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The Conservation Amendment

Clay Henderson

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I. INTRODUCTION

In November 1998, Florida voters overwhelmingly ratified The Conservation Amendment as proposed by the Constitution Revision Commission (CRC).[1] The revision was a combination of four specific proposals approved by the CRC as part of its every twenty-year review of

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* Clay Henderson of New Smyrna Beach is President/CEO of Florida Audubon Society. He served on the 1997-98 Constitution Revision Commission and was a sponsor of the Conservation Amendment. His previous public service includes membership in the Volusia County Council, Florida Communities Trust, Florida Greenways Coordinating Council, Governor's Property Rights Study Commission, and Governor's Administrative Procedure Act Review Commission. He is a graduate of Stetson University and The Cumberland School of Law.

1. The CRC referred to the proposal as "Revision 1." The Legislature placed four other measures on the ballot, so this one was re-designated by the Secretary of State as "Revision 5." *See* FLA. CONST. REVISION COMM'N (visited Jan. 18, 2000) <http://www.law.fsu.edu/crc/ballot.html> [hereinafter CRC]. A political committee called the Fish and Wildlife Committee was formed to mount the public campaign for its ratification. They named it "The Conservation Amendment," and this is how it was referred to in public discussion, newspaper articles, and television commercials.

Florida's organic law.[2] The Conservation Amendment requires the enactment of adequate laws for conservation of natural resources,[3] authorizes bonds for environmental land acquisition,[4] protects conservation lands,[5] and creates a new independent agency with jurisdiction over wildlife and habitat.[6] Taken as a whole, the Conservation Amendment is the most comprehensive proposal relating to environmental policy ever ratified as part of a state constitution. Its full implementation by the 1999 Legislature is the most significant land, water, and wildlife conservation program in the United States.

II. CONSTITUTIONAL CONTEXT

The Conservation Amendment builds upon thirty years of evolution of environmental policy in Florida's Constitution. Since 1968, the Natural Resources Clause has declared it "the policy of the state to conserve and protect its natural resources and scenic beauty."[7] This Clause was not part of the revision recommended by the 1968 Constitution Revision Commission, but was placed in the revision by the Legislature. In 1978, the Constitution Revision Commission recommended language relating to a "right" to a clean environment, but the voters rejected all its recommendations. The Natural Resources Clause and other constitutional provisions have been the conceptual peg supporting a body of environmental and growth management laws that have evolved as a reaction to Florida's phenomenal population growth and development.[8]

Public support for further constitutional protection of the environment has been tested in recent elections. In 1994, sport fishermen supported an initiative to ban net fishing, and the initiative received overwhelming voter approval.[9] In 1996, two of the "Save Our Everglades" initiatives were ratified, including a provision that requires polluters be responsible for the cost of abating their pollution.[10] In 1998, The Conservation Amendment was ratified by 72% of Florida voters, further demonstrating the widespread public support for protection of Florida's natural resources.

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2. The CRC grouped together the following proposals: 36 & 38 GENERAL PROVISIONS, Natural resources and scenic beauty; 45 EXECUTIVE, Game and Fresh Water Fish Commission; 64 FINANCE AND TAXATION, State bonds, revenue bonds; 102 MISCELLANEOUS, create § 18. *See* CRC (visited Jan. 28, 2000) <http://www.law.fsu.edu/crc/proposals/hist-group.html>.
3. *See* FLA. CONST. art. II, § 7(a).
4. *See* FLA. CONST. art. VII, § 11(e).
5. *See* FLA. CONST. art. X, § 18.
6. *See* FLA. CONST. art. IV, § 9; FLA. CONST. art XII, § 23.
7. FLA. CONST. art. II, § 7(a).
8. *See* FLA. STAT. chs. 369, 370, 373, 380, 403 (1999).
9. *See* FLA. CONST. art. X, § 16.
10. *See* FLA. CONST. art. II, § 7(b); FLA. CONST. art. X, § 17.

III. CONSTITUTION REVISION COMMISSION

Environmental issues were at the top of the agenda for the 1997-98 Constitution Revision Commission. At fifteen public hearings, dozens of speakers urged that more be done to protect Florida's natural resources. While some used the hearings as an opportunity to re-debate the merits of the net ban amendment, others supported measures such as an "environmental bill of rights," extension of Preservation 2000 (P-2000), unification of fish and wildlife, and Forever Wild. These and other environmental proposals received serious attention from the Commission.[11] Four proposals ultimately received the necessary three-fifths vote and were "bundled" to appear on the November ballot as Revision 5, entitled "Conservation of Natural Resources and Creation of Fish and Wildlife Conservation Commission."[12] The revision was overwhelmingly ratified and strengthens existing environmental language in the Constitution. Policymakers are now better equipped with tools to protect the state's natural resources.

IV. CONSERVATION AND PROTECTION OF NATURAL RESOURCES

The first section of the Conservation Amendment contains a specific directive that the law shall make adequate provision for the conservation and protection of natural resources.[13] It amends the Natural Resources Clause to provide a broader grant of authority[14] with more contemporary

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11. Under the Rules of the CRC, participants at a public hearing could present proposals that were assigned a number and filed with the Clerk for consideration. *See* CONST. REVISION COMM'N, J. OF THE 1997-98 CONST. REVISION COMM'N, May 5, 1998, at 262 [hereinafter CRC JOURNAL]. Proposals that were supported by ten commissioners were referred to a committee for consideration. *See id.* The CRC considered the following proposals:

- II-7-x-1 would create an Environmental Bill of Rights.
- IV-9-1 would unify Marine Fisheries Commission and the Game and Fresh Water Fish Commission.
- XII-9-2 would establish a Florida Land and Water Conservation Fund.
- XII-x-2 would establish a rigorous process of sale, use or lease of conservation lands.

12. *See* CRC, *supra* note 1 and accompanying text. A fifth proposal relating to tax exemptions for private conservation lands was bundled with Revision 10 relating to local government matters. *See id.* Revision 10 was the only measure proposed by the CRC not ratified.

13. *See* FLA. CONST. art. II, § 7(a) ("It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.").

14. *See* CRC (visited Feb. 11, 2000) <http://www.fsu.edu/crc/proceeding.html>

language.[15]

The provision followed significant discussion by the CRC on language to strengthen Florida's commitment to protect the environment. Initially, the CRC agreed to consider a public proposal which would have created an "environmental bill of rights."[16] The General Provisions Committee considered this with two commissioner-sponsored proposals[17] and reported them as a committee substitute with a recommendation that they not pass.[18] On the floor, the measure was amended to delete language relating to the creation of any new rights and passed by a majority vote of 16-10. The Committee on Style and Drafting further revised the proposal and the full commission finally adopted it by a slim 23-11 vote. In the final debate, the Chairman of the Committee on Style and Drafting explained that the proposal was a summary of Florida's new direction in environmental law.[19] It is a directive to the legislature to do more than simply prevent air and water pollution. The provision is a broader directive that requires "adequate laws" for the "conservation and protection of natural resources."[20]

It is clearly understood that the Conservation Amendment does not make the Natural Resources Clause self-executing. The Florida Supreme Court examined the 1996 Save Our Everglades Amendment, which also amended Article II, Section 7 to create a new paragraph *b*.[21] In *Advisory*

("Commissioner Alfonso: I will explain the proposal. It is pretty simple, I can yield to Commissioner Mills. But really this proposal strengthens article II, section 7, by mandating the Legislature to make provisions for natural resources, conservation, and protection.").

15. *See id.* The drafters placed a Statement of Intent in the CRC record describing their actions as creating new contemporary directive language. *See* CRC JOURNAL, *supra* note 11, at 262.

16. CRC JOURNAL, *supra* note 11, at 67 ("II-7-x-1 Create an Environmental Bill of Rights: (1) Right to live in an environment free of toxic pollution of manmade chemicals; (2) Right to protect and preserve our pristine natural communities; (3) Right to insure the existence of the scarce and fragile plant and animal species that share Florida; (4) Right to outdoor recreation; (5) Right to sustained economic success within our natural resources capacity.").

17. *See* CRC JOURNAL, *supra* note 11, at 60, 67 (Proposal 36 by Commissioner Henderson: a proposal to revise article II, section 7 of the Florida Constitution providing a right to clean and healthful air and water and the protection of other natural resources. Proposal 38 by Commissioner Mills. A proposal to revise article I of the Florida Constitution providing for an Environmental Bill of Rights.).

18. *See* CRC JOURNAL, *supra* note 11, at 145.

19. *See* CRC, *supra* note 1, at 94 ("Commissioner Mills: It is a constitutional statement summarizing what we are doing here. It goes in the direction of conservation and protection, which is acquisition, which is anti-regulation. In other words, this is the new direction of environmental law, that is, not to intrude on property rights, but to provide incentives like conservation easements, which we have done here, to provide land acquisition, like we have done here. This simply makes that statement in the Constitution. It is prospective, it is one of the least intrusive issues that we have dealt with.").

20. FLA. CONST., *supra* note 13 and accompanying text.

21. *See* FLA. CONST. art. II, § 7(b) ("Those in the Everglades Agricultural Area who cause

Opinion to the Governor—1996 Amendment 5 (Everglades), the Court concluded that the newly-adopted Article II, Section 7(b), is not self-executing "because it fails to lay down a sufficient rule for accomplishing its purpose."[22] The Commission's proposal requiring adequate provision for conservation and protection of natural resources is not any more specific in how the provision's purpose should be accomplished.

The Natural Resources Clause, however, has been used to validate the constitutionality of a number of laws and rules relating to growth management, environmental protection, and protection of wildlife species. In *Department of Community Affairs v. Moorman*,[23] the Court was asked to strike down a Monroe County ordinance that banned fences on Big Pine Key because they obstructed the range of the endangered Key Deer.[24] The court upheld the ordinance on the authority of the Natural Resources Clause:

> The clear policy underlying Florida environmental regulation is that our society is to be the steward of the natural world, not its unreasoning overlord. . . . There is an obvious public interest in such a policy, given the fact that environmental degradation threatens not merely aesthetic concerns vital to the State's economy but also the health, welfare, and safety of substantial numbers of Floridians.[25]

While the Natural Resources Clause has been cited as a shield to defend environmental rules, it also has been cited as a sword to strike down provisions hostile to it. For example, the Florida Supreme Court removed a proposed property rights initiative from the ballot, recognizing that it was in conflict with the Natural Resources Clause.[26]

The revised Natural Resources Clause strengthens Florida's constitutional foundation for environmental policy. Making environmental protection mandatory rather than a discretionary legislative endeavor will ensure that conservation issues remain high on the legislative agenda. Moreover, interests dissatisfied with insufficient environmental rules and regulations will no doubt cite the Conservation Amendment in their

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water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.").

22. 706 So. 2d 278, 281 (Fla. 1997).

23. 664 So. 2d 930 (Fla. 1995).

24. *See id.* at 932.

25. *Id.*

26. *See Advisory Opinion to the Attorney General Re Tax Limitation*, 644 So. 2d 486, 495 (Fla. 1994).

assertion that a particular environmental rule is inadequate.

V. BONDING

Over the last twenty-five years, Florida has developed one of the most aggressive conservation land acquisition programs in history resulting in the purchase of 2.1 million acres of land for environmental and outdoor recreation purposes. Purchase of these lands came from the expenditure of $2.8 billion through programs with descriptive titles such as Environmental and Endangered Lands (EEL), Conservation and Recreation Lands (CARL), Save Our Coasts, Save Our Rivers, Florida Communities Trust, and perhaps most notably, Preservation 2000 (P-2000).[27] The latter is the nation's premier conservation program launched in 1990 as a ten year, $3 billion effort which thus far has resulted in the purchase of over 1.2 million acres of land and twenty-two new state parks.[28]

Florida's innovative conservation programs were initially funded through a constitutional amendment in 1963 which authorized bonds for land acquisition and outdoor recreation development.[29] The measure authorized revenue bonds "to acquire lands, water areas and related resources, and to construct, improve, enlarge and extend capital improvements and facilities thereon in furtherance of outdoor recreation, natural resources conservation and related facilities."[30] That authorization, as well as the creation of the Land Acquisition Trust Fund, was carried over to the 1968 Constitution in a footnote to the Schedule.[31] In 1972, Florida voters approved a general obligation bond issue pledging the full faith and credit of the state in the amount of $200 million for environmentally-sensitive lands and $40 million for outdoor recreation.[32] In 1990, Governor Martinez proposed P-2000 as a ten-year, $300 million per year revenue bond to fund CARL, Save Our Rivers, Florida Communities Trust, Rails to Trails, and inholdings purchases for state parks, forests, and wildlife management areas. The legislature approved the bonds based upon the Land Acquisition Trust Fund authorization in the constitution.[33]

P-2000 was scheduled to sunset in 2000 because the bond authorization effectively ended. The footnote to the 1968 Constitution granted authority

27. *See* DEPARTMENT OF ENV. PROTECTION, Conservation and Recreation Lands Annual Report 1998 (1999).
28. *See* FLA. STAT. § 259.101 (1999).
29. *See* FLA. CONST. art. IX, § 17 (1885).
30. *See* FLA. CONST. art. XII, § 9(e), n.1.
31. *See id.*
32. *See* Land Conservation Act of 1972, Florida Laws, ch. 72-300.
33. *See* FLA. STAT. § 259.101 (1999).

for LATF bonds for a fifty-year period from 1963-2013.[34] This requirement forced the retirement of all P-2000 bonds by 2013. Because of this, it would no longer have been economically practical to issue bonds after 2001 because they would have to be repaid in less than twelve years.[35]

The Conservation Amendment cures these problems by placing in the constitution an indefinite grant of authority to issue bonds for environmental lands acquisition. In addition, the amendment's authorization extends to park improvements, water resource development, historic preservation, and restoration of natural ecosystems.[36] It is easy to envision new bonds under this authorization being used not only for land acquisition but also for state park development, well fields, water quality projects, community redevelopment to promote historic preservation, and restoration of ecosystems such as the Everglades. Given the broad grant of authority, it is easy to contemplate bonds being utilized for a broad spectrum of capital projects designed to protect the environment, conserve critical habitat and water resources, and preserve historic sites.

The 1999 Legislature implemented the bond authorization in The Conservation Amendment by passing the Florida Forever Program (SB 908 by Senator Jack Latvala, R-Palm Harbor).[37] Florida Forever authorizes $3 billion in bonds over ten years for acquisition and improvement of environmentally sensitive lands, water resource development, environmental restoration, and historic preservation.[38] Florida Forever also refinances old Preservation 2000 bonds to extend their pay-out provisions.[39]

Florida Forever funds various programs including Conservation and Recreation Lands for large-scale ecosystem projects, Florida Communities Trust for urban open space projects, inholdings and additions to state parks and state forests, greenways and trails, as well as Save Our Rivers and

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34. *See* FLA. CONST. art. XII, § 9(e), n.1 ("The land acquisition trust fund created by the 1963 legislature for the multiple public purposes shall continue from the date of adoption of this amendment and for a period of fifty years.").

35. The first P-2000 bonds issued in 1991 in the amount of $300 million could be amortized and paid back over twenty-two years until 2013. The second series of bonds in the same principle amount would be repaid over twenty-one years with higher payments. Bonds will be issued in 2000 for the final year of P-2000 and must be retired in 13 years at substantially higher payments than those bonds issued in 1991.

36. *See* FLA. CONST. art. VII, § 11(e) ("Bonds pledging all or part of a dedicated state tax revenue may be issued by the state in the manner provided by general law to finance or refinance the acquisition and improvement of land, water areas, and related property interests and resources for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.").

37. *See* 1999 Fla. Sess. Serv. 99-246 & 99-247 (West).

38. *See id.*

39. *See id.*

other water management projects.[40] To carry out these programs, Florida Forever creates the Acquisition and Restoration Council, Greenways and Trails Council, and Florida Forever Advisory Council to set priorities, acquire lands, and implement the new law.[41] Florida Forever takes advantage of the Conservation Amendment by developing programs in all areas of the constitutional authorization.

VI. DISPOSITION OF CONSERVATION LANDS

The Conservation Amendment provides a new constitutional standard for management and disposition of publicly owned conservation property. It requires that conservation lands must be managed for the benefit of its citizens and that they may not be disposed of without a determination by a supermajority vote that they are no longer needed for conservation purposes.[42] The new standard and the statutory implementation in Florida Forever changes the way the state must designate, manage, and dispose of conservation lands.

Prior to the Conservation Amendment there was a patchwork of laws and practice relating to management and disposition of conservation lands. Since the early days of statehood, title to most of this property has been held in trust by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund. By statute, the Board of Trustees cannot dispose of land it holds in trust except by a vote of at least five of the seven trustees.[43] However, this supermajority requirement is subject to statutory modification, and does not apply to property held by the five water management districts, Game and Fresh Water Fish Commission, and the Department of Agriculture and Consumer Affairs.[44] Before disposition of lands acquired under the P-2000 program, there first must be a determination by the entity holding title that the property in question "no longer needs to be preserved,"[45] and conservation lands not purchased with P-2000 funds fall outside the purview of this statute.

This patchwork treatment demonstrates the need for a uniform standard to guide the management and disposition of conservation lands and to

40. *See id.*

41. *See id.*

42. *See* FLA. CONST. art X, § 18 (disposition of conservation lands) ("The fee interest in real property held by an entity of the state and designated for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board.").

43. *See* FLA. STAT. § 253.02(2) (1999).

44. *Compare* FLA. STAT. § 373.089(5)(b) (1998) *with* FLA. STAT. § 253.02(2) (1999).

45. FLA. STAT. § 259.101(6)(b) (1999).

protect past achievements from unraveling. To that end the Conservation Amendment provides that "[t]he fee interest in real property held by an entity of the state and designated for natural resources conservation as provided by general law shall be managed for the benefit of the citizens of this state."[46] This creates a general category for property "designated for natural resources conservation purposes," allowing the legislature to deem the circumstances of acquisition irrelevant.[47] The requirement that these properties be managed for the benefit of the citizens of the state is similar to the Public Trust doctrine that applies to sovereign lands.[48] As for disposition, the property in question may be disposed of only upon a determination that the property is no longer needed for conservation purposes and a minimum two-thirds vote of the governing board of the entity holding title.[49]

Florida Forever implements this provision of the Conservation Amendment in several ways. First, it designates all lands purchased under P-2000 and all previous land acquisition programs as having been "purchased for conservation purposes," thus bringing over two million acres of land under this protection.[50] Second, it requires all lands purchased to be managed for conservation and public recreation.[51] Florida Forever requires that management plans be adopted for all conservation lands and that individual advisory committees be established to guide those plans.[52] Third, it establishes a procedure for surplusing lands when they are deemed "no longer needed for conservation purposes."[53] The interplay of these statutory provisions will allow land acquisition agents and managers to make the best use of conservation lands.

In recent years, there have been many threats to conservation lands because of proposals for landfills, prisons, cemeteries, schools, and even private development. The new constitutional standard and the Florida Forever Program will give careful scrutiny to these threats in the future. While the proposal does not completely protect conservation lands "forever," it certainly makes it more difficult for conservation lands to be

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46. *See* CRC, *supra* note 1 (discussing Revision 5, art. X, § 18).

47. *Id.*

48. *See* FLA. CONST. art. X, § 11.

49. *See* FLA. CONST. art. X, § 18.

50. *See* 1999 Fla. Sess. Law. Serv. 99-247, § 10 (West) (amending FLA. STAT. § 253.034(6)(b)).

51. *See* 1999 Fla. Sess. Law. Serv. 99-247, § 13 (West) (amending FLA. STAT. § 259.032(9)(b)); *see also* FLA. STAT. § 253.034(1) ("The state's lands and natural resources shall be managed using a stewardship ethic that assures the resources will be available for the benefit and enjoyment of all people of the state, both present and future.").

52. *See* 1999 Fla. Sess. Law. Serv. 99-247, § 10 (West) (amending FLA. STAT. § 253.034(10)(c)).

53. 1999 Fla. Sess. Law. Serv. 99-247, § 10 (West) (amending FLA. STAT. § 253.034(6)).

used for something other than conservation purposes and establishes a conservation-based standard. The legislative implementation of this constitutional provision is a strong tool to support land conservation as our lasting legacy.

VII. FISH AND WILDLIFE CONSERVATION COMMISSION

The Conservation Amendment also created the Fish and Wildlife Conservation Commission by combining the jurisdiction of the Marine Fisheries Commission (MFC) and the Game and Fresh Water Fish Commission (GFC).[54] The MFC was a creature of statute relating to saltwater fisheries while the GFC was an existing independent agency.[55]

The original proposal before the CRC was identical to the "unification" citizen initiative amendment that was supported by a broad-based coalition of wildlife, conservation, environmental, hunting, and sport fishing groups and pending before the Florida Supreme Court for mandatory review.[56] The court ultimately struck that amendment from the ballot, concluding that the ballot summary did not sufficiently explain that the legislature would lose its exclusive authority to regulate marine life.[57] Although the general merger concept was widely supported by the CRC, the details occupied a considerable amount of the Commission's time, and some were ultimately left to the 1999 Legislature.

VIII. HISTORICAL CONTEXT: GFC AND MFC

The Game and Fresh Water Fish Commission (GFC) was created in 1943 as an independent constitutional agency vested with "the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life."[58] Regulation of "marine life," on the other hand, remained with the legislature. For years, special acts were used to adopt local saltwater fishing regulations. In recent years, however, the Legislature created the Marine Fisheries Commission (MFC) and delegated to it the full constitutional rulemaking authority over marine life, with the exception of endangered species.[59] These rules governed saltwater fishing

54. *See* FLA. CONST. art. IV, § 9 ("There shall be a fish and wildlife conservation commission, composed of seven members appointed by the governor subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and freshwater aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life. . . .").

55. *See* FLA. STAT. § 370.026(1) (1998) (repealed 1999).

56. *See* Advisory Opinion to Atty. Gen. Re Fish & Wildlife Conservation, 705 So. 2d 1351, 1355 (Fla. 1998).

57. *See id.*

58. FLA. CONST. art. 4, § 9.

59. *See* FLA. STAT. §§ 370.026, .027(1) (1998).

matters such as bag and size limits, seasons, protected species, and species that may not be sold. Unlike the rules of the GFC, the MFC's rules were subject to both the Administrative Procedures Act and final approval by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

The Florida Endangered and Threatened Species Act, in a like manner, divided responsibilities for wildlife protection.[60] The Act delegated to the Department of Environmental Protection (DEP) programs for marine endangered species such as sea turtles, whales, and manatees.[61] Other threatened and endangered species were placed under the jurisdiction of the GFC. Enforcement was also divided with the Florida Marine Patrol in DEP while the GFC had its own wildlife officers.[62]

The division of regulatory and enforcement responsibility led to confusion, overlap, inefficiency, and competition for funds. It also was inconsistent with a unified ecosystem approach to wildlife management. Many species do not fall neatly within jurisdictional boundaries, occupying both salt water and fresh water. In the case of the brown pelican, the GFC regulated the bird while the fish it ate fell under the scope of the MFC. The Conservation Amendment sought to remedy the situation by merging the authority of the MFC into that of the GFC to create a Fish and Wildlife Conservation Commission, an independent constitutional agency with regulatory and executive authority over fish and wildlife.[63]

Some have argued that there should not be an unelected independent commission with regulatory and enforcement authority. Supporters of the proposal, however, urged that species management needed to be free from the political gridlock that led to the Net Ban Amendment. Regardless of one's position on the merits of having a net ban, few would argue that it rises to the level of constitutional treatment. Beyond the goal of streamlining government, the underlying premise of unifying the two commissions is that sound research, science, and management techniques should prevail over politics when it comes to wildlife conservation and management.[64]

IX. CRC PROPOSAL

The CRC spent a significant amount of time on the proposal. The Executive Committee favorably recommended a proposal that was nearly

60. *See* FLA. STAT. § 372.072(4)(a)(b)(c) (1999).
61. *See* FLA. STAT. § 372.072(2) (1999).
62. *See* FLA. CONST. art. IV, § 9.
63. *See supra* note 54 and accompanying text.
64. *See* <http://www.fwf.usf.edu/pubs/unification> (background information on the justification of unification).

identical to the "unification" citizen's initiative. Business interests were concerned that the proposal went too far and convinced the Chairman to re-refer the proposal to the Legislative Committee where it was substantially rewritten. Once it passed the CRC for the first time, it was sent to the Committee on Style and Drafting where it was substantially rewritten again. The Commission then encountered opposition from the Governor's Office, and DEP approved the Committee Substitute again. Several critical votes were cast on last minute amendments to the proposal. Each of these amendments was designed to narrow the scope of the proposal and retain some control by the legislature.[65]

The Conservation Amendment revises Article IV, Section 9 in several respects. First, it changes the name of the GFC to the Fish and Wildlife Conservation Commission and changes the membership of the governing body from five to seven members. Next, it clearly makes the commission an independent agency by stating that "the commission shall not be a subunit of any other state agency and shall have its own staff, which includes management, research, and enforcement."[66] The most important change is that the commission shall exercise regulatory and executive authority over marine life in addition to wild animal life and fresh water aquatic life.[67] The measure also directs where certain fees and revenues are to go. Revenues from license fees for taking fresh water aquatic life and wild animal life are appropriated to the commission. Revenues relating to marine life are to be appropriated by the legislature for "management, protection, and conservation of marine life as provided by law."[68] But the sentence specifically does not require the legislature to appropriate these funds to the commission. Lastly, the measure prohibits the legislature from passing a special law or general law of local application relating to hunting or fishing.[69] A new section was added to the Schedule related to transition issues.[70]

In final form, the Conservation Amendment does not contemplate a change in the nature of the new commission's power, but rather it is an expansion of the species falling within its jurisdiction. Put another way, the proposal is carefully and narrowly drafted to accomplish its limited constitutional purpose but allows the legislature to fully add to its responsibilities to make it a true wildlife agency. Only saltwater fisheries

65. *See* CRC JOURNAL, *supra* note 11, at 262. A statement of intent was placed in the record that explained the way a number of these issues were addressed. *See id.*

66. *See* CRC, *supra* note 1 (discussing Revision 5, art. IV, § 9).

67. An amendment to the Schedule implies that "marine life" relates to the jurisdiction of the marine fisheries commission as of March 1, 1998. *See* FLA. CONST. art. XII, § 23.

68. *Id.*

69. *Compare* FLA. CONST. art. III, § 11(19).

70. *See* FLA. CONST. art. XII, § 23(a).

jurisdiction was constitutionally transferred to the new commission because amending the constitution was the only means to achieve this end. Transfer of other programs, such as Florida Marine Patrol, Office of Protected Species, and Florida Marine Institute, requires a legislative delegation. The proposal accomplishes this by providing; "the legislature may enact laws in aid of the commission, not inconsistent with this section."[71]

A technical issue related to the applicability of the Administrative Procedure Act (APA) received significant attention. Business interests supported bringing the new commission under full authority of the APA while conservation groups supported the independent nature of the new commission. Under prior law, the GFC was not subject to the APA when acting under its constitutional authority but was subject to the APA when acting based upon a grant of legislative authority.[72] The Conservation Amendment requires the new Commission to "establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions."[73] Consistent with the current scheme, any new authority delegated to the commission by the legislature would be subject to the APA. This provision greatly increases citizen access to the new commission, allaying concerns that the new commission would be too insulated.

The 1999 Legislature fully implemented the new Fish and Wildlife Conservation Commission.[74] Jurisdiction of the Marine Fisheries Commission and the Game and Fresh Water Fish Commission were merged into the new Fish and Wildlife Conservation Commission (FWCC).[75] In addition, the legislature transferred the Florida Marine Patrol, Florida Marine Research Institute, and the Office of Protected Species to the FWCC.[76] Jurisdiction for the Florida Endangered and Threatened Species Act was also fully transferred to the Commission. The legislature also appropriated all fishing license fees to the Commission.[77]

The legislation also tackled the APA issue. It required the commission to implement rules pursuant to APA § 120.52 for its constitutional responsibilities.[78] It also "encouraged" the commission to use the provisions of APA § 120.54(3)(c) when adopting rules.[79] In addition, the

71. *See id.*
72. *See* FLA. STAT. § 120.54(1)(b) (1998).
73. *See id.*
74. *See* 1999 Fla. Sess. Law Serv. 99-245 (West) (creating FLA. STAT. § 20.331).
75. *See id.*
76. *See id.*
77. *See id.*
78. *See id.*
79. *See id.*

legislation makes clear that all provisions of Chapter 120 are applicable when the commission is acting pursuant to its statutory responsibilities.[80] The FWCC is also directed to report to the Legislature on how it intends to implement "adequate due process."[81]

While it is believed that the legislation fully implemented the Conservation Amendment, there are some conflicts on where to draw the line between inherent constitutional authority and legislative delegation. The legislature listed several responsibilities of the commission that are "statutory duties." While some of these, such as boating safety and public education, are unquestionably within the purview of the legislature, there are others that are not. The legislature delegated authority to the FWCC for marine endangered and threatened species, which has prompted a challenge from some conservation groups who believe this to be the new commission's inherent constitutional authority.[82] These conflicts will be fought out before the legislature and the courts in the years ahead. Ultimately, however, the Legislature has set the stage for a new commission that will be fully empowered to protect and manage fish, wildlife, and habitat.

X. CONCLUSION

The Conservation Amendment is the new constitutional foundation for Florida's unique approach to environmental regulation, land and water conservation, and wildlife management. Taken as a whole, it is the most comprehensive constitutional mandate for environmental policy ever ratified.[83] Moreover, it has already provided a solid foundation for Florida Forever, a new wildlife agency, and other programs designed to be the most comprehensive conservation program in the United States. A constitution is a place where our fundamental values and institutions are placed so as to stand the test of time. The Conservation Amendment meets this test by leaving a lasting legacy for conservation that will be enjoyed by generations yet to come.

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80. *See id.*

81. *Id.*

82. *See* Caribbean Conservation Corp. v. Harris, No. 99-4188 (Fla. 2nd. Cir.).

83. *See* FLA. CONST. art. II, § 7(a) (Natural Resources Clause); FLA. CONST. art. II, § 7(b) (Everglades polluter pay); FLA. CONST. art. III, § 11(a)(19) (no special law or general law of local application can apply to hunting or fresh water fishing); FLA. CONST. art. III, § 19(b) (Appropriation Bills Format); FLA. CONST. art. IV, § 9 (Fish and Wildlife Conservation Commission); FLA. CONST. art. VII, § 4(a), (Blue Belt for tax assessment); FLA. CONST. art. VII, § 9(b) (local taxes—millage for water management purposes); FLA. CONST. art. VII, § 11 (conservation bonds); FLA. CONST. art. VII, § 14 (bonds for pollution control and abatement and other water facilities); FLA. CONST. art. X, § 11 (sovereignty lands); FLA. CONST. art. X, § 16 (limitations on net fishing); FLA. CONST. art. X, § 17 (Everglades trust fund); FLA. CONST. art. X, § 18 (disposition of conservation lands).