

THE
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OF THE JAMES MADISON INSTITUTE

Fall 2007



**Florida Property Taxes:
Dropping Like a Rock?**

THE JAMES MADISON INSTITUTE

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Founded in 1987 by J. Stanley Marshall, The James Madison Institute is a non-partisan policy center dedicated to advancing the free-market principles of limited government, individual liberty, and personal responsibility.

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THE JOURNAL OF THE JAMES MADISON INSTITUTE

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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 individual responsibility.

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MESSAGE FROM THE PUBLISHER

J. STANLEY MARSHALL

One of the pleasures of serving as publisher of this *Journal* is the opportunity I'm given to relate to some of the ablest people in the broad realm of public policy. Some are involved professionally in education, some in government, others in the legal profession, and still others in business. They all have an affinity for the written word and are skillful in employing words to shape public policy. They may take pleasure in the act of writing, as authors often do, and several have used words to good effect in the speeches they've made to important groups, for example to committees of the Florida Legislature.

It's occurred to me that *Journal* readers might want to know more about our writers than the by-lines we attach to the titles of their articles and the brief author notes at the end. Randall Holcombe is one of the authors we've called on frequently, and that makes him an easy choice for a short biographical sketch in this issue. He's also a personal friend of

several of us at the Institute headquarters and a professional colleague of long standing. His proximity as a Tallahassee resident has made him someone we call on frequently for ideas and direction. The article on Florida's property tax problems in this issue is representative of Dr. Holcombe's influence on the work of this Institute, and it also reminds us of the messages he's delivered over many years to Florida legislators on this subject.



Randy Holcombe came to my attention during the first few months in the life of JMI when, as a professor of economics at Auburn University, he was asked to join our first Research Advisory Committee. He was then being courted by the Department of Economics at Florida State University (FSU), where efforts were underway to fill a vacant faculty position with a strong public choice scholar. He came to FSU in the fall of 1988 and what ensued was a strong, continuing role at JMI.

Professor Holcombe earned his Ph.D. at Virginia Tech, where he studied under James M. Buchanan, a Nobel Prize winner. His bachelor's degree had been earned at the University of Florida (UF)—with honors, of course. He was also a member of UF's track team—the sprints, of course.

He served as President of the Public Choice Society and of the Society for the Development of Austrian Economics. He was a member of Governor Bush's Council of Economic Advisors from 2000 to 2006. Dr. Holcombe has held numerous leadership positions in economics—editorial board member, contributing editor, adjunct scholar and advisory board member to numerous organizations throughout the United States. He has been awarded a number of prizes and awards including the Undergraduate Incentive Teaching Award at Florida State University.

In publications, Dr. Holcombe has authored ten books and more

than 100 articles in professional and academic journals. His latest book, *From Liberty to Democracy: The Transformation of American Government*, was published by the University of Michigan Press in 2002.

Mrs. Randall Holcombe—that's Lora—is also an economist. She's the mother of the three Holcombe sons, talented boys with a variety of interests. Ross, the eldest, is in his second year at the New England Conservatory of Music where he's majoring in trombone performance. Lora also holds a Ph.D. in economics; she worked for JMI for about a year several years ago; she has taught at several universities and is now a full-time faculty member at Florida State.

This short bio of the Holcombe family is presented here to give readers of *The Journal* some familiarity with a man—a couple, really—who have given generously of their time and talent for nearly all of our 20 years—and we're hoping for at least 20 more. ❧



Worthy Words

“The invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents.”

— JAMES MADISON



FROM THE EDITOR'S DESK

TALLY THE COSTS OF THE 'GREEN' STAMPEDE

ROBERT F. SANCHEZ

President Bush's critics have chastised him for what they claim is a lack of candor and courage. Their complaint: He hasn't told the American people about the full cost of the war on terror, nor has he demanded that we "sacrifice" to pay for it.

(In their lexicon, of course, "sacrifice" means burdening us with higher taxes, bigger government, and—to hear some tell it—reinstating the military draft, which these critics no doubt hope will rekindle a wave of antiwar protests on the nation's college campuses.)

Ironically, however, some of Mr. Bush's harshest critics are guilty of a more glaring lack of candor and courage: They haven't bothered to warn the public about the high costs of the policies they're advocating in the name of countering "global warming."

Those costs may well include significantly lowering Americans' standard of living, weakening our nation's competitiveness in the global marketplace, causing frequent interruptions in our supply of elec-

tric power, the rationing of some energy sources, and paving the way for utility bills and gas-pump prices likely to cause a sticker shock that makes the current uproar over taxes and property insurance pale in comparison.

Yet anyone raising questions about those costs—or about the basic dogma being propagated by the global warming alarmists in academia, the mainstream media, and Hollywood—is attacked with fervor worthy of the Spanish Inquisition.

Skeptical scientists, for instance, have been shouted down at scholarly conferences and shunted aside on college campuses. Indeed, the mere suggestion that global warming may not be occurring at the rapid rate the alarmists claim—or that it may be partially or wholly the result of solar flares or some other cause besides human activity—is derided as heresy.

Worse, skeptics such as the noted climate scientist and hurricane expert William Gray of Colorado State University are often accused of ulterior motives and conflicts of interest. For instance, if a contrarian study is funded by, say, an energy company or a think tank that receive funding from any "suspect" corporation or non-profit group, it is immediately dismissed as less than credible, no matter how carefully researched and documented.

Not surprisingly, however, nobody seems to have thought about the potential conflicts of interest among the political activists, environmental zealots, grant-hungry scientists, and media pundits who are discovering

symptoms of global warming wherever they look.

Somebody should. Consider, for instance, the hidden agendas and potential for conflicts of interest involving some of the key groups:

► **Political liberals:** The Great Depression is long gone—despite the New Deal, not because of it. The Cold War with the Soviet Union has been sent to history’s dustbin—thanks in part to Ronald Reagan and despite the appeasers in the so-called “peace movement.” Therefore, big-government liberals in search of a cause have eagerly embraced global warming as their latest rationale for increasing government’s size and its intrusiveness into the economy and into people’s lives.

► **Researchers:** Suppose you’re an entomologist who has devoted your life to studying, say, the dung beetle. Then suppose a prominent politician suddenly announces to the world that the dung beetle was the key to human survival. And not just any politician: Al Gore, whom Hollywood had recognized with an Oscar and an Emmy and whom left-leaning Scandinavians had awarded the same Nobel Peace Prize that they had previously presented to the Palestinian terrorist Yasser Arafat. Given that situation, you’d be cheering with the same enthusiasm as the meteorolo-


gists, oceanographers, and other scientists who now have visions of immense research grants and expense-paid trips to Antarctica and the North Pole. Then again, there could never be conflicts of interest in academia, could there?

► **Environmental zealots:** For organizations such as the Sierra Club and others, the global warming scare is the best dollar generator since the days when they were busy demonizing Ronald Reagan’s Interior Secretary James Watt. Fanning the hysteria of an uninformed public misled by the pandering politicians and mainstream media will keep the donations rolling into their plush headquarters—and keep their well-paid lobbyists busy pushing their agenda in the halls of


Congress and state legislatures.

► **Mainstream media:** A few years ago, media pundits were warning us about global cooling and nuclear winter. Now it’s global warming and a sudden rise in the sea level. With a herd mentality worthy of sheep if not lemmings, journalists hoping to get published are trying to insert a global warming angle into every story, from hurricanes in Florida and poverty in Africa to recipes for Thanksgiving dinner.

► **Hollywood:** In the absence of a royal family to keep the tabloid press amused, the United States



“A few years ago, media pundits were warning us about global cooling and nuclear winter. Now it’s global warming and a sudden rise in the sea level.”



has celebrities from sports and entertainment. Education? Training? Expertise? Not necessary. All that's needed for these clueless celebrities to create the illusion of speaking with the authority of a doctor, a lawyer, or a learned professor is a trip to a movie studio's costume department and a script with no big words.



It's easy to watch this march of folly with wry amusement, but the stakes are too high to ignore it. Wrecking our economy and lowering American's standard of living has serious consequences. Indeed, many Americans may suffer hardship and deprivation as a result of politicians' desire to bask in the spotlight of public approval.

Therefore, it is important to point out that many of the policy choices being touted in the name of counter-ing global warming have a steep cost. The James Madison Institute plans to do just that in a study examining these costs. It should be a sobering antidote to the toxic policies being pushed by politicians and their Hollywood pals. ❧

Editor's Note:

The Journal welcomes readers' letters via e-mail or "snail mail." Complete contact information is listed inside the front cover of each issue.



**INSURANCE ARTICLES
EXPOSED BAD POLICIES**

TO THE EDITOR:

The summer issue of *The Journal* contained two articles on the state's mishandling of the property insurance market. Those article should be required reading for every taxpayer in Florida.

The articles, "Rebuild Florida's Damaged Property Insurance Market" by state Rep. Dennis Ross of Lakeland, and "The Silent Spring: Environmentalists Oddly Quiet In Insurance Debate," by state Rep. Donald Brown of DeFuniak Springs, clearly illustrate what happens when we try to resolve serious public policy issues with political rhetoric.¹

The private market, with its private capital, is discouraged from competing in the market and is thereby replaced with debt on the backs of taxpayers. As Rep. Ross's article noted, "With Citizens (Property Insurance Corporation, the state-run insurer) and the CAT fund, the State of Florida is not selling insurance, because it has none. Rather, it is selling debt, backed by assessments to Florida taxpayers."

Legislation passed in special

session in January and additional legislation passed in the 2007 regular session reversed the long-awaited, necessary reforms that were absolutely necessary and essential to restoring a competitive private market. These critical public policy reforms were abandoned in favor of political appeasement. Political promises were made in the 2006 campaign season to lower property insurance premiums without regard to the impact, both present and long into the future, of artificial price fixing.

As a result, political promises were kept and politicians claimed victory that they hope to cash in for votes. Unsuspecting Florida taxpayers need to fully understand the shell game that was pulled on them as the political maneuver sets them up for millions and millions of dollars in new taxes to pay for these political promises.

Perhaps most dubious about the political fixes unleashed upon taxpayers is the fact these political fixes continue to feed the disease that causes insurance premiums to rise most notably the continued building and development in high-risk, coastal areas of the state that are most vulnerable to the damaging effects of hurricanes.

The political fixes passed in the 2007 legislation, forces residents in lower risk areas of the state to continue to subsidize the cost of insurance for those who continue to choose to live in the more risky coastal areas of Florida.

Rep. Brown, who has the ability to break down complex issues with easy-to-understand, everyman examples, gives us another gem with his use of the Hummer and Prius subsidy. In his example, the state decides that big sports utility vehicles, Hummers, a substitute for insurance, should be made artificially cheaper. To do so, the state elects to tax owners of more fuel-efficient Prius automobiles. Owners of these hybrid vehicles are substituted for the state's taxpayers who do not live in more risky, coastal areas.

We are left to only ponder what the Prius owners would do if they had to pay a tax so other motorists could buy Hummers for less. Conversely, we are left to wonder how big the outrage will be when the next big storm hits, and every homeowner, every automobile owner, and every business liability policy in the state is taxed to pay for the deficits in Citizens and the CAT fund because a political promise was made to artificially lower rates for those who chose to buy big, expensive Hummers.

GARY LANDRY
Vice President
Florida Insurance Council
Tallahassee, Florida

¹ When the January 2007 Special Session passed a bill reversing the reforms of 2006, only Reps. Brown and Ross voted against it. By the time of the 2007 Regular Session, however, more than 20 other House members had joined with Reps. Brown and Ross in opposing the state's intrusion into the private market.

WHY FLORIDA NEEDS PROPERTY TAX LIMITS

BY RANDALL G. HOLCOMBE

Introduction

Property tax reform has been a hot topic in Florida over the past several years. To see why, one only needs to look at how much local property tax revenues have increased recently. From 1996 to 2001, total property taxes collected in Florida—adjusted for inflation and population growth—increased by 7.6 percent. From 2001 to 2006, total property taxes—adjusted for inflation and population growth—increased by 79.9 percent. Adjusting for population growth, property taxes grew a little faster than overall inflation from the 1996-2001 period, and then skyrocketed from 2001-2006. No wonder taxpayers are screaming for reform.

Why Is There a Problem?

The root of the problem of prop-

erty tax increases lies with the way in which property tax bills are calculated. Property taxes are calculated as the millage rate (tax rate stated in terms of the property's value) times the assessed value of the property. This could be stated as a formula: Tax Bill = Assessed Value x Millage Rate.

(This ignores the homestead exemption and the "Save Our Homes" limitation on homestead property, discussed below.)

Looking at the formula, if the tax rate (millage rate) remains constant, in a hot real estate market if the value of a property goes up, its tax bill also goes up by the same percentage unless local governments lower their millage rates. If the property's value goes up by 50 percent, the owner's property tax bill goes up by 50 percent. If the property's value doubles, the owner's property tax bill doubles.



What has happened since 2001 is that as property values have escalated during the real estate boom, local governments have lowered millage rates only slightly, so property tax bills have been skyrocketing as property values have risen. The average millage rate in Florida was 20.72 mills in 2001, and fell to 18.47 mills in 2006, just a slight decline in the tax rate during a booming real estate market. That is why property tax collections rose 79.9 percent after adjusting for inflation and population growth.

Taxes are the price we pay for government goods and services. From a simple fairness standpoint, in a rising real estate market, it appears unfair to charge people more for those services just because their property values went up in a booming market. As a result of increasing property tax bills, some property owners found themselves financially stressed to the point where they could no longer afford the taxes. The result has been pressure to reform the system. In the midst of all this, many voters are unaware of how substantial the property tax increases have been, because if they live in an owner-occupied home they have been sheltered from these increases.

The Impact of Save Our Homes

In 1992 Florida voters approved the “Save Our Homes” (SOH) amend-

ment to Florida’s Constitution. The amendment limits the growth in the assessed value of homestead property for tax purposes to three percent or the rate of inflation, whichever is less. The SOH amendment was a reaction to property taxes on homesteads that were rising so fast that

they were threatening to tax people out of their homes in the early 1990s. Despite numerous criticisms of SOH—many of them valid—the amendment accomplished what it intended, and Floridians living in homestead property have been protected from major increases in their property tax bills.

Homestead property consists of owner-occupied homes that are the owners’ primary resi-

dences. SOH covers only homestead property, and only takes effect once the owner moves in. Vacation homes of out-of-state residents, second homes of Floridians, rental property, and commercial property are not covered by SOH. The protection SOH provides to homesteaders is not extended to anyone else. That is one of the criticisms levied against SOH, and it hits renters especially hard. Owners of rental property have to cover their costs in the rent they charge, which means that property tax increases on rental property show up as higher rents to the renters. Renters tend to have lower incomes than homeowners, so higher



“As a result of increasing property tax bills, some property owners found themselves financially stressed to the point where they could no longer afford the taxes.”



income Floridians benefit from SOH, but lower-income Floridians are less likely to be protected. SOH tends to shift Florida's property tax burden from the rich to the poor.

Another inequity that SOH creates is that recent home buyers, who bought at higher prices than long-time residents, can end up paying substantially more in property taxes than their neighbors who live in nearly identical houses. While this is a problem, at least those home buyers knew what their property taxes would be in advance, and once moving in will enjoy the SOH protections against future increases.

Perhaps a larger problem with SOH over the longer run is that because voters are disproportionately homeowners, they are insulated from the property tax increases that other property owners bear when hot real estate markets increase the assessed value of property. That lessens the political pressure to reform the system. One illustration of the way this political pressure plays out is the constitutional amendment the Legislature voted to put on the ballot for a vote in January 2008. That amendment would have lowered the property taxes of homestead property by raising the homestead exemption, lowering the taxes of people who are already protected by SOH, but would not have addressed the substantially-increased tax bills on non-homestead property that saw such huge increases since 2001. It is worth at least a mention that if that amendment had passed, new property owners would no longer be

protected by SOH, so the one protection homesteaders have had since the early 1990s that actually worked would be eliminated.¹

What Is the Problem?

Several problems with Florida's property tax structure have been identified by critics. One is that because a property owner's tax bill is determined by the tax rate times the assessed value of property, in booming real estate markets local governments can receive huge revenue increases without changing their tax rates, because of the increases in assessed values. In this decade, local governments have cut their tax rates only slightly, resulting in very large revenue increases, with minimal accountability for the taxing governments. They do nothing, and more and more money comes in. The problem is, tax revenues automatically go up in booming real estate markets unless local governments aggressively cut rates, and local governments have chosen instead to passively collect and spend their windfall revenues.

A second problem is that property owners find that their tax bills can escalate substantially and unpredictably. Property owners can take measures to control their costs in many ways, but the substantial tax increases they face in rising real estate markets are burdensome, and out of their control. A third problem is that SOH creates an inequity because recent purchasers of homestead property pay more in property taxes than long-time owners, because recent owners bought at a higher price.

Solutions

If the previous section has correctly identified the problems, those problems can be solved by implementing five reforms aimed at property taxes and local government.

1. Roll back assessed values for tax purposes to their 2001 values. If this rollback is viewed as too large, increase those assessed values by a constant percentage to produce a new assessment.

The 2007 Legislature implemented a rollback and cap on local government expenditures, but it applied to total property taxes collected by the jurisdiction, so all property owners would receive the same reductions. If inequities grew after 2001, because assessed values rose but homestead property was sheltered from the bulk of the tax increases by SOH, the Legislature's rollback of all taxes preserves those inequities. The inequities that developed since 2001 are removed if assessed values are rolled back to their 2001 values. If this is viewed as too much of a cut, then increase all assessed values by a constant percentage. For example, make current assessments for tax purposes equal to their 2001 values plus 17 percent (which is the cumulative percentage increase in the Consumer Price Index from 2001 to 2007).

2. Cap future increases on the assessed value of all property for tax purposes to 3 percent or the rate of inflation, whichever is less.

This would extend the SOH

protections to all real estate in Florida, not just homesteads.

3. Keep the cap on taxable assessed value with the property when it is sold. Buyers would then pay the same taxes on the property as the sellers would have paid had they not sold.

Following this idea, "portability" of the property tax limitation stays with the property rather than with the property's owner. If the caps were designed as in (1) and (2) above, people moving from one home to another, rather than taking the SOH benefit with them, would get the benefit already attached to the property they are buying. Both buyers and sellers would benefit.

4. For tax purposes, assess new construction so that its assessment for tax purposes is equivalent to existing property with the same market value.

For example, within a jurisdiction, if houses with a market value of \$300,000 have an assessed value for tax purposes of \$200,000, then a new house selling for \$300,000 would have the same assessed value for tax purposes of \$200,000. This would treat new construction equitably relative to existing property.

5. Cap total local government expenditures so that they can grow no faster than the sum of local population growth plus inflation. Any increases beyond this cap would have to be approved by the voters in a referendum.

Items (1)-(4) would effectively cap

the growth in property assessments, but millage rates could be increased, or other sources of revenue could be used to increase expenditures. This provision would assure taxpayers that holding the line on property taxes would not cause local governments to increase taxes and fees elsewhere to get more revenue, unless voters gave their direct approval.

Conclusion

Escalating property tax burdens in Florida since the beginning of this decade have resulted in a substantial backlash. One result was the legislation passed in June 2007 that rolled back and capped the growth of local property tax revenues and created a proposed constitutional amendment—subsequently invalidated by the courts—for voters to consider in January 2008.

Meanwhile, Florida’s Taxation and Budget Reform Commission, which convenes every 20 years, is meeting now and can put amendments on the November 2008 ballot. One or more

amendments dealing with property taxes are likely to emerge from that Commission. In addition, a number of citizens groups are trying to take matters into their own hands by collecting signatures for their own constitutional amendments. This provides some background for where we stand today with regard to property tax reform. With citizen discontent and reform possibilities coming from many sources, Floridians should not be surprised if substantial changes are made in the design of our property tax system in the next few years. ❧

Dr. Randall G. Holcombe is DeVoe Moore Professor of Economics at Florida State University. His achievements are described at greater length in this edition’s Message from the Publisher.

Endnote

¹At the time this is being written the legislature’s proposed amendment has been struck from the January ballot by the court due to confusing ballot language, but that decision is being appealed, so whether the amendment actually will be voted on in January is at this point uncertain.



Worthy Words

“The tax collector must love poor people—he’s creating so many of them.”

– BILL VAUGHAN



“What the government gives, the government can take away, and once it starts taking away, it can take more than it gives.”

– SAMUEL GOMPERS





ELECTION 2008: EASIER (OR TOUGHER) FOR FLORIDA VOTERS?

BY SUSAN A. MACMANUS

“in-teg-ri-ty”: uncompromising adherence to moral and ethical principles; soundness of moral character; honesty.¹

“hon-es-ty”: truthfulness, sincerity, or frankness; freedom from deceit or fraud.²

It is getting harder and harder for Florida voters to feel confident that they have gotten “the truth” about candidates and proposed constitutional amendments. Campaigns start earlier; mud-slinging, too. Deep pockets (often difficult to identify) fund television, radio, and direct mail ad campaigns designed to tell only part of the truth. A growing number of web-based blogs and YouTube videos make no pretense of providing facts; ideologically-intense

rhetoric and character assassination are more often their norm.

Voter turnout is the casualty, especially when the election season seems endless, as does the number of negative ads. Witness turnout in the 2006 gubernatorial election; it was the lowest in over 40 years (see Figure 1), following a campaign that started in early spring rather than in late summer. But that is only half the story of the frustrations facing Floridians as we head full steam into

the 2008 election.

Florida's electorate has become more politically competitive. As shown in Figure 2, the gap between registered Democrats and Republicans has narrowed.

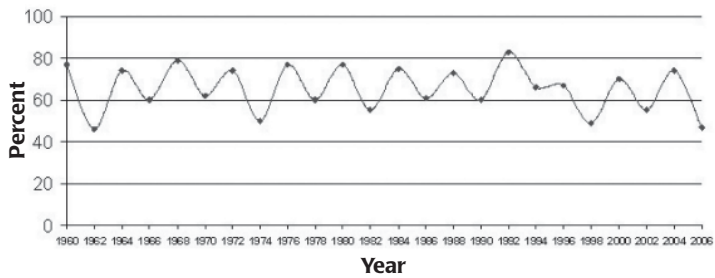
Consequently, nearly every proposed change to the state's election laws now evokes a partisan-based reaction. Each party calculates whether the change will increase or decrease turnout among its likely supporters. The result? Florida voters are constantly

subjected to conflicting claims about the impact of everything from acceptable voter eligibility verification techniques to changes in polling place locations. In general, each party accuses the other of trying to rig (or steal) the vote. It is not a healthy situation for our democracy.

To many, the 2008 election is beginning to seem like the latest reality show. The influence of "pop culture" on elections is nothing new; candidates and campaign strategists alike turn to hit television shows

Figure 1.

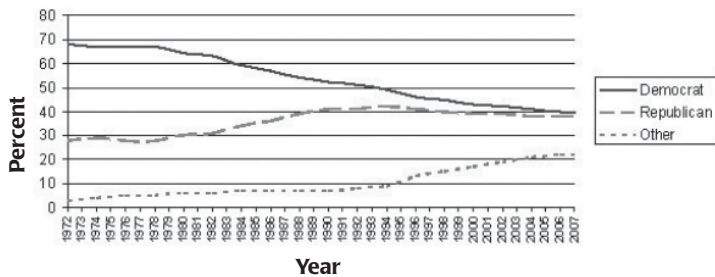
General Election Voter Turnout: 1960-2006



Source: Calculated from data available from the Florida Division of Elections.

Figure 2.

Voter Registration in Florida: 1972-2007



Source: Calculated from data available from the Florida Division of Elections.
Note: 2007 data are as of July.

to gain insights as to how to reach casual voters.

Reality shows feature people willing to go on national television and do anything for a little attention and adoration. The shows glorify strategic decisions, one-upmanship, photos of people in the most embarrassing of situations, and a willingness to sell out friends or partners just to win. The thrill comes from seeing someone you think is undeserving banished from the show. There is little concern for the truth about a participant; it is all about strategy,

not content. A considerable portion of the press coverage to date reflects the reality show mentality: name calling, “mouthy” spouses, vicious, tasteless ads on You Tube, “analyses” by body language specialists, and so forth. The growing tendency of Americans to select their news based on the perceived ideological bent of a specific media outlet (print or electronic) makes it easy to believe “their preferred media” tell the truth, while the others lie.

But sometimes, the truth is elusive, even for those who seek it. Such is the plight of voters in 2008 as independent advocacy groups (“527s”) can spend as much money as they wish saying whatever they like about particular candidates, parties, or issues. Count on these “shadow” groups to do what the candidates dare not do in 2008. But don’t count on the average voter being able to discern the difference between party-, candidate-, or independent group-sponsored ads, whether they appear on television, radio, or via direct mail. The U.S. Supreme Court has ruled that state election laws cannot outlaw these free-speech activities, regardless of voter discontent with them. Thus state election reforms have focused more on

regulating registration and voting, candidate and party activities, and voting equipment.

Election Reform: An Ever-Moving Target

Florida’s Legislature has been heavily involved in election reform in nearly every legislative session since the 2000 election. The sweeping reforms passed by the legislature in 2001 were the most extensive among all the states, according to the National Conference of State Legislatures.³ With each subsequent election (2002, 2004, 2006), the Legislature has reformed various aspects of the state’s electoral system.⁴

The election reform bill passed in 2007 – CS/

HB537 – made some 75 specific changes.⁵ Many of these changes were major shifts in policy affecting election officials, political parties, individual candidates, and the voters themselves. These reforms affected every phase of election administration – registration, candidate filing and reporting, campaign contributions, campaign advertisements, political party operations, counting and recounting of ballots; data reporting formats to be used by election supervisors; expanded responsibilities for the Department

Campaign Strategists Borrow from Pop Culture to Reach Casual Voters

- ▶ *American Idol*
- ▶ *Survivor*
- ▶ *Amazing Race*
- ▶ *Extreme Makeover*
- ▶ *Armed & Famous*
- ▶ *Supernanny*
- ▶ *Deal or No Deal*
- ▶ *The Apprentice*
- ▶ *Dancing with the Stars*
- ▶ *America’s Funniest Home Videos*

of State to include authorization of ballot on demand and rules for audit procedures and forms. The bill outlawed touch-screen voting machines; reformed the petition process; altered the responsibility and penalties for the registration of voters by third party organizations; permitted qualified minors to pre-register to vote when they reach their 17th birthday or receive a valid Florida driver's license, whichever occurs earlier; allowed earlier canvassing of absentee ballots; restructured the role and authority of the Florida Elections Commission; and changed candidate qualifying dates. The same bill also moved the Presidential preference primary to January 29, 2008, exempted persons seeking federal office from the resign-to-run law; moved up the qualification period for many state, county, and special district offices; and laid out more specific rules for contributions to political committees and committees of continuous existence.

While the major premise of these reforms is that they will improve the election system, the changes have made it more confusing for some voters and increased the burden on election officials to educate their staffs, poll workers, candidates, and the voters. Broward County alone will have to train some 6,000 poll workers to use the new optical scan (Marksense) voting equipment it has purchased to replace the old touch screens.⁶

Moreover, it is becoming increasingly difficult to recruit poll workers

because older workers often quit following a major revamping of election laws. Education and training of new poll workers costs money. So a big question heading into the 2008 election is whether the legislature will *adequately* fund voter education and poll worker recruitment and training.

The 2007 Legislature appropriated \$2 million to be distributed to the state's 67 Supervisors of Elections⁷ but for federal election activities only.⁸ It amounts to 19 cents per registered voter — calculated using 2006 registration figures that are already out-of-date. The sum is less than it has been in the past at a time when education and training demands are at their peak, and the number of lawsuits being filed against election officials is on the rise.

Unfinished Business

Despite many changes in Florida's election laws in recent years, there are still some concerns (and disagreements) as to whether current laws on the books have sufficiently protected the integrity of the system. The following questions still loom large as we head into what will surely be a highly competitive election in the Sunshine State.

Integrity of those registering others to vote. Who is registering voters and how are they regulated? The integrity of the electoral system starts with the methods and motives used by persons/groups registering others to vote. This whole issue is still somewhat unsettled in Florida

in spite of numerous attempts to address it either legislatively or via the courts. The fact remains that in the past, some groups engaged in registering voters did not turn in the registration forms they collected in either a timely or accurate manner, which effectively disfranchised these potential voters. Citizens have a right to expect individuals or groups that violate registration procedures designed to expand the electorate to be punished. The uncertainties that currently exist need to be cleared up before the 2008 election.

Voter eligibility. Are ineligible persons registering and voting? Noncitizens? Imposters using someone else's identity? Persons who are also registered to vote in another state? And how do we check for these violations? The whole controversy of what is an acceptable form of voter identification has not been resolved and is headed for the U.S. Supreme Court. (The 2007 bill passed by the Legislature eliminates employee badges or IDs and buyer's club IDs from being used at the polling place as a form of identification.) And why is the form of identification required for absentee voting different from that required of persons who vote at a precinct? Inconsistencies breed contempt—and lawsuits.

Absentee balloting. Many election system analysts see absentee balloting as the primary venue for voting fraud. There is still an uneasiness about the ease with which a "helpful" individual can ignore the vote

choices of mentally- and physically-impaired voters and instead vote their own. Polls taken by The Collins Center for Public Policy, Inc., after recent elections also show that voters believe there is more opportunity for fraud in the absentee balloting process than in voting via touch-screens or optical scan machines.

Voting equipment. After much debate, the state has abandoned touchscreen (direct recording electronic or DRE) voting machines. The 15 Florida counties with touch-screens⁹ must replace them with optical scan machines by August 2008—in time for the regular primary election. (They will not be used in the January 29, 2008 presidential preference primary.) Supporters of the switch see optical scan machines as more "tamper free" than touch-screens and as offering a paper trail in the event of the need for a recount. But a study by the Brennan Center for Justice has concluded that both DRE and optical scanner systems can be tampered with.¹⁰ The same study concludes that neither type of machine can totally eliminate poll worker errors, programming errors, defective tally service software, machine breakdowns, or other mechanical problems. And voters will have to be educated on how to use these new machines as well. (Approximately 54 percent of the state's registered voters live in these 15 counties.)

Already there are concerns about the new optical scan machines. The sight-impaired community wants to

know how their newly-gained access to a secret ballot via the touchscreen machines will be restored using the optical scan machines. Under laws to take effect July 1, 2008, Florida counties are not required to have an optical scan machine that the disabled can use without assistance not later than 2012. Meanwhile, the provision is for counties to let disabled voters cast their ballots using an optical scan with or without assistance or a touchscreen machine without paper through the 2010 election.

Other perceived downsides to the new machines are surfacing:¹¹ (1) no warning about “under-votes” or contests in which voters fail to make a choice; (2) no ballot review in three of the four optical scan systems approved for use in the state; (3) the potential for bottlenecks at the scanners in each precinct; (4) concerns that there are no guarantees that someone will not tamper with the scanner at the precinct level. Optical scan supporters downplay these concerns... but they still persist.

Recounts and audits. While paper ballots make recounts possible, there are still questions about audit procedures to be used by the counties to check on the accuracy of the voting equipment. In 2007, the Legislature enacted a new law requiring each county to conduct a post-certification manual audit of the paper ballots cast in randomly

selected precincts (1 percent to 2 percent of all precincts) and a public manual tally of the votes cast in one randomly selected race that appears on the ballot. The law authorizes the Department of State to adopt rules for audit procedures and form, a process that is currently underway. Some voter advocacy groups will be pushing the 2008

Legislature to expand these audits to include more precincts and races. Their fear is that the smaller the number of audited precincts and races, the greater the potential for fraud.

“Their fear is that the smaller the number of audited precincts and races, the greater the potential for fraud.”

Restoration of voting rights to ex-offenders.

Under a rule approved by Gov. Charlie Crist and the state Clemency Board, ex-felons who

have completed their sentences and paid restitution will automatically regain the right to vote. However, those who have been convicted of violent offenses (like murder and kidnapping) still cannot have their voting rights restored without going through a more extensive restoration process. But even non-violent ex-offenders must apply to have their civil rights (right to vote, serve on a jury, hold public office)¹² restored, although it will be done automatically once the form is reviewed by the Clemency Board.

Understandably, these ex-offenders sometimes get angry at county supervisors of elections when they discover

they are not on the voter registration roll. An over-emphasis on rights restoration and an under-emphasis on the process have contributed to these misunderstandings. In addition, there are still questions about the fairness of this rule, although polls show Floridians in favor of the new law. Finally, the possibility of lawsuits in 2008 is real here, too, due to the backlog of persons waiting to have their rights restored.

Petitions and constitutional amendments. The growing tendency of parties and interest groups to use constitutional amendments as turnout mechanisms has prompted state legislatures, including Florida's, to tighten up petition signature gathering procedures. And past evidence of dishonest attempts to gather signatures prompted the Legislature to lay out a process whereby petition signers may revoke their signatures. This process has already evoked some confusion and threats of lawsuits. Another problem that remains is the differing requirements for legislatively-proposed constitutional amendments and those put on the ballot via the citizen initiative process, the Taxation and Budget Reform Commission, and the Constitutional Revision Commission. A poll taken in 2004 by The James Madison Institute and the Collins Center for Public Policy, Inc. revealed that a high percentage of Floridians think the wording of amendments is biased and that proposed amendments are the work of deep-pocketed special interests.

All these looming questions likely

mean that the Florida Legislature will engage in some more election reform in their Spring 2008 session in time for the August primary and November general elections.

Complexities Yield Confusion

Floridians will have their work cut out for them in separating reality and rhetoric, and truth from fiction throughout the 2008 election cycle. The challenges stem from: new election reforms (some of which remain controversial and/or unfinished); internet and wireless communication technologies and formats that make fact-verification almost impossible; virtually unchecked, unregulated independent advocacy groups; and a barrage of 20- or 30-second ads with almost invisible sponsorship information and selective use of statistics.

These trends make the education and training roles of the state's election administration officials all the more important in 2008. But their job, like the voters', is getting more complex and litigious by the day. The bottom line is that conducting elections in the 21st Century is a difficult job, especially in a diverse, highly competitive state like Florida. ∞

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HOMETOWN DEMOCRACY AMENDMENT: A SUREFIRE WAY TO CAUSE MORE ELECTION-DAY HAVOC

BY RYAN HOUCK

“Let’s just pass it and fix it later.” Florida Hometown Democracy panelist and top donor Joe Redner hung his hopes on this particular argument at a recent *Tampa Bay Business Journal* debate on the proposed Hometown Democracy constitutional amendment. At best, Mr. Redner’s comments reveal a serious misunderstanding of the constitutional process. At worst, they are reflective of the cavalier disregard so many Hometown Democracy proponents have demonstrated for Florida’s future.

Hometown Democracy replaces a planning process with a political process. The amendment—asking voters to decide every change to a local comprehensive land-use

plan—subverts a well-established, open, accessible, and democratic planning process. Hometown

Democracy will mean that every Florida voter—not the representatives they elected—will confront 200 to 300 intricate land-use planning amendments every year at the ballot box. While the supporters of this unworkable proposal have suggested that voters will face only the “important” amendments, such language

is absent in the actual text of their amendment. Indeed, the language itself only casts more doubt as to the workability of their proposal.

Hometown Democracy raises a host of questions about the election process itself. Where will these



new elections fall in the planning process? Experts will disagree. Some suggest it will merely be tacked onto the tail end of the process. Others argue that it would fall somewhere in the middle. Regardless of where it takes place, Floridians can brace themselves for an end to anything remotely resembling “growth management.” Future land-use debates will take place in 30-second sound bites and on the front of political mail pieces. Expert planners and engineers will be relegated to the sidelines and tasked with sending voters the endless pages of technical data they will need to “Vote on Everything.”

Other questions abound. For example, what happens if election results render a county “noncompliant” with new state growth-management laws? How many elections will the taxpayers need to fund each year? Will we need to replace Election Day with Election Week or will every single land-use amendment be packed onto a single, monstrous ballot? What happens if certain parties are dissatisfied with the results of an election and decide to seek redress in the courts? What happens if they win? The answers are likely to cost taxpayers millions of dollars. With no true examples of Hometown Democracy anywhere else in the country, it’s difficult to know exactly how extensive the damage will be. With so many unanswered questions, one thing is for certain: this amendment is bad for Hometowns and worse for democracy.

Voting on everything isn’t cheap.

Every local government in Florida will be burdened with the time and cost of preparing complex voter materials and holding additional elections. Make no mistake: Each of these elections will be expensive. The cost of producing, preparing and mailing ballots will be significant. As the average ballot increases in size and complexity, so, too, do the costs associated with production. With every land-use change now debuting at a voting booth near you, local governments will be forced to pay attorneys to carefully craft a 75-word summary and 15-word title for each amendment. They will also inherit the costs of litigation, should election-day losers decide to sue. And with smarter growth stalled, Florida’s economy will taper off into recession while property taxes skyrocket to pay the new election bills.

With Hometown Democracy, you’ll vote more but count less. Consider the simple fact that cities and counties will be forced to hold additional elections for proposed comprehensive plan changes—not just major projects, but all minor technical changes, too. In the last four years alone, this amendment would have required an average of more than 10,599 additional local items to be voted upon in Florida. In Carrabelle, a small Franklin County town, voters would have decided 840 separate ballot questions in 2006 alone. The disorder will disfranchise Florida’s already-fatigued electorate. Voters will be buried in hundreds of pages of highly technical background

materials on hundreds of separate and often confusing ballot questions. The legalese of proposed comprehensive plan changes, often puzzling for expert engineers and attorneys, will further dampen voter turnout.

I hope you have deep pockets. An unintended side-effect of this amendment is that those most impacted by local land-use changes will also be those least empowered by Hometown Democracy. That's right. Imagine that you and your neighbors decide to support a new hospital, community center, or public park. It's entirely possible that this improvement will require a land-use change. If so, be prepared to dig deep because you will have to wage an expensive political campaign to convince voters on the other side of town that you deserve it. Instead of working with your neighbors, community associations, and elected officials, Hometown Democracy suggests that we should outsource all decision-making to the ballot box where voters living an hour away will hold the most power.

Our nation's founders created a Republic—a representative democracy—and government hasn't become less complex since 1776. And while Hometown Democracy purports to "trust voters," the opposite is true. They don't trust voters to make the right choice when it comes to electing public officials. They don't trust voters to fire the bad ones. Ultimately, the only thing they trust the voters to do is vote "no." In fact, they're counting on it. The special interests behind Hometown Democracy are

bent upon stopping all growth at all costs. So, they hope that the average voter—inundated with countless land-use changes and technical planning data—won't even show up on Election Day. They hope that the small percentage of the electorate that does decide to vote on every land-use change will simply say "no." It doesn't matter if it's for a hospital, a community center, a school, or a road; they just want you to vote "no."

That's one of the reasons some of Florida's most respected environmental leaders refuse to support Hometown Democracy. They know that it will make well-planned growth impossible by locking our communities into a pattern of "build and sprawl." At the end of the day, one size does not fit all and the growth management solutions that are right for Carabelle are not necessarily right for Miami or Coral Springs or Fort Lauderdale. While growth management is a serious problem, Hometown Democracy is far from a serious solution.

Today, the extreme special interests behind Hometown Democracy are rapidly gathering signatures and closing in on the 611,000 they need to place it on the 2008 ballot. This "Vote on Everything" proposal is bad for our hometowns and worse for our democracy. ❧

Ryan Houck is the Political Director for Floridians for Smarter Growth, the statewide campaign founded by Sunshine State community leaders to inform voters on the dangers of Hometown Democracy. He can be reached at rhouck@flsmartergrowth.org.

VOTING? IT'S ALWAYS BEEN A PROBLEM

BY THOMAS V. DIBACCO

If you saw the film starring Robin Williams, *Man of the Year* (2006), well, you know that computerized voting systems were responsible for the biggest error of all time, in this case, the wrongful election of an independent candidate to the White House. But even in real history, voting has always been the subject of confusion and controversy.

For example, the word ballot is derived from the French word, *ballotte*, meaning ball.

From earliest times, balls or similar objects such as stones were used in voting. By the Middle Ages, colored balls were employed, with each voter given two colored balls, one white and the other black. In voting, a white ball would signify agreement with a proposition or candidate, a black ball would mean disagreement. Long after this mode of voting was used, some private

organizations or clubs (such as college fraternities) still had the colored-ball system to make decisions about programs, members, or initiates.



Even in the early Congress in the United States, there were voting proposals that also used balls, specifically marbles. I'm serious. In 1844 and again in 1846, there were two constitutional proposals designed to change the selection of the President from the Electoral

College system to one employing marbles, both eliminating direct voting by the people.

The first scheme would have reduced the terms of U.S. senators to three years, with one-third retiring annually. From the retirees, the president would have been chosen, according to the following method: Each senator, in alphabetical order,

would draw a marble out of a prepared box. The first person who selected the one brightly colored marble would be the next president.

The second proposal was a bit more complicated. Each state would nominate a candidate for the presidency and get to place into a common box as many marbles representing that candidate as the state had senators and representatives in Congress. Thus, if a state had, in addition to its two senators, a total of six representatives, it would place eight all-the-same-colored marbles in the box for its presidential candidate. Then from the grand total of marbles representing candidates from all the states, one would be selected. The candidate whose state's uniquely colored marble was chosen would become President.

Both amendments, however, never got the serious attention of congressional leaders and failed to receive the requisite votes to be sent to the states for ratification.

In colonial America, the New England colonies used the written ballot, an instrument that originated in Europe, but in Southern colonies, most notably Virginia, a citizen would cast his vote orally—*viva voce*—and then would be rewarded with food and strong drink by the candidate for whom he had just voted. But this dual system was controversial and subject to abuse and came to an end in the early 19th

century when political parties arose.

Laws in the various states were changed to permit political parties to print ballots. Party workers often led voters by the hand to the ballot box to make sure they voted the straight party ticket and then handed over money or other favors on the spot.

Not surprisingly, turnout among those eligible to vote was high (as


were a lot of the voters). In Presidential elections, it was 80.2 percent in 1840, 81.8 percent in 1876 and 74.7 percent in 1892. That such impressive figures represented an advanced state of American democracy was doubtful.

Outright fraud, combined with close and contested election results in 1876, 1880, 1884, and 1888, led to widespread


efforts for ballot reform, with the Australian or secret ballot printed and monitored by government the ideal. Originating in 1856 in Australia, the secret ballot was first used in the United States in 1888 in a municipal election in Louisville, Kentucky; the next year Massachusetts adopted the secret ballot, which eventually spread to all states except for Georgia, South Carolina, and Delaware, which were the last to accept the reform.

Still, political parties tried to influence the secret ballot by means of getting the party emblem beside the names of candidates so that illiterate voters could more readily cast a straight party ticket.

The voting machine with mechani-



“Originating in 1856 in Australia, the secret ballot was first used in the U.S. in 1888 in a municipal election in Louisville, Kentucky...”



cal levers pulled by voters, introduced in 1892 in New York State, was believed by reformers to be the end-all to voter problems and fraud. However, it was slow to be adopted by the states. By 1924, only 11 states had authorized the voting machine's use. And *A Dictionary of American Politics*,¹ written by Edward C. Smith in that same year, illustrated both the ecstasy and agony of the invention, the recent offshoots of which, including the punch card and its chads and touch-screen computers, are still the center of controversy today:

"The machines," wrote Smith, "are so adjusted that they refuse to record a vote for two candidates for the same office, and thus they eliminate spoiled ballots.... Each vote is registered as it is cast, and the result may be ascertained at the close of election by simply unlocking the counter compartment.... The chief objections to the use of the machines are the heavy initial expense, the delicate mechanism, which is likely to get out of order, and the fact that the ordinary voter is unfamiliar with their operation.

"On the other hand, they will economize in the expense for printing [for the use of ballot boxes], and [for] the salaries of election officials, and they put an end to expensive recounts." ❧

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Endnote

¹ Smith, Edward C. *A Dictionary of American Politics*, © 1924, A.L. Burt Co.

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- ⁶ Amy Sherman, "Paper Ballots to be Back for August 2008 Primary," *MiamiHerald.com*, posted September 29, 2007. www.miamiherald.com/516/v-print/story/250491.html.
- ⁷ The chairman of each county's Board of County Commissioners is required to certify that the county will match the state funds with a 15 percent county match.
- ⁸ Federal elections are those in which a federal candidate is on the ballot. These funds may be used for: poll worker recruitment and training; mailing or publishing sample ballots; nonpartisan voter education; print, radio, or television advertising to voters; revisions to statewide poll worker curriculum; on-line poll worker training platform; standardizing election results reporting; or other federal election administration activities as approved by the Department of State.
- ⁹ These counties are: Broward, Charlotte, Collier, Hillsborough, Indian River, Lake, Lee, Martin, Miami-Dade, Nassau, Palm Beach, Pasco, Pinellas, Sarasota, and Sumter.
- ¹⁰ Brennan Center for Justice, "The Machinery of Democracy: Protecting Elections in an Electronic World," 2006.
- ¹¹ Howard Troxler, "New Vote Machines, New Set of Problems?" *St. Petersburg Times*, September 27, 2007.
- ¹² The application form is available at county supervisors of elections offices, from the Office of Executive Clemency in Tallahassee, and on the internet at www.state.fl.us/fpc/exclem.html.

A BLAST FROM THE PAST: A CRITIQUE OF FLORIDA'S SYSTEM OF HIGHER EDUCATION

BY CHARLES B. REED

***Editor's Note:** Dr. Charles B. Reed served as Chancellor of the State University System of Florida from 1985 until 1998. He is currently Chancellor of the California State University System. The article below is excerpted from a talk he recently gave during a forum attended by a group of stakeholders in higher education. The event was sponsored by the LeRoy Collins Institute, a nonpartisan organization that "promotes creative solutions to major issues facing Florida and the nation." The Institute, located at Florida State University, is affiliated with the SUS and collaborates with the state's public universities.*

Thank you for inviting me here today. I am extremely honored to be here before this extraordinary group of Floridians. We're here to talk about the future of higher education in Florida. If I have to sum up everything that lies ahead for Florida's system of higher education, I would simply say, "We have a LOT of work to do."

We need to shape up the governance system. We need to improve funding stability. We need to assert



priorities for the future. But before we undertake any of these projects, we have to be clear about what our ultimate objective is. Why do we need to do anything? What is the "prize" we have to keep our eyes on?

The simple answer is that Florida's future economic and social prosperity is at stake. When we have a strong higher education system in place, we graduate more students who go on to more high-wage, knowledge-based jobs, and our economic wheels start turning in high gear. If we allow our higher education system to languish, fewer young people will have opportunities for good jobs, our workforce will stagnate, and our economy will suffer.

Florida, the choice is yours: Do the hard work now and yield dividends for the future, or do nothing and watch all of that potential slip away.

Let me start with the first big task ahead: Governance. Some states have central higher education governing systems, some do not. Most people outside higher education don't think that much about how their state college and university systems are run.

But somehow only Florida has made such a mess of its own governing system that it generated an opinion piece in the national edition of *The New York Times* by Stanley Fish. Try explaining to an outsider that there was a Board of Regents, then the Regents went away, then voters passed a former governor's initiative that brought back the Regents, but they are now called Governors, and we still haven't settled once and for all who has the right to set tuition.

The average person would say "Huh?" to which I would respond, "Exactly."

This is not the kind of governance that will allow us to build quality for the long term. We need to have a cohesive plan in place for a stable, functioning system of higher education in Florida. Having a university system allows us to avoid costly competition and duplication between the universities. It allows us to leverage the institutions' collective

strength in Tallahassee and Washington. And most importantly, it allows us to keep the focus on the educational mission of the institutions and build the kind of quality that establishes a national reputation.

Consider California's three-tier system: It was created by a Master Plan for Higher Education, and it has stood the test of time for nearly 60 years. California is a Nation State—38 million people, the sixth-largest economy in the world, the most billionaires.

We have the 10-campus University of California system, which is governed by a Board of Regents; they serve 12-year terms.

The 23-campus California State University system is governed by a Board of Trustees; they serve eight-year terms. And there's the 109-campus California Community Colleges system, which is governed by a Board of Governors, along with 72 district boards. They are elected in each community college district.

The University of California is unquestionably the best research university system in the world. Ten campuses, one system, six universities in the Association of American Universities (AAU). UC Berkeley didn't hold anyone back.

And the California State University is the best teaching university system in the world: 23 campuses, one system. We have 450,000 students



"This is not the kind of governance that will allow us to build quality for the long term. We need to have a cohesive plan in place..."



and 46,000 employees. We prepare more than 96,000 graduates per year for the state's workforce. Our student body is nearly 56 percent students of color, and about 30 percent are the first in the families to attend college.

We have a single budget for all the campuses, we have common admissions standards, we have the same personnel and bargaining policies for all campuses, and we advocate before federal and state agencies as a single entity. We have a strong Board, and so does the University of California system.

As an independently governed university system, we are not subject to the whims of the legislative process, and we are able to operate relatively free from partisan political intrusion. In 10 years no legislator has ever called me to hire someone or put a building in the budget.

Of course the Legislature and Governor should have some involvement in university affairs. They need to have a level of oversight as representatives of the taxpayers. But political leaders with a partisan agenda can do harm to these institutions, and by association, have a negative effect on the state's economy.

That is why California's university systems—and those in many other states as well—have benefited from strong governing boards that operate with only the best interests of the university in mind. What might be best for one university may not be best for the state.

Florida needs to chart a direction for its universities that is sure and strong, one that cannot be swayed

by political winds and one that will last for generations. A long sustained investment is what is important.

That leads me to the next issue: Stability of the university system. The 2005 Tough Choices report from the Collins Institute said:

“Rough estimates for 2005 place Florida's per capita spending on higher education, public and private, dead last among the states, about 55 percent of the norm.”

Dead last: Now those are words no one wants to hear about our states or our universities. Why is the investment in Florida higher education so poor? Because it is subject to the quirks of the legislative cycle. In Florida, it's often said, we're “cheap, and proud of it.” In the state budget, higher education “gets what is left” after all other needs are met.

That's a good way to manage a budget if you're talking about spending on luxuries. But we cannot afford to make higher education a luxury. Higher education is a necessity for our future economic health.

In California, the UC and the CSU have shaped a long-term financial agreement with the Governor called the “Compact.” Former Gov. Pete Wilson initiated the first Compact, followed by Gray Davis, who called it the “Partnership,” and now we are back to the Compact with Gov. Arnold Schwarzenegger. These agreements all provide specified base budget funding increases as well as defined increases for enrollment growth, and allows the governing Boards to set tuition.

Our current Compact began in

2005-06 and runs through 2010-11. In the first few years, our base budget increased by 3 percent, plus 1 percent non-recurring and enrollment by 2.5 percent, plus an annual capital budget of \$400 million for construction.

Now, our base budget increases are 4 percent recurring plus 1 percent non-recurring, and enrollment growth stays at the 2.5 percent level. The Compact allows the Board to increase tuition up to 10 percent a year. We certainly could use more funding, but the Compact provides the foundation from which we begin negotiations each year. What it allows us to do is to ensure quality, student access, and affordability. It is a floor.

It's especially important in years like this one when the state budget was not passed on time. We know that we have that funding commitment, and therefore we know how many students we can enroll each fall. And the growth will always be funded.

Taken from a broader perspective, the Compact is an up-front commitment to higher education's significant role in the state's economy. It recognizes that a state cannot be great without world-class universities.

California did not become the world's sixth-largest economy on its own. It got there in large part due to the research, development, creativity, and workforce emanating from the University of California and the California State University. The citizens of California and its political leader-

ship support higher education.

In 2004, a system-wide impact study showed that the CSU's direct economic impact on the state of California is \$7.46 billion. For every \$1 the state invests in the CSU, the CSU returns \$4.41, a four-fold return on investment. A similar report on the UC system, completed in 2003, showed that its campuses had a total impact between \$14 billion and \$16 billion annually.

These numbers reflect the fact that universities are cultural, social, and intellectual hubs for their communities and states. They are where innovation starts, knowledge is created, entrepreneurs are born and nourished, and scientific breakthroughs occur. They also create jobs in the industries that make the state competitive on a national and global scale. California's economy recreates itself about every 10 years. Not to mention that when a state invests in its public university systems, the state as a whole receives a lifetime earnings boost. Per capita income is higher in places like California, where a large percentage of the population has a university degree.

In Florida, where funding for higher education has been spotty, per capita income relative to other states is on a downward slope. The Tough Choices report notes that Florida declined in comparison to national and regional averages from 1989 to 2005. That's in part due to a low-wage economy and the lack of high-wage jobs being created.

And that's why the report says: "Florida has a long way to go in

pre-K-12 results, college degree production, and investment in top-level university research before it can put a world-class labor force together with a dynamic high-wage segment of the state economy.”

That leads me to the third major task ahead, which is asserting priorities.

Beyond governance and stability of the university system, we need to pay attention to funding for our universities. I believe that 1) Florida universities are under-funded; 2) Florida tuition is way too low; and 3) Florida’s financial aid system is broken.

According to the Tough Choices report: “Modern facilities and pockets of research excellence notwithstanding, there is a mass production, on-the-cheap character to the university system. With better support Florida would realize a ready payoff in a more qualified workforce and strengthened research capability in universities.”

We need to set a higher priority for better funding and adequate and affordable tuition levels. We also need to look critically at programs like the Bright Futures scholarships. Scholarships should be based on need, not solely on merit. Why are we financing higher education for students from families who can well afford the tuition many times over?

I called it “one of the dumbest

public policies” when it was created when I was Chancellor here. I think today I’d call it “the dumbest, not just one of the dumbest.”

The effect is that Florida’s universities are not educating the growing populations of underserved students, particularly those of color and most needy. It is these students whose educational levels will ultimately

shape the direction of the state’s economy.

Florida must disconnect from the Bright Futures program. You can’t afford it, and it is just plain wrong.

Mark Howard, editor of Florida Trend.com, recently called the Bright Futures program and the Prepaid College Plan, “programs that for all their good intentions, help imprison the system in mediocrity.”

When I was in Florida, I worked hard to elevate

the quality of our institutions. We made big strides like bringing the prestigious High Magnetic Field Laboratory to Florida State University. So when our university system is described with words like “mediocrity,” that hurts.

To wrap up, I believe that Florida has the potential for—and deserves—a world-class system of higher education. I’d like to call attention to these words from the recent Pappas report on Florida’s universities:

“If the state’s economy is to be



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further transformed from its historical emphasis on tourism and many low-wage jobs into a rich and diverse economy ... and takes advantage, through education, of its diverse population ... and connects that economic future to the intellectual capital that exists in its universities, then there will need to be a level of cooperation and stewardship never seen before in the state.”

With that thought in mind, I’m going to take the liberty of proposing that the Board of Governors have a conversation with Governor Crist; that we establish a commission to develop a master plan for the future of Florida’s higher education system. The challenge for such a master plan is to articulate a forward-looking vision, one that recognizes that education is an investment in the future.

- ▶ You need to shape up and strengthen the governance system
- ▶ Improve funding stability
- ▶ Assert priorities for the future

The Pappas report cited the importance of designing an intentional future for Florida’s higher educational institutions. That means a future filled with defined goals rather than uncertainty; of clear direction rather than catch-as-catch-can governance and funding. One university getting something at the expense of all the others, based upon who is Speaker of the House or President of the Senate, will never work!

Our students and all of our citizens deserve the very best effort we can put forward. We hold this state’s future in our hands. ∞

∞

Florida Factoids: ELECTION QUIZ

1: *When was the last time Floridians elected a Governor who was representing a party other than the Democrats or Republicans?*

∞

2: *How many Florida Governors have served a full eight years in office?*

∞

1: In 1916, Sidney J. Catts, who had lost the Democratic Party’s primary, ran in the general election on the Prohibition Party ticket and was elected.

2: Only three: William Bloxham, Reubin Askew, and Jeb Bush. Gov. Bob Graham was elected to a second four-year term but left office four days early to enter the U.S. Senate. Lt. Gov. Wayne Mixson succeeded him. Gov. Lawton Chiles also was elected to a second four-year term, but he died 25 days before the end of his term. Lt. Gov. Kenneth “Buddy” MackKay succeeded him. The Florida Constitution of 1885 did not permit governors to succeed themselves. Governor Bloxham’s two terms were widely separated, with one beginning in the 19th Century (1881-1885) and another extending into the 20th (1897-1901).

BRINGING STABLE GOVERNANCE TO FLORIDA'S UNIVERSITIES

BY ROBIN GIBSON

To appreciate why it's important for Florida to ensure stable governance of higher education now and in the future, it's helpful to take a brief look back at how we got to where we are today.

In 1905, with the urging of Gov. Napoleon Broward, the Florida Legislature consolidated a handful of colleges that had sprung up over the years into three institutions that were to be managed by a Board of Control.

Over the first half of the 20th Century the Board of Control, the members of which were appointed by the Governor, oversaw the development of those three institutions into what are known today as the University of Florida, Florida State University, and Florida A & M University.

Following World War II, higher education institutions in Florida

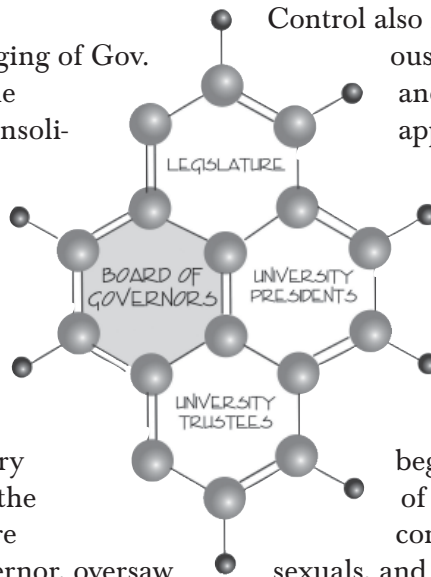
were faced with startling growth as former service men and women enrolled in record numbers with the assistance of the GI Bill. Along with unprecedented growth, the Board of

Control also had to deal with various postwar ideological and political issues that appeared on the university campuses.

Tensions eventually came to a head in 1956 when the "Johns Committee," named for its chairman Sen. Charlie Johns, D-Starke,

began a nine-year search of the universities for communists, homo-

sexuals, and subversive books. The resulting turmoil motivated state business leaders and outside education consultants to publish a 1962 study critical of political interference in university matters. The study led the Legislature to overhaul university governance and create the Board of



Regents in 1965.

Tensions continued. In 1971 the Legislature attempted to abolish the Board of Regents. The 1978 Constitution Revision Commission tried to stabilize the situation by proposing a constitutional amendment granting the Board of Regents constitutional status. The amendment failed. Legislative attempts to abolish the Board of Regents in 1979 and 1980 were unsuccessful. In 1980, a measure to abolish the Board passed both houses, only to be vetoed by Gov. Bob Graham.

In 2000, the Legislature's leadership wanted to establish a medical school at Florida State University. When the Regents wouldn't agree, the Legislature passed a measure abolishing the Board of Regents. This time there was no veto. On June 30, 2001, Florida's 96-year history of a citizen board devoted to the governance of universities came to an end.

The 2001 Legislature's "K-20 Education Code" took effect. It was an enormous tome consisting of 1,786 pages of legislation lumping all of public education together—from kindergarten through the highest reaches of graduate education—and imposing an unprecedented level of regulatory bureaucratic restrictions and dictates. The Legislature retained for itself the ultimate control over education policy and over the operation of universities.¹ Florida became the only state in the union without a citizen board devoted to university governance.

Constitutional Governance Arrives

In 2002, U.S. Senator Bob Graham became convinced that Florida had had enough of the unproductive tension between the Legislature and the state's universities. His assessment was confirmed in an exploratory phase, consisting of public forums, four focus groups, a comprehensive statewide survey, and many campus consultations.

As the result of what was learned, Graham became the inspiration for a widespread citizen movement to amend Florida's Constitution by voter initiative. The movement was chaired by Joan Ruffier of Orlando, a former chair of the Florida Board of Regents. A group of accomplished attorneys drafted a proposed amendment to carry out the will of the people as expressed in the exploratory phase. The amendment placed total and exclusive authority to manage universities in the hands of a citizen board.

As it turned out, the amendment did indeed represent the will of the people at large, who adopted it with a vote of greater than 60 percent. With this action, Florida joined the ranks of those states having university governance as part of their fundamental constitutional law. The amendment now appears in the Florida Constitution as Section 7 of Article IX,² which is devoted to public education.

How Constitutional Governance Works

In drafting the Amendment, the

authors analyzed the governance structures of some of the more distinguished public universities in the country. The most positive results seemed to have occurred in Michigan, Minnesota, and California. Each of these states was found to have a similar form of constitutional governance, which was credited with being a major factor for university achievement.³

The governance structure of each of the three states had two major elements: 1) a public corporation as the system's operating entity, and 2) a governing board that had been given total and exclusive authority to manage its universities. Florida's amendment contains both major elements.

The Public Corporation

The Amendment as adopted states that the "board of governors shall be a body corporate." This means that governance occurs within the well-known corporate form. Like most such constitutional corporations, the individuals on the governing board are the members of the corporation as well as the directors responsible for the management of the corporation's business.

The big difference is that a constitutional corporation, such as the Board of Governors, derives its charter and authority not from the Legislature, but from the people. This makes the corporation the

"highest form of juristic person known to the law, a constitutional corporation of independent authority, which within the scope of its functions, is co-ordinate with and equal to that of the Legislature."⁴ Since the people created the corporation, only the people can alter or abolish the corporation.



"Since the people created the corporation, only the people can alter or abolish the corporation."



The Board, while virtually autonomous in its management of universities, is not a separate branch of government. It resides in the executive branch and has no executive authority outside the scope of its grant. The board is shaped by the Governor's office, which selects most of its membership. Board terms are staggered and longer than a Governor's term. Thus, board members will be the product of more than one chief executive and will have adequate time to acquire competence with respect to their "oneness of purpose and singleness of aim":⁵ to create and sustain the best possible universities for Florida.

Scope of Authority

The electorate empowered the Board of Governors with a broad scope of authority for the conduct of university business. The operative language is deliberately consistent with the court decisions of Michigan, Minnesota, and California and is unmistakably clear. The result is a total, exclusive and self-executing⁶ grant of power to the Board of Gover-

nors, which is granted the authority to “operate, regulate, control, and be fully responsible for the management of the whole university system.”

Florida’s First District Court of Appeal has found, in *NAACP, Inc. v. Florida Board of Regents*, 874 So.2d 635, 639 (2004), based on the “explicit language and the intent of the framers and voters,” that the electorate made a “broad grant of authority” that “transferred” university operation from the Legislature to the Board of Governors, “subject only to the Legislature’s authority to appropriate funds, to confirm the Board’s appointed members, and to set members’ staggered terms.”

Finances

Perhaps the highest level of interest concerns how the Amendment affects the handling of university finances. Florida’s amendment separates the powers of the Board of Governors from the powers of the Legislature. The Legislature retains the power of appropriation, while the Board of Governors is “fully responsible” for managing the business of universities.

The courts of states with constitutional governance have defined the terms and made the distinction between the two responsibilities. “Appropriations” involve the expenditure of state revenues generated by mandatory payments of taxes and fees. “Management” of universities involves the handling of funds generated by voluntary payments in exchange for university services.⁷ Generally speaking, one controls funds from taxation, while the other

controls funds from contract.

In constitutional systems, these voluntary, contractual revenues have included research grants, tuition and student fees, endowments for the university, income from management of university investments, and private monies and contracts. Self-liquidating projects are not subject to legislative control, although the university may be required by the Legislature to report progress of the project.

Appropriations with Conditions Attached

The Legislature is free to impose conditions on appropriated funds, as long as the conditions do not intrude on the Board’s power to manage. Examples of invalid conditions for appropriations have included the requirement that a college be moved to another city and that a university pay wages prevailing in the community. If the use of the funds is conditioned upon something that does not impact university management, then the Board has a choice: either accept the appropriation and use the funds accordingly, or turn down the appropriation.

Tuition

At the time of submission of this paper, both the Board Governors of the State University System and the Florida Legislature were claiming the authority to control and set university tuition. In view of the controversy, tuition probably deserves special mention here.

Students and their families evaluate a number of factors while

deciding which university, college, or other post-secondary educational pursuit is appropriate for them. Eventually, choices are made, agreements are signed, and tuition is paid in exchange for admission and academic instruction. Tuition is a matter of contract.

Setting tuition is therefore inherent in the scope of authority granted to constitutional university governance systems and is a routine practice for such boards. Whether it is the Bylaws of the Michigan Board of Regents, the California Higher Education Compact, or the Minnesota University Charter, the evidence is clear. The practice is so accepted that it rarely has been questioned, and when it has, all the decided cases affirm the authority of the citizen governing board to set tuition.

Other Examples of University Business within the Scope of Authority

At its core, Florida's new university governance observes a simple, well-known standard: the Board of Governors manages and controls the business of the constitutional corporation as authorized in its charter issued by the people. The board is granted freedom from interference by either the Legislature or the courts while operating within its scope of authority. When legislation imposes requirements of statewide application concerning the general welfare, the constitutional corporation must comply with the legislation just as all other corporate and individual citizens must comply.

The same standard applies to the other areas of corporate management, including the areas of policy, police power, rule-making and personnel. Thus, if a law impacts academic policy or the internal control and management of universities, then it is unconstitutional to the extent of the impact. Examples of legislation of general application requiring university compliance include open meetings laws and worker's compensation laws. Examples of intrusion upon university management include direction as to where a university may or may not invest its funds and the amount of a university president's salary.

Opportunity for Florida

Universities are a major economic engine for a given state and a key ingredient for enhancing quality of life. The better the universities, the better the economic engine and the quality of life. At present, the Legislature is having a hard time adjusting to the constitutional transfer of the authority to govern universities to the Board of Governors. And, the Board has been reluctant to assert its authority, fearing retaliation by the Legislature through its power of appropriation.

The sooner Florida settles these issues, the better everyone will be. In the states where the constitutional status of university governing boards has long been recognized as a reality, the boards and the Legislature have met as equals and negotiated long-standing relationships that have lowered tensions and resulted in

substantial benefits for their states and their citizens. ❧

Robin Gibson is a practicing attorney in Lake Wales, Florida. He is board certified by The Florida Bar in the areas of Civil Trial and Business Litigation. He chaired the Law and Drafting Committee that authored the Constitutional amendment that is the subject of this article. He is a former Chair of the Board of Regents of the State University System of Florida.

Endnotes

¹ §1000.02(2)(a), Fla. Stat. (2000).

² The full text of the Amendment reads as follows:

(a) **PURPOSES.** In order to achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens, their communities and economies, the people hereby establish a system of governance for the state university system of Florida.

(b) **STATE UNIVERSITY SYSTEM.**

There shall be a single state university system comprised of all public universities. A board of trustees shall administer each public university and a board of governors shall govern the state university system.

(c) **LOCAL BOARDS OF TRUSTEES.**

Each local constituent university shall be administered by a board of trustees consisting of thirteen members dedicated to the purposes of the state university system. The board of governors shall establish the powers and duties of the boards of trustees. Each board of trustees shall consist of six citizen members appointed by the governor and five citizen members appointed by the board of governors. The appointed members shall be confirmed by the senate and serve staggered terms of five years as provided by law. The chair of the faculty senate, or the equivalent, and the president of the student body of the university shall also be members.

(d) **STATEWIDE BOARD OF GOVERNORS.** The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining

the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law. The governor shall appoint to the board fourteen citizens dedicated to the purposes of the state university system. The appointed members shall be confirmed by the senate and serve staggered terms of seven years as provided by law. The commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the president of the Florida student association, or the equivalent, shall also be members of the board.

³ The Supreme Court of Michigan has reviewed the early history of university governance in that state. The court refers to the time "the Legislature had the entire control and management of the university and the university fund," finding that "[t]he university was not a success under this supervision by the Legislature." *Sterling v. Regents of the University of Michigan*, 68 N.W. 253, 255 (Mich. 1896). The members of the constitutional convention sought to, among other things, place the university "beyond mere political influence." *Id.* Among reports submitted to the convention, "[n]o more forcible argument could well be made than is found in the report for placing the entire control of the university in the hands of a permanent board." *Id.* at 256. The convention created the Board of Regents with a "oneness of purpose and singleness of aim." *Id.* The court references Michigan's Superintendent of Public Instruction, for the conclusion that "[t]he result has proved their wisdom, for the university, which was before practically a failure, under the guidance of this constitutional body, known as the 'Board of Regents,' has grown to be one of the most successful, the most complete, and the best-known institutions of learning in the world." *Id.* Notably, the stated conclusion was then based upon experience of 46 years. Now more than 110 years later, the conclusion is the same.

⁴ *Board of Regents of University of Michigan v. Auditor General*, 132 N.W. 1037, 1040 (Mich. 1911).

⁵ *Sterling v. Regents of the University of Michigan*, 68 N.W. 253, 255 (Mich. 1896).

⁶ *NAACP, Inc. v. Florida Board of Regents*, 874 So.2d 636, 639 (Fla. 1st DCA 2004).

⁷ *Board of Regents of Higher Education v. Judge*, 543 P.2d 1323, 1334 (Mont. 1975).

PRIVATE HIGHER EDUCATION: A KEY TO FLORIDA'S FUTURE

BY ED H. MOORE

In Florida state revenues, real estate property transactions, and enrollments at many of the K-12 public schools districts are down. How best then to get a handle on all these variables while also building a stronger educational foundation for the future of Florida? Clearly we have shifts occurring in the customary flow of Florida's continuous growth, a growth we have grown to depend upon for the economic well being of our state.

Will the reactions and actions of Florida policy makers be solid, stable and organized, or short term and limited in scope? Our times could be viewed as an opportunity for creative, innovative approaches to vexing public policy issues and also as an option for policy makers to reflect on what it is that is necessary to know to make real fiscal policy decisions that will benefit

in the longer term. However the press of time and the need to make fast decisions often limits the ability of lawmakers to stand back and evaluate options.



The National Academy of Sciences, in a whitepaper titled *Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future*, sought to define "the top 10 actions... that federal policy makers could take to enhance the science and technology enterprise so that the United States can

successfully compete, prosper, and be secure in the global community of the 21st Century."

This comprehensive review should serve as a guidepost for efforts by Florida to meet these same challenges. It will take a trained high tech workforce, capable of meeting the scientific and medical challenges of

tomorrow, as well as an instruction force: teachers and professors capable of both advancing the sciences as well as enticing students to enter these complex fields.

Meeting the professional and workforce needs as Florida grows will be a major challenge facing the Legislature in the coming decade. Stimulating the desire for learning and making a quality higher education available to all those who seek knowledge should be a primary goal for Florida.

Florida is ill-prepared to meet these challenges. For example, Florida is short of the clinical settings and credentialed instructors to produce enough nursing and health-related professionals to meet the growing and changing demographics. Florida is currently unable to produce enough math and science teachers at the secondary levels for our public and private K-12 schools. How best then to plan to meet these growing challenges?

How to Start

An assessment of existing resources and a thorough examination of how best to stretch these resources is a good place to start. This requires the inclusion of the Independent Colleges and Universities of Florida (ICUF) member institutions, which currently produce about one-third of all degrees in Florida and a quarter of all teaching degrees. Using the backdrop of the solutions offered in *Rising Above the Gathering Storm*, ICUF has proposed a series of potential programs and actions designed to

meet these needs. The challenge for leaders is how to best engage the academic and research resources of our 28 independent institutions in meeting the state's critical needs.

We must recognize that too often the solutions of yesterday planted the seeds for the problems of today. If we do so, then perhaps the solutions we develop today can avoid creating the problems of tomorrow.

Placing policy makers in the problem-solving mode requires a thorough assessment of all resources to meet these challenges. Only after embracing the quality assets available to us can we then determine which additional assets of similar or higher quality can be created.

Bettering Higher Education in Florida

For decades, Florida has chased after its own growth. This amount of practice should make us better at meeting increased demands. In 2004, Florida had the highest net migration of students of any state in the nation, just as we did with the general population, with almost 20,000 more first-time-in-college undergraduate students entering Florida than leaving the state. ICUF schools serve approximately 41 percent out-of-state students. These students live here for four or more years. They rent apartments, dine out, and in general spend funds just as resident students do, adding to the local economies of each institution. A sizeable number of these out-of-state students decide to make Florida their home. Students

who become residents have earned degrees at no cost to the state, added to our economy, and continue to add to the robust environment with their degrees.

When thinking about the relative costs of higher education, whether for a resident or a non-resident, the national figures on public institutional costs for each education are that tuition and fees make up only 16 percent of four-year public institutions' revenues and 29 percent of private not-for-profit institutions' revenues, excluding Public Education Capital Outlay (PECO) funding. Private, not-for-profit schools build their facilities, largely using their own capital campaigns for this purpose and the ability to bond for construction.

Within the not-for-profit sector of higher education, student tuition is generally supplemented using raised funds. National figures show undergraduate financial aid recipients at private, not-for-profit institutions (86 percent) were more likely to receive institutional grants (those provided by the resident institution) than those at public institutions (43 percent) or at private, for-profit institutions (17 percent). Clearly the private, not-for-profit institutions find a way to make higher education affordable and accessible.

The Pell Grant program is the primary federal financial aid program for students from the lowest family

income brackets. Twelve of the 15 Florida schools with the highest percentages of Pell Grant recipients are ICUF members. ICUF schools are providing opportunities for students who would otherwise be unable to gain access to higher education.

After ramping up enrollment at community colleges, state universities and independent institutions for decades, Florida is not close to being finished. Regrettably, we trail most other large states in many

key higher education measures – an issue that could remain a low priority if higher education were not so central to jobs, income, and business development. The products of higher education – graduates, business services, new knowledge and breakthrough research – all fuel prospering economies and are essential elements of attractive,

vibrant and prospering communities. For Florida, armed with the weapons of relatively lower taxes, excellent geography, and growing markets, investing in higher education should be the state's best economic development strategy.

Unfortunately, recent reorganizations of higher education governance have caused policy makers to focus some of their attention on structural issues in higher education. Available state resources have grown in the past decade, but so has the competition for a share of



“ICUF schools are providing opportunities for students who would otherwise be unable to gain access to higher education.”



these resources.

It is imperative that the state find ways to maximize the allocation of resources for higher education and ensure that funds are being spent in ways that increase the access and availability of programs. It is critical to focus on the projected needs of the state economy by viewing higher education as an engine of economic growth.

In addition to increasing competition for public funding and unpredictable growth cycles, there are several emerging trends that demand flexibility and change. They include:

- ▶ The emerging importance of technology in instruction
- ▶ The aging population and the growth of non-traditional students
- ▶ The need to understand other cultures and languages
- ▶ The weakening national capacity in math & science
- ▶ The societal need to boost access for upward social mobility
- ▶ The unmet demand for graduates in critical fields
- ▶ The need for research to reach the marketplace more rapidly
- ▶ The need to better blend higher education activities with economic needs
- ▶ The increased recognition of the value of a liberal education to foster creative thinking and develop the reasoning skills needed to meet the challenges of the future

Options for Change

Here are a few options that should

be considered by policy makers to better maximize all quality resources to address the issues of the present, while building the best toolbox for constructing the policies for tomorrow.

Funding Options

- ▶ Use the 28 independent colleges and universities of Florida as a low-cost catalyst to trigger higher education competition, production increases and economic growth.
- ▶ Increase the Florida Residents Access Grants (FRAG) to increase bachelor degree access and production at the state's lowest cost, providing proven access for low-income and minority students in Florida.
- ▶ Offer an enhanced FRAG for community colleges graduates who remain on their community college campus to complete their bachelor degrees at concurrent use facilities.
- ▶ The state should promote university centers on every community college campus in the state that would offer a menu of bachelor degree offerings from state universities and independent colleges and universities.
- ▶ Targeted degree strategies should enlist all institutions that currently award those degrees and fully utilize their capacity before initiating new degree programs at institutions at greater costs.
- ▶ Consortiums management of comparably accredited public and private universities, colleges and community colleges should be promoted and rewarded in areas of

the state where regional demand for higher education is growing.

Expanded Options for Education and Careers

- ▶ Align the high school graduation exam with the placement exams used by Florida's community colleges. Make the exams available on a web-based resource that allows students in Florida's middle and high schools to take the practice exams as often as needed to make sure they meet the placement standards. This will increase graduation rates while decreasing money spent on remediation.
- ▶ The FRAG (a tuition equalization grant) and PSAG (need-based aid to private institution students) should be expanded to part-time students and non-traditional students at ICUF institutions.
- ▶ If the state designated Higher Education Development Zones with tuition-assistance inducements and communities providing instructional space and equipment, public and private higher education institutions could deliver classroom and on-line bachelor degree programs to high-need urban and rural communities.
- ▶ Critical-needs scholarships — Florida community college students who had not been eligible for a Bright Future Scholarship after graduating from a Florida high school but complete 30 credit hours toward their AA degrees with a 3.0 GPA and are pursuing a targeted pre-bachelor degree should become eligible for a Criti-

cal-Need Scholarship which mirrors the Bright Futures Medallion Scholarship.

- ▶ Florida should jump ahead of other states by offering students interested in pursuing degrees in science and math education four-year performance and progress driven scholarships. These should apply to students entering the fields of "physical science, life science, engineering or mathematics" with concurrent certification as K-12 science and mathematics teachers.
- ▶ To increase the number of students entering into health care, math, science, or engineering fields, but not pursuing a pathway towards becoming educators, the state should develop a targeted grant for students who pursue physical science, life science, engineering and math bachelor degrees.



ICUF colleges and universities are already a vital component of the fabric of higher education opportunities in Florida. Florida has 11 public universities and 28 public community colleges. All could be better utilized by the state when it comes to meeting identified state needs and priorities. Existing concurrent use and other partnerships should be used as models for replication and expansion. Collaborative efforts among sectors should be recognized, rewarded and replicated.

Nationally, innovation and

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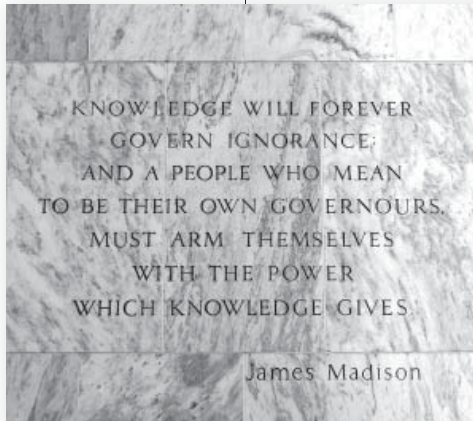
PUBLIC DISCLOSURE: A FOUNDING PRINCIPLE THAT BOOSTS ACCOUNTABILITY TODAY

BY PAT GLEASON

William McKenzie of the *Dallas Morning News* recently commented on the “odd bedfellows” that have teamed up to support and oppose renewal of the federal No Child Left Behind Act.¹ According to McKenzie, the “landmark federal education law is supported and opposed by so many unexpected fellow travelers that you might think Washington has fallen off its axis.”² Business groups and civil rights organizations, he writes, have joined forces to support the accountability measures in the current legislation while the “education lobby” and conservative Republican senators favor alternative approaches to measure student progress.³

The early leaders of our country also disagreed on a variety of issues.

Despite these differences, however, they generally concurred on one principle: The public’s right to know helps to safeguard a strong democracy. For most of their



political careers, John Adams and Thomas Jefferson held widely divergent views on the proper role of the government in the fledgling republic.⁴ However, their writings reflect a mutual apprecia-

tion of the critical importance of the public’s right to information about their leaders.

As Thomas Jefferson observed in 1789, “Wherever the people are well-informed, they can be trusted with their own government.”⁵ John Adams shared a similar sentiment when he said, “And liberty cannot be preserved without a general knowl-

edge among the people, who have a right... an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge, I mean, of the characters and conduct of their rulers.”⁶

James Madison was perhaps the strongest proponent of public access to government proceedings. In 1822, he wrote: “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”⁷ These words, using the older spelling “Governours,” are inscribed to the left of the main entrance of the Library of Congress James Madison Memorial Building.⁸

The Founding Fathers’ advocacy of open government is even more significant considering how difficult it was to transmit and record information in the early days of our country. Government documents were laboriously copied before they were recorded, and travel to a town meeting was often a long and arduous journey. Despite these challenges, our early leaders recognized that in order for our country to flourish, the public had to have the information needed to hold our government officials accountable.

Today, advances in technology have made it possible for government agencies to record and transmit information at lightning speed. However, the sheer volume of infor-

mation stored in electronic databases can make it difficult for members of the public to obtain the information that they need. Many government agencies, perhaps being mindful of the teaching of Madison and his contemporaries, are responding to this need by putting records on the Internet so they are easier to access, and Floridians are taking advantage of these opportunities.⁹

For example, an article in the Summer 2007 edition of *The Journal of the James Madison Institute* uses information from online state audit reports to discuss the types of activities that have been supported by student fees.¹⁰ In fact, nearly all of the articles in that edition of *The Journal* contain source material from state agency websites. The online information provides a vehicle for the public to become informed about governmental agencies and the programs they oversee. This is exactly the type of knowledge that the early leaders of our country deemed to be so critical to the success of a democracy.

The knowledge that the public gains through the operation of strong open government laws directly impacts the ability of the public to hold these agencies accountable. As Gov. Charlie Crist, a longtime proponent of open government, observed in Executive Order 07-01, “To further the goal of maximizing service by the public’s servants, the people of Florida must have access to their state government and their elected and appointed officials...”¹¹

When former Attorney General

Bob Butterworth was appointed to serve as Secretary of the Department of Children and Families, he reiterated Governor Crist's commitment to transparency and open government. Addressing more than 1,200 people attending a conference on children in need, he said: "We must put our energy into cooperation, not controversy, competition, or divisiveness. We have nothing to hide, but more importantly, we should hide nothing."¹²

A few weeks earlier, in testimony before the Commission on Open Government Reform, Department of Children and Families Deputy Secretary George Sheldon stated that the new openness policy has enhanced the Department's public image.¹³ More importantly, however, Sheldon said that the emphasis on transparency has improved employee morale and performance because the agency is able to explain its actions to the public rather than hiding behind confidentiality laws.¹⁴

The benefits of transparency and openness are not restricted to the public sector. Increasingly, the importance of public disclosure in the corporate world has also been recognized. For example, in 2000, the Securities and Exchange Commission [SEC] adopted a new regulation designed to end what the SEC calls "selective disclosure" or the corporate practice of disclosing information to financial market

professionals before releasing it to the public.¹⁵

In explaining the regulation, popularly called Regulation FD, the SEC referred to many reports showing that companies were "disclosing important nonpublic information, such as advance warning of earnings results, to securities analysts or selected institutional investors or both, before making full disclosure

of the same information to the general public."¹⁶ This practice resulted in a "loss of investor confidence in the integrity of our capital markets" because investors "who see a security's price change dramatically and only later are given access to the information responsible for that move

rightly question whether they are on a level playing field with market insiders."¹⁷ The SEC noted that technological developments have made it much easier for issuers to disseminate information broadly, without having to rely on analysts.

When Regulation FD was proposed, the SEC received nearly 6,000 comment letters. The vast majority of the commentators consisted of individual investors who were nearly unanimous in their support of the proposal.¹⁸ However, some writers urged the SEC not to adopt the rule.¹⁹ They said that there was little evidence of selective disclosure and that the SEC should instead encourage voluntary adherence to



"We have nothing to hide, but more importantly, we should hide nothing."



“best practices” of disclosure.

In response, the SEC said it can be difficult to determine the extent of the problem because “incidents of selective disclosure, like insider trading, by definition are not conducted openly and in public view.” However, the SEC’s review of numerous media reports and other surveys of corporate personnel indicated that selective disclosure was not a limited problem.²⁰ The SEC refused to back down and Regulation FD became effective on October 23, 2000.²¹

Even though the SEC and the Department of Children and Families have vastly different missions, both agencies have recognized that disclosure is essential to public confidence in the programs they oversee. Capital markets are healthier if all investors, not just a select few, are able to gain access to the information they need to make investment decisions. If a child is hurt while in the custody of the Department of Children and Families, the public expects the agency to explain what went wrong.

As Governor Crist has recognized, “our public access laws have enabled Floridians to improve government at all levels by providing the information needed to support programs that work and dismantle those that do not.”²² The Founding Fathers would expect nothing less. ❧

Pat Gleason serves as Director of Cabinet Affairs and Special Counsel for Open Government for Gov. Charlie Crist. Jordan Blumenthal, a Florida State University student and an intern in the Office of the

Governor, assisted with research and the bibliography.

Endnotes

¹ McKenzie, William. “No Strange Bedfellow Left Behind Here.” *The Dallas Morning News*, Aug. 21, 2007. www.dallasnews.com.

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³ *Ibid.*

⁴ See generally, Allison, John Murray. *Adams and Jefferson: The Story of a Friendship*. Norman: University of Oklahoma Press, 1966.

⁵ Jefferson, Thomas. “Letter to Richard Price.” Jan. 8, 1789. The Thomas Jefferson Papers. Washington: The Library of Congress.

⁶ Adams, John. *A Dissertation on the Canon and Feudal Law*. Diss. 1765, <http://www.founding.com>.

⁷ Madison, James. “Letter to W.T. Barry.” The James Madison Center. Aug. 4, 1822. <http://jmu.edu>. (Madison, 1865, III, p. 276).

⁸ See, Madison, James. “Respectfully Quoted: A Dictionary of Quotations.” Bartleby. <http://www.bartleby.com>.

⁹ See, e.g., http://www.flgov.com/og_home, listing various records that may be obtained online as well as links to other agency websites.

¹⁰ Ali, Amar. “In the ‘Tuition’ Debate, Follow the Money.” *The Journal of the James Madison Institute*, No. 39, Summer 2007, p. 29.

¹¹ Executive Order 07-01. Jan. 2, 2007, p. 1.

¹² Butterworth, Bob. Address. Florida Department of Children and Families’ Statewide Dependency Summit 2007. Orlando. Sept. 5, 2007. <http://www.dcf.state.fl.us>.

¹³ Sheldon, George. Testimony before Commission on Open Government Reform. Tallahassee. Aug. 23, 2007. Transcript of proceedings, p. 256.

¹⁴ *Ibid.*

¹⁵ Selective Disclosure and Insider Trading—17 CFR Parts 240, 243, & 249. Securities and Exchange Commission. 2000. p. 51716. [Executive Summary] <http://www.sec.gov>. The regulation provides that whenever an issuer, or person acting on its behalf, discloses material nonpublic information to certain enumerated persons (in general, securities analysts), the issuer must make public disclosure of that same information: simultaneously (for intentional disclosures), or promptly (for non-intentional disclosures).

¹⁶ Summary, p. 2.

¹⁷ *Ibid.*

¹⁸ Summary, p.3.

¹⁹ Summary, p.4.

²⁰ *Ibid.*

²¹ Summary, p. 1.

²² Crist, Charlie. “Introduction” to Weitzel, Pete. *The White Paper: A Narrative History of Open Government in Florida*. Tallahassee: First Amendment Foundation, 2006. p. iii.

BOOK REVIEW

THE AGE OF ABUNDANCE

By Brink Lindsey

© 2007 Harper Business, 377 pages

REVIEWED BY J. STANLEY MARSHALL

Florida has produced many talented writers, and the books they have produced have made—and continue to make—valuable contributions to history, both the history of Florida and of the United States. In the winter 2007 issue of *The Journal*, we reviewed an outstanding book by Gary Mormino of the University of South Florida-St. Petersburg, and we now can recommend another outstanding book.

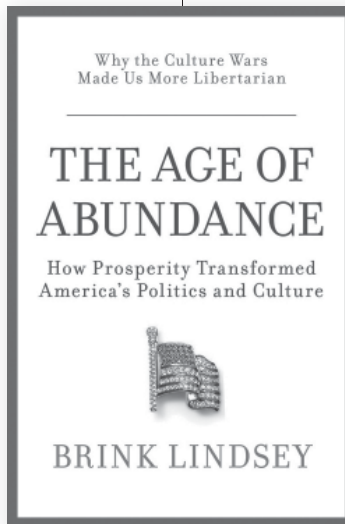
The author is Brink Lindsey, a born-and-bred Tallahasseean whose writings have graced the pages of several respected publications including *The Wall Street Journal*, *The New Republic* and *The Economist*. His latest book, *The Age of Abundance*, is not a history in the usual sense,

but it is nonetheless described by the publisher as an account of “...how and why the contemporary cultures of Left and Right emerged in response to the novel challenges of mass prosperity,” and as “...a sweeping history of postwar America.”

Mass affluence. These two words capture one of the dominant themes of Mr. Lindsey’s book: how it was achieved and how America has adapted to mass affluence in the face of often conflicting ideological themes.

The author describes the antagonisms of the Left toward capitalism along with the views of those on the Right who were stalwart defenders of capitalism and middle class values.

Lindsey describes at length the



enormous task of Americans in overcoming material scarcity. At the center of the effort was the establishment of a mass production economy fostered by a strong Protestant work ethic. Tocqueville, reports the author, wrote that he knew of no country where the love of money had such a grip on people's hearts. But this love went far beyond avarice; it made serious intellectual and moral demands on its followers. From the moral standpoint, it required work before rest, deferred gratification, and frugality and savings before spending.

At the same time, religious enthusiasm was reaching new heights. Early in the 19th Century the Second Great Awakening swept over much of the country with revival campaigns and camp meetings resulting in dramatic growth of the Baptist and Methodist denominations. Lindsey cites the increase in churches: Between 1780 and 1820 Americans built 10,000 new churches and 40,000 more by 1860. American beliefs and values underwent a stunning shift, temperance being one of the guiding Christian virtues. Alcohol consumption dropped from seven gallons per person in 1830 to less than two gallons by 1845. Sexual behavior also assumed a more conservative tone than it had been. While in the late 18th Century in New England, one bride in three was pregnant, by 1840

the number had been reduced to one in five or six.

The author has identified countless changes in the social landscape that contributed to the mass affluence that had become an integral part of the lives of Americans. In business, people learned to trust each other even in the absence of personal

knowledge or family ties. Perfect strangers were willing to stake their money and oftentimes their lives on the assumption that unknown others would do their part and would be true to their word. This made possible large-scale, long-term investments that generated great wealth.

New affiliations were established, based on occupation and shared values, and the gospel according to *Poor Richard's Almanac* became the national creed. A


reputation for clean living became a substitute for personal knowledge; blood and locality were often accepted as the primary basis of trust.

Deep-seated sectional differences gave way to the driving dynamism of the bourgeois Protestant consensus. Once the Southern slave economy was destroyed in the Civil War, the way was clear for vigorous new economic development and dynamic social change in the southern part of the country.

Trade unions were formed to strengthen the bargaining power of



“The author has identified countless changes in the social landscape that contributed to the mass affluence that had become an integral part of the lives of Americans.”



workers with specific skills. Workers also sought to flex their economic muscle by engaging in the political process. In 1847 New Hampshire became the first state to pass maximum hours legislation. The next year Pennsylvania outlawed factory work for children under 12 years of age.

Many of the leading theologians gave up the old dogmatic insistence on biblical inerrancy and sought to re-orient liberal Protestantism toward social activism. Land grants for railroads and protective tariffs for manufacturers were early examples of exploiting taxpayers to fatten corporate profits. A bitter class struggle developed between the defenders of capital on one side, who seemed to believe that the status quo in every particular was divinely ordained; and on the other side stood defenders of labor who endorsed many crackpot utopian schemes and who would have been willing to junk the current system entirely. Truth and error, the author reports, were distributed haphazardly among the contending factions.

The transition to American mass affluence was muddled by a great deal of confusion during periods of transition; the system endured its gravest crisis during the economic catastrophe of the 1930s. In the end, however, the competitive market order survived pretty much intact.

America in the Fifties has been judged harshly for its “shallowness, complacency and conformism.” There followed a rising tide of rebellion that released a nation-wide wave of cynicism and ridicule. The Baby Boomers are described as “the first

generation born into the realm of freedom from scarcity,” resulting in a “generation gap” between parents and children. The abiding theme of the Sixties generation was defiance and rebellion, a generation that found in psychedelic drugs an altered and expanded consciousness accompanied by a reckless disregard for the restraint and discipline essential to success in the marketplace.

In the years after World War II, America reached a new realm of freedom. Growth and accumulation of material launched a century earlier by a spiritually energized Protestant bourgeoisie had succeeded—in material terms at least—beyond its instigators’ wildest expectations, and it extended prosperity to all but the margins of American society.

What’s most remarkable about Brink Lindsey’s book is the author’s ability to synthesize and organize, to draw the deeper meanings from the historical record and from raw data, to glean from a great number and range of sources the penetrating and powerful pathways that most readers of the book search for in the grand scheme of things.

As to what the future holds for Americans, Lindsey tells us that, for the present at least, the ideological center is up for grabs and the new world that Americans have created does not yet appear on the political map. The publisher mentions on the dust jacket “...the secret formula of this remarkable alchemy,” that he says is revealed in the book. Searching for that secret is another reason to read this remarkable book. ∞

PRIVATE *(Continued from page 43)*

creativity often take a back seat to incremental adjustments and the tweaking of policy issues. That is just the nature of the complex beast of government in the 21st Century. It is in our best interest for policy makers to tame the Hobbes Leviathan and to foster the innovation, experimentation and evaluation required in matters of educational policy. We must move beyond tweaking and embrace change and improvement; building models of excellence and providing the research required to determine best practices for program

delivery. Our futures depend upon both the actions we take today and the roadmaps we build for tackling the issues of tomorrow. Friedman may be correct in asserting that “The World is Flat”, but the economic future is filled with hills and mountains that Florida must climb to stay competitive. ∞

Ed H. Moore is Executive Director of the Independent Colleges and Universities of Florida, an organization representing the state’s 28 leading private institutions of higher education.



Worthy Words

“The Constitution is not a panacea for every blot upon the public welfare, nor should this Court, ordained as a judicial body, be thought of as a general haven for reform movements.

– JUSTICE JOHN MARSHALL HARLAN



“It is easy to be tolerant of the principles of other people if you have none of your own.”

– HERBERT SAMUEL



“People are very open-minded about new things— as long as they’re exactly like the old ones.”

– CHARLES F. KETTERING



“I have seen gross intolerance shown in support of tolerance.”

– SAMUEL COLERIDGE





Florida Factoids: CENSUS SENSE

The nation is already gearing up for the U.S. Census of 2010. The Constitution requires counting noses every 10 years so congressional seats can be reapportioned according to population. Florida is expected to gain two or three additional seats as a result of its robust growth.

It wasn't always that way. Florida missed out on the census of 1820 because it was still a Spanish colony until 1821. So the first federal census to tally the population of the new territory occurred in 1830—and recurred every ten years thereafter.

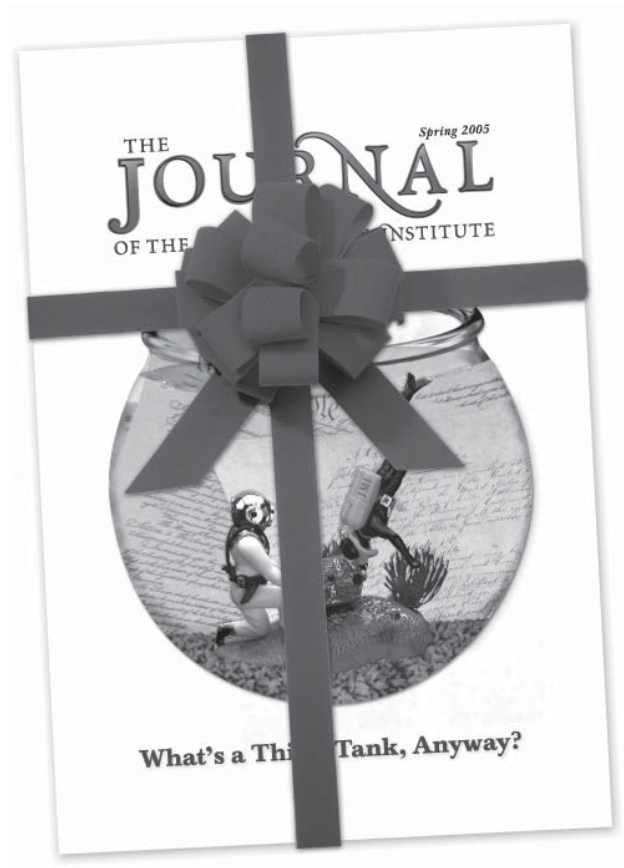
In these 18 previous tallies, five Florida counties have shared the honor of being the state's most populous: Dade (renamed Miami-Dade in 1996) has topped the rankings seven times, Leon five times, Duval four times, and Hillsborough and Alachua once each.

Meanwhile, ten counties have shared the obloquy (or honor, if you're among the anti-growth crowd) of being Florida's least populous county: Dade (yes, that Dade) has been in last place four times; Liberty thrice, including the two most recent counts; Glades, Lafayette, and St. Lucie twice each; and Flagler, Gilchrist, Monroe, Mosquito* and Okeechobee once each.

County boundaries were quite different during most of this period. The 1930 census was the first with the current 67 counties. In that first census back in 1830, however, Florida had only 16 counties and a total enumerated population of 34,730. In the first post-Civil War census (1870), not only was Dade still dead last with only 85 inhabitants tallied, but its borders then extended from the southern tip of the peninsula up the east coast to a point near the site of the present-day city of Stuart.

Dade is the only county that at different times has been both the most populous and least populous—and it has led each category more often than any other county. Chances are, however, the 2010 census will show Liberty County as the state's least populous county for the fourth time, tying Dade in that category. Meanwhile, only one Florida county (Jefferson) recorded fewer people in the 2000 census than it had in the census of 1880—120 years earlier.

*By 1850, the good folks in Mosquito County had changed its name to Orange County. Years later, Walt Disney was undoubtedly glad they did. Promoting a Magic Kingdom in a county named for a bug doesn't fly. 



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