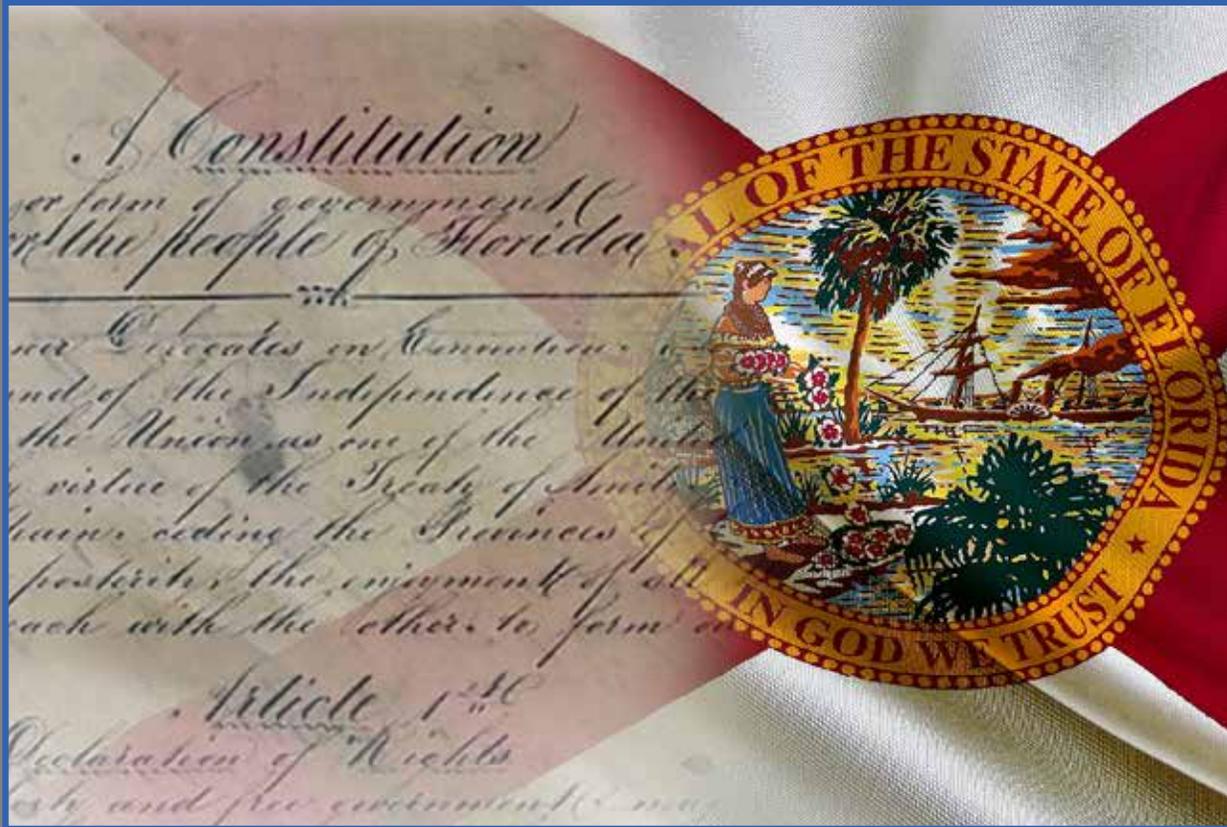


What Belongs in a State Constitution?

By

Foundation of Associated Industries of Florida
Constitution Revision Commission Working Group



Building a Strong
Foundation for
the Future of
Florida Business





Constitution Revision Commission Working Group

Associated Industries of Florida has a long history in leading the business community in its efforts with the Constitution Revision Commission. That leadership continues with the Foundation of AIF's CRC Working Group.

The CRC Working Group meets regularly to assess the activities of the Commission and closely monitor the potential proposals they would consider for placement on the ballot. The mission of this project is for the Working Group and Foundation to provide information and education to Florida's business community and voters on the possible impact amendments can have on our constitution. Additionally, based on the recommendations of the working group, AIF communicates directly to the leadership of the CRC to ensure it's aware of business community's concerns.



**The Honorable
Kenneth B. Bell**
*Former Supreme
Court Justice*



**The Honorable
Steve Crisafulli**
*Former Speaker of the
Florida House of
Representatives*



Dr. Ed H. Moore
*President Independent
Colleges & Universities
of Florida*



**The Honorable
Dudley Goodlette**
*Former Member
Florida House of
Representatives*

Foundation Mission

- Promoting and supporting any and all initiatives, projects, campaigns or other endeavors that will strengthen Florida's business community and economy
- Promoting and advancing principles of a free market enterprise system
- Educating individual and corporate citizens about business principles that lead to continued and greater economic strength and prosperity

What Belongs in a State Constitution?

The 2017-18 Florida Constitution Revision Commission (CRC) has examined more than 100 potential amendments to the state constitution and is still in the process of deciding which amendments to put before Florida voters for consideration. It is important for voters, in deciding just what does belong, to take a look at several past and present issues that have or have not been approved for inclusion in the Florida Constitution. Additionally, many complex issues that have been before the Florida Legislature over the years were unable to be satisfactorily resolved. Some might think that if the Florida Legislature cannot reach a unified decision that the next step is inclusion in the core document of the state—the constitution. This is often an incorrect assumption.

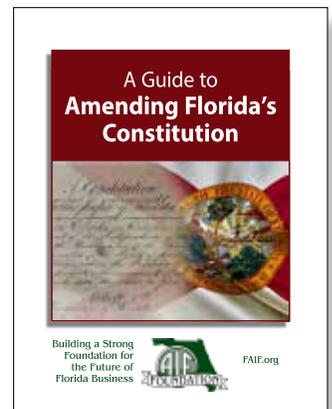


The 2017-2018 Constitution Revision Commission assembled on the Senate floor.

Know the Facts

The CRC are not elected members of a legislative body. They were not appointed to resolve the vexing and complex issues of the day by placing amendments to the Florida Constitution before the people. This is not in keeping with the purpose of a constitution. In a recent Foundation of Associated Industries of Florida document, *A Guide to Amending Florida's Constitution*, Former Supreme Court Justice Kenneth Bell wrote that the constitution should be:

“Limited to the core or fundamental law of the state, with more detailed measures left to statutory law.”



(Copy available at FAIF.org)

Even after intense debate and thorough research, many issues have yet to be resolved. Some issues are resolved eventually by duly elected officials who spend the necessary time to fully understand the complexities of issues while trying to avoid both expected and unintended consequences of their actions.

Before passage there will be limited debate on complex issues. Once passed, these issues are cast in stone unless they can once again go before the voters for remediation.

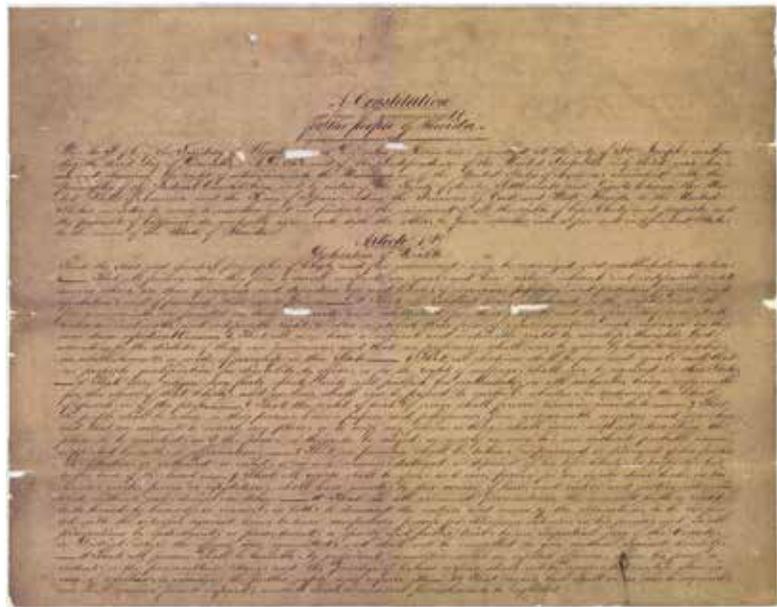


The Florida Constitution is already an enormous document filled with much that does not belong in a constitution. Florida is unique among the 50 states with this revision process. Florida also allows for citizen initiatives whereby any organization that has enough of the required, legitimate signatures can have language placed on the ballot; thus, amending the constitution by petition as well. How much detail is offered as explanation? How much time is spent by voters to consider these proposals? What is the depth of understanding that these changes are not simply laws that can be addressed each time a legislative body meets, but rather, words that are chiseled into stone and extremely difficult to alter or remove once placed in this purposeful document?

Voters should ask themselves if the amendment regarding pregnant pigs, inserted in the Florida Constitution through the citizen initiative process, really belongs in the foundational document of state government. Would a similar measure belong in the United States Constitution? The U.S. Constitution is a document that has lasted over two centuries, remains focused on ensuring government does not intrude upon the constitutional rights of citizens, and offers a clear and concise description of how national government should be structured. Should not the purpose of the state instrument be similar in nature and composition?

***The U.S. Constitution has just 8,770 words.
The current Florida Constitution has more than 44,000 words.***

If weighed in words, Florida's constitution is again obese. By 1968, the 1885 Florida Constitution had grown to 55,000 words. Because it could no longer do its job, Floridians trimmed it down that year to 23,000 words by adopting a fully modernized constitution. Unfortunately, it has since grown to over 44,000 words.



Past & Present Proposal Digest

Below is a sampling of a few past and present proposals, seeking to determine the validity for inclusion.

Past Proposal: High-Speed Rail

In November 2000, Florida voters added a constitutional mandate to direct policy makers to construct a system of high-speed trains throughout the state. It was soon discovered that the added mandate failed to address key questions, such as how it would be financed or the fluidity of the technology of transportation.

Thanks to tremendous leadership from Governor Jeb Bush and others, voters repealed this mandate four years later.



Our legislative system provides deliberative processes for elected officials to establish and review general societal needs. This process, unlike adding a constitutional amendment, does not constrict for eternity what the needs of the state may be in the future.

Past Proposal: Class Size

In 2002, Florida voters approved an amendment to the constitution that restricted classroom size. However, the amendment failed to cover the broader issues of our education system, and was based on what many felt was an unproven notion that the fewer students per teacher, the more the child will learn.

Furthermore, it has been established that the amendment forced school district administrators to sacrifice other key school priorities, all while failing to account for modern tools for successful education. These tools include online education, virtual learning, individual curriculums for students who can progress at a pace unique to them, and other rapidly developing education methods.

This is another constitutional amendment that has proven to be so constrictive that it doesn't allow for the rapid development of technology and new tools. Fortunately, the writers of our original state constitution did not place such mandates on our education system that may have made sense at the time, but would be senseless in today's society.

Current Proposal: Limits on Power to Tax

There are some issues that are suitable for inclusion in the state constitution such as those issues dealing with the power to tax. The 2018 Florida Legislature's Joint Resolution 7001 would require a two-thirds vote of the Florida Legislature to increase state taxes or fees. This proposal will likely be before voters on the 2018 ballot. The power to tax and how to apply or impose those taxes is an essential element in any constitution, just like the power that is appropriate to address the general welfare of the citizenry.

Super-majorities for state tax issues may or may not be a great idea. However, the inclusion of these type of requirements are both a legitimate and important aspect of a constitution that has as its fundamental purpose a description of the powers and constraints elected legislators have to impact individual Florida citizens and taxpayers.

Current Proposal 29: E-Verify

E-Verify, a citizenship verification technology not yet fully worked out or implemented, is also being considered by the CRC for inclusion on this year's ballot.

Should the Florida Constitution mandate that Florida businesses provide what is essentially a federal government function in verifying the naturalization and immigration status of every employee and job applicant?

Immigration and naturalization policies are some of the limited powers delegated by the U.S. Constitution to the federal government. Moreover, rapid advances in technology may soon make E-Verify technology archaic and obsolete. This issue is not suited for a state constitution.



Current Proposal 88: Declaration of Rights

Just like the U.S. Constitution, the Florida Constitution should provide a structure for guaranteeing the God-granted rights of all citizens and should be an instrument that captures the rights of all citizens equally. Part of the genius of the U.S. Constitution's framework is the inclusion of the first ten amendments. The Bill of Rights was part of the passage of the constitution at its inception. Now enhanced by the 13th, 14th and 15th Amendments, the Bill of Rights ensures for government protection of the freedom and rights of all citizens equally.

CRC Proposal 88, regarding a "Declaration of Rights" for nursing home patients, selects a special class of people and, in practice, is an attempt to classify citizens by groups and specify they have rights, different and aside from the equal rights and protections afforded to other citizens.

Proposal 88 would create both a "Declaration of Rights" for seniors living in these facilities and causes of action that the Florida courts would have based on these very specific enumerated rights. The amendment would add substantial additional rights for a single class of citizens over and beyond what all citizens should expect and open a Pandora's box of lawsuit claims. It could be argued, why not include "special" rights for K-12 children, the mentally handicapped, veterans, the homeless, Pre-K children, etc.?

Equal protection of all citizens requires restraint against the constitution offering special protections for any subset of citizens.

Current Proposal 95: Intrastate Commerce Protection

The U.S. Constitution promotes commerce between the various states by allowing Congress to adopt certain uniform restrictions on which states may outlaw or regulate business matters that involve interstate commerce.

One such CRC proposal is consistent with the legitimate purpose of the state constitution. Within the 67 counties and hundreds of municipalities, this proposal would protect businesses conducting activity in multiple local jurisdictions within the state; effectively an intrastate commerce clause for Florida. Again, a broad regulatory function that is suitable for a constitution while leaving details to the elected Florida Legislature.

Current Proposal 97: Consistency in Voting

CRC Proposal 97 establishes that the required 60 percent approval rate needed to pass the amendment would be based on the actual turnout, not just those voters that voted on that amendment. This is a legitimate question for the state constitution since it addresses the process for successfully amending the constitution itself, and ensures that before our constitution is amended, a sufficient percentage of voters cast an informed and educated decision to approve such an amendment.

Summary

The Foundation's CRC Working Group urges voters to carefully and thoughtfully evaluate each proposed amendment they will see this November on the general election ballot. While the essence of the proposal may be something the voter can support, we believe that the first consideration should be, "does it belong in the foundation document of our state?" Should that issue bypass the legislative process? A legislature, made up of men and women who are elected by the citizens of their districts, where multiple studies and public debates will take place. Where citizens from all over the state will have the opportunity to come before the Legislators and make their case in public. A system that requires the House of Representatives, the Florida Senate and the Governor to all agree on the issue before it becomes law, rather than a very briefly worded statement on a ballot that, in some cases, has had little to no debate.

As we have pointed out, there are certainly some issues that are so clearly centric to ALL citizens, deal with the foundational policies of our government, and meet the criteria to go before all voters for approval. Yet, as the U.S. Constitution shows us, those issues are very rare.

This recommendation shouldn't in any way dissuade any citizen for voicing their opinions on issues. We encourage and support Floridians to become a voice for those issues they are passionate about and get involved with both local and state government to seek debate on those issues. That is why our system of Government has endured and continues to be an example for the rest of the world.



CONSTITUTION REVISION COMMISSION

2017 - 2018

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Building a Strong Foundation for the Future of Florida Business

The Foundation of Associated Industries of Florida was formed in 2008 to address the educational and development needs of Florida's business community. FAIF is governed by an independent board of directors. The Foundation does not engage in any political activities.

The private business sector's support is critical to the success and continuance of FAIF's initiatives and programs. Florida businesses cannot afford to rely on public opportunities alone to train and prepare their future employees and leaders. FAIF will foster programs that identify business needs today and create solutions that will last into the future.

We are confident you will want to be part of these programs and opportunities. We welcome your participation and suggestions as we move forward. Your contributions to FAIF are tax deductible and can be made by visiting FAIF.org or contacting our executive director, Stephen Trickey at 850.224.7173.



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