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The James Madison Institute is a Florida-based nonpartisan, nonprofit research and educational organization dedicated to advancing such timeless ideals as economic freedom, limited government, federalism, traditional values, the rule of law, and individual liberty coupled with responsibility.

The Journal is a quarterly magazine provided to members and supporters of The James Madison Institute, to members of the Florida legislature, and to others who share the Institute's conservative philosophy. *The Journal* is intended to keep Floridians informed about their government, to help advance practical public policy solutions, and to recognize individuals who exemplify civic responsibility, character, and service to others in their lives. Opinions expressed in *The Journal of The James Madison Institute* are those of the authors and do not necessarily reflect the views of The James Madison Institute, its staff, or its Board of Directors. All rights reserved.

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Message from the publisher

j. stanley marshall



As some *Journal* readers know, several months ago we conducted a small survey of selected readers, asking whether they favor our carrying book reviews, and respondents answered in the affirmative. The books we review will, with few exceptions, deal quite directly with issues related to the Institute's mission, including the one reviewed in this issue. We would, of course, be pleased to have your comments on the reviews and your suggestions for books you'd like to see reviewed.

The lead article on Florida's election reform efforts (page four) came out of a collaborative effort with our friends at The Collins Center for Public Policy. The survey we conducted on the evening of election day in November received a good bit of attention in the state and national media, and probably helped to ease some of the ridicule (and the bad jokes) about the so-called (and mostly mythical) hazards of voting in Florida.

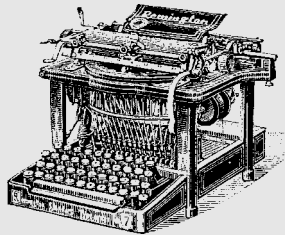
And the widespread interest in our report led us to invite Florida Secretary of State Jim Smith to address a luncheon forum in Tallahassee. He is the cabinet officer who oversees elections in Florida and co-chaired the Election Reform Commission. Smith told us that he was well pleased with the results of the reforms and, except for some remaining problems in Broward and Miami/Dade Counties, the process in Florida is now more voter friendly and the results more reliable than in most other states. Another case of government doing its job well.

Members will have more opportunities in the

future to attend luncheons and other issue-related gatherings around the state as part of an increased outreach effort. Board member Tom Sylte hosted a dinner in early December in Pensacola with Matthew Simmons as the speaker. Simmons, who is chairman and chief executive officer of Simmons and Company International, a specialized energy investment banking firm that operates in the United States and several other countries, painted a rather grim picture of the lack of balance be-

tween the demands for energy worldwide and the available supply. This problem has serious implications for Florida, a state whose economy is heavily dependent on gasoline for tourists' cars and gas and oil for the generation of electricity.

Interesting challenges often bring interesting responses. Public policy in Florida presents JMI with interesting opportunities, and we hope to rise to the challenge in the future as we have during the past 15 years. ❧



we want to hear from you

If you have a letter to the editor, or a suggestion, or a comment, you can reach the *Journal* staff in any of the following ways. We will treat all communications received as letters to the editor unless you instruct us otherwise, and we reserve the right to edit your communiqué for length, style, or clarity.

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COVER STORY

the election reforms of 2002: did they work?

by j. stanley marshall and mark s. pritchett



Florida's reformed voting process may be a model for the nation.

Florida voters went to the polls on November 5, 2002, to test one of the most comprehensive election reform efforts ever undertaken in any state in the nation. Following the highly controversial presidential election in 2000, election reforms were passed in 2001 and implemented in 2002. New voting machines, new voter education efforts, new early voting schedules, and newly trained poll workers were key elements in a series of changes in the process that election officials hoped would remedy the earlier problems.

With the whole world watching, Floridians voted early, voted absentee, and voted on election day. Having voted, how did Floridians then feel about the new system? Were they satisfied with the new machines? Did poll workers do their jobs? Were voters comfortable with what they were required to do? And most important, do Floridians now believe their votes count?

The Collins Center for Public Policy and The James Madison Institute believed that the voting public deserves to have answers to such questions. The two organizations had previously joined in the use of opinion polls to seek answers to questions of public policy (see "School Choice: A Rising Sun or Rising Storm?" *The Journal of The James Madison*

Institute, January–February 1999). The method selected was polling Florida citizens by telephone late on the afternoon of election day and continuing through the evening until a sample of suitable size had been polled. Dr. Susan A. MacManus, professor of political science and government at the University of South Florida and a widely recognized expert on polling, was selected to direct the study.

MacManus also serves as chair of the Florida Elections Commission. The survey instrument was developed with the assistance of Dr. David Colburn, professor of history and provost of the University of Florida, and Dr. Mark Pritchett of The Collins Center, along with Mr. Bruce Barcelo, whose company has conducted numerous successful polls throughout the country. These four developed the survey instrument, and Barcelo's staff began calling Floridians late in the afternoon of November 5. Eight hundred one respondents who reported that they had voted were surveyed, along with 666 respondents who reported that they had not voted.

Key Questions

Pollsters focused on the following questions in their calls to respondents:

- How did voting in this election compare with voting in the 2000 presidential election?
- How did Florida voters rate their polling places?
- How did they rate their poll workers?

- How did they rate the efforts of their supervisors of elections?
- Did Florida voters think the election reforms will reduce voter fraud?
- How did disabled voters or families of disabled voters rate the voting accommodations?
- How did Florida voters feel about the new voting technology?
- Why didn't some Floridians vote?

The Answers

- Voters were well satisfied with the voting experience this time compared with two years ago. More than half (55.5 percent) said the experience was about the same as in 2000, but nearly 40 percent (39.7 percent) felt better about the experience. Only 3.2 percent said they felt worse (*Figure 1*).
- More than nine in 10 rated the polling place excellent or good. They found parking convenient, posted information helpful, and voting machines easy to use. Poll workers, they said, did their jobs well and ballots were easy to understand (*Figure 2*).
- With respect to the performance of the poll workers, voters were nearly unanimous in reporting that they were treated with respect (96.6 percent). Nearly as many believed poll workers gave them the right information (94.3 percent) and provided timely help in voting (92.1 percent) (*Figure 3*).


- Supervisors of elections occupy key positions in the process of voting, and it was important to find out if voters thought they had been kept informed about the election process. The majority of voters were well satisfied with the performance of the supervisors of elections, rating them as excellent or good. They approved of changes in voting technology (77.5 percent), liked the changes in polling locations (68.2 percent), and believed the requirements for voter identification at the polls was excellent or good (87.5 percent) (*Figure 4*).

- Responses with respect to perceived voter fraud were less dramatic, perhaps because voters did not believe fraud to have been a major problem in the past. Of the respondents, 44.7 percent said they believed the reforms would reduce voter fraud, 30.8 percent thought the reforms would have no real impact, and 19.1 percent had no response (*Figure 5*).


- Disabled voters or their family members were positive about the accommodations provided them: 78.4 percent rated the accommodations as excellent and 8.1 percent rated them as good (*Figure 6*).

- Respondents also expressed satisfaction with the new technol-

ogy. Only a few voters asked for help in using the voting machines (8.6 percent), even though about one half (49.2 percent) reported that they had not used this type of machine before. The methods used by voters included optical scan (18 percent), touch screen (52.4 percent), and absentee paper ballot (25.7 percent).



Do Floridians now believe their votes count?



- We were strongly interested in why some Floridians did not vote and asked a series of questions to determine the reasons. The most common response was that citizens simply had not registered; the other responses varied widely. It is noteworthy that only 0.8 percent said they were turned off by the election in 2000. Apart from those who had not registered, only three reasons for not voting gathered more than a 5 percent response: 9.6 percent said they were too busy, 7.4 percent were prevented from voting by illness, and 6.3 percent said they just weren't interested (*Figure 7*).

The Collins Center and The James Madison Institute conducted a press conference on the morning of November 13 that resulted in widespread media coverage of the survey. Given the unfavorable coverage of the 2000 election, we believe there will be widespread interest in our survey and that election officials in all states will be interested in what

Figure 1
2002 Voting Experience:
Better, Worse, or Same as 2000?



N = 801

** Totals sometimes do not equal 100% due to rounding of percentages.*

Figure 2
Voters Rate the Polling Place

	Excellent-Good	Fair-Poor	N/A	Total
• Ease in finding polling place	94.1%	3.0%	2.9%	100%
• Convenience in parking	86.4%	9.9%	3.7%	100%
• Helpfulness of posted information	84.3%	6.8%	8.9%	100%
• Job precinct poll workers did today	90.9%	4.6%	4.5%	100%
• Ease of using voting machine	85.1%	2.6%	12.7%	100%
• Ease of understanding ballot	89.9%	9.4%	0.7%	100%
• Confidence your vote will count	88.3%	8.9%	2.7%	100%

N = 801

** Totals sometimes do not equal 100% due to rounding of percentages.*

Figure 3
Voters Rate the Poll Workers

WERE YOU:	Yes	No	N/A	Total
• Treated with respect?	96.6%	0.7%	2.6%	100%
• Given correct information?	94.3%	1.0%	4.7%	100%
• Helped in a timely fashion?	92.1%	3.1%	4.7%	100%

N = 801

** Totals sometimes do not equal 100% due to rounding of percentages.*

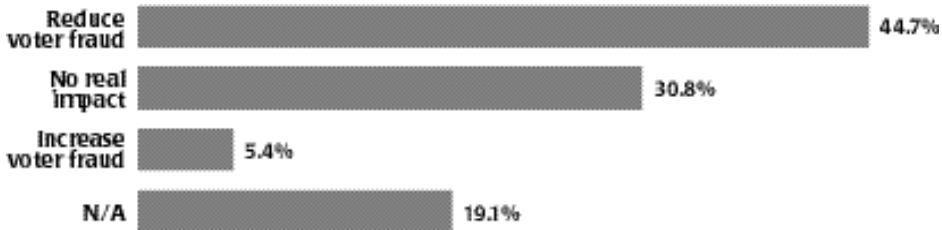
Figure 4
Voters Rate the Supervisors of Elections in Keeping Them Informed

	Excellent-Good	Fair-Poor	N/A	Total
• Changes in voting technology	77.5%	15.1%	7.4%	100%
• Changes in polling locations	68.2%	10.4%	21.5%	100%
• Required identification at the polls	87.5%	7.6%	4.9%	100%
• Absentee or early voting procedures	56.1%	13.7%	30.2%	100%
• Voter rights and responsibilities	79.5%	12.1%	8.5%	100%
Overall job done this year	85.4%	11.5%	3.1%	100%

N = 801

** Totals sometimes do not equal 100% due to rounding of percentages.*

Figure 5
Impact of Reforms on Perceived Voter Fraud



N = 801

** Totals sometimes do not equal 100% due to rounding of percentages.*

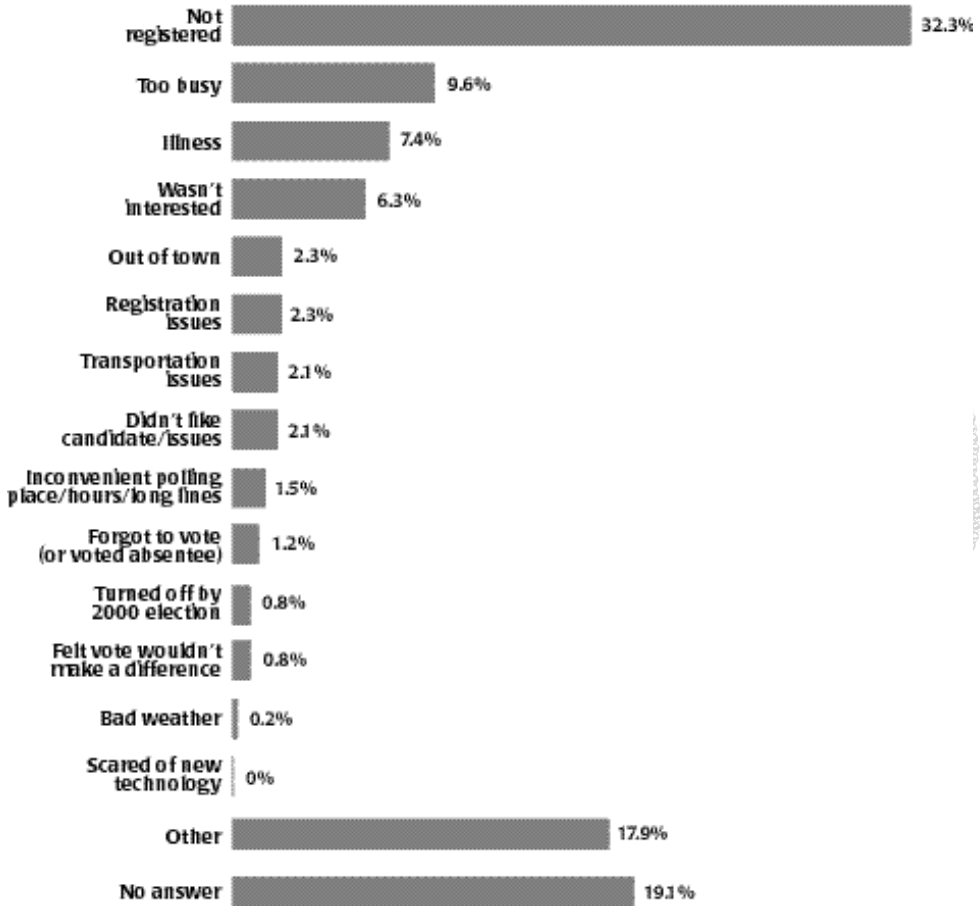
Figure 6
Voting Assistance for Disabled: Rate the Accommodations



N = 37

** Totals sometimes do not equal 100% due to rounding of percentages.*

Figure 7
"Why didn't you vote?"



N = 666

** Totals sometimes do not equal 100% due to rounding of percentages.*

we have done in Florida to reform the election process and how well the reforms have been accepted.

Will further refinements of the process be undertaken? Secretary of State Jim Smith, who headed the Election Reform Task Force, intends to continue his department's review of the voting process to fine-tune it as

necessary and to make it a model for the nation. Our poll shows that Florida is off to a good start. ∞

J. Stanley Marshall is founding chairman and president of The James Madison Institute. Mark Pritchett is executive vice president of The Collins Center for Public Policy.

is there a doctor in the house?

by james c. mcdowell



First in a series of articles on the impact of litigation on Florida's health care system. Future articles will address the costs of defensive medicine and the effect on prescription drug costs and availability.

Is there a doctor in the house? Increasingly, in Florida and around the country, the answer is no—not in the house, not in the doctor's office, and not in the hospital. Many physicians are choosing to retire early or to practice in other states because medical malpractice insurance in Florida has become unaffordable and, in some cases, unavailable.

The Problem

What is causing the current crisis in medical malpractice insurance? That depends on whom you ask. Doctors and malpractice insurance carriers say it is caused by years of litigation excesses and by the size and frequency of large jury awards. Plaintiffs' lawyers blame the insurance carriers and careless doctors. Regardless of who wins the argument, the reality is that to physicians and others in the health care field, there *is* a crisis. Caught in the middle of this debate are the patients who search for doctors to deliver babies, surgeons to perform certain high-risk procedures, and professionals to administer and interpret mammograms.

Is the crisis real? Consider this: Florida is one of 12 states experiencing dramatic increases in medical malpractice insurance premiums. Even physicians with no malpractice claims over the course of their entire careers are seeing premium increases of 50 to

100 percent for this year. And no end is in sight as annual increases of 30 percent for premiums in medical malpractice insurance are expected over the next few years.

Examples of these skyrocketing increases and their effects on access, affordability, and availability of health care can be seen statewide and throughout the medical community.

- A Sarasota obstetrician/gynecologist stopped delivering babies when his annual medical malpractice insurance premium increased to \$80,000.
- A multispecialty practice in Boca Raton was recently informed that its annual insurance premium, currently \$80,000, would rise next year to \$2.5 million.
- A South Florida radiologist who specializes in mammograms was recently informed that his annual premiums would increase from \$30,000 to \$120,000.
- Orlando Regional Medical Center saw its premiums rise from \$1.3 million to \$9.8 million in one year.

Doctors and hospitals cannot automatically pass these increased costs on to their patients because they are bound by managed care contracts or government reimbursement limits. Many are trying to increase income by seeing more patients, but this limits the time they spend with each patient.

Other consequences of this problem adversely affect the access to and affordability of health care, such as:

- Florida doctors are choosing to retire early or to relocate to states with limits on frivolous malpractice lawsuits, according to the Florida Medical Association.



Annual increases of 30 percent for premiums in medical malpractice insurance are expected over the next few years.



- One third of all doctors nationwide avoided specializing because of the increased risk of lawsuits associated with a particular field of medicine.

- Nationwide, one in 11 obstetrician/gynecologists is limiting his or her practice to gynecology because of the

liabilities associated with delivering babies. Also, one in six obstetrician/gynecologists refuses high-risk cases, according to the American College of Obstetricians and Gynecologists.

- Retirees and the uninsured are affected as the number of doctors willing to accept Medicare and Medicaid payments is decreasing. The latest national physician access study, released by the Medicare Payment Advisory Commission, found a 7 percent drop in the number of doctors taking new Medicare patients from 1999 to 2002. It also showed that the proportion of practices open to all new Medicaid patients dropped from 48 percent to 37 percent during that same period.

- Waiting lists for mammograms are growing longer. Breast tests are performed in about 465 locations in the state, 16 fewer than a year ago and 50 fewer than in 1993, according to the American College of Radiologists, which accredits mammography units. This comes at a time when there is a 30 percent increase in the number of women over 40, the age at which the American Cancer Society recommends starting annual mammograms.
- Excessive litigation contributes to defensive medicine, a major health care cost driver.

In determining the cause for skyrocketing medical malpractice insurance premiums, one need only look at the number of million- and multimillion-dollar verdicts delivered by Florida juries over the last few years. A large portion of these awards did not compensate injured patients for their economic losses (such as wage losses and health care costs) or replace services patients could no longer perform. Instead, in some cases, 50 percent or more of the judgments were for noneconomic damages. Awarded on top of compensation for the injured patients' actual economic loss, noneconomic damages compensate for intangibles, such as pain and suffering, loss of consortium, loss of the enjoyment of life, and other theories that are only limited by the imagina-

tion and creativity of the plaintiff's attorney.

Certainly no argument exists among health care professionals that in a case of legitimate malpractice, a patient's mathematically predictable economic damages should be taken care of. However, what has turned the doctors' world upside down and caused the remaining malpractice insurance carriers to raise rates is the subjective nature of noneconomic damage verdicts. Nationally, million-dollar

awards accounted for 6 percent of malpractice awards last year, compared with fewer than 3 percent five years ago, according to the Physicians Insurers Association of America. While the trial lawyers will argue that few malpractice cases ever come before a jury and many of those are settled in favor of the doctors, a "shadow effect" exists on settlements. No matter how strong their cases, some insurers and doctors don't want to risk going before a jury.

A Solution

The fear of out-of-control noneconomic damage verdicts is only one aspect of the impact that frivolous medical malpractice litigation has on Florida's health care system, but it is the one that could be most easily remedied. We only need look to California for a model.

Faced with essentially the same problem in medical malpractice insurance that Florida is experienc-

***Some insurers
and doctors don't
want to risk going
before a jury.***

ing, the California legislature passed the Medical Injury Compensation Reform Act of 1975 (MICRA). One of the key components of MICRA was a \$250,000 cap on noneconomic damages. For example, premiums in 2002 for a family physician in Los Angeles County, California were approximately \$12,000. That same physician would pay approximately \$52,000 if he or she were practicing in Miami-Dade County, Florida. After 25 years of experience with these reforms, the following can be said about the effects of MICRA laws in California:¹

- Doctors are not leaving the state to escape high insurance premiums.
- Insurance rates have risen more slowly than in the rest of the country without affecting the quality of care.
- Premiums for medical malpractice insurance have risen by 167 percent over the last 25 years, while the rest of the country has seen increases totaling 505 percent.
- Residents have saved billions of dollars in lower health care costs and health insurance premiums.
- Californians and other U.S. taxpayers saved billions of state and federal Medicaid and Medicare dollars.

In October 2002, the U.S. House of Representatives passed H.R. 4600, which has many provisions similar to California's MICRA including:

- Shortening the statute of limitations for health care lawsuits
- Capping noneconomic damages at \$250,000

- Allowing punitive damages only in the case of "malicious intent to injure" or deliberate failure to avoid "unnecessary injury"
- Eliminating joint and several liability
- Giving the courts the power to review and restrict contingency fees
- Setting a sliding scale for attorneys' fees
- Informing the jury when other sources exist to pay the plaintiff's claims, such as additional health insurance
- Disallowing damages against a manufacturer of any product that has been cleared by the Food and Drug Administration as "safe and effective" or is recognized as such by qualified experts
- Providing periodic payment to plaintiffs for future economic damages.

Unfortunately, the Senate failed to take up its version of this bill after the House's approval. This occurred in spite of the fact that President Bush supports such reforms and the U.S. Department of Health and Human Services (HHS) recommended MICRA-type reforms.

Assuming the U.S. House passes a similar bill in the session beginning in January 2003, it is doubtful that the Senate will act on the measure. Given the need for 60 votes to force cloture on the bill (in order to have a vote of the whole body) and the large amount of money trial lawyers have given candidates in both parties, the outlook is not good for these types of reforms in the Senate.

Action Needed

With prospects dim for any federal medical malpractice reforms, it falls to the Florida legislature and the governor to address this crisis. Many reforms are needed to fix the current situation; it would seem that capping noneconomic damages in medical malpractice cases is a good place to start. Only six carriers are currently writing medical malpractice insurance in Florida, whereas there were as many as 50 a few years ago. Such action by the legislature would send the message to those remaining carriers that their risks would now be more predictable. The U.S. Department of Health and Human Services reported that states adopting reforms similar to MICRA have demonstrated that malpractice premiums could be reduced by as much as 34 percent.

On May 1, 1975, anesthesiologists in Northern California announced their withdrawal from service in protest over the lack of medical malpractice insurance. The impact on elective surgeries was immediate with only emergency services continuing. This was followed by similar strike actions throughout the state by surgeons and physicians. Hospitals were concerned about their ability to keep their emergency rooms open.

Will the doctors strike in Florida? That's surely a possibility.

Soon the devastating news that neurosurgeons and orthopedic surgeons were joining the anesthesiologists' protest raised concerns that patients might die or suffer serious trauma from the lack of care.

Governor Jerry Brown called leaders of both the California Medical Association and the California Hospital Association to the state capital to craft a solution. The result was the MICRA legislation, its centerpiece a \$250,000 cap on noneconomic

damages.

Will the doctors strike in Florida? That's surely a possibility if our legislators resort to finger-pointing and ignore the facts. A prolonged doctors' strike would have a devastating effect on both patients and Florida's reputation, particularly at a time when the governor is urging people to retire here.

Is there a doctor in the house? Maybe yes, maybe no. It's up to Florida's lawmakers to provide the answer. ❧

James C. McDowell is an adjunct policy analyst with The James Madison Institute.

Endnote

¹*Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Costs by Fixing Our Medical Liability System*, U.S. Department of Health and Human Services (HHS), July 2002.

another time for choosing

by brett organ



**Read what this
“candidate” has to
say and then
answer one
critically important
question: Would I
have voted for
this person?**

What follows is a campaign speech I would like to hear. It’s written from the standpoint of someone running for the U.S. Congress in the recent election, but the ideas and sentiments expressed here could and should be evident in any race from school board member to President of the United States.

Later this year, on the first Tuesday in November, the people of Florida will again have the privilege of choosing those who will represent them in the United States Congress. I come before you to state that Floridians and all Americans are again at a crossroads. We have arrived at another time for choosing.

Years ago, Senator Barry Goldwater had these words for a nation faced with a similar choice:

I have little interest in streamlining government or in making it more efficient, for I mean to reduce its size. I do not undertake to promote welfare, for I propose to extend freedom. My aim is not to pass laws, but to repeal them. It is not to inaugurate new programs, but to cancel old ones that do violence to the Constitution, or that have failed in their purpose, or that impose on the people an unwarranted financial burden. I will not attempt to discover whether legislation is “needed” before I have first determined whether it is constitutionally permissible. And if I should later be attacked for neglecting my constituents’ interests, I shall reply that I was informed their main interest is liberty and that in that cause I am doing the very best I can.

Those were epic words from a man with the rare courage to speak the fundamental truth. I invoke them now with “no reservation or purpose of evasion.” My message at this time is simple and clear. Florida voters have a choice to make this November—one that can show the way for the rest of America. In short, I want us to return to the path of liberty. I propose to embark on a journey with you to rediscover our common heritage of freedom, prosperity, and destiny.

Fellow citizens of Florida, I pledge to keep the only promise that ever really mattered—to truly uphold the Constitution of the United States of America as I represent you in our nation’s capital. In that regard I am proudly and irrepressibly a radical in the spirit of the founders of this country. I have chosen to emerge from the small box that we have been placed in by the Republican and Democratic parties. For too many years we have been given only one option—that of a steadily growing and oppressive federal government. On the one hand, we have a lack of discipline; on the other, an appalling lack of courage. Those we have elected have repeatedly promised to streamline government, make it more responsive, or even to cut it back. In reality, we have actually been privy to the biggest shell game ever devised. Quite simply, our federal government has grown in size year in and


year out. I propose to do everything in my power to stop this unopposed retreat from our first principles.

You may remember that in recent years many programs and proposals have been advocated “for the children.” I now offer you an opportunity to preserve that most precious of gifts for our children—their God-given, unalienable freedom. We can decide to work together to make sure that “this last, best hope” does not “perish from the face of the earth.” If you will agree to join me in this daunting pursuit, we can accomplish


much. But the will and the energy must come from you. You must consent.

“Consent to what?” you may ask. There is just one task that must be completed, one that is easy to enunciate, yet admittedly difficult to accomplish. In the interest of a secure future for all Americans I will state it now.

We must return the federal government to the binding chains of the Constitution. That is our duty and our destiny. From now on, when a proposal is made for some new federal program, the first and only question will be, “Does the Constitution allow it?” No more emotional pleas for action based on false science or prophecies of economic fairness and doom. If I am elected, you will never have to wonder whether I voted for legislation that runs afoul of the Constitution—you



***We must return
the federal
government to the
binding chains of
the Constitution.***



will absolutely know that the answer is “no.” If my campaign goes forward, I will develop specific proposals to accomplish this seemingly impossible goal. We must restore the system of checks and balances that has been gradually eroded over the years. We must make sure that each branch of the federal government fully realizes the role that it plays in the republic. Perhaps most importantly of all, we must educate ourselves and others as to the true foundation and history of this ongoing experiment in self-government. I will need the help of every freedom-loving Floridian, and I will gladly accept it from every other corner of this great land.

Normally, one would expect to hear all of the promises that a candidate would make to “bring home the bacon,” as it were. I am not going to do that—at least not in the way that might be expected. Rather, I am proposing to bring home the liberty that is our birthright, that we have allowed the federal government to parse out as if it authored it in the first place. Some I have spoken to already have said to me, “Sure, I believe that the government is a little too large and could probably do a better job, but it probably does the best job that it can, and besides I’m still free to do as I please.” I disagree. We are not as free as we could or should be. My sole duty will be to make sure

that the government concerns itself only with constitutionally permissible functions. All Americans must demand that the federal government direct its energy and resources toward those few and defined functions so that life, liberty, and property will be as secure as possible.

I am working on specific ways to make this happen. That is, if you decide you want it to happen because others have made similar proposals in recent elections. Typically they have been called the third-party option. They have been treated as nothing more than a novelty by the anointed ones in the media and political elite. Of course the voters are repeatedly told how irrelevant these new upstarts are. We’re told how a vote cast for such a candidate is merely wasted.

Such rhetoric is true only if you believe it. However, if you agree that we need to fundamentally change the way things are done in Washington, then it will take hard work and courage. It will take more than one generation to get all the way there. So now, I ask you, the voters, a question. Do you have the courage and vision to do the right thing for Florida and America? If so, then let’s get to work. ☞

Brett Organ is an adjunct policy analyst with The James Madison Institute.

BOOK REVIEW

a brilliant solution: inventing the american constitution

by peter schorsch



**Historical
commentator
Carol Berken
takes a fresh
look at the
Constitutional
Convention
of 1787.**

With the considerable effort recently expended to amend Florida’s state constitution to ban smoking in restaurants, protect pregnant pigs, and reduce classroom sizes, one has to forgive those who yearn for a more perfect document to govern the affairs of men. Fortunately, that document is on display at the National Archives in Washington, D.C. It’s a slab of parchment—the words written on it speak of forming “a more perfect Union.” It is, of course, the United States Constitution.

As deified as the U.S. Constitution has become, the arduous process of crafting laws for governing this nation more than 200 years ago was anything but heavenly. Even though some may argue that the Constitution was divinely inspired, the men who gave birth to our country were not the demigods historical myth has made them out to be.

According to Carol Berkin, a professor of American history at Baruch College and City University of New York, it is the fact that our Founding Fathers were not demigods, but ordinary men with individual foibles, that made the process of writing and ratifying the Constitution all the more amazing. Employing a novelistic approach to convey the personalities and events of the 1787 Constitutional Convention, Berkin

offers a vivid but intimate account of the birth of the nation in her latest book, *A Brilliant Solution: Inventing the American Constitution*.

The author relies on compelling humanity to reveal the compromises and conflicts during the Constitution's drafting. She refreshes our recollections of James Madison, George Washington, and the other wealthy elite who met in a miserably humid Philadelphia to frame a creative answer to the political crisis that existed under the Articles of Confederation.

Chronicling the development of the Constitution and recording the details of each article, Berkin consistently reinforces the framers' belief in the primacy of the legislative branch. She also portrays the disagreements between Madison's federalists and the states' rights advocates, such as George Mason and Edmund Randolph of Virginia, both of whom refused to sign the Constitution and opposed ratification in their state.

Berkin's account of the Constitution's genesis demonstrates the conflicts that can occur between the Founding Fathers' intentions and the realities of modern America. The 2000 presidential election demonstrates the apparently imperfect nature of our "hybrid of universal suffrage and [the] older mechanism of an electoral college."

The aftermath of the 2001 attack on the World Trade Center reveals that Americans have come to expect their president "to set our agenda in every aspect of domestic and foreign

relations." Berkin explains this expectation would have horrified members of the revolutionary class of 1776, who mistrusted the executive and placed their hopes in an independent, representative legislative body. George Washington, she writes, "believed his role in government was exemplary rather than directive," and that the president should be a model of decorum and disinterest "removed from the tarnishing effects of ambition, greed, and factional wrangling" in daily politics.

The author allows that the Founding Fathers' parochialism and wariness of centralized government soon yielded to the reality that citizens prefer looking to a single leader rather than to committees or caucuses. Even so, she professes surprise that Americans today have so little investment in the workings of the legislative branch, which many of the framers of the Constitution believed should be responsible for electing the president. She reminds us that George Mason believed that allowing the people to elect a leader directly was as unnatural as it would be "to refer a trial of colours to a blind man."

As evidenced by her distinguished effort with *A Brilliant Solution*—and her increasing popularity as a historical commentator—Berkin's work deserves to stand alongside the best of contemporary historical literature. ❧

Peter Schorsch, a policy analyst and senior writer with The James Madison Institute, lives in St. Petersburg, Fla.. The author notes that Carol Berkin spoke recently at the St. Petersburg Times Festival of Reading.

florida is not facing a revenue crisis

by randall g. holcombe



The chairman of JMI's Research Advisory Council examines the impact of the economic slowdown on tax revenues.

Economic slowdowns hit all parts of the economy, and the recession that began in 2001 has slowed Florida's state government revenue growth as it has affected the broader economy. Yet looking at the big picture, Florida's revenues continue to grow, and the state is not facing a crisis.

Florida's state government revenues were at an all-time high last year, and grew by more than \$3 billion over the previous year, up from \$43.6 billion in 2000-01 to \$46.9 billion in 2001-02.¹ Adjusted for inflation, state revenues per person increased by \$123 in 2001-02 and were 9.75 percent of personal income, up from 9.45 percent the year before. State revenues continue to grow even faster than the state's income. One could hardly say a government that spends an increasingly larger share of the state's income is facing a revenue crisis. If Florida is facing a budget crisis, it is being caused by spending growth, not lack of revenue.

Taxes and Revenues

Table 1 shows a history of Florida's total state revenue, its total tax revenue, and, because it is the largest source of tax revenue, Florida's sales tax revenue.

Table 1
Florida's Revenue History

Fiscal Year	Total State Revenue		Total Tax Revenue		Sales Tax Revenue	
	MILLIONS OF DOLLARS	PERCENT OF INCOME	MILLIONS OF DOLLARS	PERCENT OF INCOME	MILLIONS OF DOLLARS	PERCENT OF INCOME
2001-02	46,904.7	9.75	29,432.4	6.12	16,045.5	3.34
2000-01	43,607.8	9.45	28,397.6	6.15	15,802.6	3.43
1999-00	41,215.8	9.57	27,731.2	6.44	15,076.9	3.50
1998-99	38,550.7	9.37	26,396.7	6.40	13,917.7	3.37
1997-98	36,262.9	9.27	25,006.8	6.39	12,974.7	3.32
1996-97	34,430.7	9.41	23,511.6	6.42	12,088.8	3.30
1995-96	33,306.6	9.67	22,256.4	6.46	11,461.8	3.33
1994-95	31,721.8	9.82	21,018.4	6.50	10,672.0	3.30
1993-94	30,257.5	9.97	20,251.6	6.67	10,072.5	3.32
1992-93	28,632.2	9.98	18,757.3	6.54	9,426.0	3.29
1991-92	24,882.0	9.09	16,528.9	6.04	8,375.5	3.06
1990-91	22,872.7	8.66	15,216.0	5.76	8,152.0	3.09
1985-86	13,514.0	7.79	9,842.5	5.67	5,050.7	2.91
1980-81	8,141.4	7.65	5,604.5	5.26	2,542.9	2.39
1975-76	4,621.7	8.76	3,143.0	5.96	1,254.1	2.38
1970-71	2,410.4	8.32	1,717.0	5.93	715.2	2.47

The first column, “total state revenue,” is the total revenue from all sources, including the federal government.² In fiscal year 1990-91 Florida’s total state revenues were \$22.9 billion, and have more than doubled since then, reaching \$46.9 billion in 2001-02. The next column, “percent of income,” shows total state revenues as a percentage of income. In 1990-91 total revenues were 8.7 percent of personal income in Florida, and by 2001-02 had increased to consume 9.8 percent of personal income. Not only has Florida’s state government revenue increased over the past decade, but

revenue has taken a larger share of Floridians’ incomes. Note, however, that in the early to mid-1990s revenue as a share of income was slightly higher, reaching nearly 10 percent in 1992-93.


The table shows data back to 1970-71, when total revenues were \$2.4 billion and 8.3 percent of income. By 1980-81 revenues had increased substantially to \$8.1 billion, but were only 7.7 percent of income. State revenues as a percentage of income have increased more than two percentage points since then, and in dollar terms have shown steady growth.

The next column shows total tax revenue for the state. Tax revenues have increased from \$15.2 billion in 1990-91 to \$29.4 billion in 2001-02, and show growth similar to total revenues. As a percentage of income, tax revenues rose from 5.8 percent in 1990-91 to 6.1 percent in 2001-02. As with total revenues, tax revenues peaked as a percentage of income in 1992-93, but have shown impressive growth every year.

Some observers have expressed a concern that because of its structure, the sales tax will not keep up with the growth in the state's economy. Table 1 shows otherwise. Florida's sales tax revenues have approximately doubled since 1990-91, when they were \$8.1 billion, to \$16 billion in 2001-02. In 1990-91 sales tax revenues were 3.1 percent of income, and rose to 3.3 percent of income by 2001-02. As a percentage of income, revenues are down marginally from their high of 3.5 percent in 1999-00, but that drop is most likely due to the economic downturn that has prompted consumers to adopt more conservative buying habits. In addition, sales tax revenues from tourist spending have had an impact. The numbers in Table 1 show total sales tax collections, which includes sales taxes paid by tourists. Considering this, sales tax revenue growth is all the more impressive—despite the recession and decline in tourism, sales tax revenues

have increased every year.


Florida's revenue growth has been strong over the past several decades. As a percentage of income, Florida's sales tax revenues and total tax revenues are higher than they were 10 years ago, as is the state's total revenue.



Revenues are growing because more people are paying taxes and demanding government services.

Inflation-Adjusted Revenues per Person

To better assess their strength, Florida's revenues should be adjusted for both inflation and population growth. Florida is a growing state, and one reason revenues are growing is that more



people are paying taxes and demanding government services. Table 2 adjusts the total state revenue, total tax revenue, and sales tax revenue numbers shown in Table 1 for inflation and population growth, and gives inflation-adjusted revenues per person.³ Even after adjusting for inflation and population growth, revenues show impressive growth. After being adjusted for inflation, the total state revenue per person was \$2,281 in 1990-91 and increased to \$2,955 in 2001-02. Similarly, total tax revenues rose from \$1,518 in 1990-91 to \$1,854 in 2001-02, and sales tax revenues rose from \$813 per person to \$1,010 per person during the same period.

From year to year, revenues may fluctuate with changing economic conditions, but over longer periods of time, revenue growth has been

Table 2
Inflation-Adjusted Revenue per Person
and Percentage Increase from Five Years Earlier

Fiscal Year	Total State Revenue		Total Tax Revenue		Sales Tax Revenue	
	MILLIONS OF DOLLARS	FIVE-YEAR % INCREASE	MILLIONS OF DOLLARS	FIVE-YEAR % INCREASE	MILLIONS OF DOLLARS	FIVE-YEAR % INCREASE
2001-02	\$2,955	11.9	\$1,854	2.9	\$1,010	9.1
2000-01	2,832	6.2	1,844	3.7	1,026	11.8
1999-00	2,809	6.1	1,890	7.8	1,027	15.4
1998-99	2,763	4.6	1,887	6.8	995	13.2
1997-98	2,684	3.2	1,851	8.7	960	12.2
1996-97	2,640	11.9	1,803	15.0	927	16.7
1995-96	2,668	16.9	1,783	17.5	918	12.9
1994-95	2,647	11.8	1,754	13.1	890	1.1
1993-94	2,641	12.6	1,767	12.7	879	0.0
1992-93	2,600	20.7	1,793	10.0	856	1.2
1991-92	2,359	21.6	1,567	9.8	794	9.8
1990-91	2,281	21.7	1,518	11.2	813	16.1
1985-86	1,874	16.1	1,365	22.8	700	38.9
1980-81	1,615	2.4	1,112	3.7	504	17.9
1975-76	1,576	14.2	1,072	9.1	428	4.5
1970-71	1,380	—	983	—	409	—

substantial. Following the dollar amounts of inflation adjusted per person revenues in the table is the percentage increase in that revenue figure from five years before. Total inflation-adjusted state revenues per person of \$2,955 in 2001-02 were 11.9 percent higher than five years previously, when they were \$2,640. In 2000-01 they were 6.2 percent higher than five years previously. Total state revenues have increased substantially in every five-year period in the table, with the exception of 1975-76 to 1980-81, when they grew only 2.4 percent in five years. Recall,

however, that there was a severe recession in 1981.

Total tax revenues show a similar pattern, but with slower growth in recent years than total revenues. Total tax revenues were 2.9 percent higher in 2001-02 than five years before after adjusting for inflation and population growth. That is, revenues increased 2.9 percent more than inflation and population growth over the previous five years. Earlier in the 1990s total tax revenues showed consistent double-digit percentage growth rates. There has been a slowing in the growth of inflation-adjusted total tax

Table 3
Inflation-Adjusted Revenue per Person
and Percentage Increase from Previous Year

Fiscal Year	Total State Revenue		Total Tax Revenue		Sales Tax Revenue	
	MILLIONS OF DOLLARS	PERCENT INCREASE	MILLIONS OF DOLLARS	PERCENT INCREASE	MILLIONS OF DOLLARS	PERCENT INCREASE
2001-02	\$2,955	4.3	\$1,854	0.5	\$1,010	-1.5
2000-01	2,832	0.9	1,844	-2.4	1,026	0.0
1999-00	2,809	1.6	1,890	0.1	1,027	3.3
1998-99	2,763	3.0	1,887	2.0	995	3.6
1997-98	2,684	1.7	1,851	2.7	960	3.6
1996-97	2,640	-1.1	1,803	1.1	927	1.0
1995-96	2,668	0.8	1,783	1.7	918	3.1
1994-95	2,647	0.2	1,754	-0.8	890	1.3
1993-94	2,641	1.6	1,767	3.8	879	2.7
1992-93	2,600	10.2	1,793	8.7	856	7.8
1991-92	2,359	3.4	1,567	3.3	794	-2.3
1990-91	2,281	-3.7	1,518	-2.1	813	-7.7

revenues per person in Florida, but even after adjusting for inflation, Floridians paid 22 percent more per person in taxes in 2001-02 than in 1990-91, and inflation-adjusted taxes per person have more than doubled since 1970-71.

The far right columns of Table 2 show inflation-adjusted sales tax revenues per person, and reveal that sales tax revenue has grown faster than total tax revenue. Inflation-adjusted sales tax revenues rose from \$813 per person in 1990-91 to \$1,010 in 2001-02, and were 9.1 percent higher in 2001-02 than five years earlier. Growth in sales tax revenue is in excess of inflation and population growth. The last half of the 1990s showed double-digit

percentage growth in inflation-adjusted sales taxes per person, and stronger growth in the last half of the 1990s than in the first half. The clear message is that Florida's revenues are growing faster than population growth and inflation, and that Florida is not facing a revenue crisis.

Table 3 gives the same dollar figures for the revenue sources as Table 2, but also shows the percentage increase from the previous year. Because revenues fluctuate from year to year, the results are less consistent than when looking at growth over five-year periods. Total state revenue growth was relatively strong last year at 4.3 percent, but the year before revenue grew less than 1 percent

after adjusting for inflation and population growth. Revenue growth actually declined in 1996-97 after adjusting for inflation and population growth, and had a substantial decline of 3.7 percent in 1990-91, which was a recession year. Over time Florida's revenues have shown strong growth, but some years are tighter than others.

The same lesson comes through when looking at total tax revenues. After adjustments were made for inflation and population growth, these two measures were up a meager 0.5 percent in 2001-02, and showed a 2.4 percent decline in 2000-01. Sales tax revenues declined by 1.5 percent in 2001-02 after adjusting for inflation and population growth and were virtually unchanged in 2000-01. Looking farther back, sales tax revenues declined 7.7 percent in 1990-91—a recession year—and declined again by 2.3 percent in 1991-92. In the following year, 1992-93, there was a robust increase of 7.8 percent in sales tax revenues, but those revenues were not available to ease the downturn two years earlier.

Reviewing Florida's revenue history, it is apparent that state revenues have been keeping up with Florida's growth over the long run, and have been growing more rapidly than inflation and population growth. Inflation-adjusted revenues per person in Florida were 25 percent higher in 2001-02 than they were 10 years earlier, total state tax revenues were 18.3 percent higher, and sales tax

revenues were 27.2 percent higher. But looking at the year-to-year increases, it is also apparent that revenues increase more in some years than in others. Looking at Florida's recent revenue history, revenues have always been higher each year than in the previous year, but when the economy turns down, revenue growth sometimes does not keep up with inflation and population growth.

Tax Policy in a Tight Budget Year

The 2003-04 budgetary year is shaping up to be a tight one. In November 2002, revenue forecasts were adjusted downward by \$232 million for 2003-04. The sluggish economy will continue to place a burden on expenditures in areas such as Medicaid and other welfare programs, and mandates such as the recently passed class size amendment will require some funding attention. These factors have caused some legislators to look for ways to increase taxes to fund these citizen demands. In addition, there may be a call to look again at reforming the sales tax after the amendment the legislature put on the ballot last year was removed by the courts. The first thing to recognize when considering the revenue side of Florida's state budget is that its current revenue structure will allow state government expenditures to grow along with Florida's economy.

Should Florida Increase Its State Taxes? People should answer yes to this question only if they believe that state government expenditures


should take a larger share of the state's income. A look at Florida's revenue history shows that over the long run, the current revenue structure will more than keep up with the state's economic growth, so tax increases will lead to an increase in government's share of Florida's economy.

In the short run, with personal incomes negatively affected by the economic downturn, it is both unfair and poor policy to increase taxes. It is unfair to ask Floridians whose incomes are already hurt by the economic downturn to turn over a larger share of their incomes to the state, and it is poor policy because higher taxes will delay the recovery. An economic downturn requires some belt-tightening not only in the private sector but also in the public sector. If the state spends all it can during the good years, it should not expect to keep up its spending growth during the lean years. Furthermore, even with a tax increase now, unless Florida's spending patterns change, the state budget will be similarly impacted during the next recession. The solution to recession-induced revenue downturns is not to raise taxes during the recession: it is to spend less during the prosperous years.

Should Florida Reduce Its State Taxes? Lower taxes lead to more economic growth, and a reduction in taxes now will both help the eco-

nomical recovery and create more long-term growth. The remarkable growth in state revenues shown in the above tables came not from higher tax rates, but from the growth of the private sector of the economy.

A healthier private sector leads to more economic growth, which produces more tax revenues and enhances the fiscal health of the public sector. While the legislature will understandably be focused on the short term when it considers the budget this year, a longer-run view would suggest that lower—not higher—taxes would be the best policy for enhancing the state's fiscal health.



It is folly to think that government can satisfy the demands of citizens who want taxpayers to buy them something.



Conclusion

Some people question whether Florida's tax structure can generate sufficient revenue to satisfy the demands placed on state government, but government can never raise enough revenue to satisfy all the demands for government expenditures. The government gives away much of its output or sells it below cost, and in this situation, people are always going to have insatiable demands for government programs. It is folly to think that government can satisfy the demands of citizens who want taxpayers to buy them something. The legislature's job is to sort through those demands, fund the ones that are socially beneficial, and reject those that are simply

demands for private benefits funded at taxpayer expense.

During a recession, government revenue growth slows, and if the state spends all the revenue it raises during prosperous years, it will not be able to sustain that level of spending growth during economic downturns. That is the situation the state faces for the 2003-04 budget year. But Florida has fared better in the recession than have many other states. Both employment and state revenues have continued to grow, partly because Florida's policies are less burdensome to business and commerce than policies in some other states. Florida should retain and build on those policies that have made the state prosperous.

A review of Florida's revenue history shows that the budgetary problem the state faces in 2003-04 is not a revenue crisis but a spending crisis. Revenue growth has been—and continues to be—strong, considering national economic conditions. Florida's legislature needs to make some tough

decisions to hold the line on spending. Tax increases would be counterproductive both in the short run to the economic recovery and in the long run to the state's fiscal health. ❧

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Endnotes

¹These figures are from *Florida Consensus Estimating Conference, Revenue Analysis FY 1970-71-2011-12*, vol. 18, Spring 2002, Table 1.1, p. 7. The total state budget, measured by appropriations, is larger than the total revenue figures in the table because some expenditures are financed by borrowing, because of double appropriations, and because of some carry-forward money. Double appropriations occur when money is appropriated from one fund into another and then spent from the second fund, and is counted both times in total appropriations.

²All data are from *Florida Consensus Estimating Conference*, Spring 2002, cited in the previous footnote. Total revenues are from Table 1.1, and sales taxes and total taxes are from Table 1.8. Adjustments for inflation and population growth are made by using the same inflation and population figures used in Table 1.1 of that volume.

³All dollar figures in Tables 2 and 3 are adjusted to year 2002 prices.



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