

Amendment 12

Lobbying and Abuse of Office by Public Office Holders

by William N. Spicola and Fred. E. Karlinsky

Fla. Const. art. XI, §2, mandates that a 37-member revision commission meet every 20 years for the purpose of reviewing Florida's Constitution and proposing changes for voter consideration. The current Constitution Revision Commission (CRC) convened in March 2017 and met for about 15 months, traveling the state of Florida, hearing from the public, identifying issues, performing research, and finally proposing eight amendments to the Florida Constitution. The eight amendments proposed by the CRC are on the 2018 General Election ballot for voters to consider.

As we heard from people all across our great state on a variety of issues, we saw a healthy amount of cynicism about people who serve in our state government. While we can think of many fine public servants who entered politics without anything to gain, people who pulled themselves up and staked out their lot in life through years of hard work, there are undoubtedly other examples of people who enter the public arena for what it can do for them. With this concern in mind, the CRC will put Amendment 12 on the November ballot for voters to consider amending ethics in government and ethics in the judiciary.

If adopted, Amendment 12 will prohibit Florida legislators, statewide elected officers, and state agency heads from being compensated to represent a person or entity before the legislature, any state government body or agency, or any political subdivision of the state during office and for six years after vacating office. Local elected officers of bodies with taxing authority may not be compensated to represent a person or entity before the legislature, any state government body or agency, or any political subdivision of the state during office, and for six years after vacating office. There is an exception for representing a person or entity in front of judicial tribunals and administrative actions subject to judicial review, so lawyers will not have to choose between their profession and public service.

Amendment 12 also bars state public officers or state employees from abusing their position to obtain a "disproportional benefit" for themselves, their spouses, their children, their employer, or a business they own or are an officer of. The revision empowers the Commission on Ethics to define "disproportional benefit" consistent with F.S. Ch. 120.

Justices and judges are prohibited from representing a person or entity for compensation before the legislative or executive branches of state government for six years after vacating office. There is an exception for practicing law in front of a judicial tribunal or administra-

tive quasi-judicial proceeding as defined by general law. All these prohibitions would take effect on December 31, 2020, with the Commission on Ethics being obligated to define "disproportional benefit" by October 1, 2019.

There are some fair criticisms of the proposed revision: "What do these extended representation bans really have to do with ethics?" Ethics are moral principles that govern a person's behavior. If a person lacks ethics, no rules, even if enshrined in the constitution, will make that person ethical. What is accomplished by a six-year ban on representation in front of an entity that a person was never a member of? Is a six-year ban more ethical than a two-year ban? What ethical tenet is being achieved by stopping representation in front of bodies or agencies that a person was never a member of?

Those are fair points and questions. But at the same time, we must ask if elected public officials should simultaneously be paid lobbyists for private interests. Although rules cannot make a person ethical, they should define our values as a state and as a people.

Another factor we might consider in this debate is whether it is possible for an elected official to use their position to achieve outcomes for a client they represent by leveraging their power and influence as an elected official or public officer. Should elected and appointed officials use their positions to disproportionately benefit themselves, their families, or their business associates? We believe the answer to that question is obvious.

Those in favor of this revision would tell you that if it is passed, Florida would have the strongest ethical standards in any state's laws or constitution, and Florida would be a national leader in the area of government ethics. These are noble goals, certainly; but does this revision really achieve that end? While these goals may even seem too lofty or unachievable, perhaps the point is to encourage public service for altruistic

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reasons and to discourage it for self-interested reasons — which you could certainly argue would lead to more ethical individuals in state and local government.

A final question to think about on this revision might be that if someone wants a position of leadership in state or local government

truly for altruistic reasons, would it matter if they couldn't be a paid representative or lobbyist now, for 60 years, or six? This question and the other matters raised are the issues that the voters must ponder as they make their decision on Amendment 12 come this November. □

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