



# Journal of the 1997-1998 Constitution Revision Commission

Number 2—Organization Session

Tuesday, June 17, 1997

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## CALL TO ORDER

The Commission was called to order by the Chairman at 9:38 a.m. The Secretary called the roll and a quorum was present—34:

Mr. Chairman	Crenshaw	Lowndes	Scott
Alfonso	Evans	Marshall	Smith
Anthony	Evans-Jones	Mathis	Sundberg
Argiz	Ford-Coates	Mills	Thompson
Barkdull	Freidin	Morsani	West
Barnett	Hawkes	Nabors	Wetherington
Brochin	Henderson	Planas	Zack
Connor	Jennings	Riley	
Corr	Langley	Rundle	

Alternates:

Leesfield	Logan
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Excused: Commissioners Butterworth, Kogan and Sullivan; Alternate Barton

## PRAYER

The following prayer was offered by Father David McCreanor, St. Louis Catholic Church, Tallahassee, Florida.

Almighty God, we thank you for the freedom we enjoy in our nation and state. We thank you for this gathering today that seeks to assure and preserve the God-given freedoms for the citizens of Florida into the 21st Century.

The men and women who have accepted the responsibility of making constitutional recommendations come in need of a higher power than the human mind to help them in their decision making process. We call on you today, Almighty God, to provide that power in all the proceedings of this commission. Anoint each person here with the spirit of wisdom, knowledge, understanding and judgment. Grant them the vision to deal with the issues that affect the ever-changing needs of this fast growing state. May the decisions of this committee both preserve and enhance the quality of life we now enjoy.

We give you thanks, Almighty God, for the wisdom of those inspired to call for a constitution revision commission to meet every 20 years and for all those who served in the past and for those present today.

We ask your special blessings on Dexter Douglass, who chairs this commission and all commission members and their families. Keep them safe during the year ahead and protect them with your love. Amen.

## PLEDGE

Commissioner Ander Crenshaw led the Commission in the pledge of allegiance to the flag of the United States of America.

## OATH OF OFFICE ADMINISTERED

The oath of office was administered by the Secretary of the Commission, Faye Blanton, to Ander Crenshaw as a member of the Constitution Revision Commission.

**Chairman Douglass:** Welcome, Commissioner Crenshaw. First, let me thank Father McCreanor for being with us this morning. Then let me thank Commissioner Jennings for the wonderful dinner we had last evening. We certainly all enjoyed the reception and getting to see each other. I enjoyed seeing you there.

What we are going to do today is particularly ceremonial. Part of the program this afternoon will have former Governor Reubin Askew addressing the Commission. He will do that after our noon recess.

This morning, we're very fortunate to have with us Professor Robert F. Williams, a Distinguished Professor of Law at Rutgers School of Law in Camden, New Jersey. Professor Williams received his law degree from the University of Florida. He served as a legislative assistant to the Legislature during the 1967 Constitution Revision Session. Professor Williams is known nationally and throughout the country as one of, if not, the foremost authority from his writings on state constitutional law. We're pleased to welcome this native son of Florida back to the Sunshine State and to address this Commission.

## REMARKS

The Chairman recognized Robert F. Williams, Distinguished Professor of Law at Rutgers University, Camden, New Jersey.

**Professor Williams:** I am deeply honored to be invited to come here and talk to you. It's a terrific opportunity for me to return to my home state, to my home Capitol Building, even though I got started, as many of you did, in the old Capitol Building and the Holland Building. I've had a chance to see friends, classmates, mentors, and a whole range of people that I remember, since I've been here the last 24 hours or so. I want to say at the outset, I envy you. Twenty years ago I was involved with the 1978 Commission, essentially as a lobbyist. Thirty years ago I was involved with the Legislature as it worked with the product prepared by the Constitution Revision Commission. I sort of dreamed that maybe this year I'd be sitting out there the way you are now. If I worked hard and continued my career here, I thought I might have had that opportunity. But, instead, I took a different route. I'm one of the three or four people who ever moved from Florida to New Jersey and reversed the flow of the usual migration. I've spent the last 18 years studying and teaching and writing about state constitutions.

Why have I pursued such a course? It's because of what I learned here in Florida; the ideas I got from the people you know and have heard about in 1967, 1968 and 1978. I'm still pursuing those ideas and I hope to continue to do so. I would like to say that I want to make an early application here. Some of you will be appointing authorities in 2017 and I would like to have a chance to sit out there. I'm still a dues paying member of The Florida Bar and I'm going to keep paying those dues for the next 20 years. In 2017 I'm going to be practicing law in the State of Florida, and I hope you'll remember me.

1997 is actually a very big year for state constitutions in this country. Of course, the main reason it's a big year is because this Commission is

sitting. But you're sharing your enterprise with a number of people around the country. Some of you know that New York voters will vote in November on whether to call a full-blown constitutional convention in that state. California just completed a constitution revision commission which has filed its report. New Mexico recently, in the last year or two, completed a constitution revision commission. It's the 100th anniversary of the Delaware State Constitution. It's the 50th anniversary of our New Jersey State Constitution, my home state now. Montana is celebrating its 25th anniversary. So, there's a fair amount of activity going on around the country with respect to state constitutions. I hope that you'll try to get in touch with those people and stay in touch with them because as unique as Florida's Constitution is and the problems and potential of Florida are, you do share a number of things in common, I think, with others working on state constitutions in this country.

So this morning I want to see if I can paint a picture for you of your place in the broad national context of state constitution making and also link what you're doing to the deep historical roots of this enterprise of state constitution making. Then, I want to talk a little bit about the unique and special characteristics of state constitutions. Finally I'll reflect on the processes of state constitution revision in the 1990s.

I'm not going to make any substantive recommendations to you. I'm sure you're glad of that. I think everyone is full of ideas already. Others may expect you to have your whole agenda formed in your mind; and I don't think you should do that.

I'm a little hesitant because I think opening speeches to constitutional conventions or constitutional commissions are like graduation speeches, where the next day nobody remembers what was said. But I know that you know graduation speakers always say that. They always say, "I know you're not going to remember what I said." I didn't remember what the graduation speaker said at my graduation. But they go on and talk to you anyway, and try to be the one speaker who is different, and that's what I'm going to try to do. I hope I'll be able to succeed with you if you bear with me.

You took your place yesterday as the next step in what's now a 221-year history of state constitution making. It began in 1776 in wartime. Our New Jersey State Constitution began on July 2, 1776; an interesting date it seems to me.

The state constitutions of that period were the domestic political language of the Revolution. That was what the debates were about. How should we structure our governments now that we've declared independence? Even though we're still fighting a war for independence, who should participate in our governments? What should our institutions look like? What kind of rights guarantees should be in these constitutions? This was the topic of debate during that ten years while we fought the war, won the war, and struggled trying to get a federal constitutional convention together.

So the roots of this Commission reach deeply into that history; directly to James Madison, Ben Franklin, John Jay; all men in those days, of course, white men who learned about constitution making working on state constitutions, a decade before they got famous and worked on the Federal Constitution.

These roots are not only deep but they're wide. They spread all across the United States to all the states which have adopted and revised state constitutions. These roots also spread to federal systems all around the world. Eighteen or 20 countries use subnational component units or states the way we do. Most countries don't, of course. It's too inefficient; it's too much trouble.

So, you're now engaged in an enterprise that is being worked on in South Africa, as they draft the provincial constitutions there, the equivalent of state constitutions. The former East German states called Lander have just finished a process of revising their subnational constitutions, most of them with the help of constitutional commissions, by the way. So, the now reunified Germany is made up of component units, each of which have state constitutions.

These processes are also going on in Russia. Brazil, last decade, completed this process of revising state constitutions. Actually we have a lot to learn from each other even around the world, not just in other states in the United States.

This subnational or state constitution making in a federal system is experimental. You've heard states referred to as the laboratories of federalism, the laboratories of experiment. And since the beginning of our country we have recognized state constitution making as experimental, as trial and error. Even as early as 1778, the famous Tom Paine, who was famous because he advocated independence from England, was also a very important state constitutional thinker in Pennsylvania. In 1778, he applauded the "happy opportunity of trying a variety in order to discover the best . . . By diversifying the several constitutions, we shall see which state flourishes the best, and out of the many[,] posterity may choose a model."

So down through 221 years this tradition of experimentation has come to us. We've had hundreds of state constitutional conventions and state constitutional commissions in this country, thousands of state constitutional amendments, and about 150 separate state constitutions. From the beginning those experiments in the 13 original states served as models for the Federal Constitutional Convention. Actually, if you ever decided that you wanted to sit down and read the debates of the Federal Constitutional Convention, you'd see that a lot of what those debates were about was whether they should follow the New York model or the Massachusetts model. Nobody wanted to follow the Pennsylvania model and nobody wanted to follow the New Jersey model. It's very interesting and it's no accident that, literally, the first line of the Federalist Papers addressed to the people who were worried about the new Federal Constitution said, in effect, "New Yorkers, don't worry. This new Federal Constitution, it really looks a lot like your New York State Constitution." It might be the second line of the Federalist Papers, but it's right up front.

After the federal Constitution was adopted the state constitutional tradition continued on its own course, different from the developments in federal constitutional law. Through this period of time, of course, state constitutions were both cursed and praised. But there's one thing that's clear about this process of the evolution of state constitutions and experimentation, it gave a chance for voices to be heard in constitution making, voices that were never heard in the federal constitutional process.

The 55 white men who drafted the federal Constitution were not a diverse group. State constitution making, though, has heard the voices of women, African Americans, Native Americans, Latino people; all kinds of people in our country have had a chance to be involved in one level or another with state constitution making. And, of course, that's continued in this Commission today.

States still continue to be the laboratories of experiment in the federal system. States continue to copy ideas one from the other, or to reject ideas that have been tried in other states and haven't worked. The federal government continues to look to the states for models to emulate. One only has to look up the current debates over the line-item veto in Washington. That was invented in the states. Balanced budget, that was invented in the states. Term limits were invented in the states. Victim's rights provisions in constitutions were invented in the states, just to name a few of the current ideas they're circulating in Washington as proposed federal constitutional amendments. You're the direct descendants of these two centuries of experimentation.

Now, these experiments, these processes that we've seen unfold over two centuries have had two kinds of experimentation. One has been with the content or the substance of the state constitutions. That I'm not going to talk about; what should be in there, what kinds of institutions, what kinds of rights. I'm very interested in that, but it's not my interest here with you today.

The other kinds of experiments, on the other hand, have been procedural or process-oriented experiments. Throughout these two centuries, the debate has focused on how we can change the state constitution. Should you be able to change the state constitution? How easy should it be? How often should you do it? The question that's asked by one group is, how stable should the state constitution be? Asking your question that way suggests an answer. But the other way to ask that same question is, how rigid should the state constitution be? Asking the question that way seems to suggest a different sort of way of looking at the state constitution. One of them is, keep it the way it is, stability is important. The other one is that if it's rigid, it can block progress. Of course, we've seen that in many states including Florida, before 1968 and even today, possibly.

The first state constitutions didn't provide for their own amendment and revision. The New Jersey Constitution was adopted July 2, 1776,

which is a date we all like to talk about in New Jersey because we beat the Declaration of Independence by two days. That constitution amazingly said, if we settle with the British, if we settle this "current controversy", as it was called, this constitution will be null and void. It didn't say anything about, what if we lose. They knew what would happen. They would be hanged as traitors. But it also didn't say anything about what would happen if we won. So we did win the Revolution and New Jersey was stuck for 80 years with a constitution that nobody knew how to change. Finally, after a lot of debate, people realized the Legislature could pass a bill calling for a state constitutional convention. So, we did have a convention in 1844.

This whole process question about how you revise or modernize a state constitution has bothered Americans since the beginning, and it still bothers us. I suspect it bothers you somewhat; how much change, how quickly, these kinds of things. When we began, our New Jersey State Constitution was drafted by the State Legislature, if you can call it that, it was really a revolutionary congress. We really didn't have the attributes of higher law that we think of for a constitution now.

Pretty quickly, though, Delaware and Pennsylvania invented the constitutional convention. It's one of America's great contributions to the constitutional learning of the world. This was refined in Massachusetts in 1780 where they had both an elected convention and they submitted their product to the voters, literally, who adopted it. They had voted down a constitution in 1778 during wartime, probably because it came from the State Legislature and not from an elected convention. So, that was one model, the elected convention with submission to the voters for ratification.

Soon we developed the limited constitutional convention. The limited constitutional convention is a terrific, creative response to the forces of status quo. It's a way of saying, there's certain things that are too politically difficult to tackle, so let's just take them off the table and let's work on some other things. Okay? We would still have the 1776 Constitution in New Jersey if we hadn't had the ability to have a limited constitutional convention, which protected the equal representation for counties in the Senate, prior to one person, one vote. That was a very important thing, frustrating change.

About 120 years ago we saw the advent of the constitutional commission, originally limited constitutional commissions, like the Article V Task Force here. I would say that was a limited constitutional commission focused on one topic.

Utah, fairly recently, has invented the continuous revision mechanism through a permanent commission. Alaska is considering that now.

But in Florida, in 1968, we invented something new under the sun: the appointed, automatic Constitution Revision Commission which has direct access to the ballot. This commission that you're on today is the culmination of this process of trial and error, of trying to deal with the question of whether the state constitution should be immutable or mutable; changeable or static. This automatic idea, for many years, I thought was the idea of Chesterfield Smith or Sandy D'Alemberte or somebody like that. Some of you know there's another guy who had the idea first: it was Thomas Jefferson. Jefferson thought the Constitution should reflect the views of the living generation "so the Constitution can be handed on with periodical repairs from generation to generation . . ."

Now Jefferson hated the 1776 Virginia Constitution. So he, of course, wanted periodic revision of it. I think in some ways your answer to the question, "Should the constitution be stable?" draws on what you think of the current Constitution, obviously. So I guess you can trace your roots directly to Thomas Jefferson, which I think is probably uplifting, depending on what you think about Jefferson. On the other hand, he basically would probably call you repair people, repairing the Constitution to pass it on to the next generation.

The alternative to this was John Locke. John Locke, having no problems of limited ego, did a draft constitution for the Carolinas and provided it would stay in effect "forever". An amazing sort of idea, it was never adopted.

Like New York, about 15 states now have this automatic vote on whether to have a constitutional convention or not. But you're quite unique in this commission that you have now. It is interesting that it has not been copied by any other state in 30 years. The experiment, I take it, is still under way. The final results aren't completely in, it seems to

me. But this process has certainly stood the test of time in Florida. If I remember correctly, there was an amendment on the ballot to abolish the commission. That was voted down. The commission has been emulated. The Tax and Budget Reform Commission utilizes this process, it seems to me, and has worked all right, depending how you look at its product.

So all through this process we see changes in state constitutions, both with respect to what they contain, and changes with respect to the processes by which they would be updated or changed.

The Englishman, James Bryce, came to the United States and observed the American governmental institutions and commented in the 1880s that the American state constitutions are a "mine of instruction for the natural history of democratic communities". An American, 40 years later, James Dealey, said that, "One might almost say that the romance, the poetry and even the drama of American politics are deeply embedded in the many state constitutions..." So, I think whether you like natural history or whether you like romance and poetry, there's something in this state constitutional tradition for you. Certainly looking into the Florida State Constitution you can see both poetry and romance and natural history and some other things, of course.

So, this Commission is the latest gadget, the latest invention in the technology of state constitutional change. It operates to shift the burden of political inertia away from the status quo toward the possibility of change. It's an alternative to a constitutional convention where the people have to vote whether they want a convention at all, as we'll see in New York later this year.

I think you really should consider yourselves delegates now that you have been appointed and sworn in. You should consider yourselves a constitutional convention because you will operate from here forward with all of the attributes of a constitutional convention in the traditional sense, except that you don't have an elective constituency, and maybe that's a good thing, for a lot of you it's probably a relief. Each one of you now has a statewide constituency which in other respects is only shared by the Governor, the Cabinet members and the United States Senators from Florida.

I believe what we've learned about the way constitutional conventions operate can inform us about how you're likely to operate and how you might take your responsibilities.

The 1978 Constitutional Revision Commission, to my way of thinking, was the most open, deliberative and well-documented process of state constitutional revision in the history of this country. That even took place before the Internet, e-mail, most kinds of video, and these sorts of things. I don't think today we see it as the failure that we once saw. I remember that crushing feeling that next morning when the package was defeated. Some people remember that as a feeling of elation, I'm sure, when that package was voted down. As you know now, that set the agenda for this next generation of state constitution making and, ultimately, was not a failure at all.

This Commission promises to be even more open and more interactive, from the things I've heard now, with the technology that we have. I think, frankly, you may have to be even more interactive with the public if you want to be successful. I'll talk about that in a couple of minutes. You've got this terrific groundwork laid already by the Collins Center for Public Policy, the Article V Task Force, the Constitution Revision Commission Steering Committee, The Florida Bar, and probably some others. All kinds of people have offered their assistance to you. I think you should know that people in other states are watching this. People are very curious about this process. Even when I came here, people asked me, "Is it true, are we unique?" Yes, you are. And, for that reason, people are very, very interested in how this process is going to work.

It remains to be seen whether the State of Florida will become one of Tom Paine's states that "flourish best", or whether the experiment ultimately will fail. I think we're in a kind of crisis in the process of state constitutional change in this country now. So it's more important than ever that this experiment serve to teach people around the country. Yours is an unlimited commission. I think that's good and bad. You have an open mandate. But it means you'll have to focus; you'll have to set priorities. You'll probably have to limit yourselves. This is part of the mandate from the generation of 1968. Once you're appointed, you set the agenda for what you're going to do.

The public climate is as follows: the public is generally unaware of the State Constitution. There was a survey ten years or so ago that indicated over half of the public didn't know they had a State Constitution, and I think about half of the lawyers don't know there's a State Constitution. The judges know. But even sophisticated professionals are not very conversant with the State Constitution at any level of detail. So, I think you have a dual task. One is to fully educate yourselves about the State Constitution and its processes of change. Then you need to help educate the public about this.

What are these state constitutions we're talking about? Because they're called constitutions people think, well, they must be like the federal Constitution that they're little federal constitutions. They're clones of the federal Constitution. No, they're not. American state constitutions occupy a unique place in the legal and political technology of our constitutional federalism. They are unique in their origin. They're unique in their hierarchal place in the pecking order of our legal system. They're chameleon-like, oddly enough. Within the state, they are the supreme law of the state, they're constitutional documents; they take precedence over all other forms of state law.

At the same time they're subservient. They're lesser forms of law. They give way to any contrary federal law, including federal common law, and even federal administrative regulations, if they're valid, trump the State Constitution. So, it's a funny kind of animal.

State constitutions also include things ranging all the way from what we think of as the great ordinances of constitutions, the due process and equal protection requirements and separation of powers including trivial, lesser kinds of constitutional legislation, and legislative detail. For this a lot of people have poked fun at state constitutions as not really being constitutions. My view is they really are constitutions but they're different from the federal Constitution and people have to understand that and accept that.

Well, how are they different? Let's look at this uniqueness for a minute. They're different in their legal and political function. You heard yesterday from Chesterfield Smith this basic notion that the federal Constitution enumerates delegated powers and then has the Bill of Rights as kind of an afterthought or really a deal to get the federal Constitution adopted. The state constitutions, by contrast, limit otherwise plenary or residual power that the states never gave away to the federal government. So, you do not have to find something in the legislative article that authorizes the Legislature to pass a divorce law, a law about wills, a criminal statute, that is within the reserved plenary power of the state Legislature that is unlimited, except by the state constitution and by the federal Constitution.

Now this is slightly overstated. If you look carefully at any State Constitution, you'll say, "No, that isn't right, or it's not 100 percent right, because there are enumerations of power in the state constitution." For example, the Supreme Court has the power to promulgate rules of practice and procedure. It has the power to regulate The Bar. That's a grant of authority. The Game and Fresh Water Fish Commission has the legislative and executive power to regulate hunting and fishing. These are grants of power. These are enumerations of power. Sometimes you'll see an enumeration of power to overcome a judicial decision interpreting the state constitution to prohibit some exercise in power. The way to overcome that is to grant the power. But, interestingly, almost all of these things transform themselves from grants of power to limits on the Legislature. The power of the Supreme Court to promulgate rules of practice and procedure limits the Legislature. The authority of the Game and Fresh Water Fish Commission limits the Legislature. The way to figure out if you can hunt on Sunday is to look up the regulations of the commission, not the statutes. So that operates as a limit on the Legislature.

If these constitutions have a different function, if they work differently, I wonder if they look different. Yes, they do. They're longer, they have a different form, they're layered. They reflect a mine of natural history of democratic communities and poetry and all those things. They have specific limits in them.

You look at your legislative article, for example, filled with procedural restrictions on the Legislature. If the United States Constitution had the Florida legislative article, we wouldn't have had the shenanigans over the last month about the unrelated government shutdown-rider being attached to a disaster relief bill. But they don't have that. They've got

the slim, brief, thought-to-be model constitution. It's so great because it's short. I'm not so sure it's better in that respect.

The detailed finance and tax article, local government article, education article; all of these deal with matters that are uniquely within the reserved powers of the states. You wouldn't have to have them at all. You wouldn't need a finance and tax article. You wouldn't need an authorization to the Legislature to levy taxes or borrow money. I'm not sure how comfortable all of us would feel without those articles, no offense to legislators. People believe in the states that those are things that should not be left exclusively to the Legislature.

So we have this expanding vision from the original state constitutions; they grew up over the years. We have an expanding state constitution that ends up to be pretty long. Every time you want to do something within those areas, you have to make an exception; that makes it longer. So it doesn't follow the common vision of what a real constitution should look like when people think about that in a one-dimensional way, modeling on the United States Constitution.

If state constitutions work differently and they look different, maybe there'd be a different way to change them. There is, as you know, and as we've discussed, the text of the state constitution is much more volatile, more fluid than the federal Constitution. The federal Constitution is essentially unchangeable with some few exceptions. That's not true at all for the state constitutions, yielding a slight paradox. These are constitutional documents, protecting rights, yet they can be changed by a majority vote. In any event, these constitutions are tools of lawmaking. They're instruments of government and it's clear that state constitution revision does take place within the larger mechanisms of state politics. None of you need to be told this. I think we have to be aware of that. State constitutions are political. State constitution revision is political, and that's fine.

Just a few more points about what I think is the current climate for state constitutional change. I don't think it's a pretty picture, frankly. Public discontent with government is one of the things that fuels the initiative movement. It's thought to be independent of government. The problem with it, as everybody has pointed out, is it doesn't have the deliberative compromise potential that the regular institutions of government have.

Political scientist Gerald Benjamin was Research Director for the New York Temporary Commission on Constitution Revision, which laid the groundwork for this vote coming up in November on whether they should have a constitutional convention or not. He identified a paradox that we have in current government discussion now. "The public wants big change in government but has rejected the most thoughtful and deliberative methods of achieving such change." They've rejected the calls for constitutional conventions in essentially all of the states that have had these automatic calls. In Florida, you really get to jump over that hurdle.

The question, I think, is quite clearly whether you as a commission can operate in a way that will convince the public that you are independent of the regular processes of government. I think you have the potential to do that. Gerald Benjamin says again, "To channel the public discontent now targeted at state government we need a method of constitutional revision independent of existing government institutions." I wonder if this commission may be such an instrument.

This Commission is independent of regular government institutions and it does have that potential. I think you're going to need to consider testing the waters for potential change, possibly before you reach your final conclusions. The public hearing process may help in that respect, but I think there are lessons to be learned from the initiative process, including possibly, some polling.

There's a thing called the deliberative opinion poll which is supposed to model what the public would think about something if they were fully informed. It seems to me like a fancy focus group, although I'm not sure. Focus groups may be useful. An interactive process, a two-way flow of information that would merge direct democracy independence from regular government institutions with the deliberative consensus building process that you have available to you may be required.

Obviously, it's very important to try to gauge opposition or status quo instincts ahead of time. A massive study of seven constitutional conventions concluded, "Just as the delegates and political activists in each

state tend to break down ultimately, into 'reformers' and supporters of the 'status quo', so the electorate divides in a similar fashion . . . . In short, constitutional revision potentially polarizes state communities, or the attentive portions of them, along predictable lines."

There is a list of things that you're going to have to try to think about doing. I hope you'll think about some of these things. You've heard some of them already from some of the speakers. But I think your most important job is to try to keep an open mind for now. Give yourself time to come to understand this State Constitution. A lot of you know a lot about it already. I know that. But you may not have thought about it in every possible way. Try to assess how the Florida Constitution really touches the lives of Florida people; where it touches those lives, and how; and where it touches government and how. Because, obviously, much of what goes on in government is not dependent on the State Constitution. Maybe if there are problems, they don't need to be remedied in the State Constitution. You need to get a picture of the places where the government and the people touch the State Constitution. Otherwise, I don't think you can tell what, if anything, needs to be done.

I think you have to give yourself time to come together as a collegial body. This is a different institution from the Legislature. It's a different institution from a city commission or anything like that. With two exceptions, all of you are freshmen in this. You may have done a lot of things in politics, but you haven't done this before. It's different. This body will develop a collective personality; its group dynamics. Different from other political bodies, you don't have to run for election. You didn't have to run a campaign to get here, at least an election campaign. What I'm really suggesting is that you try to transform yourself into Commissioners from what you were the day before yesterday and what you'll go back to as this process continues. That's partly why I think the Chairman asked you to, from now on, call everybody "Commissioner", not Chief Justice or President or whatever. It seems like a surface tactic but it actually has some potential to bring you together in a different way.

Try, if you can, to distance yourself somewhat from your current, regular constituency. You do have this statewide constituency now. If you can, distance yourself from your appointing authority, at least in some respects. You need to do this to make the inside job work and to be able to work together over the next year in this process. It's going to go beyond the next year if you think about the election campaign, if you suggest any changes. You need to have this independence to work inside this chamber together and also to present an independent face to the public.

There were a lot of reasons why the 1978 revisions were defeated. That was the beginning, really, of the current negativism about government. 1978 was the year of Proposition 13, and I think it has just gotten worse. Many people are not willing to trust what government officials tell them all the time. If you can begin to take on the identity of independent Commissioners rather than government officials, in government as usual, I think you'll have a better chance of convincing the public to do what you want them to do. If you don't feel like statespeople right now, if you don't feel it, wait a little bit, hang on. The studies show that a high percentage of you will become statespeople, and will rise above the direct constituent kinds of things. Not all of you, but some of you. So, try to wait.

Seek consensus. Build on the combined strength of this body. Maybe you don't need a whole lot of ideas. Maybe you only need a couple of good ideas that everybody can get behind. If you combine the clout in this room, together with that of your appointing authorities, I'll bet you could do anything you think the state needs. But if you, instead, spread yourself out, if you are beguiled by the unlimited nature of your mandate, you may end up accomplishing nothing.

I would like to make a couple more technical points. There is general agreement that the State Constitution should be limited to fundamentals and not legislative detail. Of course, your fundamentals might be my legislative detail. When I was representing clients in front of the Commission in 1978, my fundamental ideas were told to me to be legislative detail. So this is not an easy dichotomy, but it's one that most people agree on. Most people that speak to constitutional conventions and commissions say, stick to fundamentals, keep it short. I don't think that's exactly the right way to go. Use some words if you need them. Brevity isn't any sort of special virtue, it seems to me. Of course you don't want to load up the constitution with rigid detail. Putting something in the State Constitution elevates it to the highest legal position in the state.

It also puts it beyond change by ordinary legal processes. It is good sometimes and it's bad sometimes, to take something out of the normal processes of legal change.

Studies have shown that the good things are usually anticipated. The good that you get from putting something in the State Constitution, you usually can predict. But bad things are usually unanticipated. There are things you couldn't imagine or you couldn't predict, hard as you thought about it. So the unanticipated negative consequences of putting something in a State Constitution really ought to be remembered.

You might want to consider some sort of a "constitutionalization impact statement", to try to force yourselves to think beyond the pros and cons of the policy that you're discussing, but also to think, if it's a good idea, do you need it in the Constitution? You might. But what are the costs and benefits of that.

You need to work on some of the technical questions. Will the provision be self-executing? Will the courts enforce it without implementing legislation? If the court won't, why are you putting it in the constitution? Maybe it just sounds good. Maybe it's a good idea. You need to worry about the problem of negative implication, where the expression of one thing sometimes is read as a limit on others. People put in the state constitutions that widows of veterans got a tax exemption. It sounded like a good idea. They found out later, when the courts told them, the Legislature can't pass a statute giving widowers of veterans a tax exemption when our society changed. What seemed like a good idea turned into a limit on the Legislature.

Putting things in the State Constitution delegates a lot of decision-making to the judiciary. You don't always have to do that. We just amended our constitution in New Jersey to include one of the local government mandate protections. The people didn't want the court adjudicating that. So a commission was created and the decisions of the commission are nonjusticiable. They're not reviewable by the courts. But by and large when you put something in the State Constitution you delegate a decision about it to the courts. Some people would say, "What's wrong with that?" But others might say, "Well, I don't know if I want to do that." You need to think about it ahead of time.

What about sunset provisions? Sunset provisions could be used in State Constitutions. Do you think you have good idea? Well, let's try it for a generation. Let the next generation muster a majority to keep it. That's a possibility.

The Sunshine Amendment adopted here showed us another mechanism. Part of that went into effect but it could be changed by statute. How could you do that? Because it says so in the amendment. That's an interesting mechanism, it seems to me.

In any event, the real question is whether the loss of flexibility is worth it. Try to develop ideas for assessing these impacts as you debate.

What will the state be like in the next generation? I've heard some current debate about changing the public housing laws around the country. Almost all of that debate concludes that state constitutions won't let us do it. There's an idea to go to more mixed-income housing and some privatization. The state constitutions were amended 100 years ago to say the state can't lend its credit to private corporations and similar limitations.

So you need to think ahead. Do we have things in the State Constitution that will limit what we ought to be doing for citizens? Consider techniques for presenting the recommendations to the public. We saw in 1978 that the separation of questions on the ballot didn't necessarily protect the noncontroversial provisions. People just voted against all of them. Maybe all of them were controversial. I don't think they all were. If you can manage your unlimited mandate carefully and wisely, pull together, and give yourself time to develop an independent identity, you really will function as a constitutional convention. I think you'll be successful.

Most people who give these kind of speeches say you've got to try to provide for the next 100 years. In Florida, you don't have to do that. If you can get us to the next generation, there'll be another commission. And, remember, I want to be on it. For better or for worse, you don't really have to try to make a constitution for the next 100 years. But I think if you do a good job, people will remember you for 100 years.

I'm going to leave you with the words of Governor Alfred Driscoll of New Jersey as he opened the 1947 Constitutional Convention in New Jersey. He said:

The rights you exercise in this convention were won in 1776 and protected in memorable struggles through the years . . . . May you be blessed with clearness of vision, soundness of purpose, and successful accomplishment, to the end that citizens of this state a hundred years hence will repeat your names with pride and call you devout and wise and just. Yours, ladies and gentlemen, is the opportunity of the century.

Two of you have had more than one chance to serve in this body, but most of you won't get that chance. This is your shot. Most people say that this kind of experience is their most meaningful piece of public service in their career. I hope you'll be able to leave an enduring legacy. I think you're privileged. I wish you best of luck, and I'll see you in 2017. Thank you very much.

### SPECIAL GUESTS

The Chairman introduced Janice Patrowski, his assistant for 39 years, and Edward R. Blumberg, President-elect of The Florida Bar, who were present in the gallery.

### RECESS

On motion by Commissioner Barkdull, the Commission recessed at 10:39 a.m. to reconvene at 10:50 a.m.

### CALL TO ORDER

The Commission was called to order by the Chairman at 11:06 a.m. A quorum was present.

### PRESENTATION OF PROPOSED RULES

The Chairman recognized Commissioner Barkdull, member of the Constitution Revision Steering Committee, for a presentation and discussion of the proposed rules to govern the Commission.

### RECESS

On motion by Commissioner Barkdull, further consideration of the proposed rules was deferred and the Commission recessed at 12:34 p.m. to reconvene at 1:45 p.m.

### AFTERNOON SESSION

The Commission was called to order by the Chairman at 1:40 p.m. The Secretary called the roll and a quorum was present—34:

Mr. Chairman	Crenshaw	Lowndes	Scott
Alfonso	Evans	Marshall	Smith
Anthony	Evans-Jones	Mathis	Sundberg
Argiz	Ford-Coates	Mills	Thompson
Barkdull	Freidin	Morsani	West
Barnett	Hawkes	Nabors	Wetherington
Brochin	Henderson	Planas	Zack
Connor	Jennings	Riley	
Corr	Langley	Rundle	

Alternates:

Leesfield Logan

**Chairman Douglass:** Steve Uhlfelder was the Executive Director of the 1978 Constitution Revision Commission. Mr. Uhlfelder is currently serving on the Board of Regents as the Vice-Chairman. He is considered one of the more active and, some call him progressive, others might call him obstreperous, but no one calls him anything other than very brilliant in government and in management of such things as the Board of Regents. Steve has been here since he completed law school. He was president of the student body at the University of Florida when he took on President O'Connell, who still remembers Steve fondly. Steve has done many things in public service which including being a partner, and current office manager, in the Holland and Knight Law Offices in

Tallahassee. I speak fondly of Steve, his great abilities and his accomplishments. Steve is here today to speak to us briefly and to introduce Governor Askew.

### REMARKS BY FORMER EXECUTIVE DIRECTOR

The Chairman recognized Steven Uhlfelder who addressed the Commission.

**Mr. Uhlfelder:** Congratulations on your appointment. It is a great honor for you to serve the citizens of your state in this capacity. Working as the Executive Director of the Commission twenty years ago with some of the finest Floridians, was one of my greatest honors and I am sure you will feel the same when you complete this very important task. I am privileged to have the opportunity to address you today and to have the opportunity to introduce my former boss, Governor Askew.

First, I want to commend the Chairman and the Steering Committee for selecting Billy Buzzett as Executive Director. He is a bright, hard-working lawyer and a wonderful human being. He will do an outstanding job, and he is way ahead of where I was twenty years ago which bodes well for your Commission. I also had the pleasure of working with your Chair on the past Constitution Revision Commission, and I can assure you he will be diligent, hardworking and very fair.

There is a great deal that you will be able to learn from the work of the Constitution Revision Commission of 1978. I hope you use their experiences. While none of the eighty-seven proposals and eight ballot items proposed by our Commission passed, forty percent of our recommendations eventually found their way into the law or into the Constitution during the past twenty years. Hopefully, your record will be even better.

I believe you have a copy of my article from the *Nova Law Review* that explains what was done during the 1978 Commission, and I will not spend a great deal of time talking about the past. I think there are many things that are different today than in 1978. In 1978 we set a very challenging agenda because there was an atmosphere and feeling that government needed to change and the Commission should be the proponent for many of these changes. I am not sure the atmosphere and the circumstances are the same in 1997, particularly as we look ahead to the new millennium. This is a more cautious and conservative era. More and more Floridians believe that government and its institutions do not, or should not, play a significant role in their lives.

Today we also live in a state that is much larger—9 million in 1978 and 14.5 million today—which makes it much more difficult to effectively communicate ideas to all citizens of our state. When you finish your work product, you will need to be able to promote it and that will require resources. In order to successfully pass your work product, you will need to begin today thinking about how you will present your recommendations to the public when you are finished.

In 1978, because of the extensive revisions that were being proposed or developed, some competition arose between the Commission and the Legislature. In fact, two years after the Commission completed its work, the Legislature proposed to the voters the elimination of the Commission. Fortunately for you, it was rejected by the voters. I think it is important that the Commission remains on good terms with the Legislature and listens to and values its input. I think it is very helpful that the President of the Senate, Toni Jennings, and Senator Jim Scott are on this Commission. There will be a bridge and effective liaisons to the Senate and the Legislature as a whole. Since there are no members of the House on this commission, I think it is important to work with them very closely. Remember, unlike the 1978 Commission, the 1968 Commission product went to the Legislature. One was successful and one was not.

In 1978, the Legislature ended its work one month before the Commission did in May. This year both your work and the legislative session will end at approximately the same time which will put significant pressure on you and the Legislature to avoid dealing with the same issues and to avoid unnecessary competition. I suggest, even though it may be difficult for some of your members, that you hold as many meetings outside of Tallahassee as possible in order to avoid interfering with the legislative process and to gain broader citizen input.

I think over the past day and a half you have heard from many people and have had many issues suggested to you. I know you will debate

many of the same issues that we debated in 1978. There were great speeches from Chairman Sandy D'Alemberte, Governor Leroy Collins, Representative Don Reed, former Attorney General Jimmy Kynes, and Senate President Jack Mathews. You have many people of similar stature and you will have similar discourse.

I suggest, unlike the 1978 Commission, that you limit the issues you discuss and debate and the ones you ultimately place on the ballot. I would also suggest, unlike the 1978 Commission, that you require an extraordinary majority to place issues on the ballot. I believe had we done that in 1978, fewer issues would have been placed on the ballot and more of them would have passed. Remember also, that all the issues you place on the 1998 ballot will be alongside the names of candidates for Governor, cabinet positions and the Legislature. Choose your issues carefully.

I will not go into lengthy detail about what you should or should not do. You have heard enough and already have a good understanding of the government. You have already heard extensively about the need to review the citizen initiative. I believe today we use the citizen initiative too much in Florida and in doing so we adversely affect the republican form of government. It will be difficult to do away with citizen initiative, but you should consider statutory initiative in its place or alternatively raise the requirements for constitutional initiative and have a lower threshold for statutory initiative.

One of the areas of the State Constitution which I consider the most important is the individual rights given its citizens. United States Supreme Court Justice William Brennan stated: "State Constitutions are a font of individual liberties for, without it, the full realization of our liberties can not be guaranteed." We live in an era of increased technology, computerization and massive information gathering on all our citizens. We must be constantly vigilant to protect the right to privacy. Esteemed United States Supreme Court Justice Lewis Brandeis emphasized, "The right to be let alone is the most comprehensive of rights and the right most valuable to civilized man." I urge you to proceed with caution when examining the right of privacy which was first proposed by the 1978 Commission.

I wish you the best of luck in your responsibilities and I know you will undertake your tasks with great care and caution.

It is now my great honor to introduce Governor Reubin Askew, a man whom I have known since he ran for office in 1970 and for whom I had the privilege to work in his administration.

I can think of no finer person to address you than Governor Askew, the man who appointed the last Constitution Revision Commission, who helped establish its aggressive agenda, and who set direction for the state for eight years and for many years since.

He is a former prosecuting attorney, state legislator, former chairman of two federal commissions, United States Ambassador and member of the President's Cabinet. He is one of the few people in our state who has served at every level of American government. Governor Askew's public service began as an assistant county solicitor which led to his election to the Florida House of Representatives, and subsequently, the Florida Senate where he served for twelve years.

He was elected Governor and gained recognition as a practical and progressive reformer, a man of great integrity and strong conviction who believes fervently in the need to make government better for the people of this great state.

Governor Askew set the stage for constitution revision in 1978, but because casino gambling was placed on the ballot by citizen initiative, he was diverted from his efforts to ratify the new Constitution. His foresight in working against casino gambling at a time when proponents said it was the only solution for saving Miami Beach, showed his great understanding of the complexity of the people and issues of Florida. Just look at Miami Beach today.

The Askew years as Governor were characterized as years of achievement, reform and great success for Florida. Because of his outstanding record as Governor, he was recognized by Harvard University as one of the ten greatest American Governors of the twenty-first century. It is my honor and privilege to introduce to you, Governor Reubin Askew.

## REMARKS BY FORMER GOVERNOR

The Chairman recognized former Governor Reubin O'D. Askew who addressed the Commission.

**Governor Askew:** Thank you for the applause. One of the things you learn quickly as Governor is that when you address the Legislature, when you get introduced from the door, you walk very fast because the applause has a way of dying, and you'd like to have it going while you're going. So I've tried to pass that on to each of my successors. I didn't pass that on to my predecessor, whom I understand was very kind to me. We've become very good friends. I appreciate his kind words.

Your chairman asked me to visit with you. I really don't have any prepared remarks, but I might like to share some thoughts with you. First of all, enjoy this. You know it's really an historical occasion. You may get tied up from time to time in the tension of the debate, but it's going to be a great experience for you; one that you'll always remember. And so, my first advice to you is to sit back, relax and enjoy it.

I had the opportunity, as some of the others who have spoken, to have been part of the Statutory Revision Commission. We met in the old Senate Chamber in November 1966. The procedure, of course, was different then because the Legislature was able to sanitize our product, which made it, I think, a great deal more palatable to the people. The Legislature bought into it. I wish I saw more members of the Legislature here today. I respect all of the appointing authorities for whom they appointed. Obviously your product is only as good as you really have a consensus to publicly support it.

I notice that some of the speakers have talked only about maybe doing housekeeping things. I'm not of that view. I made some recommendations to the 1978 Commission. They took me at my word and passed them. It didn't pass. But this only comes once every twenty years. To approach it only from the standpoint of just housekeeping, I think misses, in my opinion, what the framers of the 1968 Constitution really meant. You have to always be mindful that ultimately your product has to be approved by the people. That's no small part in terms of deciding what your product may be. But if, in fact, the Constitution only needs a few housekeeping measures, then you won't lose anything if you strike out and are bold on some. If they fail, why you haven't done that much bad because it didn't need but housekeeping to begin with.

This is an opportunity that under the Constitution is meant for you to review the Constitution and, if necessary, make some basic changes. There were those who said the Constitution of 1968 would never pass. It did. No one knows what your product is going to result in being, except it will go directly to the people. I hope that you will get an awful lot of input. I particularly would say to those members—active members of the Legislature—that it won't hurt to get some input from your colleagues, because almost each one of you, each group of you here, has the ability to defeat the product.

If there isn't some type of consensus, then it may not go very far. Rather than talk about only making minor changes or housekeeping, I think it has to do more with how much consensus can be developed on a proposal and how you place it on the ballot. Those are things that this Revision Commission will have to face up to.

In thinking about what to say, I could throw out a lot of questions to you. If the framers of the Constitution in 1968, in setting the size of both houses of the Legislature, did so in the legal atmosphere of trying to jockey with counties, therefore, the population didn't always come out just right. At that time, even though it was after *Baker v. Carr*, it was prior to *Swann v. Adams*, before we were reapportioned by the courts. In order to give us the flexibility and numbers to work with, we said that the Senate "shall be not less than 30 nor more than 40" and the House "not less than 80 nor more than 120." Now, obviously, the Legislature is never going to reduce its size. I was a part of that body for twelve years and I didn't have that inclination. I don't know that others will. But, wherein are you supposed to look at the basic framework of the whole government if it isn't here? One of the first questions that pops up is, "Are 40 and 120 realistic figures? Should they be smaller?" Of course the Legislature can statutorily change it. It seems to me that 120 is a fairly large house. I think the Senate has a pretty reasonable number. With "Eight is enough," if you project it far enough ahead of time you could make some real courageous statesmen eight years hence. It would probably overwhelm the people that we reduced the size of government, starting in the body that talks the most about it.

You might also think about shortening the size of the Executive Branch. I've long felt that there were too many members of the Executive Branch. Back in the late 1960s, we strengthened the Legislative Branch. When I became part of it, it was a rather weak branch. I don't see anyone here that was around at that time. That was before we got Pat Thomas into politics. It's before, actually, he was an active part of the scene. Members of the Legislature had to be reliant upon lobbyists, either from the Executive Branch of government—and I was a lobbyist for eight years, some of you may remember that—or from the private sector. We didn't really have any information of our own. The Legislature was intended to be the primary policy-making institution in our government. Yet it really wasn't equipped to do it. We would see an Appropriations Bill the night before it was supposed to pass. It was sacrosanct to question it. Only a few knew what was in it, for the most part. When we passed it, the Governor with a line item veto and the then-existing Budget Commission with adjustments, fine-tuned it. We'd come back two years hence and then the question was moot.

I always have supported the elected Cabinet system, up until that time, up until the Constitution of 1968 passed, mainly because the Legislature was not able to exercise its full strength in the whole system of checks and balances. It was, in effect, a weak body. Of course, it was somewhat malapportioned, too. It was the worst in the nation in terms of its representative view of the people. And so, what I would ask you just to take a look at is, how the checks and balances have really made our government work. Maybe during the Roman times you had, maybe, a little split between the General and the horse cavalry. When you look at governments, none was really founded like ours—on a separation of powers. It works. You have checks and balances. But the Legislature was a weak branch and it was imbalanced. But do you sufficiently diffuse the Executive, maybe, to mitigate it? That's no longer the question. I don't know of anyone who thinks the Legislature is a weak branch. I said one time that they had become so independent, they were the most independent since Parliament beheaded the King. But the fact of the matter is, that the Legislature is supposed to be independent, it's supposed to be the primary policy-making branch of the government. It has legitimate oversight.

The question really becomes, in the Legislature, to what extent will it micro-manage, with the use of computers, its exercise of oversight. It is a strong branch.

Our court system was really a mess; the trial court system. We had some fine people in it at the time. Many of us worked on this for years. Finally, with the help of some of you we passed, in 1972, a revision of the court system. We really made the Chief Justice and the Supreme Court head of the Judicial Branch. What we didn't do, they declared for themselves in *Chiles v. Askew*, to where they could do almost anything. I agreed with McDonald's dissent. The fact of the matter is, the Legislative Branch is as strong as it should be. The Judicial Branch is as strong as it should be. The Executive Branch isn't. If you wait for the Legislature to make any changes, with "Eight is enough," those independent posts become much more attractive.

We have a practical consideration: If our system is to work, is it going to be balanced? Why are we fearful with giving authority to the Governor when the Constitution starts off by saying the supreme power is in the Governor? Well, it goes downhill after that. I could see and supported it, when I felt it was a check on a Governor when you had a weak Legislature. That's no longer the case. I would not ever want to see a legislative body go back to the way it was when I got here, by any means. One of the biggest reforms we got when I came to this chamber was the reform that required a live quorum in a committee meeting. Dick Langley is nodding his head. He has been here a long time, too. But you see, they still kept proxies. My first bill, I lost. Bart Knight in Blountstown told me what a good bill it was and he'd vote for it and then he voted six proxies against me. That day has passed.

I would suggest to you, as long as you isolate it on the ballot, I wouldn't be fearful of taking a look at it. I'm not sure whether the people of Florida are quite ready to accept the entire abolition, which I still favor, or whether you could combine them—such as the proposal that Governor Collins and Commissioner Dexter Douglass were involved in (he's been around a long time too, I might add) in terms of combining the Comptroller and the Treasurer and retaining the Attorney General. In effect what you will have is a new version of the State Board of Administration.

Don't be so hesitant to exercise what is expected of you because you, in effect, are an initiative by the people. We have an initiative. But

wherein is there an initiative of the people in a representative capacity, such as you have, that will go directly to the ballot. It doesn't happen anymore, except in a convention, and that's not likely. One of the things I want to leave you with is: Don't be hesitant to take a look at it. It may be your feeling that it won't pass, maybe you don't want to change it. You do not have an Executive Branch of government that can respond to the people on public policy as a Governor could with a singular voice. One of the things we found in the Legislature, with my predecessor, is that as much as we disagreed, we were diffused and couldn't really get any public forum. The Governor is still the one that has the forum and is the only one that, in effect, can challenge the people. If you really want to have a Governor lead, and not just respond to what the polls say, frankly, you need to give that Governor the authority of the office. And then I think you will find it better than it is now.

Another provision that obviously you're going to be looking at, and most speakers have talked about, was the initiative process. Times have changed greatly since we considered that—and I was a supporter of it. But that was before *Buckley v. Valeo*. In 1976, the Supreme Court, in effect, was saying you couldn't limit expenditures, except with this quid pro quo, such as in Presidential public finance programs. Overnight that changed. We saw people trying to put casino gambling on the ballot. But they weren't getting very far. When the limitation was knocked off, by a subsequent case, then a key family in this state, with one of the biggest hotels—we're talking about Miami Beach and South Broward only—put in three-quarters of a million dollars, and got it on the ballot. Then it became obvious that if any group wants to, and has enough money, you can get anything on the ballot. Let's put it this way, you can get the signatures for it. Whether it will go through the remaining steps, then becomes a question.

We saw these professional signature-getters in California, for instance, where it has been made into an industry, "Are you for casino gambling?" "Absolutely not." "Good, sign here so you can vote against it." And "Are you for it?" "Yes." "Good, sign here; you'll get a chance to have it." So, believe me when I tell you, the citizen initiative that we thought of, when this was put on the ballot, has been somewhat altered. Now the people deserve some type of retention of a viable program in it. It was put in there mainly because of the lack of response from the Legislature in properly apportioning Florida's Legislature. So that you wind up being stymied. We said if the people have a right to initiative, that will never happen again. That's true. I don't think it will happen again with the Constitution Revision Commission doing its job.

In looking at it, it's complex. We've made some subsequent changes that have helped it. But the question is, "How can we have something left for the people and still not undermine representative government?" Our government has functioned on the basis that we elect people, and then we judge them. If we don't like what they've done, we turn them out. If you think you're going to be able to get considered thoughts in the initiative process, that may or may not work. It seems to me that if we required that an election intervene—and many times it will, depending upon when the proposal was prepared for the ballot—if there was some way that the Legislature would have a shot at it, before such time as it went to the ballot, then I would feel much more comfortable with it, to ensure if it can be addressed in the Legislature; if the Legislature is going to be the deliberative body that will make sense out of it. Mechanically, I'm not sure how you put that all together.

Mr. Chairman and members of the Commission, I believe that the initiative is so important that it might well be worthy of special attention before this body in trying to get the collective view of everyone involved in it. Now, I was a part of putting it on the ballot for the first time successfully; 210,000 signatures, we were a somewhat smaller state then. I want to tell you my people came to me and said "Governor, the only way this is going to get on the ballot is if you spend the next four to five months at shopping centers throughout the state every weekend." I really thought all I had to do was just to put something in the paper and they could clip out the paper and send it in. It doesn't work that way. So putting something on the ballot is no easy task if it is really a citizen initiative. As Governor, I had people helping me, but it wasn't the classic case we thought about at the time, either. It needs some thoughtful consideration of how mechanically we can still make it available and yet not turn us into another California where you just undermine all sense of representative government. And if you start relying only upon referendums and polls, then ultimately people can react to the emotion of the times, rather than being deliberate. That's why I would put my confidence in the legislative body in terms of that consideration. You might



also in the initiative, lengthen the time where you can have a subsequent item on the ballot after it has been defeated.

In the Judicial Branch—and this has been twice defeated—is the merit selection and retention of trial judges. It is not a good system that we have. We may think we're denied a chance to elect. The fact of the matter is, Commissioner H.T. Smith, in your county: how many names are on the ballot when they go to vote on circuit judges and county judges? Too many. I lived in Dade County for seven years, enjoyed it, and I want to tell you, if anyone thinks that we furnished an opportunity for them to exercise really good judgment, it just doesn't work that way. People say maybe there ought to be something more than "Shall so-and-so be retained in office?" Maybe there should be a better system. I'm not happy with that system, in particular, because it still forces a judge to raise money if he has a contested retention campaign. I haven't seen one that was better. I hope that you will consider that trial judges need to be selected essentially upon merit. Our system has worked pretty well. We had some kinks to begin with in it. I put the system into existence for vacancies by Executive Order. Then we put it in the Constitution when we finally, finally passed it.

Another incidental measure is: whether the Legislature would still be given the authority for impeachment for judges other than Supreme Court justices? When we met in 1966, the Judicial Qualifications Commission was just coming into being. I think with this last amendment, which I think was an excellent amendment, which strengthened the whole process of discipline, then it seems to me that the Supreme Court ought to have the ultimate authority to decide all discipline of everyone other than their body. Now we have a provision in it, it's not a well-known provision, that if Judicial Qualifications Commission makes a recommendation on the Supreme Court Justice, then you pick out your seven senior justices throughout your circuit courts and they become part of the Supreme Court. It seems to me that the Supreme Court ought to have the exclusive authority to discipline everyone up to them. The Legislature, through impeachment, should have the exclusive authority to deal with the discipline of Supreme Court justices. Bear in mind you have both. Some say it's a reserve and maybe it doesn't hurt anything to have it. I really think for clarity and accountability, it works better.

A couple of other points. I'm not going to dwell on the whole question of our finance and tax structure. Most of you are aware of it. Anyone who is familiar with it, knows that we have built ourselves into a corner by doing things we needed to attract people. Now we've become a tax haven. We have so many people coming in and becoming a part of Florida. The interesting thing about Florida, is we have become a state where almost everybody is from somewhere else. Trying to coalesce on issues to ensure quality of life, even for those people coming, we're substantially limited. You're aware of that. My only point is, I think you really ought to address it. What you will need to come out with, that's something different for state government.

One of the biggest problems you should face in terms of challenges is local government. We did a lot, to begin with, for local government. We freed them up, somewhat, in the 1968 Constitution. But if devolution, and all that may or may not mean, is going to work, and if there is, in fact, human need at the tail end, and we don't do it as we often think that we might be able to do it; then all we're doing, frankly, is just dropping it all on local government at a time when they're the least able to handle it. I think it's about time for the state government to free up local governments and let them respond to their needs—let them be responsible. Of course some of them would just as soon the State Legislature pass the tax for them and them not have to take the heat. I believe with a state as big as we are, projected to grow and grow and grow, 700 a day, that we have to understand the challenge of state government and to really sit down and hear from Sam Bell, if he isn't speaking to you, the chairman of the State and Local Government Study Commission or Lance deHaven-Smith, who is the director of the Reubin O'D. Askew School of Public Administration and Policy at Florida State University, to be able to face up to it.

If I had to pick out two of the most important issues, I would say the initiative provision and how you free up local government so they can respond essentially to meeting their own needs.

Lastly, I would repeat what I started with, that is, don't be so hesitant that you perceive your role only as a housekeeping role. People who have initiatives individually, they're not timid. I think you want to think about it in a realistic context. This is the only time every 20 years that

we can look fundamentally at some of the issues and to be able to see how we can recommend adjustments to the people, knowing that the greater chances are they will probably not come, either through the initiative process or through the legislative process.

Having done that, I think you will do a good job. I wish you well. I think you would want to feel that your job doesn't stop with the passage of your product. Your job will just begin, and that's essentially selling it. That's why I think it's so important that legislative leadership in both aisles, to the extent they're willing, may become a part of this.

If there are any questions, Mr. Chairman, I'll be happy to entertain them. Thank you very much for your attention.

## ADOPTION OF RULES

The Commission resumed consideration of the proposed rules. Commissioner Barkdull moved that the proposed rules—

- excluding the provisions of Rule 5 [full Commission voting], and
- suspending the provisions of Rule 9.3 [requiring a two-thirds ( $\frac{2}{3}$ ) vote of the Commission to amend the rules] until final consideration of the adoption of the rules,

—be adopted to govern the Commission until the next full Commission meeting, so that members could have time to review the Rules and prepare amendments if desired.

Commissioner Langley moved the following amendments which were adopted:

**Amendment to Rule 1.11**—On page 4, line 2, after "calendar", insert: *of public hearing and meeting notices of the Commission*

And on page 4, line 10, after the period (.) insert: *Such notice shall be published no less than five (5) days prior to Commission meetings.*

**Amendment to Rule 2.15**—On page 12, lines 9-14, delete the entire rule.

The question recurred on the adoption of the proposed Rules, as amended, which were adopted.

## RULES OF THE 1997-1998 CONSTITUTION REVISION COMMISSION

### RULE ONE

#### CHAIR, OFFICERS, MEMBERS, AND EMPLOYEES

#### PART ONE—COMMISSION CHAIR

##### 1.1 Appointment of the Chair.—

The Chair of the Constitution Revision Commission is appointed by the Governor pursuant to Article XI, section 2(b) of the Constitution of the State of Florida.

##### 1.2 Employment of Executive Director.—

The Commission Chair shall employ on behalf of the Commission an Executive Director who shall employ with the approval of the Chair such personnel of the Commission as may be necessary to perform the functions of the Commission. The Executive Director serves at the pleasure of the Commission Chair.

##### 1.3 Appointment of Committees.—

The Commission Chair, in consultation with members of the Commission, shall appoint all standing and select committees, and the members of each, and unless otherwise provided shall designate a chair and vice-chair of each committee.

##### 1.4 Calling the Commission to order.—

The Commission Chair shall take the chair each day at the hour established by the Commission at the last session or by the Committee on Rules and Administration. On appearance of a quorum, the Commission Chair shall immediately call the members to order and proceed with the daily order of business.

**1.5 Commission Chair's control of order.—**

The Commission Chair shall decide all questions of order, subject to appeal by any member to the Commission. The Commission Chair may require the member raising the point of order to cite the Rule or other authority in support of the question. Upon appeal, no member (except the member making the appeal) shall speak more than once, except by permission of the Commission Chair. The member making the appeal shall have the right to speak five minutes in closing, and the Commission Chair shall have the right to speak five minutes from the floor to close the debate.

**1.6 The Commission Chair's control of chamber, corridors, and rooms.—**

The Commission Chair shall preserve order and decorum and shall have general control of the Chamber, galleries, halls, and rooms surrounding the Chamber as well as distribution of literature and other materials in those areas.

**1.7 The Commission Chair's vote.—**

The Commission Chair shall not be required to vote in ordinary proceedings, except on final passage of any proposed revision or part thereof of the Constitution, unless the Commission Chair's vote is needed to break a tie. In all roll call votes, the Commission Chair's name shall be called last.

**1.8 Vacating the chair.—**

The Commission Chair may name any member to perform the duties of the Chair, but such substitution shall not extend beyond one Commission meeting.

**PART TWO—COMMISSION OFFICERS: SECRETARY OF THE COMMISSION AND SERGEANT-AT-ARMS****1.9 Appointment of a Secretary of the Commission.—**

The Secretary of the Commission shall be designated by the Commission Chair.

**1.10 Secretary's duties generally; maintains Journal.—**

The Secretary of the Commission shall keep a correct daily Journal of the proceedings of the Commission, and this Journal shall be numbered serially from the first day of the Commission meeting in full session. The Secretary shall retain custody of all records or papers belonging to the Commission and shall not permit any records or papers belonging to the Commission to be removed from the custody of the Secretary other than in the regular course of business and with proper receipt.

**1.11 Secretary's duties; prepares calendar of public hearing and meeting notices of the Commission.—**

The Secretary shall publish a calendar as provided by the Committee on Rules and Administration in accordance with these Rules. In the event the Commission goes into recess, the Secretary shall publish an interim calendar, which sets forth notices of public hearings, and all other matters of public information as shall be necessary to properly advise the members and the public of the official meetings of the Commission. Such notice shall be published no less than five (5) days prior to Commission meetings.

**1.12 Secretary's duties; reads papers and calls roll.—**

The Secretary shall read to the Commission all papers ordered to be read, note responses of members when the roll is called to determine the presence of a quorum; call the roll and tabulate the answers of members when a question is taken by yeas and nays, and assist, under the direction of the Commission Chair, in taking the count when any vote of the Commission is taken by a show of hands or otherwise.

**1.13 Secretary's duties; prepares printed forms.—**

The Secretary shall prepare the copy for all printed forms used by the Commission.

**1.14 Secretary's duties; indexes proposals.—**

The Secretary shall maintain a numerical index of proposals filed by members and a cumulative index by introducers.

**1.15 Appointment of a Sergeant-at-Arms.—**

The Sergeant-at-Arms shall be designated by the Commission Chair.

**1.16 Duties of the Sergeant-at-Arms.—**

The Sergeant-at-Arms shall attend the Commission during its meetings, maintain order under the direction of the Commission Chair, and execute the commands of the Commission and all processes issued by the authority thereof as directed by the Commission Chair.

**PART THREE—COMMISSION MEMBERS****1.17 Attendance and voting.—**

Unless excused for just cause, every Commission member shall be within the Commission's chamber during its sessions and shall vote on each question.

**1.18 Excused absence.—**

The Commission Chair may excuse any member from attendance at any Commission proceeding, and such excused absence shall be noted in the Journal.

**1.19 Incurring obligations.—**

No member of the Commission shall incur any obligation payable from Commission funds without the prior written approval of the Commission Chair.

**PART FOUR—EMPLOYEES OF THE COMMISSION****1.20 Executive Director.—**

The Commission Executive Director serves at the pleasure of the Commission Chair.

**1.21 Commission personnel.—**

The Executive Director with the approval of the Commission Chair may employ such personnel of the Commission as may be necessary to perform the functions of the Commission. The personnel serve at the pleasure of the Chair, and the Executive Director has the authority to dismiss any employee with the approval of the Commission Chair.

**1.22 Personnel; duties and hours.—**

Commission personnel shall perform the duties assigned them by the Commission Chair or the Executive Director and shall remain on duty as required.

**PART FIVE—PUBLIC MEETINGS AND PUBLIC RECORDS****1.23 Open meetings and records.—**

All proceedings and records of the Commission shall be open to the public.

**RULE TWO****COMMITTEES, OFFICERS, MEMBERS,  
VOTING, MOTIONS, DECORUM, AND DEBATE****PART ONE—COMMITTEE ORGANIZATION, DUTIES, AND RESPONSIBILITIES****2.1 Standing substantive committees; creation.—**

There is hereby created the following substantive standing committees:

1. Declaration of Rights
2. Executive
3. Judicial
4. Legislative
5. Local Government
6. Finance and Taxation
7. Ethics and Elections
8. Bonding and Investments
9. Education
10. Miscellaneous

Each standing committee shall be composed of no less than five (5) members. Additional standing committees may be named by the chair.

## **2.2 Substantive standing committees; powers and responsibilities.—**

The standing substantive committees shall review proposals referred to them by the Chair in relation to the Constitution of the State of Florida, as revised in 1968 and subsequently amended, and report the results of their deliberations to the full Commission. Any action of a standing committee is advisory only.

## **2.3 Standing procedural committees.—**

There is hereby created the following procedural committees:

1. The Style and Drafting Committee. The Style and Drafting Committee shall have 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. It shall also prepare the Commission's final report.

2. The Rules and Administration Committee. The Rules and Administration Committee shall be responsible for setting the daily calendar and any additions thereto. It shall also see that the proceedings of the Commission, in full session, are in accordance with the Rules of the Commission and consider such matters as may be referred to it by the Chair. It shall also provide a schedule of the days and hours for the meetings of the committees to prevent scheduling conflict among members. The committee will also be responsible for working with the Chair and the Executive Director on administrative matters relating to the Commission's operation.

## **2.4 Committees, meetings.—**

Each committee, substantive or procedural, shall meet publicly at such times as are called by the respective committee chair or as determined by the Committee on Rules and Administration, subject to the approval of the Commission Chair. The Chair may excuse any member from attendance from committee meetings. The Chair shall group standing committees to provide each with an opportunity to meet without conflicting with the meetings of other committees.

## **2.5 Committees, quorum.—**

A majority of the members of a committee shall constitute a quorum.

## **PART TWO—COMMITTEES; OFFICERS**

### **2.6 Committees; appointment of chair and vice-chair.—**

The Commission Chair shall appoint a chair and vice-chair of each committee who shall serve at the pleasure of the Commission Chair.

### **2.7 Committees; calling committees to order.—**

The chair or, in the chair's absence, the vice-chair, shall call the committee to order. On the appearance of a quorum, the committee shall proceed with the order of business. Any member of the committee may question the absence of a quorum.

### **2.8 Committees; chair's control.—**

The chair or vice-chair shall preserve the order and decorum and shall have general control of the committee room. If there is a disturbance or disorderly conduct in the committee room, the chair or the vice-chair may require participants in the disturbance to clear the room.

### **2.9 Chair and vice-chair; vote.—**

The chair and vice-chair shall vote on all matters before the committee. The name of the chair shall be called last.

## **PART THREE—COMMITTEES; VOTING**

### **2.10 Committees; taking the vote.—**

The chair shall declare all votes and shall cause the same to be entered on the records of the committee, but if any member questions a vote, then by a show of hands by three (3) members the chair shall call the roll. When the committee shall be equally divided, the question shall be lost.

### **2.11 Committees; proxy voting.—**

Each committee member shall attend all meetings. No member of a committee shall vote by proxy.

## **PART FOUR—COMMITTEES; CONSIDERATION AND REPORT**

### **2.12 Committees; consideration of proposals.—**

All proposals that are referred to a committee established pursuant to these Rules shall be reported from the respective committee in writing, together with the recommendation of approval, disapproval or no recommendation and filed with the Secretary. No proposal may be rejected or defeated by a committee, but a committee, in reporting its recommendation, may draft a new proposal, embracing the same general subject matter of the original proposal(s) to be returned to the Commission with the recommendation that a substitute be considered in lieu of the original proposal(s).

### **2.13 Committee consideration; time-frame.—**

Prior to the convening of the full Commission in session, committees may consider proposals at the pleasure of the chair of the respective committees. When the Commission is meeting in regular sessions, each committee to which a proposal is referred shall have no longer than three (3) Commission meeting days from the day it received a proposal within which to file its written report, provided however, that on the motion of the committee chair, the time may be extended by the Commission for a period not to exceed five (5) Commission days per motion.

### **2.14 Committees; failure to report.—**

In the event a committee fails to report a proposal within the time allowed by these Rules and the time has not been extended, on point of order by the introducer, the proposal shall be deemed reported without recommendation and transmitted to the Secretary to be placed on the calendar for consideration.

[Provisions of Rule 2.15 were deleted.]

### **2.16 Committees; signing reports.—**

All committee reports shall be signed by the chair, or the vice-chair in the absence of the chair, and filed with the Secretary. Committees shall keep an accurate record of the committee's activity including but not limited to motions, amendments, and votes.

### **2.17 Committees; transmit proposals to Secretary.—**

Proposals after having been reported by a committee shall be placed on the calendar for consideration. Proposals shall be listed in numerical order. The Rules and Administration Committee shall establish a calendar for consideration of proposals and other matters in such order or manner as it deems proper.

## **RULE THREE**

### **PROPOSALS**

#### **3.1 Objectives.—**

The Constitution Revision Commission is vested with the duty to examine the Constitution of the State of Florida, as revised in 1968, and subsequently amended, hold public hearings, and file with the Secretary of State its proposal, if any. This Rule and each portion thereof addresses itself to the basic document under consideration, proposals for revision and procedures therefor.

#### **3.2 Base document.—**

The Constitution of the State of Florida, as revised in 1968 and subsequently amended, shall be the base document for all proposals. The Constitution shall be printed in legislative bill form.

#### **3.3 Commission consideration of public issues.—**

Constitutional issues raised by the public shall be identified and listed in numerical order according to the article and section of the Constitution to which they relate. Upon motion of a Commissioner and upon receiving an affirmative vote of at least ten (10) Commission members, issues submitted by the public shall be filed with the Secretary for

consideration by the Commission. The moving Commissioner of a public proposal shall be deemed the sponsor of such proposal.

### 3.35 Commissioners' proposals.—

Those issues submitted by Commissioners shall be reviewed by the Commission and upon an affirmative vote of at least ten (10) members, the issue shall be filed with the Secretary of the Commission for consideration by the Commission.

### 3.4 Form of proposals.—

Proposed revisions to the 1968 Constitution shall be submitted on written forms prescribed by the Secretary. The forms shall follow the form for bills used by the Florida Legislature. A proposal for revision shall address itself to the pertinent article, section, page, and line number of the 1968 Constitution, as amended, which it seeks to revise. Existing language proposed to be deleted shall be lined through with hyphens. Proposed new language shall be underlined. A proposal for revision of the Constitution shall be designated a proposal, and shall be referred to as such.

### 3.5 Proposals for introduction.—

All proposals submitted and receiving requisite consideration by Commission members shall be filed with the Secretary who shall serially number them and submit them to the Commission for any action as determined by the Commission. The Commission Chair shall refer proposals to the appropriate committees.

### 3.6 Substitute proposals.—

If a substitute proposal has been filed with the Secretary, when the original proposal is reached on the calendar, it shall be automatically tabled and the substitute proposal shall be available in lieu of the original proposal. Upon failure of a motion to consider the substitute proposal, consideration of the original proposal shall be the next order of business. The introducer of the original proposal may be shown by the Secretary as a co-sponsor of a substitute or may withdraw as a co-sponsor.

## RULE FOUR

### FULL COMMISSION; ORDER OF BUSINESS AND CALENDAR

#### 4.1 Session of the Commission.—

The Commission shall meet pursuant to a schedule adopted by the Committee on Rules and Administration and approved by the Commission Chair. The schedule shall set forth the hours to convene and adjourn.

#### 4.2 Quorum.—

A majority of the Commission shall constitute a quorum.

#### 4.3 Daily order of business.—

The daily order of business shall be as follows:

1. Roll call
2. Prayer
3. Pledge of allegiance to the flag
4. Receiving communications
5. Introduction of proposals
6. Reports of committees
7. Matters on reconsideration
8. Special order as determined by the Rules and Administration Committee.
9. Unfinished business
10. Correction and approval of Journal

The Secretary of the Commission shall prepare and distribute, on each day of session, a calendar corresponding to the Daily Order of Business; and within each order of business, matters shall be considered in the order that they appear on the daily calendar.

#### 4.4 Motion to amend daily order of business.—

Any motion to amend the daily order of business shall be deemed as a motion to waive the rules.

## RULE FIVE

### FULL COMMISSION VOTING

[The substance of Rule 5 was deferred until a later meeting.]

## RULE SIX

### MOTIONS AND PRECEDENCE

#### 6.1 Motions; how made, withdrawn.—

Every motion other than a motion to amend a proposal under consideration, shall be made orally. At the request of the Commission Chair any motion shall be reduced to writing. After a motion has been stated or read by the Commission Chair, it shall be deemed to be in possession of the Commission and, without a second, shall be disposed of by a vote of the Commission. The mover of the motion may withdraw a motion, except a motion to reconsider, as hereinafter provided, at any time before the same has been amended or before the vote shall have commenced.

#### 6.2 Motions; precedence.—

When a question is under debate, the Commission Chair shall receive no motion except:

1. To adjourn instant
2. To adjourn at a time certain
3. Questions of privilege
4. To take a recess
5. To reconsider
6. To limit debate
7. To postpone to a day certain
8. To commit to a standing committee
9. To commit to a select committee
10. To amend

Those motions shall have a precedence in the descending order given above. The Commission Chair shall propound all questions in the order in which they are moved unless the subsequent motion be previous in nature; except that in fixing time, the longest time shall be put first. In all cases where the Commission shall be divided, the question shall be lost.

#### 6.3 Motions which can be made but once.—

Motions to adjourn or recess shall be decided without debate by a majority vote of those present and voting. Only one substitute for a motion to adjourn shall be entertained. The substitute motion shall fix a different time for adjournment, and the same shall be put without debate, except that one (1) minute shall be allowed for the movers of the substitute within which to explain their reasons. The substitute motion having been lost, the question shall be put on the original motion, which, if lost, shall preclude any further motion to adjourn until other business shall have intervened.

#### 6.4 Division of question.—

Any member may call for a division of a question when the sense will admit it. A motion to strike and insert shall be deemed indivisible; a motion to strike out, being lost, shall neither preclude amendment nor a motion to strike out and insert.

#### 6.5 Reconsideration; generally.—

When a main question has been made and carried or lost a Commissioner voting with the prevailing side may move for reconsideration of the question on the same or the next day on which the Commission meets. If the question has been decided by voice vote, any Commissioner may so move. Such motion may be made pending a motion to adjourn or if it is time to adjourn. Consideration of a motion to reconsider shall be a special and continuing order of business for the full Commission when it next meets as the full Commission succeeding that on which the motion was made and, unless considered on said business day, shall be considered abandoned. If the Commission shall refuse to reconsider or, on reconsideration, shall confirm its first decision, no further motion to reconsider shall be in order except on unanimous consent of those present. When a majority of Commissioners present vote in the affirmative on any question but the proposition be lost because it is one in which the

concurrence of more than a majority is necessary for adoption or passage, any Commissioner may move for reconsideration. On the last day on which the Commission meets, a motion to reconsider shall be taken up instanter.

#### **6.6 Reconsideration; when debate allowed.—**

Debate shall be allowed on a motion to reconsider only when the question which it is proposed to reconsider is debatable. Where debate upon a motion to reconsider is in order, no member shall speak thereon more than once nor for a longer period than five (5) minutes.

#### **6.7 Reconsideration; collateral matters.—**

The adoption of a motion to reconsider a vote upon any secondary matter shall not remove the main subject under consideration from the consideration of the Commission. A motion to reconsider a collateral matter must be disposed of at once during the course of consideration of the main subject to which it is related and such motion shall be out of order after the Commission has passed to other business.

### **RULE SEVEN**

#### **AMENDMENTS**

#### **7.1 General form; notice; manner of consideration.—**

All amendments shall be filed with the Secretary of the Commission on forms prescribed by the Secretary, but shall be considered only after the sponsor gains recognition from the Chair to move for adoption.

#### **7.2 Sequence of amendments to amendments.—**

An amendment to a pending amendment may be received, but until it is disposed of, no other motion to amend will be in order, except a substitute amendment or an amendment to the substitute. Such amendments are to be disposed of in the following order:

1. Amendments to the amendment are acted on before the substitute is taken up. Only one amendment to the amendment shall be in order at a time.
2. Amendments to the substitute are next voted on.
3. The substitute then is voted on.

The adoption of a substitute amendment in lieu of an original amendment shall be treated and considered as an amendment to the proposal itself.

#### **7.3 Amendment by section.—**

The adoption of an amendment to a section shall not preclude further amendment of that section or article. If an article is being considered section by section or item by item, only amendments to the section or item under consideration shall be in order. The Commission Chair shall, in recognizing members for the purpose of moving for adoption of amendments, try to consider all amendments to Section 1 first, then all amendments to Section 2 and so on. After all sections have been considered separately in lieu of the entire article, the whole article shall be open for amendment.

#### **7.4 Amendment; germanity of amendment.—**

No proposition on a subject different from that under consideration shall be admitted under color of amendment.

### **RULE EIGHT**

#### **DECORUM AND DEBATE**

#### **8.1 Decorum and debate.—**

When any member desires to speak or deliver any matter to the Commission, the member shall rise at his or her seat and address the Chair as "Mr. or Madam Chair," and, on being recognized, may address the Commission from his or her desk, and shall confine any remarks to the question under debate, avoiding personality. A member shall not address or refer to another member by his or her first name. A member shall use the appellation of "Commissioner," or such appellation and the surname of the Commissioner addressed.

#### **8.2 Commission Chair's power of recognition.—**

When two (2) or more members rise at once, the Commission Chair shall name the member who is first to be recognized.

#### **8.3 Interruption of members in debate.—**

No member shall be interrupted by another member without the consent of the member who has the floor, except rising to a question of order.

#### **8.4 Time for debate.—**

No member shall speak more than ten (10) minutes in debate on any question. The introducer of a proposal under consideration shall be entitled to five (5) minutes to close, notwithstanding that the introducer may have used ten (10) minutes in opening.

#### **8.5 Limitation on debate.—**

When a proposal is under debate by the Commission, a member may move to limit debate, and such motion shall be decided without debate, except the introducer of a proposal shall have five (5) minutes to discuss said motion. If, by two-thirds ( $\frac{2}{3}$ ) vote of those present, the question is decided in the affirmative, debate shall be limited accordingly.

#### **8.6 Priority of business.—**

All questions relating to priority of business shall be decided without debate.

#### **8.7 Questions of privilege.—**

Questions of privilege shall be: (1) those affecting the Commission collectively, its safety, dignity, and the integrity of its proceedings; and (2) the rights, reputation, and conduct of members individually in their representative capacity only. These shall have precedence over all other questions except motions to adjourn. Upon recognition of the Chair, no member shall be permitted to speak longer than ten (10) minutes on a question of privilege.

### **RULE NINE**

#### **MISCELLANEOUS**

#### **9.1 Interpretation of rules.—**

It shall be the duty of the Commission Chair, or the presiding officer, to interpret all rules.

#### **9.2 Waiver and suspension of rules.—**

These rules shall not be waived or suspended except by a two-thirds ( $\frac{2}{3}$ ) vote of all the members of the Commission. The motion, when made, shall be decided without debate. No motion to waive a rule requiring unanimous consent of the Commission shall be adopted except by unanimous consent of those present.

#### **9.3 Changes in rules.—**

All proposed amendments to these Rules shall be presented to the Rules and Administration Committee for recommendation to the Commission. Such recommendation may be amended by a two-thirds ( $\frac{2}{3}$ ) vote of the Commission and shall be adopted by a two-thirds ( $\frac{2}{3}$ ) vote of the Commission.

**[Pursuant to the motion by Commissioner Barkdull, provisions of Rule 9.3 were suspended until final consideration of the proposed rules to govern the 1997-1998 Constitution Revision Commission.]**

#### **9.4 Majority action.—**

Unless otherwise indicated by these rules, all action by the Commission shall be by majority vote of those members present.

#### **9.5 Supreme Court library temporary repository for Commission records.—**

The Supreme Court library shall be provided with copies of the records for the purpose of creating an electronic record of the Commission process. All records of the Commission will be permanently stored with the

Secretary of State, Division of Library Information Services, Bureau of Archives and Records Management.

**9.6 Alternates.—**

Alternates shall have the same privileges as Commissioners, but shall not have voting privileges.

**RECESS**

On motion by Commissioner Barkdull, the Commission in Organization Session recessed at 3:10 p.m.

**JOURNAL OF THE CONSTITUTION REVISION COMMISSION**

**Daily Index for**

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**CONSTITUTION REVISION COMMISSION  
B-11 HISTORIC CAPITOL  
TALLAHASSEE, FLORIDA 32399-1300**