

FOREWORD: ISSUES OF CONSTITUTIONAL SIGNIFICANCE IN TWENTY-FIRST CENTURY FLORIDA

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In 2017, a group of thirty-seven individuals will begin the significant and daunting task of critically reviewing the Florida Constitution and recommending revisions for voters to consider the following year. The group, known as the Constitution Revision Commission (“CRC”), convenes every twenty years and comprises members appointed by each of the three branches of government. Florida distinguishes itself as the only state that constitutionally mandates this type of periodic review of its organic law, and the 2017 event will mark only the third time in the state’s history that the CRC has been mobilized. To recognize this historic occurrence and to educate citizens and others about this unique process and some of the issues that will likely arise, the *Florida Coastal Law Review* hosted a summit in the spring of 2016 to provide “A Look into the 2017 Florida Constitution Revision Commission.” This special edition of the *Florida Coastal Law Review* is the fruit of the summit.

It is fitting that the journal begins with an article by Professor Mary Adkins describing the evolution of Florida’s Constitution and the historical context in which the CRC was created. *The Same River Twice: A Brief History of How the 1968 Florida Constitution Came to Be and What it has Become* explores the fascinating path to the adoption of the constitution currently governing Florida. Adkins discusses the societal, political, and legal forces giving rise to the nearly wholesale revision of the state’s governing document in 1968 and highlights one of the trademarks of the new constitution: its adaptability for the future. Focusing on the recurring CRC amendment process, Adkins examines how past revision commissions tackled pivotal procedural matters, such as organizational voting rules. She also identifies major public policy issues that have been scrutinized by past revision commissions and that remain critical issues facing our state today. By looking to history,

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Adkins provides insightful guidance for the CRC in its work ahead.

The journal next features articles in two subject areas likely to be addressed by the CRC: the judiciary and education. In *A Modest Proposal: Raise the Mandatory Judicial Retirement Age*, Judge Scott Makar makes the case for amending the Florida Constitution to raise the mandatory retirement age for state judges. Makar revisits the proposal that he advanced two decades ago in an article featured in a special edition of *The Florida Bar Journal* dedicated to the 1997 CRC. He argues, both then and now, that factors including the nature of judicial work, increased longevity, technological developments, and Florida's demographic trends support a modest adjustment to the current judicial retirement bar of seventy.

Given that education has been a prominent source of discussion and debate for past revision commissions, Judge Waddell Wallace predicts that article IX will again be closely examined by the next CRC. In his article, *The 2017 Constitution Revision Commission: School Vouchers and Choice in Education to Be Major Points of Interest*, Wallace lays the groundwork for this review by examining the history of public education in Florida and the evolving role of government in educating children. He describes the contours of the constitution's education mandate and highlights difficult legal and policy questions that have arisen, including the adequacy of state-supported education, the role of families to decide how best to educate their children, and the application of Florida's no-aid-to-religion clause. As the courts and public opinion continue to grapple with these issues, Wallace contends that so too will the CRC.

The next article in this special edition addresses the citizen initiative process, an avenue for a constitutional amendment to reach the ballot apart from the CRC process. Jaclyn Blair's article, *Sugar, Politics, and the Destruction of Florida's Natural Resources: The Problem with Constitutional Amendments*, examines the Florida Water and Land Conservation Initiative, Amendment 1 (2014), a citizen initiative aimed at combatting the destruction of Florida's environmentally sensitive resources by constitutionally setting aside funds to acquire and restore Florida conservation and recreation lands. Blair argues that even though Amendment 1 passed by a supermajority of the voters two years ago, its promise remains unfulfilled. She

provides an overview of the environmental impact on Lake Okeechobee, the Everglades, and the estuaries caused by the rise of the sugar industry in Florida and submits that possible solutions to the state's environmental crisis are being impeded by the industry's political influence. Through this lens, Blair questions the efficacy of constitutional amendments and suggests that a referendum on amendments, as well as the fate of Amendment 1, are issues ripe for consideration by the CRC.

The final article, while not pertaining to the CRC, nonetheless addresses an issue of constitutional interest. Aliza Hochman Bloom examines the enforceability of plea agreement provisions waiving the right to appeal, where the law changes after entry of the plea. Bloom advocates for the Eleventh Circuit Court of Appeals to adopt an exception barring enforcement of these waivers where an intervening change in the law directly affects a defendant's guilty plea or sentence. Such an exception, she argues, is in harmony with the Eleventh Circuit's reasoning in *United States v. Durham*, which held that, despite the longstanding rule that an appellant waives an argument if it is not raised in the opening brief, an appellant in a direct appeal can raise a new argument in a supplemental brief when an intervening decision by the U.S. Supreme Court overrules precedent existing at the time of the opening brief. Bloom submits that the logic and justifications supporting the procedural rule in *Durham* apply equally to the enforcement of appellate waivers. She further argues that the proposed exception would avoid the injustice of preventing an appellant from appealing his conviction or sentence based on changes in the law that occur before the sentence becomes final.

The diversity of the articles in this journal reflects the power and awesome responsibility of the CRC. The third CRC, which will soon be underway, will have the benefit of lessons learned from the past but also the challenges facing a state that has changed dramatically in the last twenty years. This vicennial event will likely have a profound impact on the state's foundational document. For that reason, the initiatives of the *Florida Coastal Law Review* and others, which are designed to inform and educate citizens about the CRC, are vital to the process.