

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

ETHICS AND ELECTIONS
Commissioner Coxe, Chair
Commissioner Kruppenbacher, Vice Chair

MEETING DATE: Friday, January 12, 2018
TIME: 1:00—5:00 p.m.
PLACE: 301 Senate Office Building, Tallahassee, Florida

MEMBERS: Commissioner Coxe, Chair; Commissioner Kruppenbacher, Vice Chair; Commissioners Gaetz, Heuchan, Joyner, Newsome, Plymale, Schifino, and Smith

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1	P 56 Kruppenbacher	SUFFRAGE AND ELECTIONS, Prohibition on expenditure of public funds for campaign spending; Section 7 of Article VI of the State Constitution to remove the requirement that a method of public financing for campaigns for statewide office be established by law and to prohibit the expenditure of any public funds on campaigns for state or local elections. EE 11/29/2017 Temporarily Postponed EE 11/30/2017 EE 12/13/2017 Temporarily Postponed EE 01/12/2018 Temporarily Postponed FT	Temporarily Postponed
2	P 41 Schifino	JUDICIARY, Eligibility; SCHEDULE, creates new section; Section 8 of Article V and to create a new section in Article XII of the State Constitution to increase the age after which a justice or judge may no longer serve in a judicial office. JU 11/28/2017 Favorable EE 01/12/2018 Favorable	Favorable Yeas 8 Nays 0
3	P 62 Schifino	SUFFRAGE AND ELECTIONS, Primary, general, and special elections; Section 5 of Article VI of the State Constitution to authorize a qualified elector who is registered with no party affiliation to vote a primary election ballot of a political party. EE 01/12/2018 Temporarily Postponed GP	Temporarily Postponed

**Constitution Revision Commission
Ethics and Elections Committee
Proposal Analysis**

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

Proposal #: P 56

Relating to: SUFFRAGE AND ELECTIONS, Prohibition on expenditure of public funds for campaign spending

Introducer(s): Commissioner Kruppenbacher

Article/Section affected: Article VI, Section 7

Date: November 22, 2017

	REFERENCE	ACTION
1.	<u>EE</u>	<u>Pre-meeting</u>
2.	<u>FT</u>	<u></u>

I. SUMMARY:

Amends Section 7 of Article VI of the State Constitution to remove the requirement that a method of public financing for campaigns for statewide office be established by law and to prohibit the expenditure of any public funds on campaigns for state or local elections.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Campaign Financing Systems – General

A public campaign financing system is one where government funds are provided to candidates running for elected offices to help fund their campaigns. The funds are provided if candidates adhere to the system's established requirements.

According to the National Conference on State Legislatures, 13 states – Arizona, Connecticut, Florida, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, Rhode Island, Vermont, and West Virginia - provide some form of public financing option for campaigns. Each of these plans require the candidate to accept public money for his or her campaign in exchange for a promise to limit both how much the candidate spends on the election and how much they receive in donations from any one group or individual. In most cases, these systems provide funding only to certain types of candidates, for example those running for Governor.

Public Campaign Financing Systems – Types

The two main types of programs states offer for public financing of elections are the clean elections programs, offered in states such as Maine and Arizona, and programs that provide a candidate with matching funds for each qualifying contribution they receive. The “clean election states” offer full funding for the campaign, and the matching funds programs provide a candidate with a portion of the funds needed to run the campaign.

Clean Elections Programs

In the clean elections programs offered in Arizona, Connecticut, Maine and New Mexico, candidates are encouraged to collect small contributions from a number of individuals (depending on the position sought) to demonstrate that he or she has enough public support to warrant public funding of his or her campaign. In return, the commission established for the program gives the candidate a sum of money equal to the expenditure limit set for the election.

As an example of a clean elections program, a candidate for state office in Arizona must raise \$5 contributions from at least 200 people in order to qualify for the program. In return, the state provides the candidate with public money in an amount equal to the expenditure limit. In the 2014 election, the expenditure limit for gubernatorial candidates was \$1,130,424, and the limit for legislative positions was \$22,880. Arizona Governor Doug Ducey, who declined participation in the clean elections program, raised \$2.4 million for his 2014 campaign, more than double the amount authorized for the program’s participants.

The program is funded through a 10 percent surcharge on all civil penalties and criminal fees, civil penalties paid by the candidates, and the qualifying contributions the candidate raised.

Matching Funds Programs

The other type of public financing program, offered in states such as Florida and Hawaii, provide matching funds for candidates up to a certain amount. In Hawaii, candidates are encouraged to limit their contributions and expenditures to an amount set by the legislature. For the 2014 election, the expenditure limit for the general election was \$1,597,208. The candidate who participates in the matching funds program is eligible to receive 10 percent of this limit in public funds, or \$159,721. A candidate must first receive \$100,000 in qualifying contributions during the primary season for the state to provide a matching \$100,000 during the general election. The candidate can then raise an additional \$59,721 in qualifying contributions that the state will match, for a total of \$319,442. The candidate can then raise additional money from other sources, like PACs, parties, or individuals, to reach the expenditure limit of \$1,597,208.

For example, Hawaii governor David Ige received \$105,164.73 in public funds for his 2014 gubernatorial campaign, and spent the maximum of \$1,597,208 during the general election. His challenger, Duke Aiona, who elected to not participate in the public financing program, spent \$1,532,306.65 on his unsuccessful election. Mr. Aiona, like all

candidates, had to comply with the state's contribution limits, but did not have to worry about collecting the smaller qualifying contributions from many different sources.

The program is funded through a tax return checkoff, whereby citizens choose whether they want to contribute three dollars from their tax burden to the Hawaii Election Campaign Fund.

Florida's Public Campaign Financing System

1986 Florida Election Campaign Financing Act

The Florida Election Campaign Financing Act was enacted in 1986. Effective July 1, 1987, this law established a procedure for partial public funding of campaigns for statewide office (governor/lieutenant governor and cabinet officers) for candidates who voluntarily limit campaign expenditures. Resources for this system were provided through the Election Campaign Financing Trust Fund, which was funded by fines assessed for late filed campaign treasurer reports, the one percent election assessment for municipal candidates, and the three percent filing fee for all other candidates. This trust fund expired by law on November 4, 1996; since then, distribution of public campaign financing to participating candidates has been from the state General Revenue Fund.

1998 Amendment to the Constitution

At the time the Florida Constitution Revision Commission met in 1998, a number of legal challenges had been made to the Florida Elections Campaign Financing Act, with existing sentiment in some quarters that the law be repealed. Others were of the opinion that the state campaign financing system be expanded, and initial proposals before the 1998 Constitution Revision Commission would have increased spending limits and extended public funding to elections for legislators. In the end, the 1998 Commission's recommendation simply maintained the status quo by requiring the retention of the existing campaign financing act or a similar general law that provides public funds to those statewide candidates who limit their campaign expenditures.

The 1998 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 adding a new Section 7 to Article VI of the Florida State Constitution that included the following language:

“Campaign spending limits and funding of campaigns for elective state-wide office.--It is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state-wide office shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998.”

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

2010 Proposed Amendment to the Constitution

In 2009, the Florida Legislature voted 80-34 and the Florida Senate voted 29-11 to place a constitutional amendment - House Joint Resolution (HJR) 81 - on the 2010 general election ballot. HJR 81 repealed Section 7 of Article VI of the Florida State Constitution, thus removing the language added in 1998. HJR 81 was supported by a majority of those voting on the amendment – 52.5 percent. However, Florida’s Constitution then (and now) required amendments to receive 60 percent of the vote to pass, so HJR 81 was not adopted.

Operation and Administration of Florida’s Public Campaign Financing System

Florida’s public campaign financing system is administered by the Florida Department of State’s Division of Elections (Division.) The program can be summarized as follows:

- Participating statewide candidates must have opposition.
- Candidates must submit an irrevocable statement to abide by overall expenditure limits as well as contribution limits on personal (\$25,000) and party (\$250,000) funds
- Only personal contributions of \$250 or less from state residents are eligible for matching; corporate and political committee contributions are not eligible for matching.
- Participating candidates must raise an initial threshold amount of \$150,000 (for gubernatorial candidates) or \$100,000 (for candidates for Cabinet offices.) Contributions received from the candidate, political parties or non-Florida residents are not counted towards meeting the threshold amount.
- Contributions received after September 1 of the calendar year preceding the election are eligible for matching; contributions prior to September 1 can be counted towards meeting the threshold amount but are not matched.
- The threshold amounts are matched on a two-to-one basis, and after that, a contribution is eligible to be matched on a one-to-one basis, up to \$250. Thus, if a person makes a \$250 contribution, it is matched with \$250 from the state.
- Distribution of public financing begins on the 32nd day prior to the primary election and every seven days thereafter; the last distribution occurs one week after the general election.

Participating candidates must complete a form declaring their intention to apply for public campaign financing at the time of qualifying and after this declaration, submit their contributions for audit by the Division to determine eligibility for the match. The Division audits the submissions and makes payment to the candidate.

Participating candidates must abide by campaign expenditure limits that are based on the total number of Florida registered voters as of June 30th of each odd numbered year. For Governor/Lt. Governor races, the expenditure limit is \$2 for each registered voter; for Cabinet races, the limit is \$1 for each registered voter. According to the Division, the total number of Florida registered voters as of June 30, 2017 was 13,545,731. Therefore, candidates for Governor in the 2018 election cycle that want to accept public financing would be limited to approximately \$27.1 million in campaign expenditures, and

candidates for Cabinet offices that want to accept public financing would be limited to approximately \$13.5 million in campaign expenditures.

Distribution Amounts from Florida’s Public Campaign Financing System

From 1994 through 2016, distribution of funds through Florida’s public campaign financing system have been as follows:

1994

- Governor (5 Candidates): \$8.8 million
- Cabinet (6 Offices, 13 Candidates): \$4.1 million

1998

- Governor (1 Candidate): \$1.1 million
- Cabinet (6 Offices, 13 Candidates): \$3.5 million

2000

- Cabinet (2 Offices, 4 Candidates): \$1.6 million

2002

- Governor (3 Candidates): \$3.0 million
- Cabinet (2 Offices, 7 Candidates): \$2.2 million

2006

- Governor (4 Candidates): \$7.4 million
- Cabinet (3 Offices, 6 Candidates): \$3.7 million

2010

- Governor (1 Candidate): \$1.8 million
- Cabinet (3 Offices, 9 Candidates): \$4.3 million

2014

- Governor (2 Candidates): \$2.8 million
- Cabinet (3 Offices, 5 Candidates): \$1.6 million

TOTAL 1994-2014: \$46 million

Distributions to Governor Candidates

- Low (1998): \$1.1 million
- High (1994): \$8.8 million
- Average: \$4.2 million

Distributions to Cabinet Candidates

- Low (2000): \$1.6 million
- High (2010): \$4.3 million
- Average: \$3.0 million

B. EFFECT OF PROPOSED CHANGES:

This proposal amends Section 7 of Article VI of the State Constitution by deleting existing language and inserting new language. The proposal removes the following language from Section 7:

“...limits and funding of campaigns for elective state-wide office.—It is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state-wide office shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998.”

The proposal also adds language, with the final result being that the revised Section 7 of Article VI would read as follows:

“SECTION 7. Prohibition on expenditure of public funds for campaign spending.—Public funds may not be expended on any campaign for a state or local election.”

C. FISCAL IMPACT:

Passage of the amendment would require elimination of the existing Florida public campaign financing system. Based on distributions from 1994 through 2014, the state General Revenue Fund could save somewhere between \$2.7 million and \$13.1 million every four years when the Governor and Cabinet are up for election, with a likely savings in the range of \$4-\$6 million.

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

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

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Kruppenbacher

kruppenbf-00070-17

201756__

1 A proposal to amend
2 Section 7 of Article VI of the State Constitution to
3 remove the requirement that a method of public
4 financing for campaigns for statewide office be
5 established by law and to prohibit the expenditure of
6 any public funds on campaigns for state or local
7 elections.

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

11
12 Section 7 of Article VI of the State Constitution is
13 amended to read:

14 ARTICLE VI

15 SUFFRAGE AND ELECTIONS

16 SECTION 7. Prohibition on expenditure of public funds for
17 campaign spending. ~~Public funds may not be expended on any~~
18 ~~campaign for a state or local election. limits and funding of~~
19 ~~campaigns for elective state wide office. It is the policy of~~
20 ~~this state to provide for state wide elections in which all~~
21 ~~qualified candidates may compete effectively. A method of public~~
22 ~~financing for campaigns for state wide office shall be~~
23 ~~established by law. Spending limits shall be established for~~
24 ~~such campaigns for candidates who use public funds in their~~
25 ~~campaigns. The legislature shall provide funding for this~~
26 ~~provision. General law implementing this paragraph shall be at~~
27 ~~least as protective of effective competition by a candidate who~~
28 ~~uses public funds as the general law in effect on January 1,~~
29 ~~1998.~~



348922

CRC ACTION

Commissioner .
Comm: FAV .
01/12/2018 .
. .
. .
. .

The Committee on Ethics and Elections (Kruppenbacher)
recommended the following:

CRC Amendment (with title amendment)

Delete line 18

and insert:

campaign for a state election. ~~limits and funding of~~

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

And the title is amended as follows:

Delete line 6

and insert:

any public funds on campaigns for state



348922

11

**Constitution Revision Commission
Ethics and Elections Committee
Proposal Analysis**

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

Proposal #: P 41

Relating to: JUDICIARY, Eligibility; SCHEDULE, creates new section

Introducer(s): Commissioner Schifino

Article/Section affected:

Date: January 4, 2018

	REFERENCE	ACTION
1.	<u>JU</u>	Favorable
2.	<u>EE</u>	Pre-meeting

I. SUMMARY:

A proposal to amend Section 8 of Article V of the State Constitution to increase the mandatory judicial retirement age to seventy-five, without the possibility of completing a term. Additionally, this proposal will add a new section to Article XII to specify that the mandatory retirement age will be raised on July 1, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution currently provides that “[n]o justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one half of which has been served.”¹ Therefore, if a judge has completed one day more than half of his or her term at the time that he or she turns seventy, then completion of the term will be allowed. This means that some judges and justices may serve until they are nearly seventy-three, since judicial terms are six years.²

During the 1997-98 CRC, a proposal that increased the age to seventy-two and eliminated the provision that allowed a justice or judge to complete the second half of a term made it out of the Judicial committee, but failed in the Style and Drafting Committee.³

¹ Fla. Const. Art. V, § 8.

² Fla. Const. Art. V, § 10.

³ Proposal V-8-2, “Calendar for the Constitution Revision Commission,” fall.fsulawrc.com, Web. Accessed 8 April 2017. Gary Blankenship, “Court-related proposals occupy Constitution Revision Commission,” 24 Fla. B. News 1, 8 (1 Dec 1997).

States vary from having no mandatory retirement age to provisions mandating retirement at ages.⁴ Of the states that do have a mandatory retirement age, those ages range from seventy to seventy-five years,⁵ with the exception of one outlier, Vermont, which allows judges to serve until ninety.⁶ Of the states that have a mandatory retirement age of seventy-five, less than half allow for the completion of a term after turning seventy-five.⁷

B. EFFECT OF PROPOSED CHANGES:

The proposed amendment will increase the mandatory retirement age from “seventy” to “seventy-five.” Additionally, the provision that allows a judge or justice to complete less than half of their term after turning the mandatory retirement age will be repealed. This will prevent judges from serving until they are nearly seventy-eight years old, by requiring them to retire as soon as they turn seventy-five, regardless of how much of their term remains.

The proposed amendment specifies that the change to the mandatory judicial retirement age will take effect on July 1, 2019.

C. FISCAL IMPACT:

Indeterminate.

III. Additional Information:

A. Statement of Changes:

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

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

⁴ 2012 Legis. Bill Hist. FL S.B. 408

⁵ *Id.*

⁶ Judicial Impact Statement from Office of the State Court Administrator on file with the CRC.

⁷ *Id.*

By Commissioner Schifino

schifinow-00064A-17

201741__

1 A proposal to amend
 2 Section 8 of Article V and to create a new section in
 3 Article XII of the State Constitution to increase the
 4 age after which a justice or judge may no longer serve
 5 in a judicial office.
 6
 7 Be It Proposed by the Constitution Revision Commission of
 8 Florida:
 9
 10 Section 8 of Article V of the State Constitution is amended
 11 to read:
 12 ARTICLE V
 13 JUDICIARY
 14 SECTION 8. Eligibility.—No person shall be eligible for
 15 office of justice or judge of any court unless the person is an
 16 elector of the state and resides in the territorial jurisdiction
 17 of the court. No justice or judge shall serve after attaining
 18 the age of ~~seventy-five~~ seventy years except upon temporary
 19 assignment ~~or to complete a term, one half of which has been~~
 20 ~~served~~. No person is eligible for the office of justice of the
 21 supreme court or judge of a district court of appeal unless the
 22 person is, and has been for the preceding ten years, a member of
 23 the bar of Florida. No person is eligible for the office of
 24 circuit judge unless the person is, and has been for the
 25 preceding five years, a member of the bar of Florida. Unless
 26 otherwise provided by general law, no person is eligible for the
 27 office of county court judge unless the person is, and has been
 28 for the preceding five years, a member of the bar of Florida.
 29 Unless otherwise provided by general law, a person shall be
 30 eligible for election or appointment to the office of county
 31 court judge in a county having a population of 40,000 or less if
 32 the person is a member in good standing of the bar of Florida.

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

schifinow-00064A-17

201741__

33
 34 A new section is added to Article XII to the State
 35 Constitution to read:
 36 ARTICLE XII
 37 SCHEDULE
 38 Eligibility of justices and judges.—The amendment to
 39 Section 8 of Article V, which increases the age at which a
 40 justice or judge is no longer eligible to serve in judicial
 41 office except upon temporary assignment, shall take effect July
 42 1, 2019.

Page 2 of 2

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

**Constitution Revision Commission
Ethics and Elections Committee
Proposal Analysis**

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

Proposal #: P 62

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

Introducer(s): Commissioner Schifino

Article/Section affected:

Date: January 3, 2018

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

I. SUMMARY:

Amends Section 5 of Article VI of the State Constitution to authorize a qualified elector who is registered with no party affiliation to vote a primary election ballot of a political party.

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, adding a new subsection stating that “A qualified elector who is registered with no party affiliation may choose to vote a primary election ballot of a political party; however, 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.” Under the NCSL state primary classification system, the proposed change would remove Florida from the Closed Primaries category and place it into the Primaries Open to Unaffiliated Voters category with nine 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 Florida’s 2020 election cycle.

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 along with voters registered to the political parties holding the primaries. Should this occur, county Supervisors of Elections could experience an indeterminate increase in costs for primary election administration.

III. Additional Information:

A. Statement of Changes:

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

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Schifino

schifinow-00066-17

201762__

1 A proposal to amend
2 Section 5 of Article VI of the State Constitution to
3 authorize a qualified elector who is registered with
4 no party affiliation to vote a primary election ballot
5 of a political party.

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

9
10 Section 5 of Article VI of the State Constitution is
11 amended to read:

12 ARTICLE VI

13 SUFFRAGE AND ELECTIONS

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

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

24 (b) If all candidates for an office have the same party
25 affiliation and the winner will have no opposition in the
26 general election, all qualified electors, regardless of party
27 affiliation, may vote in the primary elections for that office.

28 (c) A qualified elector who is registered with no party
29 affiliation may choose to vote a primary election ballot of a
30 political party; however, a qualified elector who is registered
31 with a political party designation may vote only in a primary
32 election of the political party which he or she has designated.

Page 1 of 1

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

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

12:45p.m

1-12-18

Meeting Date

P62

Proposal Number (if applicable)

*Topic Open Primaries

Amendment Barcode (if applicable)

*Name Steve Hough

Address 9701 Resota Beach Rd

Phone 850-265-9073

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

12:50p.m

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/2/18

Meeting Date

62

Proposal Number (if applicable)

*Topic OPEN PRIMARIES

Amendment Barcode (if applicable)

*Name JASON OLSON

Address 350 7th Ave STE 2003

Phone 415-606-4130

Street

New York NY 10001

City

State

Zip

Email jolson@openprimaries

*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

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)

1-12-2018
Meeting Date

P62
Proposal Number (if applicable)

*Topic Schifano Open Primaries

Amendment Barcode (if applicable)

*Name Andrew Huston

Address 5517 NW 80th Ave
Street

Phone 352-318-3599

Guineville FL 32653
City State Zip

Email athuston@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? Tim Canova Congressional Candidate D23 Tom Wells
again

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)

1.12.2018

Meeting Date

62

Proposal Number (if applicable)

Open primaries

*Topic Supp. Regs. and elections

Amendment Barcode (if applicable)

*Name Stephanie Owens

Address _____
Street

Phone 777-639-1243

City _____ State _____ Zip _____

Email LKIVADVOCACY@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 VETERANS FLORIDA

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

1:14 pm.

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/12/18
Meeting Date

P62
Proposal Number (if applicable)

*Topic opening primaries to NPAs

Amendment Barcode (if applicable)

*Name Brad Ashwell

Address 1536 Chuli Wene

Phone 850 294-1008

Street Tallahassee

Email bradashwell@gmail.com

City Tallahassee State FL Zip 32301

*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? Common Cause Florida

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

1:15 p.m

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/12/18
Meeting Date

62
Proposal Number (if applicable)

*Topic Open primaries

Amendment Barcode (if applicable)

*Name Ben Wilcox

Address 1719 Old Fort Dr

Phone _____

Street

Tallahassee
City

FL
State

32301
Zip

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? Integrity Florida

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

1:16 p.m.

WELCOME GUEST

CONSTITUTION REVISION COMMISSION PUBLIC HEARING

11/2/18

Date

Do you want to speak? Please fill out this card.

*Topic/Issue PRIMARY ELECTIONS / PROPOSAL #: PC02

*Name GLEN BURHANS

Address 106 E. COLLEGE AVE. - SUITE 700

Phone 850.4329.4850

Street

TALLAHASSEE

FL

32312

City

State

Zip

Email gburhans@stearnsandweaver.com

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**

January 12, 2018

To: Constitution Revision Commission Members

From: Steve Hough, Director of Florida Fair and Open Primaries

RE: Submission of Petition Signatures and Public Proposal for Open Primaries

Commissioners:

On behalf of a coalition of organizations including Florida Fair and Open Primaries, Progress for All, and the national organization Open Primaries, please find the attached petition and 9,588 Florida signers requesting that the Constitution Revision Commission place Commissioner William Schifino's Proposal 62 for an open primary on the 2018 ballot.

Their message is simple: "Let the voters decide".

In 2016 Florida taxpayers spent more than \$13 million conducting closed party primaries which locked out 3.4 million independent voters, the fastest growing segment of the electorate for the past 20 years. Because so few general elections are competitive, those primary elections determined 86% of Florida's Legislative and Congressional Elected Officials.

Independents are asked to pay for elections that are structured to disenfranchise them and remove their voice from selecting their elected representatives. This is fundamentally unfair.

During the Commission's public hearing process, 77 Floridians provided more than two hours of testimony detailing their dissatisfaction with closed primaries and support for open primaries. In a poll conducted earlier this year, 73% of Floridians — including supermajorities of Republican, Democratic, and independent voters — said they want the Constitution Revision Commission to put an open primaries initiative before the voters.

Please listen to the people of the state and place Commissioner Schifino's open primary proposal on the ballot. It's time to let the voters decide.

Respectfully yours,

Steve Hough
Director
Florida Fair and Open Primaries

**Attachments on file
with committee staff.**

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 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
- 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 young voters disassociating with the major parties. In 1990 only 7% of voters were independents vs. 27% today.²

Benefits of an Open Primary

- Welcomes young voters, instead of shutting them out. 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
- Modernizes Florida's democracy to meet the changing needs of its electorate. By 2024, independents will become the plurality of Florida voters, surpassing both major parties.
- 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 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

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.

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

Thank you Mr. Chairman, and thank you to the members of the Committee for allowing me to speak today. My name is Jason Olson and I am the National Outreach Director for Open Primaries, a national nonprofit working to open the primaries in all 50 states.

In particular I want to thank Commissioner Schifino for submitting proposal 62 for an open primary, and this committee for taking it up. Changing the political system to open it up to more voters is always controversial, and I appreciate both Commissioner Schifino and the Committee's willingness to have this discussion.

If it were up to the American public, then every primary in every state would already be open. 70% of Americans in polls, including large majorities of Republicans, Democrats, and independents, support opening the primaries. In Florida, that support is even higher than the national average.

But as with many things the American people want, the political system has found a way to keep the status quo rather than move forward. That is why Florida's Constitution Revision Commission is such a wonderful, once in a generation opportunity to finally give the voters the ability to move forward on open primaries and other issues.

This body, freed as much as possible from the constraints of everyday political deal making that goes on in every elected body, can listen directly to the voters and allow them to decide an issue.

So today, I do not even ask that you as individuals support enacting an open primary. Rather I come before you to ask that you give the voters of Florida the opportunity to decide this issue for themselves. In short, let the voters decide.

Of course, there are many reasons to support an open primary. Four of those reasons are particularly evident here in Florida:

#1. Primaries in the state of Florida are paid for by the taxpayers. Floridians spent over \$13 million in 2016 alone on administering primary elections. Yet 3.4 million taxpayers were shut out of voting in elections they paid for. That's wrong and it's the very definition of taxation without representation.

#2 Most elections in the state of Florida are determined in the primary 84% of Florida's general elections are not competitive meaning that all of those elected officials were actually chosen in the primary. That makes primary elections the most meaningful elections for Florida voters. Yet 27% of all voters are not allowed to participate.

#3. Closed primaries are a recipe for declining voter turnout and participation, particularly as independents head towards becoming the largest group of voters in the state. I could of course cite the fantastic study done by the League of Women Voters of Florida that showed the state lagging behind most open primary states in voter turnout, and their conclusion that open primary states have higher voter turnout than closed ones. But let's be honest, the math isn't that hard to do. If you start the process by locking out 27% of voters - a number that is increasing every year and projected to become the plurality around 2024 - then obviously voter turnout can only go down.

#4. Open primaries allow younger voters - 50% of whom consider themselves independents - to be welcomed into the political process rather than shut out of it. I suspect that every single Commissioner here has an independent young person related to them - either a child, grandchild, niece or nephew. Imagine the millions more who will come into the political process over the coming years. Now imagine the two possible futures for the state. The first one is a Florida that says to these young people, “thanks for showing up but we don’t want you to vote”. The second vision is a Florida that says “your voice is important.” Which of those Floridas do you want to live in?

Finally, I want to address whether or not open primaries are a partisan issue. They are not. Most states-41!-have open primaries. There are open primaries in conservative states, liberal states states and battleground states. Florida is in the tiny minority of states-only 9-with completely closed primaries. Open primaries do not give advantage to either political party, nor have they changed the political balance between the parties.. Instead, they empower the voters by changing the political balance between them and their elected officials.

In closing, I want to thank Commissioner Schifino again for putting forward Proposal 62 for an open primary, and the commissioners for allowing me to speak. The Voters of Florida deserve the opportunity to decide this issue for themselves. I ask simply that you now listen to the voice of Floridians, and let the voters decide.



January 12, 2018

William Schifino
Commissioner
Florida Constitution Revision Commission
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399

Dear Commissioner Schifino,

I applaud your work on the Florida Constitution Revision Commission and I am grateful that you submitted proposal number 62 – the open primaries proposal – to allow the 3.4 million independent voters in Florida to cast their ballots in either Democratic or Republican primary elections. I understand this proposal is currently being considered before the CRC Ethics and Elections Committee.

We need open primaries at every level of government, including state and local elections, to ensure that all voters have a voice in primary elections. And the people of Florida agree. Progress For All, alongside our partners Open Primaries and Florida Fair and Open Primaries, conducted a statewide survey which showed overwhelming support for open primaries among all Floridians -- Republicans, Democrats, and independent voters.

Across the state of Florida, citizens have repeatedly expressed their aspirations for a stronger democracy and to have their voices heard. Thousands of Floridians have signed petitions, spoke out at CRC meetings, sent e-mails, and made phone calls to members of the CRC to show their overwhelming support for open primaries.

We urge all members of the Ethics and Elections Committee to vote in favor of your proposal and we call on the full body of the CRC to listen to the people of Florida and place an open primary referendum on the state ballot in 2018.

Sincerely yours,

Tim Canova
Chair, Progress For All

cc: Members of the Florida Constitution Review Commission

P62 Open Primaries A Candidate's Perspective

Tom Wells United States Congressional Candidate District 3

The notion of representative democracy does not start & end with the general election. Florida is closed primary state - hence the names in the 2 meaningful slots on the ballot, the Republican & Democratic slots, are determined by the relatively small fractions of voters registered as Republicans & Democrats. The deficiencies of this system have become more apparent as the % of Rs & Ds has fallen as that of Independents has burgeoned. *balloon*

In the early 70's the large majority of Florida voters were registered Democrats and that majority nominally selected the Democratic candidate. The Republican candidate was nominated by the maybe 30% of the voters registered as Rs. In 1972 only 3% of voters were not of the 2 parties & their exclusion from primaries was pragmatically of no great significance.

Switch to 2016. Ds are 38%, Rs 36% & independents 28% (this includes minor party registration). Both major party candidates represent only a minority of the voters, and the Independents? Their common pliant is that they 'will vote for person, not for Party'. Yet is they who are denied any input into what names are on the ballot when they vote - which is not until the general election.. They have been cut-out of the nominating process by their dissatisfaction with both parties.

Arguably this is in fact a vicious cycle. The increasing dissatisfaction with both major parties drives voters away from either. As the voters in these distinct Party 'tribes' determine the nominee; candidates will tailor their message to their Party base to win the primary.

And neither party speaks to, or for, the Independents - till after the Primary.

Commissioner Schifino's excellent proposal puts these disenfranchised back into the mix in the nominating process. The present numbers are such that candidates of both parties will be incentivized to talk to - to listen to) - & to in fact represent these disillusioned & disenfranchised. My great hope is that this will be a harbinger of a more inclusive democracy. That tribal barriers will be eroded. That the necessity of speaking to a majority of voters throughout the campaign will help the voters - and the candidates! - recognize that we have broad common interests. That we are the United States.