

Inquiring Minds

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CRC—A Missed Opportunity?

Moderator: Melissa Butler

In Florida, there are three ways to constitutional amendments can be placed on the ballot: 1) by the state legislature 2) by citizens' initiative and 3) by a Constitutional Revision Commission (CRC). The latter is unique to Florida. CRCs are convened every 20 years, and this was the year. With the process winding down, the Commission's work has raised many questions. What sort of thing belongs in the Constitution? Did "bundling" represent a valiant effort to achieve balance and consensus? Or, was it a cynical effort to "trample on the voter's right to make informed choices"? Did the CRC live up to the original intentions for the process, or was this a missed opportunity? Should the process be scrapped in the future?

Don Gaetz, "Constitution revisions can mean a better Florida," *NWF Florida Daily News*, 4/29/18

For the past 18 months I've been one of 37 constitution revision commissioners hearing and debating ideas for improving Florida's governance for the next 20 years.

This once-in-a-generation gathering of tribal elders — appointed by the Supreme Court, governor and legislative leaders — is unique to our state. Nowhere else in America is a group of citizens empowered to hold up their state constitution to the light of present realities and future possibilities and put plans for a better Florida directly before the voters.

Thousands of Floridians showed up at our hearings to support or oppose hundreds of proposals, some scalding with controversy, some perhaps worthwhile but not rising to constitutional importance and some just, well, weird.

In the end, the grind and grist of this intensely public, not always pretty process produced eight proposed amendments to the state's operating manual. I don't like the way some were grouped and bundled. In my view, not all of those that passed belong in the Constitution. Several proposals I supported were voted down by my fellow commissioners. But four strong, well-conceived recommendations that came to me from grassroots citizens could become part of our constitution.

Here are the four initiatives I sponsored or co-sponsored that will be on the November ballot:

— Ban on offshore drilling. We who lived through the Deepwater Horizon oil spill know how the nation's worst man-made disaster brought our coastal economy to its knees. The final invoice against our environment is still not tendered. We can't let the oil companies buy political amnesia by killing this amendment.

— Ban on greyhound racing and wagering. Forty states have prohibited this bloody, wasteful practice. It takes a constitutional change because the authority for racing dogs for money is already

in the constitution. Dog racing actually costs taxpayers more money to police than it produces in revenues, ironically creating taxpayer-subsidized cruelty.

— Promote civic literacy. More than half today’s college graduates can’t explain the First Amendment, don’t know how the three branches of government work, don’t understand their own voting rights and many think pet ownership is in the Bill of Rights. This amendment mandates that our public schools, colleges and universities teach the rights and obligations of citizenship.

— Ethics in public office. This amendment prohibits elected public officials from simultaneously being paid lobbyists for private interests, bans paid lobbying by former elected officials and heads of state departments for six years after leaving public office and stops elected and appointed officials from misusing their positions for the “disproportionate benefit” of themselves, their families or their business associates. If passed, these would be the strongest ethical standards in any state’s laws or constitution.

None of these four proposals hang off the left or right wings. No nefarious hidden hand guided me to sponsor or co-sponsor them. But there is well-financed and organized opposition against them.

Admittedly, some excellent ideas didn’t make the cut. I wanted voters to elect the Secretary of State. I wanted to end the write-in loophole that allows cynical politicians to close primary elections with fake candidates. I tried to repeal the O.J. Simpson Relief Act that lets out-of-state criminals and fraudsters hide their assets from their victims in Florida real estate. I argued to repeal the Blaine Amendment, a nasty relic of anti-Catholic discrimination from the 1880s still used today against faith-based education and religiously affiliated charities. But we didn’t have enough votes on the commission to win those fights.

With your vote in November, however, you can ensure that voters, not county managers, will always choose your sheriff.

You can decide if you want to make Florida’s state college system, the best in the nation, a permanent part of our education system. You can give victims of crimes more rights in the court system. You can ban vaping where smoking is banned. You can remove the judicial presumption that favors government agencies when citizens are at odds with bureaucrats. You can make sure the children of first responders killed in the line of duty get an education. You can make charter schools independent of local politics. You can pass term limits for school board members. All are “bundled” into amendments you can enact or not.

In other words, the Constitutional Revision Commission worked like church congregations, neighborhood associations, parent-teacher organizations, city councils, unions and families. Nobody got everything they wanted. Some got nothing. Most of what we agreed to will make things better for most people.

If you don’t like some of the proposed constitutional amendments or the way they were grouped, you aren’t alone. But balance and judge each amendment on its merits. Most of what the Constitution Revision Commission is recommending will make Florida better. Most of what you’ll see on your ballot is too important to Florida’s future to wait 20 more years.

Julie Anderson, Rosemary O'Hara, Elana Simms, and Andy Reid, "Constitution Revision Commission attacks public schools, ignores public good," *Sun Sentinel*, April 25, 2018

The Constitution Revision Commission concluded its agenda last week having squandered most of its rare and precious opportunity. It deserves a harsh judgment from the public in November. The eight amendments it voted to put on the ballot are a mishmash of the good, the bad, and the unnecessary, mostly packaged in ways that deny clear choices to Florida voters.

That's a pity and a disgrace. The majority of this commission's 37 members broke faith with the framers of Florida's 1968 Constitution. The point of having such a commission, which comes into being every 20 years with the power to send amendments directly to the ballot, is to keep Florida moving forward. This commission dashed to the rear with its proposals to dismember the public school system and sacrifice home rule.

If changes aren't made in the politicized appointment of its members, the commission of 2038 may well be a wasted opportunity, too.

Two issues in particular shame this commission, compared to its predecessor 20 years ago.

The commission of 1997-98 voted to strengthen public education in Florida. This commission would dismantle it by removing local control of schools the county school board does not establish. It's meant to let Tallahassee create a network of private and charter schools answerable to no one except the for-profit corporations lining up to run them. Hank Coxe, a dissenting commissioner, says bluntly: "It will abolish public education."

The previous commission also provided for open primaries when the winners will be unopposed in November, but sly politicians often foil that by recruiting write-in candidates who can't win and don't intend to. This commission refused to close that loophole. Although the vote was 19 to 17 in favor, it fell three votes short of the supermajority needed for passage. The outcome reflects poorly on Gov. Rock Scott and House Speaker Richard Corcoran. Ten of the governor's 15 appointees voted to perpetuate the write-in scam. So did five of the nine people Corcoran appointed. The Senate president's appointees and those of Chief Justice Jorge Labarga mostly favored letting more people vote.

The worst of the commission's work consists of combining unrelated issues in packaged proposals the leadership referred to as "bundling." That's a fancy word for old-fashioned logrolling, which is a vice, not a virtue. Roberto Martinez, a dissenting commissioner who fought the tactic, referred to it as "putting lipstick on a pig."

The insidious attack on public schools is packaged with term limits on local school board members and a feel-good requirement that the Legislature provide for the "promotion of civic literacy." To vote for civic literacy is to oppose today's requirement that Florida maintain a "uniform" system of free public schools.

A provision requiring death benefits for first responders, law enforcement officers, National Guard members and correctional workers who die in the line of duty sugarcoats language that requires a

supermajority vote of university and college boards of trustees to raise fees — but not tuition. These issues have nothing in common. Neither belongs in the constitution.

A proposal intended to force Miami-Dade voters to elect their sheriff once again — which overrides the home rule charters of Broward and six other counties — is bundled with an unnecessary provision requiring an office of domestic security and counterterrorism in the Department of Law Enforcement, which already has one. These issues are unrelated.

A dubiously detailed and potentially budget-busting victim's rights proposal is bundled with a wholesome change in how courts evaluate state agency decisions. Commissioners acted with no idea of how the former will complicate the criminal justice system or what it will cost.

A provision extending the constitution's smoke-free workplace language to vaping devices is coupled to one banning oil drilling in state waters. Both may be popular, but what does one have to do with the other?

The commission, said a Tampa Bay Times editorial, "has wasted months as a politically motivated scam masquerading as a high-minded effort. ... It's a cynical attempt to sneak through a conservative agenda that otherwise never would be approved, and voters should send a clear message they refuse to be manipulated." The judgment is accurate.

Only three of the eight amendments are clear, unambiguous and unburdened with log-rolling. One substantially strengthens the ethics code; among other things, it imposes a six-year ban on lobbying by former officials. Another prohibits dog racing and wagering on greyhounds by the year 2020. The third repeals obsolete sections of the present constitution.

But such was the commission's haste to pack up and go home that it took only nine hours for its ultimate debate April 16, and some oversights are already obvious. The racing/wagering ban that will protect dogs in Florida allows betting here on simulcast races from other states. The oil-drilling ban would permit pipelines from farther offshore to riddle the waters Florida intends to protect.

Some of the best of the public's suggestions at the commission's public hearings fell on sterile soil, defeated in committee or withdrawn to please powerful lobbies. They included the right of citizens to go to court to defend the environment, a bill of rights for nursing home patients and open primaries or a "top-two" primary system like California's.

Apart from the ethics proposal, the commission did virtually nothing to make government more responsive to the public. And a once-in-a-lifetime opportunity to ban assault weapons in the wake of the 17 murders at Marjory Stoneman Douglas High School was denied by a selective application of the commission's rules.

The commission sorely abused its exemption from the single-subject rule that limits citizen initiatives. But that doesn't leave the Supreme Court powerless to strike down the log-rolling. There's precedent.

The 1957 Legislature tried to write a new constitution — beyond its powers at the time — in the guise of 14 separate amendments that required all to be ratified or none would be. The Florida Supreme Court threw the so-called daisy chain off the ballot. Two lines from that decision apply squarely to the situation today.

“(T)he right of the elector to approve one or few will become worthless unless all others, including the ones he rejects, receive a majority vote of approval. When the requirement for separate amendments is ostensibly met but approval is made inseverable, substance is sacrificed to form.”

The rules are different today, but the principle is not. This commission has trampled on the voter’s right to make informed choices. Disgust is not too strong a judgment.

Editorial Board, Treasure Coast Newspapers, “Bundling” has no place on Florida ballot” April 30, 2018

What do offshore drilling and vaping have in common?

Nothing.

Unless you're the Florida Constitution Revision Commission.

This 37-member body, which is recreated every 20 years to review and update the state's governing document, arbitrarily decided there is, in fact, a relationship between these two disparate issues.

As a result, commissioners voted to couple a proposed constitutional amendment to ban oil drilling in state waters with another to prohibit vaping in enclosed indoor workplaces.

Voila! The two have become one.

Consequently, when voters go to the polls in November, they will be asked to vote "yea" or "nay" on one proposed constitutional amendment containing two unrelated ideas (i.e., offshore drilling and vaping).

If you think that's bad, you haven't seen anything yet.

Offshore drilling/vaping actually is the least egregious example of the commission's "handiwork."

Commissioners approved eight amendments that will go on the November ballot. Only three — a prohibition on dog racing; stricter ethical standards for lobbyists and elected officials; and removal of obsolete provisions in the state constitution — are clear and deal with stand-alone issues.

The other five are the result of disparate proposals that have been bundled together. Each is murky and ambiguous, and will necessitate a tortured calculation by voters in the polling booth. These include:

A proposal combining term limits for school board members with another mandating civics education and a third proposal that would change the governance of charter schools.

A proposal that couples a new voting requirement for university and college boards of trustees to raise fees with another to provide death benefits to survivors of first responders and military members.

A proposal requiring the establishment of the Office of Domestic Security and Counterterrorism within the Department of Law Enforcement is coupled with another requiring some counties to elect certain officers who currently are appointed.

Say what?!

When citizens initiate a proposed constitutional amendment, it must be limited to a single subject. The Constitution Revision Commission operates under a different set of rules. Florida law allows the commission to "bundle" proposals together.

While some commissioners contend bundling helps alleviate "ballot fatigue" — i.e., the proliferation of proposals on the ballot — it most certainly precipitates "ballot confusion."

Bob Martinez, a litigation attorney from Coral Gables and member of the Constitution Revision Commission, urged his colleagues to abandon the "bundling" approach and place only single-issue proposals on the ballot.

"Bundling will confuse the voters, causing them to spend more time in the voting booth merely to understand each summary within a group and its relation to the others," Martinez wrote in an April 13 letter to commissioners.

"That will prolong the time in the voting booth, causing the very problem that the groups were presumably intended to eliminate."

Martinez's motion, introduced prior to the bundling fiasco, was defeated.

The bundling of loosely related (or completely unrelated) proposals by the commission is asinine and counterproductive to the purpose of this state organization.

Bundling has no place in Florida's ballot process.

Unless the commission abandons this approach in the future — and puts only single-subject issues on the ballot — there's really no point in subjecting Floridians to the dog-and-pony show that is the Constitution Revision Commission.