

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

EDUCATION
Commissioner Johnson, Chair
Commissioner Washington, Vice Chair

MEETING DATE: Thursday, February 1, 2018
TIME: 9:00 a.m.—2:00 p.m.
PLACE: 116 Knott Building, Capitol Complex, Tallahassee, Florida

MEMBERS: Commissioner Johnson, Chair; Commissioner Washington, Vice Chair; Commissioners Donalds, Grady, Jordan, Keiser, Levesque, Sprowls, and Stewart

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1	P 30 Martinez	DECLARATION OF RIGHTS, Basic rights; Section 2 of Article I of the State Constitution to provide that a person may not be deprived of any right because of any disability. DR 11/29/2017 Temporarily Postponed DR 01/25/2018 Favorable ED 01/26/2018 Temporarily Postponed ED 02/01/2018 Unfavorable	Unfavorable Yeas 0 Nays 6
2	P 10 Gaetz	EDUCATION, Civic literacy in public education; a new section in Article IX of the State Constitution to require the Legislature to provide for the promotion of civic literacy in public education. ED 01/26/2018 Temporarily Postponed ED 02/01/2018 Favorable	Favorable Yeas 4 Nays 2
3	P 60 Johnson	EDUCATION, creates s. 8; Section 8 in Article IX of the State Constitution to require the Legislature to annually appropriate certain funds to be used towards postsecondary education financial assistance and to establish conditions on a student's eligibility to receive such financial assistance. ED 02/01/2018 Withdrawn	Withdrawn

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 30

Relating to: DECLARATION OF RIGHTS, Basic rights

Introducer(s): Commissioner Martinez

Article/Section affected: Article I, Section 2 – Basic rights.

Date: January 25, 2018

	REFERENCE	ACTION
1.	<u>DR</u>	<u>Favorable</u>
2.	<u>ED</u>	<u>Pre-Meeting</u>

I. SUMMARY:

Article I, Section 2 of the Florida Constitution, Florida’s “Equal Protection” Provision, expressly forbids discrimination by the government on the basis of race, religion, national origin, or physical disability. This proposal expands the prohibited bases of discrimination to include “any disability,” rather than only physical disabilities.

If passed by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Equal Protection Clause of the U.S. Constitution and the Basic Rights Provision of the Florida Constitution entitle everyone to stand before the law on equal terms with others. In addition to this principle of equal treatment, the Florida Constitution also expressly prohibits discrimination by the government on the basis of an individual’s race, religion, natural origin, or physical disability. Specifically, Article I, Section 2 of the Florida Constitution provides:

Basic rights.—All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property;

except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or **physical disability**.

Florida is one of only three states with an express constitutional prohibition regarding discrimination on the basis of a disability.¹ The Florida Supreme Court has found that this explicit prohibition is a more stringent constitutional requirement than the right to be treated equally before the law.²

Development of Constitutional Protection for Persons with Disabilities

State constitutional protection for persons with disabilities is woven from developments during the 1970s in three parallel areas: educational rights, residential rights, and civil rights.³ Some developments began in 1971 in federal and state courts, others in proposed legislative amendments, and still others in administrative regulations.⁴

It was within this social context that the Florida Legislature proposed a disability amendment to the Florida Constitution. In 1974, the Florida Senate introduced a Joint Resolution proposing to amend Article I, Section 2 of the Florida Constitution (the Basic Rights provision) to add “mental or physical handicap” as an additional ground of prohibited discrimination.⁵ The companion House Joint Resolution,⁶ proposed the following amendment to the Basic Rights provision delineating even broader and more specific rights for disabled persons than the Senate version:

No person shall be subjected to discriminatory treatment which results in the deprivation of any right, benefit, or opportunity on account of a physical or mental handicap; this guarantee shall include, among other areas: housing, access to services and facilities available to the public, education, employment, and any governmental action.

Senate staff explained that the Senate amendment “[spoke] to the rights that have been denied to physically and mentally handicapped because of the stigma attached to being handicapped.”⁷ However, the Senate Health & Rehabilitative Services Committee amended the proposal to remove mental disabilities from the Senate Joint Resolution.⁸ The Senate Joint Resolution, encompassing only “physical handicaps” as a basis of prohibited discrimination, unanimously passed both the Florida Senate and House of Representatives on May 31, 1974.⁹ Electors voted overwhelming to adopt the amendment during the 1974 General Election, garnering 76.43% of votes for approval.

¹ Louisiana constitutionally prohibits discrimination based upon “physical condition.” See LA. CONST. art. I, § 3 (1974). Rhode Island constitutionally prohibits discrimination on the basis of a “handicap.” See R. I. CONST. art. I, § 2 (1986).

² *Scavella v. School Bd. of Dade County*, 363 So. 2d 1095, 1097 (Fla. 1978).

³ The Florida Bar Committee on the Mentally Disabled, MENTAL DISABILITY LAW: EDUCATION RIGHTS OF THE HANDICAPPED, 1 (1979)

⁴ *Id.*

⁵ SJR 917 (1974).

⁶ HJR 3621 (1974).

⁷ Fla. S. Comm. on HRS, SJR 917 (1974) Staff Evaluation 1 (April 22, 1974).

⁸ Senate Bill Action Report 211 (July 17, 1974).

⁹ *Id.*

In 1998, as the result of a proposal submitted to electors by the 1997-1998 Florida Constitution Revision Commission, the Basic Rights provision was again amended to revise the term “physical handicap” to “physical disability.” The purpose of the amendment was to replace the term “handicap” which has come to be regarded as derogatory, and to offer a body of federal law that Florida courts could use when defining a “disability” under Article I, Section 2.¹⁰

Disability Discrimination

The standard of review that a court applies in evaluating a claim of discrimination mandates the level of protection guaranteed. Under both the U.S. Constitution and the Florida Constitution, the lowest level of judicial review, the rational basis test,¹¹ will apply to evaluate a claim of discrimination unless a suspect class, quasi-suspect class, or fundamental right is implicated by the challenged law.¹² In applying the rational basis test, courts begin with a strong presumption that the law or policy under review is valid and the challenging party bears the burden of demonstrating the law or policy does not have a rational basis. Classifications based upon race, national origin, and alienage, are considered “suspect classifications” which trigger a review of claimed discrimination under the highest standard, strict scrutiny.¹³ In applying strict scrutiny, it is presumed that the law or policy is unconstitutional and the government bears the burden of proof to overcome the presumption.¹⁴ The constitutional treatment of disabilities varies, however, under the U.S. Constitution and the Florida Constitution.

In *City of Cleburne v. Cleburne Living Center*,¹⁵ the U.S. Supreme Court held that intellectual disabilities were not a “quasi-suspect class” for purposes of the Federal Equal Protection Clause, and that claims of discrimination based upon such classifications were subject to only rational basis review.¹⁶ With regard to intellectual disabilities, the Court explained that:

If the large and amorphous class of the mentally retarded were deemed quasi-suspect for the reasons given by the Court of Appeals, it would be difficult to find a principled way to distinguish a variety of other groups who have perhaps immutable disabilities setting them off from others, who cannot themselves mandate the desired legislative responses, and who can claim some degree of prejudice from at least part of the public at large. One need mention in this respect only the aging, the disabled, the mentally ill, and the infirm. We are reluctant to set out on that course, and we decline to do so.¹⁷

¹⁰ Ann C. McGinley and Ellen Catsman Freiden, *Protecting Basic Rights of Florida Citizens*, THE FLORIDA BAR JOURNAL, October 1998.

¹¹ To satisfy the rational basis test, a statute must bear a rational and reasonable relationship to a legitimate state objective, and it cannot be arbitrary or capriciously imposed. *Dep't of Corr. v. Fla. Nurses Ass'n*, 508 So. 2d 317, 319 (Fla. 1987).

¹² *Amerisure Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 897 So. 2d 1287, 1291 n.2 (Fla. 2005).

¹³ Laws subject to strict scrutiny will be sustained only if they are suitably tailored to serve a compelling state interest. *Jackson v. Florida*, 191 So. 3d 423, 427 (Fla. 2016).

¹⁴ The Florida Supreme Court explained that, “this test, which is almost always fatal in its application, imposes a heavy burden of justification upon the state.” *In re Estate of Greenberg*, 390 So. 2d 40, 43 (Fla. 1980).

¹⁵ 473 U.S. 432 (1985).

¹⁶ Despite purporting to apply rational basis scrutiny, the Court actually applied a heightened form of rational basis scrutiny, often referred to as “rational basis with teeth.” See Michael E. Waterstone, *Disability Constitutional Law*, 63 Emory L. J. 527, 540 (2001).

¹⁷ 473 U.S. 432, 445-446 (1985).

The Supreme Court would continue to affirm this position in later cases involving intellectual disabilities and the mentally ill.¹⁸ Eventually, in *Board of Trustees of the University of Alabama v. Garrett*,¹⁹ a case involving physical disabilities,²⁰ the U.S. Supreme Court extended to all groups of persons with disabilities the finding from *Cleburne*:²¹

The result of *Cleburne* is that States are not required by the Fourteenth Amendment to make special accommodations for the *disabled*, so long as their actions toward such individuals are rational [Emphasis added].²²

In contrast, under the Equal Protection Provision of the Florida Constitution, “physical disabilities” are a specifically enumerated suspect classification requiring strict scrutiny. The Florida Supreme Court has also described the express prohibition against discrimination as a more stringent constitutional requirement than the standard of review in equal protection cases involving suspect classifications.²³ Accordingly, courts need only decide whether laws deprive claimants of any right, not just the right to be treated equally before the law.²⁴ Thus, this clause in the Florida Constitution is “an unambiguous vehicle for providing greater protection to individuals who are members of any newly enumerated group”²⁵ than may be found under the U.S. Constitution.

Defining “Disability”

“Disability” or “physical disability” is not defined by the Florida Constitution, nor does it appear that any case has interpreted the meaning of this term under Article I, Section 2.²⁶ For purposes of construing an undefined constitutional provision, the Florida Supreme Court will first begin with an examination of the provision’s explicit language. If that language is clear and unambiguous, and addresses the matter at issue, it is enforced as written. If, however, the provision’s language is ambiguous or does not address the exact issue, a court must endeavor to construe the constitutional provision in a manner consistent with the intent of the framers and the voters.²⁷

Concept-based Definition

In its ordinary usage, the term “disability” is understood as a physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person’s ability to engage in

¹⁸ See e.g., *Heller v. Doe*, 509 U.S. 312 (1993).

¹⁹ 531 U.S. 356 (2001).

²⁰ The suit was brought by two state employees seeking money damages under the ADA, a nurse with breast cancer who lost her director position after undergoing cancer treatment and a security officer with asthma and sleep apnea denied workplace accommodations. 531 U.S. 356, 362 (2001).

²¹ Steven K. Hoge, *Cleburne and the Pursuit of Equal Protection for Individuals with Mental Disorders*, THE JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW 43(4), p. 416-422, available at <http://jaapl.org/content/43/4/416> (last visited Nov. 26, 2017).

²² 531 U.S. 356, 367-368 (2001).

²³ 363 So. 2d 1095, 1097-1098 (1978).

²⁴ *Id.*

²⁵ *Supra* note 10.

²⁶ There does not appear to be any case interpreting the meaning of this term under Article I, Section 2 of the Florida Constitution.

²⁷ *West Florida Regional Medical Center v. See*, 79 So. 3d 1, 9 (Fla. 2012).

certain tasks or actions or participate in typical daily activities and interactions.²⁸ However, in practice, there is not a single definition of the term “disability.” Health professionals, advocates, and other individuals use the term in different contexts, with different meanings.

For example, the concept of cognitive disabilities is extremely broad. In general, a person with a cognitive disability has a disability that adversely affects the brain resulting in greater difficulty performing one or more types of mental tasks²⁹ than the average person.³⁰ Cognitive impairment is not caused by any one disease or condition, nor is it limited to a specific age group.³¹ There are at least two ways to classify cognitive disabilities: by functional disability or by clinical disability. Clinical diagnoses of cognitive disabilities include autism, Down Syndrome, traumatic brain injury (TBI), and even dementia. Other cognitive conditions include attention deficit disorder (ADD), dyslexia (difficulty reading), dyscalculia (difficulty with math), and learning disabilities in general.³²

“Intellectual disabilities” refer to certain cognitive disabilities that develop at an early age. The American Association on Intellectual and Developmental Disabilities (AAIDD) defines “intellectual disability” as a disability characterized by significant limitations both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior, which covers a range of everyday social and practical skills, with an onset before the age of 18.³³ The term covers the same population of individuals who were diagnosed previously with mental retardation.³⁴

“Developmental Disabilities” is an umbrella term that includes intellectual disabilities but also includes other disabilities that are apparent during childhood.³⁵ Developmental disabilities are severe chronic disabilities that can be cognitive or physical or both. These disabilities typically manifest before the age of 22 and are likely to be lifelong. Some developmental disabilities are largely related to physical disabilities, such as cerebral palsy or epilepsy. Other conditions involve the co-occurrence of a physical and intellectual disability, for example Down Syndrome or Fetal Alcohol Syndrome.³⁶

Intent-based Definition

The 1997-1998 Constitution Revision Commission cited the intent to offer a body of federal law for purposes of defining the term “disability” as one reason for replacing the term “physical handicap” with “physical disability” in 1998.³⁷ Related federal laws with definitions of

²⁸ “Disability.” Merriam-Webster.com. Accessed November 22, 2017. <https://www.merriam-webster.com/dictionary/disability>.

²⁹ Tasks such as reasoning, planning, problem-solving, abstract thinking, comprehension of complex ideas, and learning.

³⁰ Finn Orfano, *Defining cognitive disability*, BRIGHT HUB EDUCATION, <http://www.brighthubeducation.com/special-ed-learning-disorders/70555-defining-cognitive-disabilities/> (last visited November 24, 2017).

³¹ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Cognitive Impairment: The Impact on Health in Florida*, https://www.cdc.gov/aging/pdf/cognitive_impairment/cogImp_fl_final.pdf (last visited Nov. 24, 2017).

³² WebAIM, *Cognitive*, <https://webaim.org/articles/cognitive/> (last visited Nov. 24, 2017).

³³ AMERICAN ASSOCIATION ON INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, *Frequently Asked Questions on Intellectual Disability*, <https://aaidd.org/intellectual-disability/definition/faqs-on-intellectual-disability#.Whh9K7pFzct> (last visited Nov. 24, 2017).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Supra* note 10.

“disabilities” could include, without limitation, the Americans with Disabilities Act,³⁸ the 1973 Rehabilitation Act,³⁹ the Social Security Disability Insurance Program,⁴⁰ the Fair Housing Act,⁴¹ or the Individuals with Disabilities Education Act.⁴²

B. EFFECT OF PROPOSED CHANGES:

This proposal amends Article I, Section 2 of the Florida Constitution (the Basic Rights Provision) to expand the prohibited bases of discrimination to include “any disability,” rather than only physical disabilities. Thus, classifications based upon disabilities may be subject to a higher level of judicial scrutiny under the Florida Constitution than is currently required by the Equal Protection Clause of the U.S. Constitution.

The term “disability” is undefined, but may encompass a wide spectrum of physical, mental, cognitive, and developmental conditions that impair, interfere with, or limit a person’s ability to engage in certain tasks or actions. It may also encompass “disabilities” as defined under various federal laws.

If approved by the voters, the proposal will take effect on January 8, 2019.⁴³

C. FISCAL IMPACT:

The fiscal impact on state and local government is indeterminate.

³⁸ Under the ADA, a “disability” is defined as a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment; or being regarded as having such an impairment. 42 U.S.C. § 12102.

³⁹ The definition of “disability” under the ADA applies to claims under the 1973 Rehabilitation Act. 29 U.S.C. § 705(20)(B).

⁴⁰ For individuals applying for disability benefits under Title II of the Social Security Act (Disability), and for adults applying under Title XVI (SSI), the definition of disability is the same. The law defines disability as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment (s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. Under Title XVI (SSI), a child under the age of 18 will be considered disabled if he or she has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A “medically determinable impairment” is an impairment that results from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. *See Disability Evaluation under Social Security*, Social Security Administration, <https://www.ssa.gov/disability/professionals/bluebook/general-info.htm> (last visited Nov. 24, 2017).

⁴¹ Under the FHA, a “handicap” means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person’s major life activities; a record of having such impairment; or being regarded as having such impairment. 42 U.S.C. § 3602 (h).

⁴² Under IDEA, a “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities. For children aged 3 -9, the definition may also include children experiencing developmental delays in physical development, cognitive development, communication development, social or emotional development, or adaptive development. 20 U.S.C. § 1401(3).

⁴³ *See* FLA. CONST. ART XI, S. 5(E) (1968) (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

The adoption of the proposed amendment may subject Florida laws relating to mental, cognitive, or developmental disabilities to a heightened level of judicial scrutiny. Areas of the law which may be impacted include, but are not limited to guardianship, involuntary mental health treatment (Baker Act), etc.



600642

CRC ACTION

Commissioner .
Comm: FAV .
02/01/2018 .
. .
. .
. .

The Committee on Education (Washington) recommended the following:

CRC Amendment (with title amendment)

Delete line 21

and insert:

because of race, religion, national origin, or ~~physical~~

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 4

and insert:



600642

11

because of disability

By Commissioner Martinez

martinezr-00060-17

201730__

1 A proposal to amend
2 Section 2 of Article I of the State Constitution to
3 provide that a person may not be deprived of any right
4 because of any disability.

5
6 Be It Proposed by the Constitution Revision Commission of
7 Florida:

8
9 Section 2 of Article I of the State Constitution is amended
10 to read:

11 ARTICLE I

12 DECLARATION OF RIGHTS

13 SECTION 2. Basic rights.—All natural persons, female and
14 male alike, are equal before the law and have inalienable
15 rights, among which are the right to enjoy and defend life and
16 liberty, to pursue happiness, to be rewarded for industry, and
17 to acquire, possess and protect property; except that the
18 ownership, inheritance, disposition and possession of real
19 property by aliens ineligible for citizenship may be regulated
20 or prohibited by law. No person shall be deprived of any right
21 because of race, religion, national origin, or any ~~physical~~
22 disability.

Proposal 30

Proposal 30, by Commissioner Martinez amends Article I, Section 2 of the Florida Constitution by expanding constitutional protections for individuals with a “physical disability” to all those with a “disability.”

Article I, Section 2 is Florida’s equal protection clause forbidding discrimination based on classifications such as race, religion, national origin, or physical disability. It is a corollary provision to the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

In analyzing a statute under the equal protection clause, Florida courts will examine whether the statute affects a suspect class or a fundamental right. If it does, then the statute is reviewed using a “strict scrutiny” standard meaning that to withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest. *See State v. T.M.*, 761 So.2d 1140, 1144 n. 2 (Fla. 2d DCA 2000).

If the statute does not implicate a suspect class or a fundamental right the equal protection analysis used by courts is the less restrictive “rational basis” test. To satisfy the rational basis test used for an equal protection challenge under the state constitution, a statute must bear a rational and reasonable relationship to a legitimate state objective, and it cannot be arbitrarily or capriciously imposed. *See Estate of McCall v. U.S.*, 134 So. 3d 94 (Fla. 2014).

States are not required by the Fourteenth Amendment to the U.S. Constitution to make special accommodations for those with disabilities. However, Florida’s equal protection clause goes beyond the requirements in the U.S. Constitution and explicitly provides protections for those with physical disabilities. That means that laws implicating or classifying individuals based on physical disabilities are examined under the heightened “strict scrutiny” standard. Expanding this protection to all those with a “disability” will greatly expand the constitutional protections and potentially call into question the constitutionality of current laws affecting those with mental disabilities.

Potential Questions:

1. Threshold questions → What problem or issue is this amendment intended to address? Is the best way to solve this problem by substantially expanding a protected class in the constitution, or can the problem be more narrowly solved by the Legislature through statute?
 - For example, the Legislature in 2016 adopted “Carl’s Law” (after an autistic man who was followed home and murdered by several individuals because he was deemed a “soft target”) in section 775.0863, Florida Statutes to establish a separate hate crime specifically for crimes evidencing prejudice based on mental or physical disability. These type of crimes result in enhanced criminal penalties.

2. Disability is not defined in the constitution, how broad is the amendment intended to expand existing rights? For example, is this amendment intended to cover individuals with cognitive disabilities such as autism, dyslexia, attention deficit disorder, learning disabilities? What impact (if any) do you think this will have on school districts or the state in ensuring that they are not discriminating?

3. What effect will this amendment have on involuntary commitment statutes such as the Baker Act (Florida's general civil commitment statute based on mental disability or the Jimmy Ryce Act (involuntary commitment of sexually violent predators)? Is it possible that these statutes designed to protect the public could be declared unconstitutional now under this amendment?

- The classifications created by the Ryce Act and the Baker Act, different classes of mentally ill individuals, are not suspect classes, and, thus, not currently subject to strict scrutiny on this basis. *See Westerheide v. State*, 831 So. 2d 93 (Fla. 2002).
- *See* Ch. 394, part V, Involuntary Civil Commitment of Sexually Violent Predators;

4. Will this amendment handcuff the legislature in designing laws to protect the public's safety and protecting those with serious mental illness from harming themselves or others?

5. Will this proposal limit the ability of the Legislature to pass laws that restrict the ability of mentally ill individuals to purchase firearms or engage in other activities that would be harmful to themselves or others?

OPPOSITION TO P 30 (2018)

**REAL PROPERTY, PROBATE AND TRUST LAW SECTION
OF THE FLORIDA BAR**

**GUARDIANSHIP, POWER OF ATTORNEY AND ADVANCE DIRECTIVES
COMMITTEE**

I. SUMMARY

The Guardianship, Power of Attorney and Advance Directives Committee has reviewed Proposal 30 (“P30”) and formally opposes the legislation. The Committee found the proposed constitutional amendment to be detrimental to the persons with disabilities intended to be protected by Florida statutes, including but not limited to, Chapter 744 (Florida Guardianship Law), Chapter 393 (Guardian Advocate Law), Chapter 394 (Florida Mental Health Act), and Chapter 397 (Marchman Act), result in serious overarching and unintended consequences, and potentially result in a significant increase in fees and costs incurred by the State of Florida, the person with disabilities, and others. This position is consistent with the staff analysis of P30 which states in section III(D) “The adoption of the proposed amendment may subject Florida laws relating to mental, cognitive, or developmental disabilities to a heightened level of judicial scrutiny. Areas of law which may be impacted include, but are not limited to guardianship, involuntary mental health treatment (Baker Act), etc.”¹

Article I, Section 2 of the Florida Constitution prohibits discrimination by the government on the basis of an individual’s race, religion, natural origin, or physical disability. P30 seeks to expand the protection provided under Article 1 to all types of disabilities. However, the term disability is not defined in the Florida Constitution and there appears to be no Florida case law that interprets the term within the scope of Article I, Section 2. Further, only two other states in the United States have an express constitutional prohibition regarding discrimination on the basis of a disability, and only one state includes all handicaps.

The Committee feels P30 should be opposed primarily based on the need to more fully evaluate the impact that the proposed amendment may have on various Florida Statutes that address the rights of persons with disabilities, particularly those that provide safeguards to protect those who have diminished capacity or lack capacity, either temporarily or permanently. The Committee has concerns regarding the ambiguity of the term “disability” and the effect of a

¹ <https://www.flrc.gov/Proposals/Commissioner/2017/0030/Analyses/2017p0030.pre.dr.PDF>

strict scrutiny standard that will apply to a wider, undefined range of persons in Florida than may be found under the U.S. Constitution. The Committee would like to explore the problem that this proposal is seeking to fix to determine whether a revision to or creation of a Florida Statute may be more appropriate to resolve a more specific concern without the unintended consequences.

For example, the legislative intent behind Florida Guardianship Law, which is to, among other things, assist incapacitated persons in meeting the essential requirements for their health and safety, may be thwarted by P30 by applying a strict scrutiny test that limits the ability of the judiciary to protect these persons with disabilities.

II. COMMENT AND ANALYSIS ON PROPOSED CHANGES TO ARTICLE I, SECTION 2

P30 is a proposed constitutional amendment to Article I, Section 2 of the Florida Constitution, which seeks to expand the protection against discrimination to all persons with disabilities. The specific proposal is as follows:

ARTICLE I DECLARATION OF RIGHTS

SECTION 2. Basic rights.—All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or any ~~physical~~ disability.

Standard of Review

Under the Florida Constitution, “physical disabilities” are a specifically enumerated suspect classification requiring the court to use strict scrutiny when evaluating a law that deprives a person of any right based on their physical disability. The removal of the word physical from Article I, Section 2 would expand the suspect class to persons with all types of disabilities. In applying strict scrutiny, it is presumed that the law or policy is unconstitutional and the government bears the burden of proof to overcome the presumption.² The analysis requires careful examination of the governmental interest to determine whether the interest is

² *In re Estate of Greenberg*, 390 So. 2d 40, 43 (Fla. 1980).

substantial and requires inquiry into whether the means adopted to achieve the legislative goal are necessarily and precisely drawn.³ The Florida Supreme Court, in *Scavella v. School Bd. of Dade County*, 363 So. 2d 1095, 1097-98 (Fla. 1978), applied a standard even more stringent than the strict scrutiny test, finding that the court needed only decide whether the law at issue deprived the person with a disability of *any* right, not just their right to be treated equally under the law. If P30 is successful, and the court need only find that a law deprives a person with a disability of *any* right, it will turn Florida's guardianship, Baker Act, Marchman Act, and guardian advocate systems upside down, as they all deprive disabled persons of certain rights in conjunction with the person's best interests and safety to themselves and others.

Definition

The term disability is not defined in the Florida Constitution, and there are a wide range of definitions that the court may potentially consider in addressing this issue in the future. Disability is defined in the Americans With Disabilities Act (ADA) as a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment.⁴ Major life activities under the ADA include, but are not limited to, caring for oneself, concentrating, thinking, communicating, and working.⁵

Application to Florida Statutes

While the Committee strongly believes the full impact of the P30 needs to be severely vetted, as examples of possible unintended consequences, the Committee provides the following Florida Statute Chapters that the Committee believes will be seriously impacted by the amendment:

Chapter 744: Guardianships

In Florida, a petition to determine incapacity can be filed when there is a belief that another person lacks the ability to exercise some or all of the alleged incapacitated person's (AIP) rights. Florida Guardianship Law then sets forth the procedure for determining whether the AIP is incapacitated, including appointing an attorney for the AIP, an examining committee to personally evaluate the AIP, and an evidentiary hearing to make specific findings of facts regarding the determination of incapacity and nature and extent of the incapacity. When a person

³ *Id.* (citing *Examining Board v. Flores De Otero*, 426 U.S. 572 (1976))

⁴ 42 U.S.C § 12102(1)

⁵ 42 U.S.C § 12102(2)

is judicially determined to lack the ability to exercise some or all of their rights, those rights are removed from the person and those that can be delegated are delegated to a fiduciary, whether a guardian or an agent/surrogate under an advance directive.

The very nature of an incapacity proceeding is addressing a mental impairment that substantially limits one or more major life activities of an individual. The court must determine the form of assistance in each case that least interferes with the legal capacity of a person to act on their own behalf, but any time a person is found to lack the capacity to manage one or more of their own affairs, they are being deprived of a right based on their disability. If the Florida Guardianship Law relating to deprivation of rights is presumed to be unconstitutional, the practical effect will be a frustration of the entire guardianship process, which is meant to protect the very people whose rights are removed under the statutes.

If a petition to determine incapacity is filed, the court evaluates the person's ability to exercise the following rights:

- to marry
- to contract
- to sue and defend lawsuits
- to determine his or her residency
- to consent to medical and mental health treatment
- to personally apply for government benefits
- to make decisions about his or her social environment or other social aspects of his or her life
- to vote
- to travel
- to have a driver's license
- to seek or retain employment
- to manage property or to make any gift or disposition of property.

If the court has to apply a strict scrutiny test where the removal of each of these rights is presumed to be unconstitutional, the outcome may be contrary to public policy and the burden of overcoming the presumption would create a significant problem for the parties, the court and the court system. Under the current law, the burden of proving incapacity is by clear and convincing evidence, a very high burden which offers great protection to those who do not lack capacity but are subject to guardianship proceedings. Further, Florida courts have consistently applied broad constitutional protection in guardianship matters.⁶

⁶ See *Smith v. Smith*, 224 So. 3d 740 (Fla. 2017) (holding that the ward is not required to obtain court approval prior to exercising the right to marry, but court approval is necessary before such marriage can be given legal effect);

If in each incapacity hearing, the court has to inquire into whether the means adopted to achieve the legislative goal are necessarily and precisely drawn, the court may need to conduct an incredibly detailed and overly burdensome hearing, such as anticipating each of an unlimited amount of contracts an AIP may sign and make specific findings of facts regarding the AIP's ability to enter into the contract so that the outcome is sufficiently narrowly tailored.

Chapter 393

Chapter 393 of the Florida Statutes addresses the process for a person to obtain the legal authority to act on behalf of an individual with a developmental disability. Developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.⁷ Similar to guardianships under Chapter 744, the court makes findings of the nature and scope of the person's lack of decision-making ability and delegates certain rights to the guardian advocate. The court may appoint a guardian advocate for a person with a developmental disability if the person lacks the decisionmaking ability to do some, but not all, of the decisionmaking tasks necessary to care for their person or property. The developmentally disabled person retains all legal rights except those that have been specifically granted to the guardian advocate.

If the proposed amendment is passed, the concerns of the unintended consequences in guardianship advocate cases are the same as those outlined in guardianship matters above. Chapter 393 is often the favored mechanism for those who want someone to continue to have authority to care for a family member or friend once that person turns 18. If the guardian advocate statutes are presumed unconstitutional, this may create a significant roadblock to properly protecting persons with developmental disabilities once they reach an age of majority.

Chapter 394

Florida Statute Chapter 394 sets forth the law and procedure for a "Baker Act." The Baker Act allows for a person to be picked up and transported to a crisis stabilization unit for an involuntary psychiatric examination if they suffer from a mental illness and meet other criteria outlined in Chapter 394, such as posing a substantial threat to themselves. The law specifically provides that "a person who is receiving treatment for mental illness shall not be deprived of any

⁷ Florida Statute § 393.063(12)

constitutional rights. However, if such a person is adjudicated incapacitated, his or her rights may be limited to the same extent the rights of any incapacitated person are limited by law.”⁸

Under Chapter 394, a person may be subject to an involuntary examination and involuntary placement in a facility. For example, if a police officer finds someone who is suicidal and determines they meet the criteria for a Baker Act, the officer has the authority to pick up the person and take them to a facility for involuntary examination. The examination must be completed without unnecessary delay, and, if the result of the examination is that the person should continue to be held, a petition for involuntary placement must be filed with the court. If the actions of police officers, medical facilities and courts were presumed to be unconstitutional by virtue of discriminating against people with mental illness, there would be no safeguards to protect these people from themselves and others. With all of the mass shootings that our country has been faced with in recent years, this is an enormous problem and there need to be mechanisms available to the government to protect those with mental illness from themselves and others.

Chapter 397

Florida Statutes Chapter 397 is the Marchman Act, which is similar in nature to the Baker Act, but addresses substance abuse. Substance abuse issues may be considered a mental impairment that substantially limits one or more major life activities of such individual, and therefore may fall under the category of a disability. The Marchman Act provides a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and treatment services in the least restrictive environment. The services include involuntary assessment and involuntary treatment when appropriate. Therefore, the same concerns as indicated above for Baker Acts apply if the constitutional amendment goes into effect because it calls into question the constitutionality of the Marchman Act process.

III. Conclusion

This opposition paper has expressed many of the initial primary concerns with P30, although certainly not all of the concerns. The Guardianship, Power of Attorney and Advance Directives Committee of the Real Property, Probate and Trust Law Section of the Florida Bar opposes this proposed constitutional amendment. For the reasons stated herein, and for others which are not fully expressed, the proposed amendment to would be detrimental to the disabled

⁸ Florida Statute § 394.459(1)

adults intended to be protected by Florida Statutes, would cause uncertainty as to the constitutionality of multiple chapters of Florida Statutes, and would result in a significant increase in fees and costs incurred by the State of Florida, the disabled person, and others. The intent behind the amendment to prevent discrimination to mentally disabled persons is a just cause, but the unintended consequences put the people the amendment is trying to protect in great danger of being exploited, causing harm to themselves or others, and causing harm to their property. Current Florida Statutes already provide the necessary safeguards for the court to interfere with the lives of disabled persons as little as possible, and Florida Case Law has applied broad constitutional protection for these disabled persons. Accordingly, the Real Property, Probate and Trust Law Section of the Florida Bar asks that the Constitutional Revision Committee not be approved and placed on the ballot.

- IV. Fiscal Impact on State and Local Government** – Substantial additional time burdens on the Courts and the costs associated therewith can be expected due to the increased constitutional challenges associated with P30. In addition, costs to the clerks will be increased significantly as the clerk will be required to monitor and document additional restrictions/requirements as part of their review of the annual accountings and plans submitted by the guardian.
- V. Fiscal Impact on Private Sector** – This proposal will exponentially increase the amount of unnecessary and costly litigation under Florida Statutes focusing on minute issues which will now be required to be heavily litigated in order to ensure compliance with the heightened constitutional standards.
- VI. Constitutional Issues** –See above.
- VII. Other Interested Parties** – This Amendment will impact all sections of the Florida Bar. In addition, this amendment will impact private employers, private businesses, medical providers, and other private sector companies who will be required to ensure compliance with this new constitutionally protected class.

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

2/1/18

Meeting Date

30

Proposal Number (if applicable)

*Topic Prop. 30

Amendment Barcode (if applicable)

*Name Kenneth Bell

Address 215 S. Monroe St., Suite 601

Phone _____

Street

Tallahassee

FL

32301

Email _____

City

State

Zip

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Real Property Probate Trust Section, The Florida Bar

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

2/1/2018

Meeting Date

Prop 30
Proposal Number (if applicable)

*Topic Proposition 30

Amendment Barcode (if applicable)

*Name Cari Roth

Address 215 S Monroe St Suite 815

Phone 850-999-4100

Street

Tallahassee FL 32301

City

State

Zip

Email c Roth@deanhead.com

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Real Property, Probate + Trust Law Section

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

2/1/2018
Meeting Date

30
Proposal Number (if applicable)

Amendment Barcode (if applicable)

*Topic _____

*Name Edward G. Labrador

Address 115 S. Andrews Avenue, Room 426
Street
Fort Lauderdale Florida 33301
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Phone (954) 357-7575; (954) 826-1155

Email elabrador@broward.org

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Broward County

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

**Constitution Revision Commission
Education Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 10

Relating to: EDUCATION, Civic literacy in public education

Introducer(s): Commissioner Gaetz

Article/Section affected:

Date: January 24, 2018

	REFERENCE	ACTION
1.	ED	Pre-meeting
2.	_____	_____

I. SUMMARY:

The proposal creates a new Section, Article IX, in the Florida Constitution, which requires the Legislature to provide for the promotion of civic literacy in public education.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, there is no provision within the Florida Constitution that addresses civic literacy or civic education.

Civics Standards

Each district school board is required to provide instruction regarding the history, significance, and principles of the Declaration of Independence and the Constitution of the United States, flag education, and the arguments in support of adopting our republican form of government¹. Districts are also required to provide a character-development program in kindergarten through grade 12. Each school district must develop or adopt a curriculum for its K-12 character-development program and submit it to the Department of Education (DOE) for approval.

Florida's Next Generation Sunshine State Standards for social studies includes civics content in kindergarten through grade 8 and in grades 9 through 12.² Each middle grades

¹ Section 1003.42, F.S.

² Section 1003.41(2)(d), F.S.

student must complete three social studies classes in order to be promoted to high school, one semester of which must be in civics.³ The law requires the middle grade civics course to include “the roles and responsibilities of federal, state, and local governments; the structures and functions of the legislative, executive, and judicial branches of government; and the meaning and significance of historic documents, such as the Articles of Confederation, the Declaration of Independence, and the Constitution of the United States.”⁴

This course requirement also includes a required statewide, standardized end-of-course (EOC) assessment in civics.⁵ Additionally, the students score on the Civics EOC must constitute 30 percent of the student’s final course grade.⁶ Overall student performance on the Civics EOC increased by 2 percentage points (67% to 69%) from 2016 to 2017 and 8 percentage points from its inception in 2014 (61% to 69%).⁷

Each public high school student must earn a one-half course credit each in U.S. Government and economics, including financial literacy, and one credit each in World History and U.S. History.⁸

Florida statute also establishes Celebrate Freedom Week.⁹ The law provides that, “To educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded, the last full week of classes in September shall be recognized in public schools as Celebrate Freedom Week. Celebrate Freedom Week must include at least 3 hours of appropriate instruction in each social studies class, as determined by each school district, which instruction shall include an in-depth study of the intent, meaning, and importance of the Declaration of Independence.” “To emphasize the importance of this week, at the beginning of each school day or in homeroom, during the last full week of September, public school principals and teachers shall conduct an oral recitation by students of the following words of the Declaration of Independence....” “Student recitation of this statement shall serve to reaffirm the American ideals of individual liberty.”

To aid students in their responsibilities as citizens, Florida statute provides that,¹⁰ “The Department of Education shall encourage school districts to initiate, adopt, expand, and institutionalize service-learning programs, activities, and policies in kindergarten through grade 12. Service learning refers to a student-centered, research-based teaching and learning strategy that engages students in meaningful service activities in their schools or communities. Service-learning activities are directly tied to academic curricula, standards, and course, district, or state assessments. Service-learning activities foster academic

³ Section 1003.4156(c), F.S.

⁴ *Id.*

⁵ Section 1008.22(3)(b), F.S.

⁶ Section 1003.4156(c), F.S.

⁷ <http://www.fldoe.org/core/fileparse.php/5668/urlt/90NGSSSPacket.pdf> (last visited 1/24/2018)

⁸ Section 1003.4282(3)(d), F.S.

⁹ Section 1003.421(1)-(3), F.S.

¹⁰ Section 1003.497(1), F.S.

achievement, character development, civic engagement, and career exploration and enable students to apply curriculum content, skills, and behaviors taught in the classroom.”

2017 Legislative Changes

The 2017 legislative session expanded civics education in Florida.¹¹ Section 683.1455, F.S., was created to designate September as “American Founders’ Month.” The governor is authorized to annually issue a proclamation urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize and observe this occasion through appropriate programs, meetings, services, or celebrations, in which state, county and local governmental officials are invited to participate.¹² Section 1003.44, F.S., regarding patriotic programs, was amended to state, “All public schools in the state are encouraged to coordinate, at all grade levels, instruction related to our nation’s founding fathers with ‘American Founders’ Month’ pursuant to s. 683.1455 Florida Statutes.”

A new section was created which provides that the priorities of Florida’s K-20 education system include civic literacy and that students are prepared to become civically engaged and knowledgeable adults who make positive contributions to their communities.¹³

Finally, the 2017 legislative session created the requirement that beginning with students initially entering a Florida College System institution or state university in the 2018-19 school year and thereafter, each student must demonstrate competency in civic literacy.¹⁴ Students have the option to complete a civic literacy course or to achieve a passing score on an assessment. The State Board of Education and Board of Governors are required to jointly appoint a faculty committee to develop a new course in civic literacy or revise an existing general education core course in American History or American Government to include civic literacy. The committee is also required to establish core competencies and identify outcomes that include an understanding of the basic principles of American democracy and how they are applied in our republican form of government, an understanding of the United States Constitution, knowledge of the founding documents and how they have shaped the nature and functions of our institutions of self-governance, and an understanding of landmark Supreme Court cases and their impact on law and society.

As of February 2017, nine states had a similar postsecondary requirement in statute for civics education: Texas, Oklahoma, Utah, Arkansas, California, Georgia, Massachusetts, Missouri, and Nevada.¹⁵

¹¹ part of HB 7069

¹² <http://www.fldoe.org/academics/standards/subject-areas/social-studies/American-Founders-Month.stml> (last visited 1/24/18)

¹³ Section 1000.03(5)(c), F.S.

¹⁴ Section 1007.25(4), F.S., created by HB 7069 in 2017

¹⁵ CRC Education Committee Presentation by Office of Program Policy Analysis and Government Accountability on November 27, 2017. https://www.flcrc.gov/PublishedContent/Committees/2017-2018/ED/MeetingRecords/MeetingPacket_96.pdf (last visited 1/24/2018)

B. EFFECT OF PROPOSED CHANGES:

If passed, the proposal solidifies the purpose of civic literacy and the requirement for legislation. Florida already has several laws requiring civic literacy in public education. If this proposal passes, this would be the only subject content area specified in the constitution.

C. FISCAL IMPACT:

None.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Gaetz

gaetzd-00021-17

201710__

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A proposal to create
a new section in Article IX of the State Constitution
to require the Legislature to provide for the
promotion of civic literacy in public education.

Be It Proposed by the Constitution Revision Commission of
Florida:

A new section is added to Article IX of the State
Constitution to read:

ARTICLE IX
EDUCATION

Civic literacy.~~As education is essential to the~~
preservation of the rights and liberties of the people, the
legislature shall provide by law for the promotion of civic
literacy in order to ensure that students enrolled in public
education understand and are prepared to exercise their rights
and responsibilities as citizens of a constitutional democracy.

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

2.1.2018

Meeting Date

10

Proposal Number (if applicable)

*Topic CIVIC EDUCATION

Amendment Barcode (if applicable)

*Name Stephanie Owens

Address Street

Phone 727 639-1243

City State Zip

Email

*Speaking: For [] Against [x] Information Only []

Waive Speaking: In Support [] Against [] (The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes [] No [x]

If yes, who? League of Women Voters

Are you a registered lobbyist? Yes [x] No []

Are you an elected official or judge? Yes [] No [x]

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

Feb 1, 2018

Meeting Date

10

Proposal Number (if applicable)

*Topic Civic Literacy

Amendment Barcode (if applicable)

*Name Shawn Frost

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Phone (772) 584-1454

Tallahassee FL
City State Zip

Email Frost@shawnfrost.com

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? _____

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

By Commissioner Johnson

johnsonm-00014-17

201760__

1 A proposal to create
 2 Section 8 in Article IX of the State Constitution to
 3 require the Legislature to annually appropriate
 4 certain funds to be used towards postsecondary
 5 education financial assistance and to establish
 6 conditions on a student's eligibility to receive such
 7 financial assistance.

8
9 Be It Proposed by the Constitution Revision Commission of
10 Florida:

11
12 Section 8 is added to Article IX of the State Constitution
13 to read:

14 ARTICLE IX
15 EDUCATION

16 SECTION 8. Financial assistance.-

17 (a) Postsecondary education is fundamentally a public good
 18 necessary for the creation and the maintenance of a skilled
 19 workforce and a vibrant economy in this state. It is therefore a
 20 paramount duty of the state to ensure the affordability of
 21 postsecondary education to the residents of this state,
 22 especially those residents of above-average merit or substantial
 23 financial need. In order to ensure the affordability of
 24 postsecondary education, beginning with the 2019-2020 fiscal
 25 year, the legislature shall, at a minimum, annually appropriate
 26 an amount equal to 100 percent of tuition and other fees for
 27 students qualifying for the Florida Bright Futures Scholarship
 28 Program or the Florida Public Student Assistance Grant Program.

29 (b) At a minimum, a student must be in the 75th percentile
 30 of academic achievement to qualify for a scholarship under the
 31 Florida Bright Futures Scholarship Program. The student shall
 32 apply for the scholarship before earning a high school diploma

johnsonm-00014-17

201760__

33 or high school equivalency diploma, or completing a home
 34 education program, and enroll in an eligible public or private
 35 postsecondary institution in this state within three academic
 36 years of graduation or separation from active military duty
 37 initiated upon graduation.

38 (c) A student must demonstrate an annual unmet financial
 39 need of at least \$200 to qualify for a grant under the Florida
 40 Public Student Assistance Grant Program. The student shall apply
 41 for the Pell Grant or similar federal financial aid and enroll
 42 in an eligible public or private postsecondary institution in
 43 this state.

44 (d) A student may use a scholarship or grant provided under
 45 this section toward the earning of any postsecondary credential.