice Chair</i>, Comm’r Chris Sprowls • Comm’r Pam Bondi • Comm’r Jose Felix Diaz • Comm’r Don Gaetz • Comm’r Belinda Keiser • Comm’r Chris Nocco • Comm’r Pam Stewart • Comm’r Jacqui Thurlow-Lippisch
<p><u><i>Judicial (Article V)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm’r Bill Schifino • <i>Vice Chair</i>, Comm’r Anna Marie Hernandez Gamez • Comm’r Pam Bondi • Comm’r Tim Cerio • Comm’r Hank Coxe • Comm’r Arthenia Joyner • Comm’r Tom Lee • Comm’r Roberto Martinez • Comm’r Carolyn Timmann 	<p><u><i>Ethics & Elections (Article VI, part of Article II)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm’r Hank Coxe • <i>Vice Chair</i>, Frank Kruppenbacher • Comm’r Don Gaetz • Comm’r Brecht Heuchan • Comm’r Arthenia Joyner • Comm’r Rich Newsome • Comm’r Sherry Plymale • Comm’r Bill Schifino • Comm’r Chris Smith
<p><u><i>Finance and Taxation (Article VII)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm’r Fred Karlinsky 	<p><u><i>Bonding and Investments (Article VII)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm’r Chris Smith

⁷⁷ Press Release, Fla. Const. Revision Comm’n, CRC Chairman Carlos Beruff Announces Committee Assignments (July 14, 2017), <http://flrc.gov/Media/PressReleases/Show/44>.

<ul style="list-style-type: none"> • <i>Vice Chair</i>, Comm'r Tom Grady • Comm'r Jose "Pepe" Armas • Comm'r Jeanette Nuñez • Comm'r Darryl Rouson • Comm'r Chris Smith • Comm'r Nicole Washington 	<ul style="list-style-type: none"> • <i>Vice Chair</i>, Jose "Pepe" Armas • Comm'r Don Gaetz • Comm'r Frank Kruppenbacher • Comm'r Rich Newsome • Comm'r Darryl Rouson • Comm'r Bob Solari
<p><u><i>Local Government (Article VIII)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm'r Erika Donalds • <i>Vice Chair</i>, Comm'r Chris Nocco • Comm'r Emery Gainey • Comm'r Bob Solari • Comm'r John Stemberger • Comm'r Carolyn Timmann • Comm'r Nicole Washington 	<p><u><i>Education (Article IX)</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm'r Marva Johnson • <i>Vice Chair</i>, Comm'r Nicole Washington • Comm'r Erika Donalds • Comm'r Tom Grady • Comm'r Darlene Jordan • Comm'r Belinda Keiser • Comm'r Patricia Levesque • Comm'r Chris Sprowls • Comm'r Pam Stewart
Standing Procedural Committees	
<p><u><i>Rules and Administration</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm'r Tim Cerio • <i>Vice Chair</i>, Comm'r Sherry Plymale • Comm'r Lisa Carlton • Comm'r Hank Coxe • Comm'r Jose Felix Diaz • Comm'r Erika Donalds • Comm'r Marva Johnson • Comm'r Fred Karlinsky • Comm'r Carolyn Timmann 	<p><u><i>Style and Drafting</i></u></p> <ul style="list-style-type: none"> • <i>Chair</i>, Comm'r Brecht Heuchan • <i>Vice Chair</i>, Comm'r Carolyn Timmann • Comm'r Tim Cerio • Comm'r Anna Marie Hernandez Gamez • Comm'r Tom Grady • Comm'r Darlene Jordan • Comm'r Frank Kruppenbacher • Comm'r Gary Lester • Comm'r Roberto Martinez • Comm'r Jeanette Nuñez • Comm'r Chris Sprowls