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## THE MACHINERY OF REVISION

STEVEN J. UHLFELDER\*

In July, 1977, a unique experiment in constitutional revision began in Florida—the creation of an appointive revision commission whose work product would bypass the legislature and be submitted directly to a vote by the people of Florida.<sup>1</sup> The independent commission was the product of the 1965 Constitution Revision Commission, a thirty-seven member body created by the legislature to revise the 1885 constitution.<sup>2</sup> Being a product of the legislature, the bill creating the 1965 commission required the commission to submit its report, in the form of a proposed draft constitution, to the legislature. The legislature, bogged down by legislative reapportionment<sup>3</sup> and other problems, did not complete action on the constitution for one and a half years.<sup>4</sup> The concept of an independent revision commission was one of the changes proposed by the 1965 revision commission that remained in the document submitted to the voters in November, 1968.<sup>5</sup> The commission is mandated by article XI, section 2 of the 1968 constitution.

During the eight years following adoption of the revised constitution, little thought was given to the next commission. However, in 1976, Governor Reubin Askew became concerned about whether the commission should convene following the regular session of the legislature in 1978 and submit its proposals to the voters in 1980, or whether it should convene in 1977 and submit its proposals to the voters in 1978.<sup>6</sup> The Governor requested an advisory opinion from the Florida Supreme Court on the proper interpretation of article XI, section 2.<sup>7</sup> The court ruled that the commission should be appointed during the thirty-day period following the adjournment of

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1. For a discussion of the method of state constitutional revision, see Sturm, *The Procedure of State Constitutional Change—With Special Emphasis on the South and Florida*, 5 FLA. ST. U.L. REV. 569 (1977).

2. Act of June 24, 1965, ch. 65-561, 1965 Fla. Laws 1776 (repealed 1973).

3. See *Swann v. Adams*, 385 U.S. 440 (1967).

4. FLA. S. JOUR. 132-33 (Spec. Sess. June 24-July 3, 1968).

5. Florida Legislative Service, *Analysis of Proposed Revision of Constitution of Florida* 42 (Jan. 6, 1967).

6. FLA. CONST. art. XI, § 2 states that: "Within thirty days after the adjournment of the regular session of the legislature convened in the tenth year following that in which this constitution is adopted, and each twentieth year thereafter, there shall be established a constitution revision commission composed of the following thirty-seven members . . . ."

7. *In re* Advisory Opinion of the Governor Request of Nov. 19, 1976 (Constitution Revision Commission), 343 So. 2d 17 (Fla. 1977).

the regular session of the 1977 legislature and should submit its proposals to the secretary of state by May 11, 1978.<sup>8</sup>

This opinion, besides clarifying article XI, section 2 of the constitution, focused public attention on the upcoming revision process. During the 1977 legislative session, a joint resolution to amend the constitution to require that the 1977 Constitution Revision Commission submit its recommendations to the legislature prior to submission to the electors was introduced.<sup>9</sup> The resolution was defeated,<sup>10</sup> only to resurface again during the 1978 legislative session.<sup>11</sup> The 1978 attempt to require legislative approval of the revision commission's product was also defeated.<sup>12</sup>

Pursuant to the advisory opinion, the various appointing officials specified in article XI announced their appointments in late June.<sup>13</sup> The Governor appointed Talbot "Sandy" D'Alemberte as chairman of the commission. D'Alemberte, a lawyer and former legislator from Miami, had been instrumental in the 1972 revision of article V and the adoption by popular initiative of the Sunshine Amendment, article II, section 8 of the constitution. In addition, he was highly regarded as a legal scholar for his published commentaries on the Florida Constitution.

The Governor's other appointments included James Apthorp, a business executive and former Askew aide; Dubose Ausley, a lawyer and banker; Yvonne Burkholz, a teachers' union lobbyist; LeRoy Collins, a lawyer and former Governor; Dr. John DeGrove, a professor of public administration; Dr. Freddie Groomes, a university administrator; Lois Harrison, President of the Florida League of Women Voters; James Kynes, a business executive and former attorney general; John Mathews, a lawyer and a former President of the state senate; Jesse McCrary, Jr., a lawyer; Jon Moyle, a lawyer and former state chairman of the Democratic Party; Jan Platt, a member of the Tampa City Council; Donald Reed, a lawyer and former legislator; and Nathaniel Reed, a business executive and former assistant secretary of the interior for the United States. The Governor also chose two alternates: Dr. Sybil Mobley, a professor of business; and Charlotte Hubbard, a member of the state Ethics Commission.

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8. *Id.* at 23-24.

9. Fla. HJR 1998 (1977).

10. FLA. H.R. JOUR. 719 (Reg. Sess. 1977).

11. Fla. HJR 1522 (1978). *See also* Fla. HJR 871, abolishing future revision commissions, which was defeated. FLA. H.R. JOUR. 335 (Reg. Sess. 1978).

12. FLA. H.R. JOUR. 560-61 (Reg. Sess. 1978).

13. Additional biographical data on commissioners can be found in Transcript of Fla. C.R.C. proceedings 3-14 (July 6, 1977).

The speaker of the house of representatives, Donald Tucker, appointed nine members and one alternate. His appointees were William Clark, an insurance executive; Dexter Douglass, a lawyer; William Gardner, an accountant; William James, a legislator; Dr. Marcelino Oliva, a physician; Nathaniel Polak, an insurance executive; B.K. Roberts, a former Florida Supreme Court justice; John Ryals, a legislator; J.B. Spence, a lawyer. Dr. Warren Morgan, a Tucker aide, was appointed as an alternate.

The president of the senate, Lew Brantley, also appointed nine members and one alternate. His appointees were Dr. Edward Annis, a former president of the American Medical Association; Dempsey Barron, a legislator and former president of the state senate; William Birchfield, a lawyer and former legislator; Mark Hollis, a food store executive; Dr. Richard Moore, former president of Bethune Cookman College; Kenneth Plante, a legislator; Stella Thayer, a lawyer; John Ware, a legislator; and himself. Elliott Messer, a lawyer, was the alternate.

The chief justice of the Florida Supreme Court, Ben Overton, appointed Thomas Barkdull, Jr., a Third District Court of Appeal judge; John Moore, a circuit court judge for the seventeenth circuit; and himself. The attorney general, Robert Shevin, was an automatic appointee to the commission, as specified in article XI, section 2 of the 1968 constitution.

On July 6, 1977, the thirty-seven commissioners convened in Tallahassee to be sworn in and to organize for the task of revising the constitution. The group was addressed by the four appointing officials and Chesterfield Smith, the chairman of the 1965 commission. Smith, a long-time observer of Florida politics, urged the members to be bold:

Amending or revising or completely rewriting the State Constitution, of course, will not necessarily bring better, more effective, more efficient government to Florida. At best, it can and will only permit better government. But indubitably a government better structured to handle its assigned functions than we now have necessarily will be in a more advantageous position to earn and retain the confidences of its citizens.<sup>14</sup>

The following day the commission was addressed by other former commissioners. The group then started to organize for the task ahead.

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14. *Id.* at 33.

The revision process which followed can be divided into five phases. The first phase, consisting of the organizational session and the initial public hearings, lasted from July 6 to September 27. The second phase involved the promulgation of rules of procedure and committee work consisting mainly of the drafting of proposals to revise various sections of the constitution. This phase lasted from September 28 to November 14. The third phase, lasting until January 27, was the most important phase. During this time the commission debated more than 200 proposals and adopted a first draft of the proposed revised constitution. During the fourth phase, January 28 through March 5, the Committee on Style and Drafting repeatedly reviewed the first draft, and comments from the public were solicited. During the last phase, March 6 through May 9, the entire document was subjected to repeated reviews, amended, and voted on several times.

Debate during the organizational session was a prelude to things to come. Chairman D'Alemberte had announced his intention to hold ten public hearings<sup>15</sup> and had admonished the commissioners to attend as many hearings as possible. The Rules Drafting Committee<sup>16</sup> had proposed a rule specifying that a quorum need not be present at the public hearings.<sup>17</sup> Commissioner Plante offered a motion to strike that language, explaining that the commission was

in the second day of a 2-day meeting, freshly appointed, supposedly all 'gung ho,' got fired up yesterday by a lot of rhetoric, and we are starting right off by saying that not all of us or even a majority have to attend the first public meetings. We are already admitting to the press and to the people in the State of Florida that it's going to be impossible to get a majority of this body to go around and hear the input of the citizens.<sup>18</sup>

The Plante motion was defeated.<sup>19</sup>

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15. FLA. CONST. art. XI, § 2(c) mandates that "[e]ach constitution revision commission shall . . . hold public hearings . . ." Transcript of Fla. C.R.C. proceedings 54 (July 7, 1977) (remarks of Chairman D'Alemberte).

16. The members of the Rules Drafting Committee were Chairman John Mathews, Tom Barkdull, Dexter Douglass, James Kynes, Jon Moyle, Don Reed, B.K. Roberts, Stella Thayer, and John Ware.

17. Temporary Rule 11:

All public hearings of the Commission thereof [sic] shall be open to the public and conducted in such places and at such times by such members of the Commission as shall be designated by the Chairman of the Commission, and a quorum shall not necessarily be required. Reasonable notice of any such public hearing shall be given.

Transcript of Fla. C.R.C. proceedings 79 (July 7, 1977).

18. *Id.* at 81-82.

19. Attendance at the public hearings was far better than Commissioner Plante had

Following the organizational session of the commission, ten public hearings were held on eleven different days between August 18 and September 26. Contrary to Commissioner Plante's fears, the hearings were well attended by the commissioners. Each hearing was divided into two sessions. The first session was devoted to a particular subject with invited speakers. The second was open to the public for discussion of either the designated subject or any other topic.<sup>20</sup>

More than 600 witnesses testified and almost 800 issues were presented, either by written or oral testimony.<sup>21</sup> A cross section of Florida citizens appeared before the full commission at these hearings. The highlight of the public hearings process was Governor Askew's two-hour appearance in Orlando on September 1. While he suggested many significant revisions to the constitution, his proposal to abolish Florida's elected Cabinet captured most of the attention.<sup>22</sup>

The hearings captured considerable attention from the press, the special interests, and the citizenry of Florida. A number of columnists commented on the overall atmosphere of the hearings, and one reporter who attended all the hearings suggested that the Miami hearing might have to be held at the Orange Bowl:

There were 38 public witnesses at the first hearing in Pensacola, 45 in Jacksonville and 68 in Gainesville. The Jacksonville and Gainesville hearings went almost until 9 p.m.

And Chairman . . . D'Alemberte . . . gave the speakers broad latitude to talk about many problems, some far afield from the Constitution.

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predicted. Over 80% of the members attended each hearing. The chairman attended all of the public hearings and was given the nickname "The Iron Kidney" by other commissioners. Lindley, *Revision Commissioners Listening to Citizens Views*, Gainesville Sun, Sept. 4, 1977.

20. Public hearings were held as follows:

- August 18, 1977—Pensacola (Economic Development)
- August 24, 1977—Jacksonville (Executive)
- August 25, 1977—Gainesville (Declaration of Rights)
- August 30, 1977—Ft. Myers (General)
- August 31, 1977—Tampa (Health, Welfare, and Environment)
- September 1, 1977—Orlando (Legislative)
- September 7, 1977—Ft. Pierce (Education)
- September 8, 1977—Ft. Lauderdale (Local Government)
- September 9-10, 1977—Miami (Judiciary and Amendments)
- September 26, 1977—Tallahassee (Ethics and Elections).

21. The Center for Governmental Responsibility, University of Florida, prepared a summary of the testimony given at the public hearings. A limited number of copies were distributed. Public testimony before the Florida Constitution Revision Commission, Summary of Hearings, August 18, 1977 - September 26, 1977 (Oct. 6, 1977).

22. See, e.g., Tampa Tribune, Sept. 2, 1977, at 1; Orlando Sentinel Star, Sept. 2, 1977, at 1; Florida Times-Union, Sept. 2, 1977, at 1; St. Petersburg Times, Sept. 2, 1977, at 1.

People ought to have a forum, he says. As one witness echoed, politicians don't campaign on the courthouse corner anymore and the witness might not live long enough to speak to another constitutional revision commission.<sup>23</sup>

The second phase of the revision process began after the public hearings were completed. The commission met September 27-28, 1977, in Tallahassee to adopt its permanent rules<sup>24</sup> and to examine the many issues presented by the public. The rules, patterned after the rules of the 1965 commission, the senate and house rules, and Robert's Rules of Order, would have been uncontroversial but for a rule specifying that a two-thirds vote of the members would be required to propose a revision to the constitution.<sup>25</sup>

Because the majority rule issue would have a substantial effect on future commission work, it was vigorously debated.<sup>26</sup> Proponents of the extraordinary two-thirds majority argued that since the popularly elected legislature was required under article XI, section 1 to obtain a three-fifths vote of its membership to propose a constitutional amendment, an appointed commission should require no less.<sup>27</sup> Additionally, commissioner Roberts asserted,

[W]e have been trigger happy in this state on changing the constitution. We have sought to use the organic law of this state as a means to enacting statutes. From 1885 to 1968, the Constitution of Florida was amended 135 times. From 1970 to 1976, a period of only six years, it was amended 20 times, whereas the Constitution of the United States, requiring the stability of a two-thirds vote,

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23. Moore, *Random Thoughts on Revision* . . ., Florida Times-Union, Aug. 28, 1977, § C, at 3.

24. Fla. C.R.C. Rules, reprinted at 1 Fla. C.R.C. Jour. 1-25 (Sept. 27, 1977).

25. The rule as proposed read:

Rule 57. ADOPTION OF PROPOSALS AND SUBMISSION TO THE SECRETARY OF STATE: Proposals to be incorporated in any revision must be adopted by a majority of the members of the Commission, except that, upon the final passage of any complete revision of or part thereof of the Constitution, the Commission shall vote in such form as shall be determined by the Commission, for the proposals previously passed and such vote shall be by two-thirds (2/3) of the members of the Commission. This rule may not be amended except upon a vote of not less than two-thirds (2/3) of the members of the Commission.

Fla. C.R.C. Jour. 19 (Sept. 27, 1977).

26. Some saw the issue as an indication of whether major reform to the Constitution would be possible, arguing that it would be extremely difficult to attain a two-thirds majority on controversial matters. See Editorial, *Majority Vote Seems Fairest For Revision Recommenders*, Miami Herald, Sept. 25, 1977.

27. Transcript of Fla. C.R.C. proceedings 44-46 (Sept. 27, 1977) (remarks of Commission Barkdull).

from 1787 until the present, 190 years has only been amended 26 times.<sup>28</sup>

Opponents of the rule prevailed. Commissioner Don Reed, a feisty parliamentarian, argued that to require more than a simple majority would frustrate the will of the people: "Whenever a vote of more than a majority is required to take an action, control is taken from the majority and given to the minority. For example, when two-thirds vote is required, the minority only needs a one-third plus one member to defeat the proposal."<sup>29</sup> The rule that was ultimately adopted specified that revisions be adopted by a majority of the members of the commission.<sup>30</sup>

Following adoption of the rules, the commission considered the suggestions presented at the public hearings and by correspondence. The staff assembled the more than 800 suggestions by article and section.<sup>31</sup> The commission, in accordance with its rules, reviewed each issue and, upon a showing of ten hands, designated the suggestion as a priority issue.<sup>32</sup> The issue then was referred to an appropriate committee for further study. The committee could draft and sponsor a proposal to revise the constitution, or it could decide not to pursue the issue. However, a vote by the committee to "kill" an issue did not signal its death. Any commissioner was free to sponsor a proposal to accomplish the revision.<sup>33</sup>

Two hundred thirty-two issues were designated for further study.<sup>34</sup> The committees established by articles of the constitution,<sup>35</sup>

28. *Id.* at 53-54.

29. *Id.* at 66.

30. Fla. C.R.C. R. 55 [renumbered from proposed rules]

ADOPTION OF PROPOSALS AND SUBMISSION TO THE SECRETARY OF STATE: Proposals to be incorporated in any revision must be adopted by a majority of the members of the Commission, and upon the final passage of any complete revision of or part thereof of the Constitution, the Commission shall vote in such form as shall be determined by the Commission, for the proposals previously passed and such vote shall be by a majority of the members of the Commission. This rule may not be amended except upon a vote of not less than two-thirds (2/3) of the members of the Commission.

31. Fla. C.R.C., Summary of Proposed Revisions to the Florida Constitution (Sept. 27, 1977) (suggestions submitted by the public).

32. Fla. C.R.C. R. 46.

33. *Id.* at R. 49.

34. Fla. C.R.C., Constitution Revision Commission Issue List (List of 232) (Sept. 28, 1977). This list was updated routinely to keep commissioners informed of the status of various issues. In the event a committee decided not to develop a proposal on a particular issue, commissioners would then be on notice that a proposal would have to be introduced individually.

35. Nine substantive committees were established, 3 Fla. C.R.C. Jour. 96 (Oct. 4, 1977): Declaration of Rights Committee—article I, except § 4.



spent the next six weeks reviewing the issues assigned to them, determining what action to take, and drafting proposals.<sup>36</sup>

Approximately four and a half months after commencement of the revision process, the third phase of the revision process began with the introduction, consideration, and adoption of the proposals.<sup>37</sup> The legislative article, the first to be considered by the commission was taken up on November 14, 1977,<sup>38</sup> followed by the Judiciary Committee's report and proposals.<sup>39</sup>

Although few would agree with everything the commission did, most observers agreed that the process had been productive. One newspaper editorialized that

[W]e believe it is fair at this point in the political process to suggest that our Constitution Revision Commission of citizens has done a marvelous job. The commissioners have dared to strive for a measure of efficiency, authority and responsibility in both executive and judicial circles. They have walked where angel legislators dared not tread. Yet they have been subjected to many of the same kinds of natural pressures and political suggestions which are a part of our democratic processes.<sup>40</sup>

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Ethics, Privacy and Elections Committee—article VI; article III, § 18; article II, § 8; article I, §§ 4, 12.

Legislative Committee—article III, §§ 1-17; article X, §§ 1, 8, 13, 14.

Executive Committee—article IV; article II, §§ 2-7; article X, §§ 3, 11.

Judiciary Committee—articles V, XI.

Finance and Taxation Committee—article VII, §§ 1-9; article X, §§ 4, 7.

Bonding and Investments Committee—article VII, §§ 10-12, 14-15; article XII, §§ 8-9.

Local Government Committee—article VIII; article X, § 6; article V, § 16 (although primary jurisdiction was with the Judiciary Committee); article VII, §§ 3, 8-9 (although primary jurisdiction was with the Finance and Taxation Committee).

Education Committee—article IX; article VII, §§ 8-9, 12 (although primary jurisdiction over those sections was with the Finance and Taxation, and Bonding and Investments Committees); article IV, § 4 (although primary jurisdiction was with the Executive Committee).

Pursuant to Rule 4, the chairman was authorized to appoint select committees, which he did as the need arose.

36. All committee meetings were electronically recorded, and minutes were filed by the title of the committee and the date of the meeting. Although the thoroughness of the minutes varied, the tapes, on file with the Division of Archives, are available to trace the development of proposals.

37. The form used for proposals was similar to that of a legislative bill. The 1968 constitution was keyed into a computer and printed in bill form, with the entire text numbered by page and line. See Fla. C.R.C. R. 47. The proposal indicated the line and page of the constitution being revised. An amendment to a proposal referred to the line and page of the proposal. The text of each proposal was entered in the commission journal.

38. 6 Fla. C.R.C. Jour. 129 (Nov. 14, 1977).

39. 9 Fla. C.R.C. Jour. 174 (Nov. 17, 1977).

40. Tampa Times, Apr. 25, 1978, § A, at 6.

The commission, by January 27, 1978, has held 25 meetings, considered 257 proposals, and passed 87 proposals.<sup>41</sup> A summary of the action taken on these proposals was maintained through status reports.<sup>42</sup> The journals of the commission indicate the official action of the commission on the proposals.<sup>43</sup> Additionally, each transcript has been indexed by proposal number, so that the debate on each proposal can be easily found.

The fourth stage of the revision process began with compilation and publication of a first draft of the proposed constitution with all proposals adopted as of January 27, 1978. A summary prepared by the commission staff briefly explained the proposed changes. Both the text of the changes and the summary were widely circulated for public comment.<sup>44</sup>

Another set of public hearings was held to give the public an opportunity to comment on the draft constitution.<sup>45</sup> The approximately 200 citizens appearing before the commission were mainly concerned with proposed revisions to the taxation article and the proposed abolition of the Cabinet.<sup>46</sup>

Between January 27 and March 6, the Style and Drafting Committee did most of its work. The committee examined every proposal adopted by the commission and offered suggestions for improving language and style.<sup>47</sup> This process resulted in the first style and drafting report, which was distributed to the commission when it met on March 6 to begin the last phase of its work.

The report was introduced as Proposal 258.<sup>48</sup> It included all the proposals adopted to date by the commission along with recommendations of the Style and Drafting Committee.<sup>49</sup> Placing all the changes in one proposal (258) provided the commission with a

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41. 25 Fla. C.R.C. Jour. 359 (Jan. 27, 1978).

42. See Fla. C.R.C., Status of Proposals (Feb. 3, 1978). This report had proposals listed in numerical order with action taken. The report was also updated in another format with the proposals listed in accordance with the articles and sections to which they related.

43. Journals were maintained for each meeting. There are a total of 33 journals.

44. The Florida Bar printed the first draft of the constitution and an explanation in the February 10, 1978 edition of the *The Florida Bar News* (Vol. 5, No 3). The 21,000 members of the Bar received a copy. An additional 10,000 copies were made available to the public.

45. Jacksonville, February 21; Tampa, February 22; Miami, February 23.

46. A summary of the statements of witnesses was prepared by the Center for Governmental Responsibility, University of Florida. See *Public Testimony Before the Florida Constitution Revision Commission, Summaries of Points Raised at Hearings Feb. 21, 22, and 23, 1978* (Mar. 2, 1978).

47. Fla. C.R.C. R. 12 explains the purpose and jurisdiction of the committee.

48. 26 Fla. C.R.C. Jour. 361-520 (Mar. 6, 1978).

49. Nineteen votes were needed to adopt recommendations of the Committee on Style and Drafting. See *Transcript of Fla. C.R.C. proceedings 3-8* (Mar. 6, 1978) for an explanation of Proposal 258.

means to review all proposed changes and obtain a better perspective on the first draft of the revised constitution. Additionally, it offered a vehicle for reexamining the proposals already adopted and avoided procedural problems relating to reconsideration of issues already addressed.

The commission voted on the style and drafting amendments before considering any further substantive issues.<sup>50</sup> After Proposal 258, with style and drafting amendments, was approved, substantive changes to the constitution were considered again. They were taken up as amendments to Proposal 258 instead of as new proposals.<sup>51</sup>

This amendatory process in March resulted in a new draft of Proposal 258 as amended March 6-9, 1978.<sup>52</sup> The Style and Drafting Committee continued to review the document in preparation for the April 14 meeting of the commission.

On April 14, the commission reconvened to examine these style and drafting amendments and other amendments offered by the commissioners.<sup>53</sup> Amendments were adopted and incorporated into Proposal 258 as amended April 14-15.<sup>54</sup> Proposal 258 as amended April 14-15 was used for the amendatory process on April 21.<sup>55</sup> However, because of an amendment to the rules adopted on April 15, a two-thirds majority was now needed to approve amendments. The extraordinary majority was explained by Commissioner Ausley as a

50. Most of the style and drafting suggestions were approved. The commission voted on Proposal 258 with style and drafting amendments incorporated and style and drafting amendments offered by the commission. See Transcript of Fla. C.R.C. proceedings 16 (Mar. 6, 1978). Proposal 258, as adopted, was used as the document for further amendments rather than the original constitution in bill form. Therefore, when examining the journal after March 6, the amendments refer to line and page numbers of Proposal 258 as amended instead of line and page numbers of the 1968 constitution. Each amendment was numbered by article, e.g., article I, amendment 1; article III, amendment 1.

51. The commission waived its rules, and Proposal 258 was made the special and continuing order of business for the remainder of the revision process. 26 Fla. C.R.C. Jour. 360 (Mar. 6, 1978).

52. Proposal 258, as amended March 6-9, was republished on March 16. The March 16 version of Proposal 258 was used for amendments on April 14-15, 1978. See 30 Fla. C.R.C. Jour. 555 (Apr. 14, 1978). A summary of action taken on substantive and technical amendments was compiled. Fla. C.R.C., Final Summary of Action Taken on All Commission Amendments to Proposal 258 (June 22, 1978). The transcripts for each meeting were also indexed by the amendments to articles.

53. The style and drafting amendments were designated alphabetically. See 30 Fla. C.R.C. Jour. 555 (Apr. 14, 1978).

54. On April 14, the commission approved Proposal 258 as amended by a vote of 31-5. *Id.* at 570. This was done for procedural reasons to reach the ultimate question of how to place the revision proposals on the ballot. See Transcript of Fla. C.R.C. proceedings 312-17 (Apr. 14, 1978).

55. Amendments were offered to the April 14-15 version of Proposal 258 on this date and were taken up again by constitutional articles.

“psychological hold on the members of this Commission to quit tinkering with the document. I don’t believe there is any attempt to snooker anybody in this. We are just trying to get the job done and get home.”<sup>56</sup> Most amendments offered on April 21 and May 5 were recommendations by the Committee on Style and Drafting.

The major issue confronting the commission during the final four meetings was the ballot placement of the revised constitution. The Style and Drafting Committee originally proposed several alternatives for consideration by the commission. Most of this advice went unheeded, however. After much debate, the commission decided on April 14 to break the revision vote into five ballot items: (1) article IV, section 4, relating to the Cabinet abolition; (2) article IV, section 10, relating to an appointive Public Service Commission; (3) article V, section 10, relating to merit retention for trial judges; (4) article IX, the education article; and (5) the remainder of the document.<sup>57</sup> On April 21, the commission approved three additional ballot items: article I, section 2, prohibiting discrimination based on sex; article VII, the finance and tax article; and article III, section 16, single-member districts and the proposed reapportionment commission.<sup>58</sup> The commission decided to place the omnibus provision first on the ballot, followed by the other seven revisions as they appeared in the first constitution.<sup>59</sup>

The ballot issue attracted a great deal of attention.<sup>60</sup> Commissioners wanted to ensure that proposals they favored would not be disadvantaged by being linked with unpopular proposals on the ballot. Some commissioners thought that balloting unpopular proposals with the omnibus provision would give them a better chance of being adopted. Others wanted to place uncontroversial but significant proposals, such as the single-member district and reapportionment issue, separately so that they could stand on their own merits.

56. Transcript of Fla. C.R.C. proceedings 29 (Apr. 15, 1978).

57. 30 Fla. C.R.C. Jour. 568-70 (Apr. 14, 1978).

58. 32 Fla. C.R.C. Jour. 575-76 (Apr. 21, 1978).

59. (1) article I, II, III, IV, V, VI, VIII, X, XI, XII (excluding the sections in other revisions).

(2) article I, § 2 (sex).

(3) article III, § 16 (single-member districts, reapportionment).

(4) article IV, §§ 1(g), 3, 4, 5, 6, 8(a); article XI, § 2 (Cabinet).

(5) article IV, § 10 (Public Service Commission); article V, § 3(b)(3) (jurisdiction); article III, § 13 (term of office).

(6) article V, § 10 (merit retention); article V, § 11(a)-(b) (vacancies).

(7) article VII; article X, § 12(h) (finance and taxation).

(8) article IX (education).

60. See Editorial, ‘Packaging’ Holds a Threat For Constitutional Revision, Miami Herald, Apr. 21, 1978.

On May 5, 1978, the revision commission approved and signed the final document.<sup>61</sup> While every commissioner did not agree with every change, the commissioners seemed generally satisfied with the process. Even so, Commissioner Don Reed offered an amendment to delete the provision in the constitution calling for future revision commissions.<sup>62</sup> Reed, the only proponent of the amendment, argued that the commissioners had not been free agents but had been influenced by the officers who had appointed them:

I will guarantee you that there is a large portion of the membership of this Commission that does not decide the questions for themselves. . . . [W]e ought to go back to what the Constitution provides, which is constitution convention, and provides that the legislature can propose amendments to the Constitution as it sees fit because they are elected.<sup>63</sup>

The opponents of the Reed amendment maintained that a review of the constitution by an independent body with direct access to the voters was necessary. Chairman D'Alemberte summarized by stating that the commission had "studied hard and listened long and paid more attention to the kinds of classman-type details that are important to a good constitution than any other group in Florida history. And no legislature will ever be allowed to do — never can do what this Commission has done."<sup>64</sup>

Florida's experiment in constitution revision appears to have been successful. The people will have an opportunity to vote on some major changes in the structure of their government, changes such as abolition of the Cabinet, a reapportionment commission, and a lay board of education which would not otherwise have been presented for a popular vote.

The next commission will not meet for twenty years, and it should be able to benefit from the work and history of this commission when undertaking the revision process again. With this in mind, I will seize this opportunity to offer a few suggestions to future commissioners and executive directors.

First, more time for preparatory and background work should be provided before the commission begins the actual process of revision. If the proposed revision to article XI, section 2 is adopted, the next commission could convene at the end of 1996 and submit its work product in November, 1998. This would allow at least six more

61. 33 Fla. C.R.C. Jour. 584 (May 5, 1978).

62. 32 Fla. C.R.C. Jour. 577 (Apr. 21, 1978).

63. Transcript of Fla. C.R.C. proceedings 100-01 (Apr. 21, 1978).

64. *Id.* at 110.

months for the revision process, which could be used to prepare and distribute background material to the commissioners.<sup>65</sup>

Second, the commission committees should have more power and authority to reject ideas and proposals. While the committees could propose revisions to the constitution and make reports, individual commissioners could still introduce proposals which had been rejected by committees. Much of the comprehensive and judicious work of the commission took place in committee, and often the full commission did not have the benefit of all background information on a particular proposal before it acted.

Third, the commission should have more time to examine its product after completing its work and adjourning *sine die*. The commission finished work on May 5 and submitted the proposed document to the secretary of state's office on May 9. An additional month at the end of the process to examine and reflect on the work product would have been helpful. One week of final meetings should have been scheduled for technical changes in the document and possibly to reexamine the way in which the document would be placed on the ballot.

Fourth, the commission should not have any meetings during the legislative session. As it turned out, most of the final work of the commission took place during the first half of the legislative session, resulting in some inherent competition between the legislature and the commission. This caused problems especially for those persons who were both legislators and commissioners. A related issue was the location of the commission meetings in the senate chambers of the old Capitol. This decision was made because of accessibility to the commission office. However, in retrospect, it may have been better to meet in a more neutral location.

Fifth, money should be appropriated for the purpose of paying commissioners a stipend for their time on commission work. There were more than sixty meetings, including the public hearings and committee meetings. Commissioners were paid travel and per diem expenses but were not compensated for their time. Providing compensation for commissioners might have allowed a more representa-

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65. Background work for the 1978 revision commission was conducted under a STAR project by the Florida State University and University of Florida law schools. See Florida State University College of Law, Constitutional Revision Research Project (Aug. 5, and Oct. 12, 1977); University of Florida, Constitution Revision Background Analyses (Aug. 3, 1977). The attorney general's office also prepared an analysis of the 1968 constitution with recommendations. R. Shevin, Report and Recommendations of Attorney General Robert L. Shevin to the 1978 Constitution Revision Commission (June 1977). Unfortunately, the commission had little time to review the information after the organizational session in July.

tive cross section of citizens to be appointed and participate in the commission process.

In my view, an appointed commission whose sole responsibility is to review the constitution can do a creditable and responsible job. This type of revision process should be retained by the people of Florida as the most viable method for periodic revision of their constitution.

As stated by Chesterfield Smith during the commission's opening session, the process, whatever the outcome,

will focus the eyes of all Floridians on the problems of state government and they will conclude in a more informed way than heretofore whether what we have is sufficient. It is an opportunity that undoubtedly will not occur again for twenty years, an opportunity to give the people of Florida, through a better constitution, a better way of life.<sup>66</sup>

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66. Transcript of Fla. C.R.C. proceedings 47 (July 6, 1977).