

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

GENERAL PROVISIONS
Commissioner Thurlow-Lippisch, Chair
Commissioner Gainey, Vice Chair

MEETING DATE: Thursday, February 1, 2018

TIME: 1:00—4:00 p.m.

PLACE: 412 Knott Building, Capitol Complex, Tallahassee, Florida

MEMBERS: Commissioner Thurlow-Lippisch, Chair; Commissioner Gainey, Vice Chair; Commissioners Heuchan, Karlinsky, Lester, Nuñez, and Plymale

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/P 39 Ethics and Elections / Gaetz	GENERAL PROVISIONS, Ethics in government; JUDICIARY, Ethics in the judiciary Prohibited activities; SCHEDULE, creates new section; Section 8 of Article II and Section 13 of Article V and create a new section in Article XII of the State Constitution to establish certain restrictions for specified public officers and employees regarding the personal representation for compensation of another person or entity before certain government bodies and to specify minimum requirements for the Code of Ethics as to the prohibition against abuse of public position. EE 12/13/2017 Temporarily Postponed EE 01/26/2018 Fav/CS GP 02/01/2018 Favorable	Favorable Yeas 7 Nays 0
2	CS/P 62 Ethics and Elections / Schifino	SUFFRAGE AND ELECTIONS, Primary, general, and special elections; Section 5 of Article VI of the State Constitution to authorize all electors qualified to vote for an office being filled by election to vote in a primary election, regardless of the elector's party affiliation, and to prescribe the method of election for specified local, county, state, and federal offices. EE 01/12/2018 Temporarily Postponed EE 01/26/2018 Fav/CS GP 02/01/2018 Unfavorable	Unfavorable Yeas 0 Nays 7
3	P 46 Thurlow-Lippisch (If Received)	MISCELLANEOUS, Land Acquisition Trust Fund; Section 28 of Article X of the State Constitution to revise the manner of the distribution of funds that are deposited into the Land Acquisition Trust Fund from a portion of the net revenues derived from the excise tax on documents. LE 12/13/2017 Temporarily Postponed LE 01/26/2018 Temporarily Postponed GP 02/01/2018 Withdrawn	Withdrawn

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

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

Proposal #: CS/P 39

Relating to: GENERAL PROVISIONS, Ethics in government; JUDICIARY, Ethics in the judiciary
Prohibited activities; SCHEDULE, creates new section

Introducer(s): Ethics and Elections Committee and Commissioner Gaetz and others

Article/Section affected:

Date: January 29, 2018

	REFERENCE	ACTION
1.	EE	Fav/CS
2.	GP	<u>Pre-meeting</u>

I. SUMMARY:

Proposal #39:

- Amends Section 8 of Article II of the State Constitution to:
 - Prohibit legislators and statewide elected officers from personally representing another person or entity for compensation before the legislature or any state government body or state agency except judicial tribunals for six years following vacation of office.
 - Prohibit legislators and statewide elected officers from personally representing another person or entity for compensation during term of office before any federal agency; the legislature; any state government body or agency other than judicial tribunals; or any political subdivision of the state.
 - Prohibit state appointed officers from personally representing another person or entity for compensation before the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department for a period of six years following vacation of his or her position.
 - Prohibit state appointed officers during service from personally representing another person or entity for compensation before any federal agency; the legislature; any state government body or agency other than judicial tribunals; or any political subdivision of the state.
 - Prohibit county officers pursuant to Article VIII or a county charter, school board members, superintendent of schools, elected municipal officers, or elected special district officers in special districts with ad valorem taxing authority from personally representing

- another person or entity for compensation before his or her former agency or governing body for a period of six years following vacation of office, or before any federal agency; the legislature; any state government body or agency other than judicial tribunals; or any political subdivision of the state during his or her term of office.
- Does not prohibit any public officer or public employee from representing his or her agency before any other governmental entities in the normal course of his or her duties.
 - Specifies that the Florida Code of Ethics prescribed by law shall, at a minimum, prohibit public officers or public employees from abusing their public position to obtain a disproportionate benefit for themselves; or to obtain a disproportionate benefit for their spouse, their children, their employer, or any other business entity with whom they do business or in which they own an interest. Also specifies that the Florida Commission on Ethics shall define disproportionate benefit and prescribe the requisite intent, if any, required for finding a violation of such prohibition, and shall prescribe appropriate financial penalties for such violations.
- Amends Section 13 of Article V of the State Constitution to prohibit a justice or judge from personally representing another person for compensation before the legislative, executive, or judicial branches of state government, other than practicing law before a judicial tribunal, for a period of six years following vacation of office.
 - Creates a new section in Article XII of the State Constitution, providing that the prohibitions on personal representation for compensation of another person or entity before specified governmental bodies by certain public officers and employees, and the creation of this section, shall take effect January 1, 2020.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Ethics in Government – General

Ethics in government covers a broad range of concepts regarding the appropriate behavior of elected officials and public employees. The National Conference on State Legislatures (NCSL) lists governmental ethics under the following broad categories:

- Conflict of Interest
- Financial Disclosure
- Gift Restrictions
- Lobbyist Regulation
- Oversight/Ethics Commissions and Committees
- Staff Ethics

Conflict of Interest – General

NCSL provides the following information under Conflict of Interest Definitions:

“Whether it be in state constitution, statute or rule, all states address the potential of conflicts of interests for legislators. Definitions usually specify that a legislator may not have a personal or private interest or gain in a financial way by votes and in their legislative duties. States differ on how to handle the conflict.” NCSL also provides a table listing the conflict of interest provisions for each state.

Conflict of Interest – Revolving Door Prohibitions - General

NCSL lists a category under Conflict of Interest as “Revolving Door Prohibitions: Rules Against Legislators Lobbying State Government After They Leave Office.” Under this category, the following information is provided:

“At least 34 states have enacted a “cooling-off period” before a former legislator can come back to work at the legislature as a lobbyist. Also known as revolving door laws, statutes range from Maryland, where the ban is until the conclusion of the next regular session, to eight states— Alabama, Colorado, Florida, Iowa, Kentucky, Louisiana, Montana, and New York— that ban former legislators for two years...In Minnesota, the ban only applies to House members, not those in the Senate, and exists in chamber rule. Ohio formerly had a one year ban, but the law was overturned by a federal district court in 2010. New Mexico and Wisconsin exempt legislators and certain legislative staff from their laws. Statutes in Kansas, Mississippi and Oklahoma restrict former legislators from certain contracting with government opportunities.”

Per House staff analysis of 2018 House Bill 5, while no state currently has a post-service lobbying ban longer than two years, House Bill 213 was filed in the Missouri House of Representatives during the 2017 Regular Legislative Session to extend Missouri’s lobbying ban applicable to former legislators and appointed state officers from six months to five years following vacation of office.

Ethics in Government – Florida

Florida Commission on Ethics

Florida’s Constitution and state law provide that the Florida Commission on Ethics (Commission) is the independent body charged with receiving and investigating sworn complaints involving Florida’s constitutional ethics provisions, as well as any other violation of Florida’s Code of Ethics for Public Officers and Employees. While the Commission receives and investigates sworn complaints, the Commission does not have the authority to impose punishment for an ethics violation. Instead, whenever the Commission finds probable cause exists that an ethics violation has occurred, the commission is required to submit its findings, along with a recommended penalty, to the statutorily designated official who may impose punishment. The Commission must make such submission to the Senate President or Speaker of the House, whichever is applicable, in any case concerning a former legislator who is alleged to have violated a

provision applicable to former legislators or whose alleged conduct occurred while a member of the Legislature. In the case of a former statewide elected officer, the commission is required to make such submission to the Governor.

Florida State Constitution – Conflict of Interest

Article II of Florida’s State Constitution is entitled General Provisions, and Section 8 of this Article is entitled Ethics in Government. Subsection (c) of this section reads:

“Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions. The manner of recovery and additional damages may be provided by law.”

Subsection (h) of this section reads:

“This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.”

Florida State Constitution – Conflict of Interest - Revolving Door Prohibition

Subsection (e) of Section 8 of Article II of Florida’s State Constitution reads:

“No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.”

Florida State Law – Conflict of Interest Provisions

Codified in state law as Part III of Chapter 112, Florida Statutes, is the Code of Ethics for Public Officers and Employees. Section 112.312(8), Florida Statutes, provides the following definition:

“‘Conflict’ or ‘conflict of interest’ means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.”

Per the 2018 Florida Commission on Ethics Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees (Guide), Section 112.3143, Florida Statutes, provides for the following:

- State public officers are prohibited from voting in an official capacity on any measure which they know would inure to their own special private gain or loss. A state public officer who abstains, or who votes on a measure which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, must make every

reasonable effort to file a memorandum of voting conflict with the recording secretary in advance of the vote. If that is not possible, it must be filed within 15 days after the vote occurs. The memorandum must disclose the nature of the officer's interest in the matter.

- No appointed state or local officer shall participate in any matter which would inure to the officer's special private gain or loss, the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, without first disclosing the nature of his or her interest in the matter. The memorandum of voting conflict (Commission Form 8A or 8B) must be filed with the meeting's recording officer, be provided to the other members of the agency, and be read publicly at the next meeting.
- If the conflict is unknown or not disclosed prior to the meeting, the appointed official must orally disclose the conflict at the meeting when the conflict becomes known. Also, a written memorandum of voting conflict must be filed with the meeting's recording officer within 15 days of the disclosure being made and must be provided to the other members of the agency, with the disclosure being read publicly at the next scheduled meeting.

Also per the Guide, Section 112.313(6), Florida Statutes, and Section 112.313(7), Florida Statutes, provide for the following:

- Public officers and employees, and local government attorneys are prohibited from corruptly using or attempting to use their official positions or the resources thereof to obtain a special privilege or benefit for themselves or others.
- A public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will pose a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties. Limited exceptions to this prohibition have been created in the law for legislative bodies, certain special tax districts, drainage districts, and persons whose professions or occupations qualify them to hold their public positions.

Florida State Law – Conflict of Interest - Revolving Door Prohibition

Codified in state law as Part III of Chapter 112, Florida Statutes, is the Code of Ethics for Public Officers and Employees. Specifically, per the 2018 Florida Commission on Ethics Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees, Section 112.313(9), Florida Statutes provides for the following:

- A member of the Legislature or a statewide elected or appointed state official is prohibited for two years following vacation of office from representing another person or entity for compensation before the government body or agency of which the

individual was an officer or member. Former members of the Legislature are also prohibited for two years from lobbying the executive branch.

- A member of the Legislature is prohibited from representing another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals.
- Certain employees of the executive and legislative branches of state government are prohibited from personally representing another person or entity for compensation before the agency with which they were employed for a period of two years after leaving their positions, unless employed by another agency of state government. These employees include the following:
 - Executive and legislative branch employees serving in the Senior Management Service and Selected Exempt Service, as well as any person employed by the Department of the Lottery having authority over policy or procurement.
 - Persons serving in the following position classifications: the Auditor General; the director of the Office of Program Policy Analysis and Government Accountability (OPPAGA); the Sergeant at Arms and Secretary of the Senate; the Sergeant at Arms and Clerk of the House of Representatives; the executive director and deputy executive director of the Commission on Ethics; an executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, legislative analyst, or attorney serving in the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, the Senate Minority Party Office, the House Majority Party Office, or the House Minority Party Office; the Chancellor and Vice-Chancellors of the State University System; the general counsel to the Board of Regents; the president, vice presidents, and deans of each state university; any person hired on a contractual basis and having the power normally conferred upon such persons, by whatever title; and any person having the power normally conferred upon the above positions.
- The prohibition does not apply to a person who was employed by the Legislature or other agency prior to July 1, 1989; who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994; or who reached normal retirement and retired by July 1, 1991. It does apply to OPS employees.

Per the 2018 Florida Commission on Ethics Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees, Section 112.313(13) and Section 112.313(14), Florida Statutes provide for the following:

- A person elected to county, municipal, school district, or special district office is prohibited from representing another person or entity for compensation before the government body or agency of which he or she was an officer for two years after

leaving office. Appointed officers and employees of counties, municipalities, school districts, and special districts may be subject to a similar restriction by local ordinance or resolution.

Under current law, a serving public officer who violates any of Florida's constitutional ethics provisions or a provision of the Code may be subject to one or more of the following civil penalties:

- Impeachment.
- Removal from office.
- Suspension from office.
- Public censure and reprimand.
- Forfeiture of no more than one-third of his or her salary per month for no more than 12 months.
- A civil penalty not to exceed \$10,000.
- Restitution of any pecuniary benefits received because of the violation committed.

Under current law, a former public officer who violates any of Florida's constitutional ethics provisions or a provision of the Code may be subject to one or more of the following civil penalties:

- Public censure and reprimand.
- Civil penalty up to \$10,000.
- Restitution of any pecuniary benefits received because of the violation committed.

Rules of the Florida House of Representatives (2016 – 2018)

House Rule 15 is entitled "ETHICS AND CONDUCT OF MEMBERS." Rule 15.3(a) reads:

- A member may neither solicit nor accept anything that reasonably may be construed to improperly influence the member's official act, decision, or vote.

Rule 15.4(c) reads:

- (A member shall) Not directly or indirectly receive or agree to receive any compensation for any services rendered or to be rendered either by the member or any other person when such activity is in substantial conflict with the duties of a member of the House.

Rule 15.5 reads:

- A member may not corruptly use or attempt to use the member's official position or any property or resource which may be within the member's trust in a manner contrary to the trust or authority placed in the member, either by the public or by other members, for the purpose of securing a special privilege, benefit, or exemption for the member or for others. A member may not solicit or accept an employment

offer or investment advice arising out of legislative activities or political activities engaged in while he or she is a member of, or candidate for, the House. A member may not enter into any investment, joint venture, or other profitmaking relationship with or advised by a lobbyist or principal, except that a member may buy or sell listed, publicly traded securities of a principal unless in violation of Rule 15.6. For purposes of this rule, "investment, joint venture, or other profitmaking relationship" does not include an employment relationship or professional partnership or similar venture engaging the professional services of the member.

Per House staff analysis of 2018 House Bill 5, during the 2016 Organization Session the Florida House of Representatives also adopted Rule 17.1(g), which prohibits a lobbyist who was a member of the Legislature at any time after November 8, 2016, from lobbying the House of Representatives for a period of six years following vacation of office as a member of the Legislature.

Rules of the Florida Senate (2016-2018)

Within Rule 1, Part Four is entitled "Legislative Conduct and Ethics" and covers Rules 1.35 through 1.43. Rule 1.36 reads:

- A Senator shall not accept anything that will improperly influence his or her official act, decision, or vote.

Rule 1.38 reads:

- A Senator shall not use his or her influence as a Senator in any issue that involves substantial conflict between his or her personal interest and his or her duties in the public interest.

Rule 1.39 reads:

- (1) Abstention on matters of special private gain or loss.—A Senator may not vote on any matter that the Senator knows would inure to the special private gain or loss of the Senator. The Senator must disclose the nature of the interest in the matter from which the Senator is required to abstain.
(2) Disclosure on matters of special private gain or loss to family or principals.—When voting on any matter that the Senator knows would inure to the special private gain or loss of:
(a) 1. Any principal by whom the Senator or the Senator's spouse, parent, or child is retained or employed;
2. Any parent organization or subsidiary of a corporate principal by which the Senator is retained or employed; or
3. An immediate family member or business associate of the Senator, the Senator must disclose the nature of the interest of such person in the outcome of the vote.
(b) For the purpose of this Rule, the term:
1. "Immediate family member" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

2. “Business associate” means any person or entity engaged in or carrying on a business enterprise with the Senator as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.

2017 Florida Legislative Session

During the 2017 Session of the Florida Legislature, the House of Representatives submitted for consideration proposed changes to both the Florida Constitution and Florida law to strengthen public officer and employee conduct regarding solicitation and negotiation of conflicting and potentially conflicting income producing relationships, and to broaden and lengthen the existing prohibitions on personal representation for compensation:

- House Bill (HB) 7083 was an omnibus ethics reform bill that among other changes contained the following provisions:
 - Prohibited public officers and employees from soliciting an employment or contractual relationship from entities with whom they are prohibited from entering into conflicting employment and contractual relationships.
 - Imposed the following restrictions on statewide elected officers and legislators:
 - Prohibited solicitation of employment or investment advice arising out of official duties.
 - Prohibited solicitation and acceptance of investment advice or profitmaking arrangements (other than employment) from lobbyists or lobbyists' employers or principals.

HB 7083 passed the House on April 20, 2017 by a vote of 118-1 but was not considered in the Senate.

- House Joint Resolution (HJR) 7001 would have amended the Florida Constitution to prohibit legislators and statewide elected officers from personally representing another person or entity for compensation before any state government body or state agency except judicial tribunals for six years following vacation of office. This would have applied to individuals who were members of the Legislature or who were statewide elected officers at any time after November 8, 2016. HJR 7001 passed the House on March 30, 2017 by a vote of 108-4, but was not considered in the Senate.
- HB 7003 would have codified the constitutional change made by HJR 7001 in state law (although the ban would have remained two years for appointed state officers.) HB 7003 passed the House on March 10, 2017 by a vote of 110-3, but was not considered in the Senate.

2018 Florida Legislative Committee Meetings

During the 2018 Session of the Florida Legislature, the House of Representatives has submitted for consideration HB 7007, an omnibus ethics reform bill which contains ethics provisions similar to last year's HB 7083. HB 7007 passed the House Public

Integrity and Ethics Committee on November 7, 2017 by a vote of 18-0, and as of January 29, 2018 is available for assignment to other committees or to the calendar of bills available for consideration by the full House. As of January 29, 2018 there is no similar companion bill filed in the Senate.

Also during the 2018 Session of the Florida Legislature, the House of Representatives has submitted for consideration HB 5, which would prohibit legislators and statewide elected officers from personally representing another person or entity for compensation before any state government body or state agency except judicial tribunals for six years following vacation of office (the ban would remain two years for appointed state officers.) HB 5 passed the House by a vote of 96-5 on January 12, 2018. Senate Bill (SB) 1330 has been filed as companion legislation, but as of January 29, 2018 has yet to be scheduled for consideration in a Senate committee.

Article V

Article V of the Florida State Constitution covers the Judiciary. Section 13 of Article V currently reads:

“Prohibited activities.—All justices and judges shall devote full time to their judicial duties. They shall not engage in the practice of law or hold office in any political party.”

B. EFFECT OF PROPOSED CHANGES:

Article II

CS/Proposal #39 amends subsection (e) of Section 8 of Article II of the State Constitution, replacing the current constitutional prohibition on legislators and statewide elected officers personally representing another person or entity for compensation before **their former government body or agency** for **two years** following vacation of office with a new prohibition. The proposed language prohibits legislators and statewide elected officers from personally representing another person or entity for compensation before **the legislature or any state government body or state agency other than judicial tribunals** for **six years** following vacation of office.

CS/Proposal #39 also replaces the current constitutional prohibition against **legislators** personally representing another person or entity for compensation during their term of office before **any state agency** other than judicial tribunals with a new prohibition. The proposed language prohibits **legislators and statewide elected officers** from personally representing another person or entity for compensation during term of office before **any federal agency; the**

legislature, any state government body or agency other than judicial tribunals; **or any political subdivision of the state.**

CS/Proposal #39 also constitutionally establishes several new provisions prohibiting public officials from personally representing another person or entity for compensation:

- A person who served as a secretary, executive director, or other agency head of a department of the executive branch of state government, may not personally represent another person or entity for compensation before the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department for a period of six years following vacation of his or her position.
- A person who is serving as a secretary, executive director, or other agency head of a department of the executive branch of state government, may not personally represent another person or entity for compensation before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state.
- A county officer pursuant to Article VIII or a county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority, may not personally represent another person or entity for compensation before his or her former agency or governing body for a period of six years following vacation of office.
- A county officer pursuant to Article VIII or a county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority, may not personally represent another person or entity for compensation before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state during his or her term of office.

With regards to all the changes made to this subsection of Section 8 of Article II, CS/Proposal #39 clarifies that no public officer or public employee would be prohibited from representing his or her agency before any other governmental entities in the normal course of his or her duties.

With all the changes incorporated, this proposal would amend Subsection (e) of Section 8 of Article II of the Florida State Constitution to read:

“(e)(1) A member of the legislature or a statewide elected officer may not personally represent another person or entity for compensation before the legislature or any state government body or agency, other than judicial tribunals, for a period of six years following vacation of office. A member of the legislature or a statewide elected officer may not personally represent another person or entity for compensation during term of office before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state.

(2) A person who served as a secretary, executive director, or other agency head of a department of the executive branch of state government, may not personally represent another person or entity for compensation before the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department for a period of six years following vacation of his or her position. A person who is serving as a secretary, executive director, or other agency head of a department of the executive branch of state government, may not personally represent another person or entity for compensation before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state.

(3) A county officer pursuant to Article VIII or a county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority, may not personally represent another person or entity for compensation:

a. Before his or her former agency or governing body for a period of six years following vacation of office.

b. Before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state during his or her term of office.

(4) This subsection does not prohibit any public officer or public employee from representing his or her agency before any other governmental entities in the normal course of his or her duties.

(5) Similar restrictions on other public officers and employees may be established by law.”

Finally, CS/Proposal #39 also amends subsection (g) of Section 8 of Article II of the State Constitution, deleting the existing language and replacing it with language specifying that the Florida Code of Ethics shall at a minimum prohibit public officers or public employees from abusing their public position to obtain a disproportionate benefit for themselves, or to obtain a disproportionate benefit for their spouse, their children, their employer, or any other business entity with whom they do business or in which they own an interest. The language also specifies that the Florida Commission on Ethics shall define disproportionate benefit and prescribe the requisite intent, if any, required for finding a violation of such prohibition, and shall prescribe appropriate financial penalties for violations.

Article V

CS/Proposal #39 constitutionally establishes a new provision prohibiting a justice or judge from personally representing another person for compensation before the legislative, executive, or judicial branches of state government, other than practicing law before a judicial tribunal, for a period of six years following vacation of office. As amended by this proposal, Section 13 of Article V reads:

“Ethics in the judiciary.—All justices and judges shall devote full time to their judicial duties. A justice or judge may not engage in the practice of law or hold office in any political party. A justice or judge may not personally represent another person for compensation before the legislative, executive, or judicial branches of state government,

other than practicing law before a judicial tribunal, for a period of six years following vacation of office.”

Article XII

The proposal also creates a new section in Article XII of the State Constitution to read:

“Personal representation prohibitions for specified public officers and employees.—The amendments to Section 8 of Article II and Section 13 of Article V, which establish certain prohibitions on the personal representation for compensation of another person or entity before specified governmental bodies by certain public officers and employees, and the creation of this section, shall take effect January 1, 2020.”

Florida Commission on Ethics Analysis

The Florida Commission on Ethics held a meeting on December 8, 2017, and included on the agenda for this meeting was Item IX, Constitution Revision Proposals. Included in the meeting materials for this item was a memo dated November 20, 2017 to Commission Members from the Executive Director. The subject of the memo was Constitution Revision Commission (CRC) request, and it provides information on each of the CRC proposals to amend the ethics provisions of the Florida Constitution. Regarding the changes made by this proposal (#39), the memo states:

“This proposal incorporates changes similar to those in Proposal 19, and in addition, prohibits members of the Legislature and statewide elected officers – during their term of office – from representing persons or entities for compensation before federal agencies, the Legislature, state government bodies or agencies other than judicial tribunals, and political subdivisions.

This proposal would prohibit a secretary, executive director, or head of an executive branch agency from representations for compensation before the Legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or the official’s own former department, for six years after leaving employment.

The proposal would also impose an in-office/employment ban which would prohibit the secretary, executive director, or agency head from representations for compensation, other than in the course of their duties, before federal agencies, the Legislature, state government bodies or agencies other than judicial tribunals, and political subdivisions. Current law does not speak to these kinds of activities, although if they were in conflict with the official’s public duties, they could potentially be addressed through application of the conflicts of interest law in Section 112.313(7).

The proposal also places a six-year restriction on county officials, including a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority. The restriction would (be) on representations for compensation before their own former agency or governing body...The proposal also creates an in-office/employment ban, which would prohibit

such officials, during their terms in office, from representations for compensation before any federal agency, the Legislature, any state government body or agency other than judicial tribunals, or any political subdivision, except in the representation of their own government entity. Again, current law does not specifically speak to such activities, but in particular circumstances, they could fall within the ambit of Section 112.313(7).

The proposal also makes a change to Article V to place a six year limit on former judges representing persons or entities for compensation before the legislative, executive, or judicial branches of state government, other than practicing law before a judicial tribunal.”

C. FISCAL IMPACT:

To the extent that the change made by this proposal resulted in greater or fewer reported ethics complaints than is currently the case, there could be an indeterminate fiscal impact based on the related change in the workload of the Florida Commission on Ethics. There may be an indeterminate negative fiscal impact to legislators and other public officers who would be affected by the changes made by this proposal. This could be offset by an indeterminate positive fiscal impact for those personally representing another person or entity for compensation before a government body or agency who in essence replace those who are prohibited from doing so under this proposal.

III. Additional Information:

A. Statement of Changes:

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

The amended proposal deletes the existing language of subsection (g) of Section 8 of Article II of the Florida State Constitution, replacing it with language specifying that the Florida Code of Ethics shall at a minimum prohibit public officers or public employees from abusing their public position to obtain a disproportionate benefit for themselves, or to obtain a disproportionate benefit for their spouse, their children, their employer, or any other business entity with whom they do business or in which they own an interest. The added language also specifies that the Florida Commission on Ethics shall define disproportionate benefit and prescribe the requisite intent, if any, required for finding a violation of such prohibition, and shall prescribe appropriate financial penalties for violations.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.



932542

CRC ACTION

Commissioner .
Comm: UNFAV .
02/01/2018 .
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The Committee on General Provisions (Plymale) recommended the following:

CRC Amendment (with title amendment)

Between lines 62 and 63
insert:

(3) A state public officer may not be employed by any person or entity that represents another person or entity for compensation before any state government body or agency, other than judicial tribunals, during his or her term of office.

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



932542

11 And the title is amended as follows:
12 Delete line 7
13 and insert:
14 person or entity before certain government bodies, to
15 prohibit the employment of state public officers by
16 certain entities during a term of office, and

By the Committee on Ethics and Elections; and Commissioners
Gaetz and Kruppenbacher

320-00236-17

201739c1

A proposal to amend

Section 8 of Article II and Section 13 of Article V
and create a new section in Article XII of the State
Constitution to establish certain restrictions for
specified public officers and employees regarding the
personal representation for compensation of another
person or entity before certain government bodies and
to specify minimum requirements for the Code of Ethics
as to the prohibition against abuse of public
position.

Be It Proposed by the Constitution Revision Commission of
Florida:

Section 8 of Article II of the State Constitution is
amended to read:

ARTICLE II
GENERAL PROVISIONS

SECTION 8. Ethics in government.—A public office is a
public trust. The people shall have the right to secure and
sustain that trust against abuse. To assure this right:

(a) All elected constitutional officers and candidates for
such offices and, as may be determined by law, other public
officers, candidates, and employees shall file full and public
disclosure of their financial interests.

(b) All elected public officers and candidates for such
offices shall file full and public disclosure of their campaign
finances.

(c) Any public officer or employee who breaches the public
trust for private gain and any person or entity inducing such
breach shall be liable to the state for all financial benefits

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obtained by such actions. The manner of recovery and additional
damages may be provided by law.

(d) Any public officer or employee who is convicted of a
felony involving a breach of public trust shall be subject to
forfeiture of rights and privileges under a public retirement
system or pension plan in such manner as may be provided by law.

(e) (1) A ~~No~~ member of the legislature or a statewide
elected officer ~~may not shall~~ personally represent another
person or entity for compensation before the legislature or any
state government body or agency, other than judicial tribunals,
of which the individual was an officer or member for a period of
six ~~two~~ years following vacation of office. A ~~No~~ member of the
legislature or a statewide elected officer may not ~~shall~~
personally represent another person or entity for compensation
during term of office before any federal agency; the
legislature; any state government body or agency, other than
judicial tribunals; or any political subdivision of the state.

(2) A person who served as a secretary, executive director,
or other agency head of a department of the executive branch of
state government, may not personally represent another person or
entity for compensation before the legislature, the governor,
the executive office of the governor, members of the cabinet, a
department that is headed by a member of the cabinet, or his or
her former department for a period of six years following
vacation of his or her position. A person who is serving as a
secretary, executive director, or other agency head of a
department of the executive branch of state government, may not
personally represent another person or entity for compensation
before any federal agency; the legislature; any state government

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body or agency, other than judicial tribunals; or any political subdivision of the state.

(3) A county officer pursuant to Article VIII or a county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority, may not personally represent another person or entity for compensation:

a. Before his or her former agency or governing body for a period of six years following vacation of office.

b. Before any federal agency; the legislature; any state government body or agency, other than judicial tribunals; or any political subdivision of the state during his or her term of office.

(4) This subsection does not prohibit any public officer or public employee from representing his or her agency before any other governmental entities in the normal course of his or her duties.

(5) Similar restrictions on other public officers and employees may be established by law.

(f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.

(g) (1) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

(2) The code of ethics shall, at a minimum, prohibit public

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officers or public employees from abusing their public position to obtain a disproportionate benefit for themselves; or to obtain a disproportionate benefit for their spouse, their children, their employer, or any other business entity with whom they do business or in which they own an interest. The Florida Commission on Ethics shall define disproportionate benefit and prescribe the requisite intent, if any, required for finding a violation of such prohibition, and shall prescribe appropriate financial penalties for violations of this paragraph.

(h) This section shall not be construed to limit disclosures and prohibitions which may be established by law to preserve the public trust and avoid conflicts between public duties and private interests.

(i) Schedule—On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

a. A copy of the person's most recent federal income tax return; or

b. A sworn statement which identifies each separate source and amount of income which exceeds \$1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.

(2) Persons holding statewide elective offices shall also

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file disclosure of their financial interests pursuant to
subsection (i)(1).

(3) The independent commission provided for in subsection
(f) shall mean the Florida Commission on Ethics.

Section 13 of Article V of the State Constitution is
amended to read:

ARTICLE V
JUDICIARY

SECTION 13. Ethics in the judiciary ~~Prohibited activities.~~
All justices and judges shall devote full time to their judicial
duties. A justice or judge may ~~They shall~~ not engage in the
practice of law or hold office in any political party. A justice
or judge may not personally represent another person for
compensation before the legislative, executive, or judicial
branches of state government, other than practicing law before a
judicial tribunal, for a period of six years following vacation
of office.

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

ARTICLE XII
SCHEDULE

Personal representation prohibitions for specified public
officers and employees.~~The amendments to Section 8 of Article~~
II and Section 13 of Article V, which establish certain
prohibitions on the personal representation for compensation of
another person or entity before specified governmental bodies by
certain public officers and employees, and the creation of this

Page 5 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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148 section, shall take effect January 1, 2020.

Page 6 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

Meeting Date

Proposal Number (if applicable)

Amendment Barcode (if applicable)

*Topic

*Name

Address

Street

City

State

Zip

Phone

Email

*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

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

2-1-2018

Meeting Date

CS/P 39

Proposal Number (if applicable)

*Topic Ethics - Public Officers

Amendment Barcode (if applicable)

*Name Edward G. Labrador

Address 115 S. Andrews Avenue, Room 426

Phone (954) 357-7575; (954) 826-1155

Street

Fort Lauderdale

Florida

33301

City

State

Zip

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
General Provisions Committee
Proposal Analysis**

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

Proposal #: CS/P 62

Relating to: SUFFRAGE AND ELECTIONS, Primary, general, and special elections

Introducer(s): Ethics and Elections Committee and Commissioner Schifino

Article/Section affected:

Date: January 29, 2018

	REFERENCE	ACTION
1.	EE	Fav/CS
2.	GP	Pre-meeting

I. SUMMARY:

Amends Section 5 of Article VI of the State Constitution to authorize all Florida electors qualified to vote for an office being filled by election to vote in a primary election, regardless of the elector's party affiliation. Also prescribes the method of election for local, county, state, and federal offices, mandating that with specified exceptions Florida primary elections paid for with state funds be based on a "Top Two" methodology, in which regardless of political party affiliation the two candidates for an office receiving the most votes in a primary advance to the general election.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Primary Elections – General

A primary election is an election used either to narrow the field of candidates for a given elective office or to determine the nominees for political parties in advance of a general election. Primary elections can take several different forms. In a partisan primary, voters select a candidate to be a political party's nominee for a given office in the corresponding general election. Nonpartisan primaries are used to narrow the field of candidates for nonpartisan offices in advance of a general election. The terms of participation (e.g., whether only registered party members can vote in a party's primary) in primary elections can vary by jurisdiction, political party, and the

office or offices up for election. The methods employed to determine the outcome of the primary can also vary by jurisdiction.

Primary Elections - Types

The National Conference on State Legislatures (NCSL) has categorized state terms of participation in primary elections into the following six categories – Closed, Partially Closed, Partially Open, Open to Unaffiliated Voters, Open, and Top Two.

Closed Primaries

Closed primaries are those in which voters must be registered members of the political party holding the primary. This system prevents “cross-over” voting by voters registered with other political parties, as well as voters unaffiliated through voter registration with any political party. Nine states are categorized as having closed primary systems - Delaware, Florida, Kentucky, Maryland, Nevada, New Mexico, New York, Oregon and Pennsylvania.

Partially Closed Primaries

Partially closed primaries are those in which voters must be registered members of the political party holding the primary, unless the party chooses to allow unaffiliated voters to participate. This system gives the parties more flexibility from election to election concerning which voters to include in the primary election process. Seven states are categorized as having partially closed primary systems – Alaska, Connecticut, Idaho, North Carolina, Oklahoma, South Dakota, and Utah.

Partially Open Primaries

Partially open primaries are those in which voters are essentially allowed to vote in a political party’s primary even if they are not registered members of that party, by declaring their affiliation to that political party at the time of voting. This system essentially allows for same-day changing of political party affiliation in order to vote in a given political party’s primary. Six states are categorized as having partially open primary systems – Illinois, Indiana, Iowa, Ohio, Tennessee, and Wyoming.

Primaries Open to Unaffiliated Voters

Primaries open to unaffiliated voters allows such voters to choose a political party primary in which to participate. It does not allow voters registered with another political party to “cross-over” and vote in the primary of a different political party. This system differs from the partially closed primary system in that unaffiliated voters are entitled to vote in a political party primary; it is not subject to the choice of a political party from election to election. Nine states are

categorized as having primary systems open to unaffiliated voters – Arizona, Colorado, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, and West Virginia.

Open Primaries

Open primaries are those in which voters are allowed to participate in a political party's primary, whether or not they are registered members of the political party holding the primary or for that matter any political party. This system allows for unconditional "cross-over" voting and participation by unaffiliated voters. Fifteen states are categorized as having open primary systems – Alabama, Arkansas, Georgia, Hawaii, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Carolina, Texas, Vermont, Virginia, and Wisconsin.

Top-Two Primaries

Top-two primaries are those in which all voters can participate, where all candidates for a given office appear on the primary ballot regardless of party of affiliation. The "top-two" vote getters in the primary, again regardless of party affiliation, advance to the general election ballot. Four states are categorized as having top-two primary systems – California, Louisiana, Nebraska, and Washington.

Primary Elections in Florida

As noted, the NCSL categorizes Florida as a closed primary state, defined as voters having to be registered members of the political party holding the primary. However, the 1998 Florida Constitution Revision Commission voted to place Proposition 11 on the ballot for the November 1998 general election. Among several election-related changes, Proposition 11 proposed amending Article VI of the Florida State Constitution by including the following language:

"If all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary elections for that office."

Proposition 11 was approved and placed into the Constitution by the voters of Florida, with 64.1 percent voting in favor.

At first glance, the 1998 constitutional change to Florida's primary system appears to allow for open primaries – where all voters may participate regardless of party affiliation – under circumstances in which a party's primary will determine who will be elected to a given office because there are no opposing candidates appearing on the ballot in the subsequent general election. However, in 2000 the Florida Department of State's Division of Elections published an opinion stating that the presence of a write-in candidate in an otherwise all-Republican or all-Democratic field "closed" the primary to all voters other than those registered with the party holding the primary. Since that opinion was published, multiple district and appellate courts have confirmed the Division's legal position. Over the ensuing years, qualification of write-in candidates for general elections has resulted in the closing of numerous Florida primary elections that otherwise would have been open to all voters regardless of party affiliation.

B. EFFECT OF PROPOSED CHANGES:

Proposal 62 would amend Section 5 of Article VI of the State Constitution, deleting the existing language in subsection (b) allowing all electors to vote in a primary election for an office if all candidates for that office have the same party affiliation and the winner will have no opposition in the general election, and inserting new language that:

- Allows all electors to in a primary election, regardless of the voter's affiliation or lack of affiliation with a political party and regardless of the candidate's nomination by, or affiliation with, a political party. Specifies that no state funds may be used to pay for the administration of an election unless all qualified voters regardless of party preference or affiliation are allowed to vote for any candidate who appears on the ballot.
- Specifies that all candidates for an office shall be listed on a single primary ballot regardless of their nomination by, or affiliation with, a political party. Only the two candidates receiving the greatest numbers of votes cast in the primary election shall advance to the general election and appear on that ballot; no other candidate for that office shall appear on the general election ballot. If more than one candidate is to be elected to an office, the number of candidates advancing from the primary to the general election shall be twice the number to be elected, with said candidates receiving the greatest number of votes. If only two candidates qualify for the same office, no primary election will be held and the winner will be determined in the general election.
- Specifies that nothing in the proposal language shall be interpreted to prohibit a political party or a party central committee from nominating, endorsing, supporting, or opposing any candidate. Candidates nominated, endorsed, or otherwise selected by a political party to run in the primary election may have such nomination, endorsement, or selection indicated on the ballot in a manner provided by law. A candidate that is not nominated, endorsed, or otherwise selected by a political party to run in the primary election may have their political party preference, or lack of a political party preference, indicated upon the ballot in a manner provided by law. Designation of a party preference by a candidate under this paragraph shall not constitute or imply the nomination, endorsement, or selection of the candidate by the political party designated.
- Specifies that the proposal shall govern all Florida primary elections for federal, state, county, and local elective offices, except for those races in which no party affiliation, registration, or preference appears on the ballot as provided by law, and for the system of selection for President and Vice President of the United States.
- Specifies that the proposal is effective upon adoption by the voters and is self-executing.

Under the NCSL state primary classification system, the proposed change would remove Florida from the Closed Primaries category and place it into the Top Two Primaries

category with four other states. If adopted by the 2018 Florida Constitution Revision Commission, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election (November 6, 2018). If approved, it would be in place for subsequent primary elections in Florida.

October 2017 Presentation by the Florida Association of Supervisors of Elections

On October 4, 2017, representatives of the Florida Association of Supervisors of Elections (Association) made a presentation to the Ethics and Elections Committee of the 2018 Florida Constitution Revision Commission on Florida's primary election system. While a broad range of issues related to this topic were discussed, in response to questions from committee members Association representatives made the following points:

- Voter turnout in Florida primary elections is significantly lower than in general elections (since 2002, voter turnout in Florida primary elections has averaged 22.5 percent for both presidential election cycles – years when voters elect the President of the United States – and non-presidential election cycles. In contrast, since 2002 voter turnout in Florida general elections has averaged 74 percent in presidential election cycles and 50.5 percent in non-presidential election cycles.) One factor that may be contributing to low turnout is that the majority of Florida primaries are closed.
- In recent years the largest growth in Florida voter registration has been among voters who do not affiliate with any political party (as of November 30, 2017, statewide voter registration in Florida was 37.4 percent Democrat, 35.3 percent Republican, 0.5 percent Other Parties, and 26.8 percent No Party Affiliation.) Unaffiliated voters may not participate in closed primary elections.
- Over time, county Supervisors of Elections have received more complaints from voters about the inability to vote due to closed primaries than any other issue. One factor that may be contributing to the level of dissatisfaction is that many Florida voters have moved here from other states where primary elections are open or not fully closed. Opening primary voting eligibility to unaffiliated voters could lead to fewer voter complaints to county Supervisors of Elections over primaries being closed, as well as contribute to increased overall voter participation in Florida's primary elections.

C. FISCAL IMPACT:

Approval of this proposal could contribute to an increase of Florida voters participating in primary elections, due to the fact that voters with no political party affiliation would now be eligible to vote in primaries. Should this occur, county Supervisors of Elections could experience an indeterminate increase in costs for administering primary elections.

III. Additional Information:**A. Statement of Changes:**

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

Ethics and Elections Committee on January 26, 2018:

The amended proposal authorizes all electors qualified to vote for an office being filled by election to vote in a primary election, regardless of the elector's party affiliation. It also prescribes the method of election for local, county, state, and federal offices, mandating that with specified exceptions Florida primary elections paid for with state funds be based on a "Top Two" methodology, in which regardless of political party affiliation the two candidates for an office receiving the most votes in a primary advance to the general election.

The amendment also removed language from the proposal specifying that a qualified elector who is registered with no party affiliation may choose to vote a primary election ballot of a political party, and that a qualified elector who is registered with a political party designation may vote only in a primary election of the political party which he or she has designated.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By the Committee on Ethics and Elections; and Commissioner Schifino

320-00235-17

201762c1

A proposal to amend

Section 5 of Article VI of the State Constitution to authorize all electors qualified to vote for an office being filled by election to vote in a primary election, regardless of the elector's party affiliation, and to prescribe the method of election for specified local, county, state, and federal offices.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 5 of Article VI of the State Constitution is amended to read:

ARTICLE VI

SUFFRAGE AND ELECTIONS

SECTION 5. Primary, general, and special elections.-

(a) A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election and, except as provided herein, to fill each vacancy in elective office for the unexpired portion of the term. A general election may be suspended or delayed due to a state of emergency or impending emergency pursuant to general law. Special elections and referenda shall be held as provided by law.

(b) This subsection shall govern all primary elections for all federal, state, county, and local elective offices except for those races in which no party affiliation, registration, or preference appears on the ballot as provided by law; and the system for selection of President and Vice President of the

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United States.

(1) All electors qualified to vote for the office being filled shall be allowed to vote in the primary election regardless of the voter's affiliation or lack of affiliation with a political party and regardless of the candidate's nomination by, or affiliation with, a political party.

(2) All candidates for an office shall be listed on a single primary ballot regardless of their nomination by, or affiliation with, a political party. Only the two candidates receiving the greatest numbers of votes cast in the primary election shall advance to the general election and appear on that ballot; no other candidate shall appear on the general election ballot.

(3) If more than one candidate is to be elected to an office, the number of candidates advancing to the general election shall be twice the number to be elected, with said candidates receiving the greatest number of votes.

(4) Should only two candidates qualify for the same office, no primary election will be held and the winner will be determined in the general election.

(5) Candidates nominated, endorsed, or otherwise selected by a political party to run in the primary election may have such nomination, endorsement, or selection indicated on the ballot in a manner provided by law.

(6) A candidate that is not nominated, endorsed, or otherwise selected by a political party to run in the primary election may have their political party preference, or lack of a political party preference, indicated upon the ballot in a manner provided by law. Designation of a party preference by a

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61 candidate under this paragraph shall not constitute or imply the
62 nomination, endorsement, or selection of the candidate by the
63 political party designated.

64 (7) Nothing in this subsection shall be interpreted to
65 prohibit a political party or a party central committee from
66 nominating, endorsing, supporting, or opposing any candidate.

67 (8) No state funds shall be used to pay for the
68 administration of an election unless all qualified voters
69 regardless of party preference or affiliation are allowed to
70 vote for any candidate who appears on the ballot.

71 (9) This subsection is effective upon adoption by the
72 voters and is self-executing ~~If all candidates for an office~~
73 ~~have the same party affiliation and the winner will have no~~
74 ~~opposition in the general election, all qualified electors,~~
75 ~~regardless of party affiliation, may vote in the primary~~
76 ~~elections for that office.~~



February 1, 2018

VIA E-MAIL (wschifino@burr.com)

William J. Schifino, Jr., Esq.
Burr & Forman L L P
P. O. Box 380
Tampa, Florida 33601-0380

Re: Open Primaries

Dear Mr. Schifino:

I have not followed the various issues being discussed by the Constitutional Revision Commission ("Commission") as closely as I should. However, I am heartened by your efforts and the efforts of others supporting open primaries. The leaders of the different parties seem to want to protect their turf no matter what the cost, but I truly hope that the voters in Florida will have an opportunity in November to approve such a change to our state constitution.

In the past I have switched my party affiliation, so I could vote for a certain candidate. This change is especially the case when it is the primary that will determine who will ultimately be elected. Don't get me started on the Far Left and Far Right; they each have too much power because of our primary system. Switching your party affiliation takes not only an individual's time but also the time and money of the Election Supervisor in changing his or her records for this change. Earlier this month I wrote a couple letters to my State Senator and State Representative about this situation setting out a proposed change in the current statute for their future consideration. I am enclosing a copy of those letters for your perusal.

Thank you for all of your efforts on the Commission not only in this area but others as well. I wish you success with the open primary proposal.

Very truly yours,

Robert M. Graham

RMG/s

Enclosures

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R

Robert M. Graham
7258 Crystal Lake Drive
West Palm Beach, Florida 33411

January 3, 2018

Senator Bobby Powell
214 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1300

Re: Primary Elections and Florida Statute §101.021 (the "Statute")

Dear Senator Powell:

I know that the Legislature is about to start its session, and there are many things with which you are and will be concerned. I am writing you about an issue about which I feel very strongly – the unfairness of our primary elections. I am concerned about the way that they are conducted, and the way that the Left and the Right are able to dictate to the silent majority which candidates will end up as our representatives. I would also like not to have to follow my practice of changing my party affiliation because of different candidates whom I support.

If you look at the Palm Beach County Supervisor of Elections' website it currently shows the number the registered Republicans at 260,077, the number of registered Democrats at 387,408, the number of registered Libertarians at 1,663 and the number of Others at 270,180. It is a telling sign that there are even more unaffiliated voters than there are registered Republicans and that they cannot vote in many of the races in our primary elections because of the lack of a party affiliation.

It is time to change our old law, so our citizens can fully participate in our primary elections and bring some sanity to some of the races which are run by candidates for political office. I would suggest a amendment of the Statute, a copy of which is attached, and I have attached a first draft of a proposed amendment. I realize that there may be more statutes involved in this process, and I know that this is fighting uphill, if not impossible, battle in which the participants in the legislative process are not unbiased. Even though this will take years to accomplish, I think it is a necessary change to bring fairness to our primary elections. I have to say that I wonder if this issue ever comes up in any discussions you have with other elected officials.

Thank you for your consideration of this proposal. I am a member of the Executive Council of the Real Property Probate and Trust Law Section of the Bar, and I would also like to thank you for the help you have given the Section with its legislation in the past. It has been very much appreciated.

Very truly yours,



Robert M. Graham

Enclosures

A Bill To Be Entitled

An Act relating to a primary ballot in a primary election amending s. 101.021 to provide all electors with the right to vote in a primary election regardless of any political party affiliation; providing an effective date.

Section 1. Section 101.021, Florida Statutes, is amended to read:

101.021 Elector to vote the primary ballot provided that the elector a registered voter.—In a primary election an elector is entitled to vote the provided the elector is a properly registered voter. It is unlawful for any elector to vote in a primary for any candidate running for nomination if such elector is not properly registered.

Section 2. This act shall take effect July 1, 2020.

A Bill To Be Entitled

An Act relating to a primary ballot in a primary election amending s. 101.021 to provide ~~for~~ all electors ~~given~~ with the right to vote in a primary election regardless of any political party affiliation; providing an effective date.

Section 1. Section 101.021, Florida Statutes, is amended to read:

101.021 Elector to vote the primary ballot ~~of the political party in which he or she is provided that the elector a registered voter.~~ -In a primary election a qualified an elector is entitled to vote the official primary election ballot of the political party designated in the elector's registration, and no other. provided the elector is a properly registered voter. It is unlawful for any elector to vote in a primary for any candidate running for nomination ~~from a party other than that in which~~ if such elector is not properly registered.

Section 2. This act shall take effect July 1, 2020.

R

Robert M. Graham
7258 Crystal Lake Drive
West Palm Beach, Florida 33411

January 3, 2018

Representative Matt Willhite
1102 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

Re: Primary Elections and Florida Statute §101.021 (the "Statute")

Dear Representative Willhite:

I know that the Legislature is about to start its session, and there are many things with which you are and will be concerned. I am writing you about an issue about which I feel very strongly – the unfairness of our primary elections. I am concerned about the way that they are conducted, and the way that the Left and the Right are able to dictate to the silent majority which candidates will end up as our representatives. I would also like not to have to follow my practice of changing my party affiliation because of different candidates whom I support.

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Thank you for your consideration of this proposal.

Very truly yours,



Robert M. Graham

Enclosures

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Section 1. Section 101.021, Florida Statutes, is amended to read:

101.021 Elector to vote the primary ballot provided that the elector a registered voter.—In a primary election an elector is entitled to vote the provided the elector is a properly registered voter. It is unlawful for any elector to vote in a primary for any candidate running for nomination if such elector is not properly registered.

Section 2. This act shall take effect July 1, 2020.

A Bill To Be Entitled

An Act relating to a primary ballot in a primary election amending s. 101.021 to provide ~~for~~ all electors ~~given~~with the right to vote in a primary election regardless of any political party affiliation; providing an effective date.

Section 1. Section 101.021, Florida Statutes, is amended to read:

101.021 Elector to vote the primary ballot ~~of the political party in which he or she is~~provided that the elector a registered voter.—In a primary election a ~~qualified~~an elector is entitled to vote the ~~official primary election ballot of the political party designated in the elector's registration, and no other.~~provided the elector is a properly registered voter. It is unlawful for any elector to vote in a primary for any candidate running for nomination ~~from a party other than that in which~~if such elector is not properly registered.

Section 2. This act shall take effect July 1, 2020.

Proposal 62: Top Two Open Primaries

What Is Wrong With Closed Primaries?

- Taxation without representation. Florida spent over \$13 million in 2016 alone administering primary elections, but **3.4 million tax paying independents-27% of all registered voters- are shut out.**
- Voters without a voice. In 2016, 84% of Florida's general elections were not competitive (within a 10% margin of victory), with 40% of races uncontested. Nearly every election is decided in the primary, which robs independents of the right to cast a meaningful vote for their elected representatives.¹ This also hurts political party members as well because members of the minority party in a given district are similarly shut out of casting a meaningful vote.
- Florida being left behind. Florida is one of only 9 states with totally closed primaries. Meanwhile the trend is toward open primaries with Colorado voters passing an open primary that allows independents to pick a party ballot.
- A dark future for the sunshine state. These inequitable trends will continue as the numbers and percentage of independents continue to grow fueled by voters' disassociating with the major parties. In 1990 only 7% of voters were independents vs. 27% today.² By 2024, independents will become the plurality of Florida voters, surpassing both major parties.
- Forced association. Under closed primaries, voters are forced to join a political party in order to cast a meaningful vote in the primary. Forcing voters to join a party with which they do not agree will only exacerbate the trend of independent voter registrations.

Benefits of an Open Primary

- Welcomes ALL voters, instead of shutting them out. Open primaries enables all eligible voters to vote in the elections that matter most. This is particularly true for engaging younger voters. In polls 50% of millennials identify themselves as independents with similar trends among youth of all ethnicities.³ Instead of being turned away at the polls (especially during a Presidential Primary), they will be welcomed.
- Increased voter turnout. In a two-year study conducted by the League of Women Voters of Florida, they found that most open primary states had a higher primary turnout than Florida, and that open primary states had a higher primary turnout than closed primary states generally.⁴
- Open Primaries do not give partisan advantage to either party, but instead creates stronger links between voters and their elected representatives.

Floridians overwhelmingly support moving to an open primary

- Public comments strongly in favor of open primaries. Open primaries was one of the most talked about issues during the Commission's spring listening tour. In fact 77

¹ Florida Division of Elections.

² Florida Division of Elections.

³ Pew Research Center. "Millennials in Adulthood." March 2014.

⁴ Florida League of Women Voters. "Florida League of Women Voters Open Primary Study Report". February 2017.

Proposal 62: Top Two Open Primaries

speakers provided more than two hours of testimony to the CRC in support of opening Florida's Primaries.

- Media voices support open primaries. Dozens of editorial boards and op-eds have called on the Commission to put an open primaries amendment on the 2018 ballot to allow voters to decide.
- Strong support from voters of all political affiliations. A recent poll conducted found that 73% of voters want the Commission to put an open primaries amendment on the 2018 ballot. This includes super majorities of Democrats, Republicans, and independents.⁵
- Don't kick the can down the road. Commissioner Ford-Coates, of the 1998 Constitution Revision Commission identified this problem 20 years ago, when speaking in support of the current open primary provision of Art. VI sec. 5(b):

*"Today in the State of Florida we have public officials selected by only some of the voters all of the time. And we have public officials elected by all of the voters only some of the time. **It is time that all our officials are elected by all of the people all of the time.**"*

-1998 CRC Commissioner Ford-Coates

⁵ PPP Poll of Florida Voters, March 12-14, 2017.

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

2-1-18

Meeting Date

P62

Proposal Number (if applicable)

*Topic Open Primaries

Amendment Barcode (if applicable)

*Name Tom Wells

Address 502 NE 6th Ave

Phone 352-514-5467

Street

Gainesville FL 32601

City

State

Zip

Email tbwells@gmail.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**

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

2/1/2018

Meeting Date

✓ P62

Proposal Number (if applicable)

*Topic OPEN PRIMARIES

Amendment Barcode (if applicable)

*Name GLENN BURHANS JR.

Address 106 E. COLLEGE AVE. SUITE 700

Phone 850.324.4850

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email gburhans@stearnsweaver.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.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

2-1-2018

Meeting Date

P62

Proposal Number (if applicable)

*Topic OPEN PRIMARIES

Amendment Barcode (if applicable)

*Name Stephanie Owens

Address _____
Street

Phone 727 639 1243

City

State

Zip

Email LWVFADVOCACY@
gmail.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? League of Women Voters FL

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)

✓ CRC P 62
Proposal Number (if applicable)

Meeting Date _____

*Topic CRC P 62

Amendment Barcode (if applicable) _____

*Name ROBERTO MARTINEZ

Address _____
Street

Phone bob@colson.com

City

State

Zip

Email 305-493-3531

*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? CD - SPONSOR

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)



P62

2/1/18

Meeting Date

Proposal Number (if applicable)

*Topic Open Primaries

Amendment Barcode (if applicable)

*Name Steve Hough

Address 9701 Resota Beach Rd

Phone 850-265-9073

Street

Southport

FL

32409

City

State

Zip

Email shough195@gmail.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? Florida Fair and Open Primaries

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

P62

Proposal Number (if applicable)

*Topic Open Primaries

Amendment Barcode (if applicable)

*Name Jeremy Gruber

Address _____
Street

Phone 609-610-1602

City

State

Zip

Email jgruber@openprimaries.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? Open Primaries, Inc.

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**