

LIMITING FLORIDA’S CONSTITUTION
REVISION COMMISSION

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Every twenty years, Florida’s Constitution mandates the establishment of the Constitution Revision Commission, a thirty-seven-member body that has been the author of fifteen successful changes to Florida’s Constitution since 1998. The 2018 Constitution Revision Commission, or “CRC,” proposed eight amendments, covering seventeen unique policy areas, seven of which were ultimately approved of by Florida voters. Despite being an efficient way to amend Florida’s Constitution, the CRC has very few checks on its considerable power. Therefore, instead of waiting until the next CRC in 2038 to consider its purpose and structure, this paper outlines the CRC, discusses its utility, and suggests adding several important limitations to its powers in order to make the CRC a more credible and useful institution.

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I. INTRODUCTION

The Constitution Revision Commission ¹ (“CRC”) is an entity that convenes every twenty years.² Its members are appointed by

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1. See FLA. CONST. art. XI, § 2. See also TALBOT D'ALEMBERTE, THE FLORIDA STATE CONSTITUTION 317 (2d ed. 2017).

2. The Florida Bar commissioned a study that found that nine of ten Floridians were unaware of what the CRC did. The Fla. Bar, *Florida Bar Launches Public Education Program for Floridians on Constitution Revision*, FLA. BAR BLOG (Oct. 23, 2017),

incumbent government leaders³ and tasked with the responsibility of reviewing the Florida Constitution, placing however many changes it wants on the ballot for voters to approve or reject. However, because its initiatives are placed before the voters with no legislative check, threat of executive veto, or meaningful review by the courts,⁴ the CRC is arguably the most powerful body in Florida that few have ever heard of.

The 2018 CRC was the third Commission in Florida's history,⁵ and judging solely by the number of amendments approved in the 2018 General Election, it was the state's most successful.⁶ Because of its obscurity and significant power, the CRC is in an anomaly in democratic governance.⁷ This Article argues that unless the institution is reformed by limiting both its powers and scope, the 2018 CRC should be the state's last. As discussed below, an important first step in that reform is removing the CRC's power to add new policy subjects to Florida's Constitution.

Nevertheless, this Article is not meant to be a criticism of the commissioners, the CRC staff, or the thousands of citizens that participated in town halls across the state. The commissioners volunteered their time away from their families and wrestled with complicated topics under a short time frame. The staff accomplished the tremendous undertaking of essentially creating a new governmental institution in a matter of months. The public participated in the process through numerous forums that the CRC designed.⁸ This Article instead focuses on if and how the CRC should be structured in 2038 and beyond.

The first section of this Article introduces the CRC, its makeup, and its powers. The second section makes the case to limit the CRC's scope to the role of a periodic constitutional editor, where, rather than

<https://www.floridabar.org/news/barlaunchesprotectfloridademocracycrc/> [https://perma.cc/L3G5-L9YN].

3. FLA. CONST. art. XI, § 2(a).

4. See FLA. CONST. art. XI, § 2(c).

5. Joseph W. Little, *The Need to Revise the Florida Constitution Revision Commission*, 52 FLA. L. REV. 475, 475 (2000).

6. The 2018 CRC placed Amendments 6, 7, 9, 10, 11, 12, and 13 on the 2018 General Election Ballot. The CRC's Amendment 8 was struck down by the Florida Supreme Court. See *Detzner v. League of Women Voters of Fla.*, 256 So. 3d 803, 811 (Fla. 2018). All of the amendments that the CRC placed on the ballot passed. The first CRC had all eight of their proposals defeated on the 1978 ballot. The second CRC had all but one of their nine proposals pass on the 1998 ballot.

7. Alvan Balent Jr., *Florida's Constitution Revision Commission (CRC): Behind-the-Scenes Insights from Bob Butterworth, Florida's Former Attorney General and Member of the 1998 CRC*, 72 U. MIAMI L. REV. 1073, 1074 (2018).

8. The Florida Constitution requires that the CRC "hold public hearings." FLA. CONST. art. XI, § 2(c). The 2018 CRC held fifteen public hearings during their "Floridians Speak, We Listen" tour. Thousands of Floridians spoke at these meetings. Lisa Carlton, *Why Amendments Were Bundled*, HERALD-TRIBUNE (Oct 8, 2018), <https://www.heraldtribune.com/opinion/20181008/carlton-why-amendments-were-bundled> [https://perma.cc/KZK5-59ZY].

adding new constitutional policies, the CRC cleans up language that has been overruled, is outdated, or is no longer needed for the proper functioning of state government.⁹ Finally, the Article makes specific rule recommendations on how the next CRC can better structure itself for success. While most of the 2018 CRC's rules were appropriate,¹⁰ this Article recommends improving the process by changing the mechanism for public input, empowering committee chairs, allowing for proposals to be truly killed, and narrowing the focus of the powerful Style and Drafting Committee. Without these changes, the 2038 CRC will retain the considerable power to rewrite the entirety of the Florida Constitution in relative obscurity and without a meaningful check on its proposals.

II. CHANGING FLORIDA'S CONSTITUTION

A. *The Six Ways to Amend*

Florida's modern constitution was adopted in 1968¹¹ and is considered one of the easiest constitutions to amend.¹² Article XI of the Florida Constitution sets forth five ways the Constitution can be amended: a constitutional convention,¹³ an initiative petition,¹⁴ a proposal by the Legislature through a joint resolution,¹⁵ a regularly occurring revision committee known as the CRC,¹⁶ and a regularly occurring Taxation and Budget Reform Commission ("TBRC").¹⁷ All of these measures require citizens to approve the final proposal with 60% of the vote.¹⁸ The sixth way to change Florida's Constitution is

9. As discussed below, Florida does not have to wait for the CRC to accomplish this. The Legislature has the authority to do so in certain articles, and some have advocated that they do just that. Talbot "Sandy" D'Alemberte, Opinion, *Time for Spring Cleaning for the Florida Constitution*, TALLAHASSEE DEMOCRAT (Oct 11, 2016), <https://www.tallahassee.com/story/opinion/2016/10/11/time-spring-cleaning-florida-constitution/91905728/> [https://perma.cc/4ATF-Y6JQ].

10. Many of the rules were hold-overs from the 1998 Commission. The 2018 rules created ten substantive committees and two procedural committees. The substantive committees related to specific articles in the Florida Constitution. For example, Rule 5.4(4) requires a vote of at least twenty-two members of the Commission for final adoption. Rule 5.4(4), Fla. Const. Revision Comm'n (2017-2018). In addition to needing a supermajority similar to the 60% requirement at the ballot box, the rules counted abstaining or absent members against the overall proposal. *Id.*

11. See generally MARY E. ADKINS, MAKING MODERN FLORIDA: HOW THE SPIRIT OF REFORM SHAPED A NEW STATE CONSTITUTION (2016) for an excellent overview of the authors of the 1968 Constitution and their work product.

12. Robert F. Williams, *Foreword: Is Constitutional Revision Success Worth Its Popular Sovereignty Price?*, 52 FLA. L. REV. 249, 252 (2000).

13. FLA. CONST. art. XI, § 4.

14. FLA. CONST. art. XI, § 3.

15. FLA. CONST. art. XI, § 1.

16. FLA. CONST. art. XI, § 2.

17. FLA. CONST. art. XI, § 6.

18. FLA. CONST. art. XI, § 5(c).

through legislation. In limited circumstances, the Legislature can delete certain obsolete items through joint resolution, subject to judicial review.¹⁹ Said differently, the Legislature can be a constitutional editor in extremely limited circumstances.

Most constitutional changes arise in response to a perceived need. Under Florida's Constitution, only the people can initiate a constitutional convention, and this power has not been used since 1885.²⁰ Other amendment avenues, though, are frequently used. Citizens and special interest groups can propose new policy issues via amendments through the initiative process, which requires hundreds of thousands of signatures from across the state.²¹ Dozens of proposals have successfully been placed in Florida's Constitution through this direct approach. These proposals range from important measures, like the restoration of voting rights to felons,²² to ones of considerably less constitutional significance, like regulating the enclosure requirements for pregnant pigs.²³ In addition to these routes, the Legislature can, and frequently does, propose amendments through a joint resolution.²⁴ A joint resolution requires sixty percent approval of each the House and the Senate, which equates to a minimum of ninety-six elected officials voting in the affirmative when the chambers are full.²⁵ Both the initiative and legislative processes have single subject limitations, meaning that these proposals must address only one policy subject at a time.²⁶ In other words, these proposals cannot combine a popular proposal with an unpopular proposal to increase the likelihood of passing the latter.

Unlike these three methods of constitutional change that require mobilizing broad coalitions of citizens or nearly a hundred elected officials, the CRC and its sister commission, the TBRC,²⁷ regularly occur every twenty years.²⁸ The Florida Constitution provides their mandate, not the people of Florida.

19. FLA. CONST. art. V, § 20(i) allows the Legislature to delete obsolete schedule items from Article V (Judiciary). FLA. CONST. art. VIII, § 6(h) allows the Legislature to delete obsolete schedule items from Article VIII (Local Government). FLA. CONST. art. XII, § 11 allows the Legislature to delete obsolete schedule items from Article XII (Schedule).

20. FLA. CONST. art. XI, § 4. See D'ALEMBERTE, *supra* note 1, at 160.

21. FLA. CONST. art. XI, § 3.

22. FLA. CONST. amend. 4 (2018), Voting Restoration Amendment; FLA. CONST. art. VI, § 4.

23. FLA. CONST. amend. 10 (2002), Animal Cruelty Amendment: Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy; FLA. CONST. art. X, § 21.

24. FLA. CONST. art. XI, § 1.

25. *Id.*

26. FLA. CONST. art. XI, § 3; FLA. CONST. art. XI, § 5.

27. FLA. CONST. art. XI, § 6; See generally Donna Blanton, *The Taxation and Budget Reform Commission: Florida's Best Hope for the Future*, 18 FLA. ST. U. L. REV. 437 (1991).

28. The CRC is established "[w]ithin thirty days before the convening of the 2017 regular session of the legislature, and each twentieth year thereafter . . ." FLA. CONST. art. XI, § 2(a).

B. *The Structure of the CRC*

The CRC is comprised of thirty-six appointed members and the Attorney General.²⁹ The thirty-six appointed members are selected as follows: fifteen by the Governor, nine by the Speaker of the House, nine by the Senate President, and three by the Florida Supreme Court Chief Justice.³⁰ The CRC is led by the Chair, who is appointed by the Governor.³¹ After the commissioners' appointments, the CRC's powers are broad, impact the whole state, and have very limited checks.³² The Chair of the CRC, not the Florida Constitution, sets how many votes are needed for a proposal to go on the ballot.³³

One particularly unusual aspect of the CRC is that it is undemocratic. Only one individual, the Attorney General, is elected statewide, and only one of the four appointing authorities, the Governor, is elected statewide.³⁴ Thus, not only is it likely that most Floridians have never heard of the CRC commissioners, it is highly likely that they have never heard of the people selecting the commissioners.³⁵ The commissioners themselves do not represent a constituency or their appointing officers, and once appointed, they are autonomous. Moreover, one can reasonably expect that "appointers tend to appoint members who will support the appointers' agendas" and tend to "protect" their appointing authority's branch.³⁶ But Florida's Constitution does not apportion CRC appointees equally among the three branches and instead leaves the judicial branch at a substantial numerical disadvantage.³⁷

29. *Id.*

30. *Id.*

31. FLA. CONST. art. XI, § 2(b).

32. Some have argued that the term "Commission" is a misnomer because "[t]he word itself connotes a principal/agent relationship," whereas the CRC is independent of any branch of state government. Williams, *supra* note 12, at 253.

33. FLA. CONST. art. XI, § 2(c).

34. The Speaker of the House and the Senate President are first elected by their constituents and then by their peers. FLA. CONST. art. III, § 2. The Chief Justice of the Florida Supreme Court is also selected by his or her peers. FLA. CONST. art. V, § 2(b).

35. Reporter Mark Lane perhaps said it best: "It's a remarkable thing about Florida politics that a speaker of the House, the most important person in state government for at least 60 days of the year, is unknown to virtually anyone you'd encounter once you drive outside Tallahassee's Capital Circle." Mark Lane, *Richard Corcoran Becomes Latest House Speaker Blindsided by Limits of the Office*, DAYTONA BEACH NEWS-J. (May 10, 2018, 12:14 PM), <https://www.news-journalonline.com/news/20180510/lane-richard-corcoran-becomes-latest-house-speaker-blindsided-by-limits-of-office> [<https://perma.cc/W5N4-SK6N>].

36. Little, *supra* note 5, at 477.

37. This fact was not lost on at least one of the 2018 CRC Commissioners. Commissioner Hank Coxe, who was one of Chief Justice Labarga's three appointees, suggested that "this numeric division . . . ignores the principle that the branches of government are co-equal. . . . [W]e are at a point in our state's history when the differential in appointee numbers has destroyed the effectiveness of the Commission, and allowed politics to control it." Hank Coxe,

After the commissioners are appointed, Article XI, Section 2(c) of the Florida Constitution grants the Commission its authority. It reads, in its entirety:

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 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.³⁸

The CRC's real power, however, arises from what is not said in this charge. There is no executive veto, legislative approval, or judicial review. Unlike other proposals,³⁹ there is no single subject requirement, meaning that "[t]he CRC's proposed amendments, may, and often do, combine several subjects" into a single amendment.⁴⁰ Not only has every CRC used this power, the Florida Supreme Court has said that "the Florida Constitution expressly authorizes bundling."⁴¹ This process is referred to as "logrolling" and has recently become the subject of some controversy based on some of the disparate subject areas that were combined by the 2018 CRC.⁴²

After the CRC adjourns *sine die*, its proposals are filed directly with the Secretary of State to be voted on by the electorate in the next general election.⁴³ Opponents of a measure can challenge a provision

Letter from Hank Coxe at the Conclusion of His Service on the Constitution Revision Commission, FLA. SUP. CT. HIST. SOC'Y 18 (2018), https://flcourthistory.org/resources/Documents/2018%20Magazine/FSCHS_Historical_Review2018_web.pdf [<https://perma.cc/ZS89-CYEB>].

38. FLA. CONST. art. XI, § 2(c).

39. Citizens' initiatives and actions of the Legislature have single-subject requirements. See FLA. CONST. art. XI, § 3 and FLA. CONST. art. III, § 6.

40. *Detzner v. Anstead*, 256 So. 3d 820, 823 (Fla. 2018). See generally Attorney General Bob Butterworth, *Anticipating the 2017-18 Constitutional Revision Commission*, FLA. CHANNEL (Oct. 28, 2015), <https://thefloridachannel.org/videos/102815-anticipating-the-2017-18-constitution-revision-commission-pt-1/> [<https://perma.cc/UM3F-YBKY>].

41. *Anstead*, 256 So. 3d at 823-24.

42. Former Florida Chief Justice Major Harding wrote in a series of editorials that "the Commission is effectively depriving the voters of their right to choose what does and does not belong in Florida's foundational text on a proposal-by-proposal basis. As a consequence, these groupings not only fail to curb the excesses of the constitutional amendment process, they deny the voters the ability to do so as well." Major Harding, Editorial, *Protect Our Constitution from Unnecessary Clutter and Logrolling*, FLA. POLITICS (Apr. 12, 2018), <https://floridapolitics.com/archives/261117-major-harding-protect-our-constitution-from-unnecessary-clutter-and-logrolling> [<https://perma.cc/BP6N-ZQEL>]. CRC Style and Drafting Chair Brecht Heuchan defended the bundling from critics, stating that the bundles reduced ballot fatigue and were consistent with prior Commissions. The 1978, 1998, and 2018 Commissions bundled proposals. Brecht Heuchan, Editorial, *Grouped Amendments Benefit Voters*, PALM BEACH POST (May 5, 2018, 12:01 AM), <https://www.palmbeachpost.com/news/opinion/point-view-grouped-amendments-benefit-voters/sqv6V04VgCNJ2RMFyP8ZcM/> [<https://perma.cc/MX8Z-3ZV4>].

43. FLA. CONST. art. XI, § 2(c).

based on the accuracy of the ballot title and summary.⁴⁴ Other legal challenges to the proposals have been attempted. For example, a former Florida Supreme Court Chief Justice filed a writ of *quo warranto* against the 2018 CRC that was ultimately rejected by the Florida Supreme Court for failing to assert a proper basis for relief.⁴⁵ Thus, in part due to the lack of additional checks on this system, the vast majority of the measures that pass the CRC are voted on by the electorate.⁴⁶ Public opinion is the only meaningful restraint.

III. THE CRC SHOULD BE A CONSTITUTIONAL EDITOR

Given its significant power, additional safeguards must be enacted to prevent the CRC process from being abused. The first such check would be clarifying and limiting the CRC's underlying purpose.⁴⁷ Presently, the CRC's mission is unclear because the entity's authority is unlimited.⁴⁸ It, as discussed above, can add entirely new sections of the Constitution just as readily as it can edit the existing language or propose no changes at all. However, in light of its inherently undemocratic compositions, the CRC's ability to create new constitutional provisions is democratically questionable. Accordingly, this power should be solely vested in the more democratic ways of amending Florida's Constitution. Therefore, the CRC should be limited to revising the state's governing document. In other words, rather than solicit, author, or bring in new ideas, the CRC would focus on perfecting the old by addressing structural issues that have arisen after decades of single-issue amendments pushed by various interest groups.

The circumstances behind the CRC's creation in the 1968 Florida Constitution support this "periodic editor" view. When the authors of the 1968 Constitution rewrote and rearranged much of Florida government, they failed to complete their overhaul of the state's judicial branch.⁴⁹ With speculation that additional, significant edits were needed, the authors of the 1968 Constitution instituted a regularly occurring revision commission to meet every twenty years, beginning ten years after the passage of the amended Constitution,⁵⁰ because they likely figured that a radical restructuring of a state government

44. FLA. STAT. § 101.161 (2019). *See* *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000).

45. *Anstead*, 256 So. 3d at 823.

46. In the sixty years of the CRCs, only one proposal, Amendment 8 (2018), was removed from the ballot by the Florida Supreme Court. *See* *Detzner v. League of Women Voters*, 256 So. 3d 803, 811 (Fla. 2018).

47. *See generally* W. Dexter Douglass & Billy Buzzett, *Constitution Revision Commission: Planning the Process*, 71 FLA. B.J. 16 (1997).

48. Balent, *supra* note 7, at 1078–79.

49. *See* ADKINS, *supra* note 11.

50. FLA. CONST. art. XI, § 2.

is bound to have unexpected and unintended consequences. The CRC was thus the vessel to address these unforeseen constitutional issues.

Three structural aspects of the CRC are consistent with this “periodic editor” view: the lack of a single subject requirement, the appointment process of the CRC, and, most tellingly, the actual language of the Constitution. Consistent with the “periodic editor” view, technical revisions for an entire constitution would likely encompass multiple subjects, so such a commission may need the power to logroll in order to be effective. Single subject requirements are used to ensure that only one issue area is being addressed in a specific proposal.⁵¹ Second, an appointed commission opens the possibility of subject matter experts, rather than politicians, examining the entirety of the Constitution.⁵² The only named member of the CRC is the Attorney General,⁵³ who is a legal professional by virtue of the office. Finally, and perhaps most persuasive of the editor-only view, the Constitution requires the CRC to file “its proposal, if any, of a revision”⁵⁴ rather than an “[a]mendment of a section or revision” found in the legislative proposals⁵⁵ or the “revision or amendment” language found in the citizens’ initiative process.⁵⁶ A plain reading of this text suggests that the words “amendments” and “revisions” have different meanings—i.e. amendments are additions and revisions are adjustments—and therefore, the CRC may have only been intended to have the power to adjust because it is limited to filing “revisions.”⁵⁷ Though not limiting the authority of the CRC, the empowering article of the Constitution also has the hedge of “if any,” which is not found in the other ways to amend the Constitution.⁵⁸ This use of “if any” shows that the CRC should, but is not required to, use its unique power even more judiciously.

51. See, e.g., Proposed FLA. CONST. amend. 11 (2018), <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf> [https://perma.cc/Y6FK-6SCL]. This amendment was one of the bundles proposed by the 2018 CRC, a broad revision encompassing multiple subjects which repealed an unconstitutional “Alien Land Law,” deleted an obsolete provision on high-speed rail, and removed a “Savings Clause” that was held over from Florida’s 1885 Constitution.

52. “The professionalization of state constitutional change is also evident in the increasing use of constitutional commissions, expert bodies established without popular input, to set the agenda of constitution change, identifying the problems that deserve attention and the appropriate solutions to those problems.” Williams, *supra* note 12, at n.18 (quoting G. ALAN TARR, UNDERSTANDING STATE CONSTITUTIONS 170 (1998)). This is not intended to be an “anti-politician” message. Quite the opposite—a reviser only CRC would let politicians make political decisions.

53. FLA. CONST. art. XI, § 2(a)(1). The Speaker of the House and the Senate President are elected by their districts and then by their peers. *Id.*

54. FLA. CONST. art. XI, § 2(c).

55. FLA. CONST. art. XI, § 1.

56. FLA. CONST. art. XI, § 3.

57. The Florida Supreme Court has declined to rule on this argument. See *Dept. of State v. Fla. Greyhound Ass’n, Inc.*, 253 So. 3d 513, 517 (Fla. 2018).

58. FLA. CONST. art. XI, § 2(c).

A reviser-only view could have a significant impact on the types of amendments moving out of future CRCs and would likely lead to fewer additions. For instance, the 2018 CRC did not propose significant revision or edits of the Florida Constitution or any of its articles.⁵⁹ Instead, through its rules and public meetings, the 2018 CRC asked for ideas from the general public.⁶⁰ Only three proposals that made it to the floor were repeals or removals of outdated language,⁶¹ and even those were of limited scope. Many of the proposals that were debated on the floor of the CRC could be or had already been accomplished by statute.⁶² The amendments the 2018 CRC sent to the ballot added approximately 3,530 new words to our state's foundational document, increasing the Constitution's length by eight percent. Since unwieldy length is one reason that state constitutions are rewritten, a process that frequently adds multiple pages to such a document should be the subject of additional scrutiny.

Nevertheless, distinguishing between a technical revision and significant policy change can arguably be difficult to determine and hard to enforce and could thus cause confusion or uncertainty. History, though, is replete with examples highlighting the importance of putting limits on power, and therefore checking the CRC's power is of paramount concern. Moreover, restricting the CRC's purview to matters already in the state Constitution is, in itself, making the process clearer because the public and state leaders will have a better idea of what the Commission will address, which is one of the current system's criticisms.⁶³ This view is also consistent with the provisions of the Florida Constitution that enable the Legislature to delete certain obsolete provisions, subject to judicial review.⁶⁴

59. There were initial indications that the 2018 CRC was planning on editing the document. Each of the policy committees had a "placeholder" proposal slot filed by the committee chair. These proposals were not expanded or voted upon. *See* Fla. CRC Proposals 74, 76, 77, 78, 79, 84, 85, 86, and 87 (2018).

60. Press Release, CRC Commissioners Sponsor Public Proposals and Ideas Regarding the Florida Constitution (Oct. 2, 2017), <http://revisefl.com/images/10.2Release.pdf> [<https://perma.cc/N2WL-YW5V>].

61. *See* Proposed FLA. CONST. amend. 11 (2018), <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf> [<https://perma.cc/VLJ6-4NAQ>].

62. Many proposals sought to invalidate statutory systems. For example, Proposal 51 sought to invalidate statutory electric energy regulations, Proposal 54 sought to invalidate statutory certificates of need, and Proposal 67, now FLA. CONST. amend. 13, sought to invalidate statutory dog racing.

63. State Senator Jeff Brandes, the sponsor of Senate Joint Resolution 362 (2019) proposing the abolishment of the CRC, tweeted that the CRC was "Constitutional Jumanji: It's rediscovered every 20yrs, has no rules, players have no experience, once it starts it can't stop, crazy things pop out, and you never know how damaging they will be." Jeff Brandes (@JeffreyBrandes), TWITTER (Jan. 17, 2019, 10:28 AM), <https://twitter.com/JeffreyBrandes/status/1085921691375673344> [<https://perma.cc/Q4YN-A8PB>].

64. *See supra* note 19 and accompanying text.

A “periodic editor” view could be institutionalized by one of three ways: one, the Florida Constitution could be amended; two, the CRC’s appointing authorities could select individuals who believe the CRC should only serve as an editor; and three, a future commission could change its rules.

IV. RULE IMPROVEMENTS

In addition to restricting its purpose, the CRC’s rules should be improved, because, as discussed earlier, the CRC sets its own rules which greatly impact what provisions are sent to the voters. The 2018 CRC based their rules on the 1998 CRC’s, and thus this article makes suggestions on the rules of the 2018 CRC.

A. *Changing the Mechanism for Public Proposals*

First, the 2018 CRC created two means for proposals to be considered by the Commission: a public proposal that is taken up by a commissioner with an affirmative vote of ten commissioners⁶⁵ or a commissioner proposal that is simply filed without any threshold.⁶⁶ Public ideas were submitted via an innovative online portal allowing citizen submitters to create proposals by editing the actual text of the Constitution, creating a document formatted as a constitutional proposal, and given a specific public proposal number.⁶⁷ Using this forum, the public submitted 782 very precise, very specific proposed constitutional changes.⁶⁸ Citizens submitted another 1,231 proposals through other means, such as email.⁶⁹ Many of those proposals were similar to each other and to those submitted by the commissioners

65. Rule 3.3, Fla. Const. Revision Comm’n (2017-2018).

66. Rule 3.4, Fla. Const. Revision Comm’n (2017-2018).

67. Lloyd Dunkelberger, *Critics Slam Florida Constitution Panel for Few Public Proposals*, ORLANDO SENTINEL (Oct. 18, 2017), <https://www.orlandosentinel.com/news/politics/political-pulse/os-constitution-public-proposals-20171018-story.html> [https://perma.cc/Z3WA-AXEU].

68. *Website Submissions 2017-2018 Sess.*, FLA. CONST. REVISION COMM’N, PUBLIC PROPOSALS, (2018), https://crc.law.fsu.edu/PublishedContent/ADMINISTRATIVE_PUBLICATIONS/CRCPublicProposals.pdf [https://perma.cc/LTN5-YWQF].

69. *Non-Website Submissions, 2017-2018 Sess.*, FLA. CONST. REVISION COMM’N, PUBLIC PROPOSALS (2018), https://crc.law.fsu.edu/PublishedContent/ADMINISTRATIVE_PUBLICATIONS/CRCPublicProposalsNonwebsite.pdf [https://perma.cc/J3NA-JFPC].

themselves.⁷⁰ However, only two public proposals were adopted through the first procedural mechanism.⁷¹ Commissioners proposed the other 101 proposals.

From a commissioner's point of view, it is undoubtedly advantageous from a political perspective to adopt a proposal that came from the public, but the CRC's rules discouraged this action because they mandated an additional and unneeded vote of the full Commission. Since the citizen was asked to file the actual constitutional text, the sponsoring commissioner also had no say in the proposal's specifics. More importantly, complying with these rules would have inevitably created a logjam, because it would have been impossible for the full Commission to hear all 2,000 or more proposals from the public, especially when there were no mechanisms to combine identical or nearly identical submissions.

Consequently, the CRC was criticized for creating an impression that the public's concerns were being ignored,⁷² which caused the CRC to publish an exhaustive list of the public proposals that matched commissioner proposals.⁷³ Future CRCs can avoid this logjam by simply asking the public what general changes they would like to have enacted. This input can be given at the public hearings that the CRC is constitutionally required to hold.⁷⁴ Since the general public rarely writes specific legislation, merely seeking ideas from the public and leaving the drafting to the commissioners and their staff, as prior CRCs have done, should bring more legitimacy to the process.⁷⁵ The public meetings, after all, can validate a commissioner's ideas.

B. Empowering Chairs

In many legislative bodies, a committee chair has the authority to set the committee agenda, which means a chair can prevent a proposal from being voted on until certain changes are made.⁷⁶ The CRC chairs, however, had no such ability. By rule, the "standing substantive

70. *Matches Between Public Proposals and Commissioner Proposals, 2017-2018 Sess.*, FLA. CONST. REVISION COMM'N, PUBLIC PROPOSALS (2018), <https://crc.law.fsu.edu/PublishedContent/ADMINISTRATIVEPUBLICATIONS/CRCProposalMatches.pdf> [https://perma.cc/6DZR-8WYA].

71. Commissioner Plymale moved to sponsor Public Proposal 700396, and Commissioner Timmann moved to sponsor Public Proposal 700202. FLA. CONST. REVISION COMM'N, 2017-2018 Sess., 7–8 (Oct. 2, 2017) (statements of Commissioners Plymale and Timmann).

72. Mary Ellen Klas, *Panel Says No to Most of Public's Ideas for Revising Florida Constitution*, MIAMI HERALD (Oct. 17, 2017), <https://www.miamiherald.com/news/politics-government/state-politics/article179411246.html> [https://perma.cc/ZRM4-J4YZ].

73. *Supra* note 70.

74. FLA. CONST. art. XI, § 2(c).

75. The first CRC received a similar number of ideas, with over 800 potential revisions suggested by the public and of which 230 were considered further. The first CRC took public comment without numbering proposals. Talbot D'Alemberte, *Constitution Revision Symposium: Introduction*, 5 FLA. ST. U. L. REV. 565, 565–66 (1977).

76. *See, e.g.*, Rule 7.3, Fla. H.R. (2016-2018), ed. 2.

committees shall review all proposals referred to them by the Chair.”⁷⁷ Therefore, CRC committee chairs were more administrative in nature and had limited authority to make their mark on prospective constitutional amendments. For example, several CRC proposals were killed unanimously in committee,⁷⁸ a rare act as most legislative bodies do not spend time on a doomed policy.

The committee process is designed to improve good proposals and defeat bad ones. Yet, of the twenty commissioner proposals that were ultimately passed by the CRC, fifteen were modified from filing, but only five of those proposals were changed in a policy committee.⁷⁹ The remaining ten proposals had their first edits before the full Commission and after the public comment period had closed. However, first round edits should be done in committee because committees are generally formed according to expertise. Their smaller size can also lead to more in-depth discussion of the topic(s) at issue, and thus the rules of any future CRC must vest more power with its committee chairs and expand the role of the committees themselves. For instance, CRC committees should be able to propose bills themselves, much like their legislative counterparts, but in 2018, not one proposal was sponsored by a committee.

C. “Mostly Dead” Proposals

In the movie *The Princess Bride*, Miracle Max gives Inigo Montoya good news regarding the protagonists’ fate: “It just so happens that your friend here is only mostly dead. There’s a big difference between mostly dead and all dead. . . . [M]ostly dead is slightly alive.”⁸⁰ In a similar vein, CRC proposals were never fully dead, just mostly dead. Rule 4.5 allowed any commissioner to move to place a proposal directly on the special order calendar with a simple majority vote of the body, despite it having been voted down in committee.⁸¹ A similar procedure exists in the Florida Legislature, but it requires a supermajority.⁸² Allowing a simple majority to overrule the committee structure weakens the committee process and creates uncertainty. This debate unfolded when Commissioner Stemberger brought up a “mostly dead” proposal, which was killed in committee, to the full

77. Rule 2.2, Fla. Const. Revision Comm’n (2017-2018).

78. For example, Proposal 23 was killed on its first stop at the Judiciary Committee, by a vote of 0-7.

79. See Proposals 9, 26, 39, 83, and 91.

80. *THE PRINCESS BRIDE* (Act III Communications, 1987).

81. Rule 4.5 in full reads: “After the Commission Chair has referred a proposal, any Commissioner may move to remove a proposal from committee. This motion may be adopted by a majority vote. Any proposal removed from committee shall be placed on the special order calendar at the next full Commission meeting.” Rule 4.5, Fla. Const. Revision Comm’n (2017-2018).

82. Rule 11.11, Fla. H.R. (2016-2018), ed. 2.

floor, resulting in enough procedural confusion that the sponsor ultimately withdrew it.⁸³ Accordingly, absent a supermajority vote, the next CRC should abandon Rule 4.5.

D. *Sunshine Laws*

Florida's Constitution guarantees access to public records and public meetings,⁸⁴ but unlike local governments that are bound by Florida Sunshine Laws,⁸⁵ the CRC's rules determine the degree by which the public can observe and comment on the process.⁸⁶ Consequently, after the Commission rules were set, some commissioners were unsure whether or not conversations among peers were permitted⁸⁷ and thus did not know exactly how to converse with their colleagues.⁸⁸ Accordingly, all future CRC rules must address commissioner-to-commissioner communications because confusion only serves to undermine discussion.

E. *Style and Drafting Bottleneck*

Despite its innocuous name, the Style and Drafting Committee wielded considerable power in the 2018 process.⁸⁹ This committee, after all, had the "responsibility for clarifying, codifying, and arranging the proposals adopted by the Commission into an orderly revision of or amendment(s) to an existing Section or Article of the present Constitution."⁹⁰ The Style and Drafting Committee also had the authority to recommend amendments.⁹¹ Under the rules, a simple majority of the first floor vote sent a proposal to Style and Drafting, even though a supermajority was required for proposals

83. See, e.g., *Panel Briefly Revives Abortion Measure*, WUSF PUBLIC MEDIA (Mar. 21, 2018), <http://wusfnews.wusf.usf.edu/post/panel-briefly-revives-abortion-measure> [<https://perma.cc/3DM3-6LTM>].

84. FLA. CONST. art. I, § 24.

85. *City of Miami Beach v. Berns*, 245 So. 2d 38, 40 (Fla. 1971).

86. Talbot D'Alemberte, Opinion, *Constitution Revision Commission Should Operate in the Sunshine*, TALLAHASSEE DEMOCRAT (Mar. 18, 2017), <https://www.tallahassee.com/story/opinion/2017/03/18/dalemberte-constitution-revision-commission-operate-sunshine/99313422/> [<https://perma.cc/L9VQ-DUDP>].

87. See Mary Ellan Klas, *Constitution Commission Adopts 'Messy' Rules as Rift Continues*, MIAMI HERALD (June 6, 2017), <http://www.miamiherald.com/news/politics-government/state-politics/article154736974.html> [<https://perma.cc/FB7L-VWVZ>].

88. At least one Commissioner was confused about the Sunshine standards and whether or not they applied to conversations among two members of the Commission. See Mary Ellen Klas, *Confusion Over Open Meetings Creates Unrest on Constitution Panel*, MIAMI HERALD (Oct. 18, 2017), <https://www.miamiherald.com/news/politics-government/state-politics/article179475016.html> [<https://perma.cc/VJ5A-SMN4>].

89. See Rule 2.3 Fla. Const. Revision Comm'n (2017-2018).

90. *Id.*

91. Rule 5.4(2), Fla. Const. Revision Comm'n (2017-2018).

to be approved for the ballot.⁹² Several referred proposals, consequently, did not receive the needed twenty-two votes before being sent to Style and Drafting, and this reality caused the Style and Drafting Committee to have two, somewhat conflicting, goals: improving some proposals that did not receive enough votes for full passage and bundling more popular proposals for the ballot.⁹³ Future Commissions should thus require a supermajority for any proposal to be sent to Style and Drafting.⁹⁴

V. CONCLUSION

Although the CRC was only established in 1968, many significant changes to the Florida Constitution have been proposed and adopted via this process, and its historical evolution suggests that this undemocratic institution is becoming more effective at changing the state Constitution. More specifically, voters approved none of the 1978 CRC's proposals;⁹⁵ voters passed all but one of the 1998 CRC's proposals;⁹⁶ and voters passed all of the 2018 CRC's proposals, despite being the first Commission to operate under the 60% approval threshold for constitutional amendments.⁹⁷ Since the CRC is becoming more effective at changing Florida's Constitution, and thus becoming more powerful, it is particularly important to examine ways to check the CRC's power. It is imperative to have this discussion now, because, come 2038, any perceived controversies or nuances of the 2018 CRC will likely have been forgotten. In the 2019 Legislative Session, which immediately followed the 2018 CRC, legislators from both parties sponsored legislation to remove the CRC's power to logroll, and

92. Brecht Heuchan, *Letter to the Constitution Revision Commission* (Mar. 15, 2018), https://crc.law.fsu.edu/PublishedContent/Committees/2017-2018/SD/MeetingRecords/MeetingPacket_185.pdf [<https://perma.cc/BD4W-Y42B>].

93. Much of the discussion on the March 22 meeting focused on whether the committee should be improving or bundling. See *Constitution Revision Commission Style and Drafting Committee*, FLA. CHANNEL (Mar. 22, 2018), <https://thefloridachannel.org/videos/3-22-18-constitution-revision-commission-style-and-drafting-committee/> [<https://perma.cc/L25P-A5DH>].

94. This is similar to the Rules of the TBRC of 2007-2008. Compare Rule 6.0107, Fla. Tax'n and Budget Reform Comm'n (2007-2008) with Rule 6.011, Fla. Tax'n and Budget Reform Comm'n (2007-2008).

95. However, many of their bolder proposals were tempered and ultimately passed by either statute or constitutional amendment. Steven J. Uhlfelder & Robert A. McNeely, *The 1978 Constitution Revision Commission: Florida's Blueprint for Change*, 18 NOVA L. REV. 1489, 1490 (1994).

96. The 1998 CRC passed eight of nine proposed measures at the ballot box. See generally *History*, FLA. CONST. REV. COMM'N 2017-2018, <https://crc.law.fsu.edu/about/history.html> [<https://perma.cc/UCX2-J3JJ>] (last visited July 19, 2020).

97. In 2006, Florida changed the threshold for passage from a simple majority to 60%. *Id.*

another pair of proposals sought to repeal the CRC in its entirety.⁹⁸ Although the policies are exclusive to each other, the proposals enjoyed bipartisan support and were sometimes heard and approved in the same committee stop.⁹⁹ In 2019, the Senate passed both proposals, with the single subject proposal passing unanimously, but the House did not consider them.¹⁰⁰ In 2020, both measures were refiled, the repeal measures passed the Florida House of Representatives, and ultimately the Senate failed to act.¹⁰¹ It remains to be seen if these measures will be refiled in the 2021 Session. If history is any guide, the effort to disband this institution will likely fail at the ballot box much like a similar proposal did in 1980.¹⁰²

Without changes to the process, perhaps the best advice to the next Constitution Revision Commission is the same that Governor Caldwell gave the first: The Commission “should meet, organize, adjourn sine die, and go home.”¹⁰³

98. H.R.J. Res. 53, 121st Reg. Sess. (Fla. 2019), S.J. Res. 86, 121st Reg. Sess. (Fla. 2019) and S.J. Res. 74, 121st Reg. Sess. (Fla. 2019) would have prevented the CRC’s ability to logroll. H.R.J. Res. 249, 121st Reg. Sess. (Fla. 2019) and S.J. Res. 362, 121st Reg. Sess. (Fla. 2019) would have repealed the CRC.

99. See FLA. H.R. CIV. JUSTICE SUBCOMM., MEETING PACKET (Feb. 13, 2019), <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3022&Session=2019&DocumentType=Meeting%20Packets&FileName=cjs%202-13-19.pdf> [<https://perma.cc/XV6X-S7LX>].

100. S.J. Res. 74, 121st Reg. Sess. (Fla. 2019).

101. S.J. Res. 142, 122nd Reg. Sess. (Fla. 2020).

102. Proposed FLA. CONST. amend. 11 (2018), <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=27> [<https://perma.cc/GT9M-J7M2>].

103. D’Alemberte, *supra* note 75.

