



# Journal of the 1997-1998 Constitution Revision Commission

Number 23

Thursday, February 12, 1998

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## CALL TO ORDER

The Commission was called to order by the Chairman at 9:14 a.m. A quorum was present—29:

Mr. Chairman	Crenshaw	Lowndes	Scott
Anthony	Evans	Marshall	Smith
Barkdull	Evans-Jones	Mathis	Sundberg
Barnett	Ford-Coates	Mills	Thompson
Barton	Freidin	Morsani	Zack
Brochin	Henderson	Nabors	
Butterworth	Jennings	Riley	
Connor	Kogan	Rundle	

Excused: Commissioners Alfonso, Corr, Planas and West

## PRAYER

The following prayer was offered by Rev. Emory Hingst, Pastor, St. Stephen Lutheran Church, Tallahassee:

Let us begin our prayer in silence, perhaps taking a breath to consider who we are, for what purpose we are here, and continue to let God's presence be known.

Almighty, yet loving Lord God, the beginning and end of all that we are and all that we have. You create, preserve, forgive, replenish, renew, and continue to create as the love of the world. You give society the privilege and the responsibility to wisely use our resources, to be responsible, to structure our society in striving for justice for all citizens, particularly in your revelation to the Judeo-Christian tradition for justice to those who are most vulnerable.

Thank you for this awesome freedom and responsibility. In that light we ask that you give these commissioners the eyes to see your presence in the citizens and the environment they serve. Give these commissioners the ears to hear your voice, and the voices of the people, and to see clearly the public they are asked to support. Give them wisdom, knowledge, patience, kindness, gentleness, humility and affirmations, in negotiations and deliberations.

Lest we forget others, we ask for your peace and health for all communities of our world. Hear our petitions in your grace. Amen.

## PLEDGE

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

## MATTERS ON RECONSIDERATION

On motion by Commissioner Barkdull, the motion to reconsider **Committee Substitute for Proposal 6** was withdrawn by unanimous consent.

## SPECIAL ORDER

### MOTION

On motion by Commissioner Anthony, the Special Order was amended to allow consideration of **Proposal 59**, **Proposal 46** and **Committee Substitute for Proposal 77** after **Proposal 58**.

**Proposal 58**—A proposal to revise ARTICLE I, s. 2, Fla. Const.; providing that a person may not be deprived of any right because of age.

—was read.

### COMMISSIONER JENNINGS PRESIDING

Commissioner Zack moved the following amendment which was adopted:

**Amendment 1**—Delete everything after the proposing clause and insert:

Section 1. Section 21 of Article I of the Florida Constitution is revised by amending that section to read:

### ARTICLE I DECLARATION OF RIGHTS

SECTION 21. Access to courts.—The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay. *In any action for personal injury or wrongful death, the right of any person to recovery may not be denied or abridged because of age.*

And the title is amended as follows: On page 1, lines 2-4, delete those lines and insert: ARTICLE I, s. 21, Fla. Const.; providing that the right to recover in an action for personal injury or death may not be denied because of age.

The vote was:

Yeas—21

Mr. Chairman	Evans-Jones	Marshall	Smith
Anthony	Ford-Coates	Mathis	Sundberg
Barton	Freidin	Mills	Zack
Butterworth	Henderson	Nabors	
Connor	Kogan	Riley	
Evans	Lowndes	Rundle	

Nays—7

Barkdull	Brochin	Morsani	Thompson
Barnett	Crenshaw	Scott	

On motion by Commissioner Zack, **Proposal 58** as amended was adopted, ordered engrossed and then committed to the Style and Drafting Committee. The vote was:

Yeas—19

Mr. Chairman	Ford-Coates	Marshall	Rundle
Anthony	Freidin	Mathis	Smith
Butterworth	Henderson	Mills	Sundberg
Evans	Kogan	Nabors	Zack
Evans-Jones	Lowndes	Riley	

Nays—7

Barnett	Brochin	Morsani	Thompson
Barton	Crenshaw	Scott	

The Commission resumed consideration of—

**Proposal 59**—A proposal to revise ARTICLE X, s. 13, Fla. Const.; providing limitations upon the amount of damages payable by the state when a court finds the state liable; providing for a bad-faith surcharge; placing a limit on attorney's fees.

—with pending substitute **Amendment 2** by Commissioners Lowndes, Zack, Morsani and Hawkes, which was previously considered February 11.

#### CHAIRMAN DOUGLASS PRESIDING

Commissioners Langley, Morsani, Lowndes and Zack offered the following amendment to **Amendment 2** which was moved by Commissioner Zack:

**Amendment 2B**—On page 1, line 14, after the period, insert: *When any tort claim is filed against the state or any political subdivision, agency, district, or municipality which exceeds the limited waiver of sovereign immunity established by general law, it shall be submitted by the court in which it is filed, in lieu of a trial, to a 3-person arbitration panel that shall, by majority vote, render a decision on the claim. The rules that govern the proceedings of the arbitration panel and any appeal taken therefrom, shall be determined by the State Supreme Court. Sovereign immunity is waived to the extent of any final arbitration decision made pursuant to this section.*

On motion by Commissioner Connor, consideration of **Proposal 59** with pending **Amendment 2B** was deferred.

#### MOTION

On motion by Commissioner Connor, **Proposal 59** with pending **Amendment 2B**, **Proposal 46** and **Committee Substitute for Proposal 77** were withdrawn from Special Order and referred to the Select Committee on Sovereign Immunity.

#### RECESS

On motion by Commissioner Barkdull, the Commission stood in informal recess at 11:04 a.m. to reconvene at 11:15 a.m.

#### CALL TO ORDER

The Commission was called to order by the Chairman at 11:25 a.m. A quorum was present.

#### SPECIAL ORDER, continued

The Commission resumed consideration of—

**Committee Substitute for Proposals 31 and 55**—A proposal to revise ARTICLE V, s. 14, Fla. Const., and create ARTICLE V, s. 21, Fla. Const.; providing for salaries, costs, and expenses of the judiciary, state attorneys, public defenders, and clerks of the circuit court, and their respective staffs, to be funded from state revenues appropriated by general law; providing for counties to fund the cost of construction, maintenance, utilities, and security of facilities for the judiciary, public defenders, state attorneys, and clerks of the circuit court, and their respective staffs; requiring the Legislature to appropriate funds according to a phase-in schedule established by general law; authorizing the Legislature to require that counties remit fines, costs, and forfeitures for the purpose of funding the operation of the judiciary, state attorneys, and public defenders.

—which was previously considered and amended November 14, 1997.

Commissioners Mills, Butterworth, Thompson, Ford-Coates and Sundberg offered the following amendment which was moved by Commissioner Mills:

**Amendment 2**—Delete everything after the proposing clause and insert:

Section 1. Section 14 of Article V of the Florida Constitution is revised by amending that section to read:

#### ARTICLE V JUDICIARY

#### SECTION 14. *Funding* Judicial salaries.—

(a) All justices and judges shall be compensated only by state salaries fixed by general law. *Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel shall, except as otherwise provided in subsection (c), be provided from state revenues appropriated by general law.*

(b) *All funding for the offices of the clerks of the circuit and county courts performing court-related functions shall, except as otherwise provided in this subsection and subsection (c), be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.*

(c) *No county or municipality shall, except as provided in this subsection, be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts. Counties shall be required to fund the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs and expenses of the state courts system, state attorneys, public defenders, and the clerks of the circuit court when performing court-related functions to meet local requirements as determined by general law.*

(d) The judiciary shall have no power to fix appropriations.

And the title is amended as follows:

Delete everything before the proposing clause and insert: A proposal to revise ARTICLE V, s. 14, Fla. Const.; providing for salaries, costs, and expenses of the judiciary, state attorneys, public defenders, and clerks of the circuit court, and their respective staffs, to be funded from state revenues appropriated by general law; providing for counties to fund the cost of construction, maintenance, utilities, and security of facilities for the judiciary, public defenders, state attorneys, and clerks of the circuit court, and their respective staffs.

Commissioners Sundberg and Nabors offered the following amendment to **Amendment 2** which was moved by Commissioner Sundberg:

**Amendment 2A**—On page 2, lines 25-27, delete those lines and insert: *expenses of the state courts system to meet local requirements as*

On motion by Commissioner Mills, consideration of **Committee Substitute for Proposals 31 and 55** with pending **Amendment 2A** was deferred to a time certain of 12:22 p.m.

On motion by Commissioner Scott, the rules were waived and the Commission reverted to:

#### MATTERS ON RECONSIDERATION

The motion by Commissioner Connor to reconsider the vote by which **Committee Substitute for Proposals 49, 103 and 185** as amended was adopted February 11 was taken up and the motion failed.

**ANNOUNCEMENT**

On behalf of the Commission, Commissioner Riley offered congratulations and best wishes to Commissioner Anthony on his upcoming marriage Saturday, February 14 to Tammy Thomas.

Pursuant to the motion by Commissioner Mills, the time of 12:22 p.m. having arrived, the Commission reverted to:

**SPECIAL ORDER, continued**

The Commission resumed consideration of—

**Committee Substitute for Proposals 31 and 55**—A proposal to revise ARTICLE V, s. 14, Fla. Const., and create ARTICLE V, s. 21, Fla. Const.; providing for salaries, costs, and expenses of the judiciary, state attorneys, public defenders, and clerks of the circuit court, and their respective staffs, to be funded from state revenues appropriated by general law; providing for counties to fund the cost of construction, maintenance, utilities, and security of facilities for the judiciary, public defenders, state attorneys, and clerks of the circuit court, and their respective staffs; requiring the Legislature to appropriate funds according to a phase-in schedule established by general law; authorizing the Legislature to require that counties remit fines, costs, and forfeitures for the purpose of funding the operation of the judiciary, state attorneys, and public defenders.

—which was previously considered this day.

Pending **Amendment 2A** by Commissioners Sundberg and Nabors was withdrawn.

The question recurred on **Amendment 2** which was adopted.

**COMMISSIONER THOMPSON PRESIDING**

**CHAIRMAN DOUGLASS PRESIDING**

On motion by Commissioner Sundberg, **Committee Substitute for Proposals 31 and 55** as amended was adopted, ordered engrossed and then committed to the Style and Drafting Committee. The vote was:

Yeas—26

Mr. Chairman	Butterworth	Freidin	Marshall
Anthony	Connor	Henderson	Mathis
Barkdull	Evans	Jennings	Mills
Barnett	Evans-Jones	Kogan	Morsani
Barton	Ford-Coates	Lowndes	Nabors

Riley	Scott	Thompson	Zack
Rundle	Sundberg		
Nays—None			

On motion by Commissioner Mathis, the rules were waived and the Commission reverted to:

**MATTERS ON RECONSIDERATION**

The motion by Commissioner Barkdull to reconsider the vote by which **Proposal 2** as amended was adopted February 9 was taken up and the motion failed.

On motion by Commissioner Barkdull, the rules were waived and the motions to reconsider **Committee Substitute for Proposal 13, Proposal 144, Proposal 168** and **Committee Substitute for Proposals 172 and 162** were placed on the calendar for consideration Monday, February 23.

**MOTIONS**

On motion by Commissioner Mathis, **Proposal 41** was withdrawn from further consideration.

**MOTIONS TO RECONSIDER**

Commissioner Zack moved that the Commission reconsider the vote by which **Proposal 130** failed February 11. The motion was placed on the calendar.

Commissioner Marshall moved that the Commission reconsider the vote by which **Committee Substitute for Proposals 138 and 89** as amended failed February 11. The motion was placed on the calendar.

**COMMITTEE MEETING CHANGE**

Commissioner Connor announced that the Select Committee on Sovereign Immunity would meet at 9:30 a.m., Monday, February 23.

Commissioner Mills announced that the Style and Drafting Committee would meet upon adjournment.

**CORRECTION AND APPROVAL OF JOURNAL**

The Journal of February 11 was corrected and approved.

**RECESS**

On motion by Commissioner Barkdull, the Commission recessed at 12:59 p.m. to reconvene at 1:00 p.m., Monday, February 23, 1998.

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