

THE HISTORICAL DEVELOPMENT OF EXECUTIVE BRANCH OVERSIGHT AND CONTROL IN FLORIDA: 1838–1968

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ABSTRACT

This article explores the historical context and development of Florida’s constitutional provisions on the organization and authority of the executive branch. The next Florida Constitution Revision Commission is due to meet in 2018 and will consider revisions to any part of the constitution, including changes or deletions to archaic language.¹ Since this article explains the intent, context, and enduring relevance since 1838 of certain terms pertaining to executive power, the topic is timely and useful to any considering constitutional revisions.

From the ratification of the U.S. Constitution to the drafting of Florida’s first constitution in 1838, the nature of the executive power was understood as including not only that authority expressly allocated in the constitutional text but also that authority necessary to meet fully the duties placed on a chief executive, whether federal or state. Vested executive authority thus inherently includes the power and responsibility to supervise and control

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1. FLA. CONST. art. XI, § 2.

subordinate officials unless particular offices are excluded from the chief executive's authority.

State constitutions adopted between 1787 and 1838 vested most governors with the "supreme executive power."² The U.S. Constitution uses "supreme" to distinguish the hierarchy between the Supreme Court and the lower courts, a distinction not needed in the federal executive article because the presidency is a unitary executive. As states vested political power in three governmental branches, and further limited that power through intra-branch divisions, using "supreme" in the executive context intended a similar hierarchal structure for the executive branch of state government, with the governor responsible for exercising executive power not otherwise allocated. This understanding informed the framers of Florida's first constitution and was carried forward by each subsequent iteration to the present version.

Keys to the history of the present executive article are the basic allocation of executive responsibility and power in each version of the Florida Constitution dating back to 1838 and the development of article IV, section 6, of the present constitution, authorizing the reorganization of the state executive branch. Contrary to a recent conclusion of the Florida Supreme Court, the historical record shows the Florida Legislature, as framers of the state constitution, expressly considered and rejected legislative control over executive branch supervision of subordinate officials.

2. See *infra* Part II.E and notes 100, 105, 111, and 113.

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INTRODUCTION

To whom are government officers accountable? This seemingly simple question has been settled in Florida by the adoption of a republican form of government incorporating the principles of representational democracy.³ While the whole political power is held by the people,⁴ as in all other states, Florida vests different aspects of that power in the three branches normative of the American form of government: Legislative, Executive, and Judicial.⁵ Thus, the apparent answer to the question is that government officers are accountable to the people.

More importantly, *how* do the people hold their government officers accountable? Many first learned in their middle school civics classes⁶ that legislators, executive officers such as the governor, and judges are all held accountable by standing periodically for the votes of the electorate. While true, that does not fully answer the question; after all, far more people work in administrative agencies than are regularly elected. How are these folks held accountable for exercising part of the sovereign power of the state, however small? Until recently, that question also had a straightforward answer in Florida, linked in part to the branch in which one served.

Since 1845, the Florida Constitution has vested the people's political power in their government, subject to express limitations.⁷ The legislative power is vested in the Florida Legislature, not individual legislators, consisting of the senate and the house of representatives and is exercised properly by each chamber only by action of the entire membership.⁸ The judicial power is distributed among the specified courts according to express provisions for their respective jurisdictions.⁹ The executive power is vested

3. See, e.g., U.S. CONST. art. IV, § 4.

4. FLA. CONST. art. I, § 1.

5. See FLA. CONST. art. II, § 3; art. III, § 1; art. IV, §§ 1(a), 2, 4; art. V, § 1.

6. Truth be told, some of us date back to the days of the "Junior High School."

7. As early as 1851, the Florida Supreme Court concluded the state constitution was not "a grant of power, but a limitation of inherent power in the legislature, their legally constituted delegates." Unless restricted by the constitution, the legislature generally possesses every power not placed in another branch of government. However, those powers did not include the authority to grant divorce, as that was squarely within the judicial power. See *Ponder v. Graham*, 4 Fla. 23 (Fla. 1851). More recently, in finding the governor lacked constitutional authority to enter into a gaming compact with the Seminole Tribe, the court observed the exclusive power of the legislature included both determining questions of fundamental policy and articulating standards to implement such policies. *House of Representatives v. Crist*, 999 So. 2d 601, 611 (Fla. 2008).

8. FLA. CONST. art. III, §§ 6, 7.

9. FLA. CONST. art. V, §§ 1, 3(b), 4(b), 5(b), 6(b).

in the governor except where express allocation of power is made to another executive entity, such as the chief financial officer.¹⁰ These internal divisions point out a second method to check the exercise of power: in addition to express limitations on the scope of a branch's power, the state constitution divides the power vested within a branch to limit further the exercise of power by any one individual or group.

The Florida Constitution contemplates the employment of personnel within each branch to assist the officers with the execution of their duties¹¹ but expressly creates only a few specified positions.¹² Unless the oversight of an appointed position is limited by the constitution itself¹³ or when provided by law,¹⁴ subordinates appointed by and serving at the pleasure of an authority within one branch remain subject to that authority's direction and supervision. Thus the answer for Florida to the original question, developed from the text of its constitution, is those exercising the power vested in a particular branch are under the authority of the electorate, and subordinate appointees within a particular branch answer to their appointing authority.

Or so it seemed. With its opinion in *Whiley v. Scott*,¹⁵ the Florida Supreme Court eschewed 166 years of Florida's experience with the constitutional establishment of executive authority and inverted the principle of vested, separated powers. The majority opined the governor lacked constitutional or statutory authority to direct or supervise those subordinate agency heads he appoints and who serve at his pleasure when they exercise administrative rulemaking authority delegated by the legislature. Finding no express statute that authorized gubernatorial participation in the creation of policy by most administrative agencies through the rulemaking process, the majority ruled the governor could not

10. FLA. CONST. art. IV, § 4(c).

11. FLA. CONST. art. III, § 14 (the legislature must provide "a civil service system for state employees").

12. *See generally* FLA. CONST. art. III, § 2 (The senate must designate a secretary, the house a clerk, and the legislature an auditor, all to serve at the pleasure of the appointing body, and these positions typically are filled by separate individuals employed by the respective bodies, but the constitution does not prohibit a member of the senate or house from being designated to fill one of the positions for that chamber); *see also* FLA. CONST. art. V, §§ 3(c), 4(c), 16 (The supreme court and each district court of appeal must appoint a clerk and marshal to serve at the pleasure of the Court; in contrast, the clerk of the circuit court is required to be an elected officer).

13. *See, e.g.*, FLA. CONST. art. IV, § 5(a) (the members of the cabinet are elected independently of the governor); FLA. CONST. art. IV, § 6(b) (members of boards authorized to grant and revoke licenses for regulated occupations are appointed for fixed terms and subject to removal only for cause).

14. As authorized by article IV, section 6(b) of the Florida Constitution, the legislature requires senate confirmation for many executive appointments, such as the secretary of the Department of Business and Professional Regulation. *See* FLA. STAT. § 20.165(1) (2013).

15. *See generally* *Whiley v. Scott*, 79 So. 3d 702, 717 (Fla. 2011).

direct or supervise rulemaking by any agency of which he was not directly made the agency head by statute. In other words, short of dismissal, the governor effectively had no authority over the formulation and implementation of policy by specific at-will, appointed executive branch employees. To reach this conclusion the majority adopted a rationale without historical, precedential, or constitutional support.

Whether the *Whiley* opinion has significant, long-term consequences is debatable.¹⁶ If the opinion binds the constitutional office of the governor, the case was not a momentary exercise of political one-upsmanship against the current occupant but a permanent alteration of the relationship between all future governors and their at-will appointees. If the opinion is binding, then the court majority recalibrated the balance of power between the legislative and executive branches by uncovering some previously-overlooked power inferred from the 1968 Florida Constitution, a power enabling the legislature to apportion executive power to be exercised by subordinate administrative officials independently from the governor. The majority acknowledged as much by inviting the legislature to address the conclusions of the decision through statutory amendment.

The legislature accepted the court's invitation. During the 2012 Session, the legislature passed House Bill 7055 (CS/HB 7055)¹⁷ to resolve certain issues arising from legislative delegations of rulemaking authority, including the extent of executive supervisory authority, and the elimination of redundant, unnecessary, or obsolete statutory rulemaking authorizations. The proposed bill thoroughly considered the present text of the Florida Constitution; the historical derivation of the constitutional language; the statutes creating and placing executive agencies under agency heads appointed by the governor or other elected officials; decisions of the court interpreting the extent of executive authority; and the understanding of executive power demonstrated by the policies and actions of prior governors. While CS/HB 7055 prospectively rebalanced the relationship between the governor and other elected officials with those agency heads appointed by and serving at the pleasure of such authorities, legislation alone cannot restore the integrity of the constitution.

This article examines Florida's historical derivation and implementation of the constitutional language defining the relationship between the governor

16. See FLA. CONST. art. V, § 3(b)(8) (authorizing the supreme court to issue writs of *quo warranto*). But see *Whiley* 79 So. 3d at 717 (the Florida Supreme Court withheld the writ and only issued an opinion).

17. Act effective July 1, 2012, ch. 2012-116, 2012 Fla. Laws 116 (passed in revised form as a committee substitute by the house on March 2 and by the senate on March 9, the bill was signed into law by the governor on April 13, 2012).

and those appointed agency heads serving at the governor's pleasure.¹⁸ Tracing the development of the scope of "executive power" from the Federal Constitution, contemporaneous state constitutions, and political authorities, I argue the framers of Florida's constitutions from 1838 through 1968 expressly intended the governor to exercise full control of the executive branch except where specifically allocated to another constitutional officer.

I. THE STRUCTURE OF THE EXECUTIVE BRANCH IN FLORIDA

The structure of Florida's executive branch of government reflects both long-held principles of constitutional authority and contemporary concepts of operational flexibility. Executive branch officers implement and enforce the law through administrative departments organized, and powers delegated directly, by general law.¹⁹ The legislature has a continuing responsibility to monitor and regulate the exercise of powers allotted or delegated to administrative agencies, particularly agency use of rulemaking authority to articulate general policy. Rulemaking is the express authority delegated by the legislature for an administrative agency to adopt binding policy statements implementing or interpreting statutes and are generally applicable to the public.²⁰ Unless otherwise provided by law, rulemaking must be conducted according to the process established in Florida's Administrative Procedure Act ("APA").²¹

The present Florida Constitution vests the "supreme executive power" in the governor,²² using the identical phrase included in each version of the state

18. Significant portions of this material previously appeared in the House of Representatives Staff Analyses prepared for consideration of HB 7055 and CS/HB 7055, culminating in the "Final Bill Analysis." See Fla. H.R. Subcomm. on Rulemaking & Reg., HB 7055 (2012) Staff Analysis 2 (April 16, 2012), available at <http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7055z1.RRS.DOCX&DocumentType=Analysis&BillNumber=7055&Session=2012>.

19. FLA. CONST. art. IV, § 6.

20. FLA. STAT. § 120.52(16) (2013).

21. FLA. STAT. § 120.54(1)(a) (2013).

22. Article IV, section 1(a) of the Florida Constitution states:

The supreme executive power shall be vested in a governor, who shall be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government. The governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices. The governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state.

FLA. CONST. art. IV, § 1(a).

constitution since 1845.²³ This is not the complete executive power because certain executive authority is distributed to the cabinet officers (including the attorney general,²⁴ chief financial officer,²⁵ and commissioner of agriculture),²⁶ entities composed of the governor and two or more cabinet officers,²⁷ or separate entities.²⁸ Other than those departments or entities directly created in the constitution, the legislature may organize the executive branch into no more than twenty-five departments. The constitution requires the legislature to *allot* executive branch *functions* among the various departments and place those departments under the direct *administration* of a specified officer: the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor.²⁹ The constitution does not authorize the legislature to *create* any executive power. Use of the word “supreme” denotes an intended hierarchy of executive branch authority and responsibility. Thus, unless otherwise expressly allocated in the constitution, the ultimate responsibility and requisite authority for exercising executive power rests with the governor.

23. “The supreme executive power” is the precise, identical phrase used since the drafting of the state’s first constitution. *Cf.* FLA. CONST. of 1845, art. III, § 1 (This version is commonly known as the constitution of 1838 for the year in which it was drafted.); FLA. CONST. of 1861, art. III, § 1 (This version incorporated the Ordinance of Secession.); FLA. CONST. of 1865, art. III, § 1 (Proposed after the Civil War to repeal the Ordinance of Secession, this version never took effect.); FLA. CONST. of 1868, art. V, § 1 (1868); FLA. CONST. of 1885, art. IV, § 1; FLA. CONST. art. IV, § 1(a).

24. FLA. CONST. art. IV, § 4(b).

25. FLA. CONST. art. IV, § 4(c).

26. *Id.* § 4 (d).

27. *Id.* §§ 4(e), (f), (g).

28. *See, e.g.*, FLA. CONST. art. IV, § 9 (authorizing the Fish and Wildlife Conservation Commission). *See also* FLA. CONST. art. IV, § 2 (The lieutenant governor is also named in article IV, but no particular authority is distributed to that office).

29. Article IV, section 6 of the Florida Constitution states:

Executive departments.—All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except:

(a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.

(b) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.

FLA. CONST. art. IV, § 6 (this section has not been amended since its adoption).

The executive branch organization authorized in the constitution—leading to the present approach to organizational flexibility—was implemented in 1969.³⁰ The “department” is the principle organizational unit.³¹ The statutes use the term “agency” more broadly; depending on the context, “agency” could mean an officer, official, department, commission, board, or other unit of government.³² The “head” responsible for a department could be an individual or a board,³³ but a “secretary” is specifically defined as an individual, not otherwise named in the constitution, appointed by the governor to head a department.³⁴ Unless otherwise provided by law, agency heads are required to plan, direct, coordinate, and execute the powers, duties, and functions vested in or assigned by statute to the department or other unit of government over which the agency head has responsibility.³⁵ This includes exercising any delegated authority “to adopt rules pursuant and limited to the powers, duties, and functions transferred to the department.”³⁶ Under the constitution, the legislature may provide by law for approval by the Florida Senate or three members of the cabinet before appointment to or removal from a statutorily-created office;³⁷ however, the members of a board authorized to grant and revoke licenses to engage in a regulated occupation must be appointed for fixed terms and may be removed only for cause.³⁸ While the appointment of a secretary to head an agency is subject to senate approval, no such condition has been generally imposed on the governor’s power to remove an appointee.³⁹

The organizational structure of the executive branch developed from the need perceived in 1968 for clarity and accountability in the exercise of constitutional executive power. The understanding about the fundamental nature of that power held by the framers of the 1968 Constitution, including the scope of authority over appointed subordinate officers, in turn, was informed by the historical articulation of executive authority in national and Florida constitutionalism.

30. See generally Ch. 69-106, Laws of Florida, codified as FLA. STAT. § 20.

31. FLA. STAT. §§ 20.03(2), .04(1) (2013).

32. *Id.* § 20.03(11).

33. *Id.* § 20.03(4).

34. *Id.* § 20.03(5).

35. *Id.* § 20.05(1)(a).

36. *Id.* § 20.05(1)(e).

37. See FLA. CONST. art. IV, § 6(a). This provision is generally implemented by statute. See, e.g., FLA. STAT. § 20.05(2) (2013). Removal of officials appointed to an office created by the legislature under does not require such approval and is left to the discretion of the appointing authority. *Id.*

38. FLA. CONST. art. IV, § 6(b).

39. See *id.* See also FLA. STAT. § 20.05(2) (2013).

II. 1787–1846: THE ARTICULATED CONSTITUTIONAL CONTEXT OF THE EXECUTIVE BRANCH

Since statehood, each version of the Florida Constitution reflected the 1787 national Constitution's philosophy of separated powers, including the established and accepted view that good government requires executive powers of significant strength and energy.⁴⁰ Given the development of governmental principles as articulated by the Federalists and the advocacy for more direct democracy—both of which were accommodated within the structures established by the U.S. Constitution—the national experience with executive power during the fifty years preceding the drafting of Florida's first constitution demonstrates a generally-accepted understanding of the broad scope of that authority the people could vest, and limit, through constitutional texts. This common understanding informed the Florida drafters as they prepared the future state's original executive branch article.

A. *The Power of the Federal Executive*

The articulation of granted governmental authority into three branches was not a novel concept springing from the 1787 Constitutional Convention. The members of the Convention drew not only from the principles developed in their respective states between 1776 and 1787 but from Americans' extensive prior experience with exercising political power in general, and executive authority in particular, during the Colonial Period.⁴¹ The separation of powers in the state constitutions of the Revolutionary Period reflected a mature understanding of the need to protect individual liberty by limiting governmental power while also providing mechanisms for effective government.⁴² Whether one argues the U.S. Constitution must be read together with the state constitutions developed from 1776–1787 to fully understand the federal document,⁴³ or whether the language of the Federal Constitution stands on its own, those who framed the document fully understood the nature and scope of the powers granted.

The framers of the U.S. Constitution created a republican form for the national government, noting its authority was derived from the people, dividing the granted powers into three branches: legislative, executive, and

40. THE FEDERALIST NO. 70, at 380–81 (Alexander Hamilton) (Michael Loyd Chadwick ed., 1987).

41. DONALD S. LUTZ, THE ORIGINS OF AMERICAN CONSTITUTIONALISM 98 (1988).

42. MARC W. KRUMAN, BETWEEN AUTHORITY AND LIBERTY: STATE CONSTITUTION MAKING IN REVOLUTIONARY AMERICA 7 (1996).

43. LUTZ, *supra* note 41, at 2, 5, 96–97.

judicial, and making all branches continually accountable to the electorate.⁴⁴ The executive power was vested in the President⁴⁵ but conditioned on certain limitations, such as standing for election every four years and being subject to impeachment.⁴⁶ One potential limitation expressly denied to the Congress was the ability to influence or control the executive branch by manipulating the President's salary. While required to devote full attention to the duties of the office, the President was assured the compensation could not be reduced (or increased) during the term of office.⁴⁷

While enumerating specific powers of the President,⁴⁸ the U.S. Constitution did not expansively define the full scope of vested executive power; the phrasing is similar to the vesting of judicial power in Article III. In a detailed analysis of this issue, one scholar concluded that at its core, "executive power," as understood during the drafting, ratification, and implementation of the U.S. Constitution, meant the power to execute the laws.⁴⁹ The constitutional vesting of that power in the President included the full authority to supervise, direct, and control all subordinate executive officers because these exercised a portion of the law execution power.⁵⁰

The exercise of some enumerated powers was made subject to express conditions, such as requiring the advice and consent of the U.S. Senate when making a treaty with a foreign power or appointing ambassadors, judges, or certain officers. Interestingly, within the executive appointment power was placed the authority for Congress to establish certain offices by law and to place the power of their appointment in the President alone, in the courts, or in a department head.⁵¹ The President had the unconditional authority to require from each officer in charge of an executive department a written

44. See U.S. CONST. pmb., art. I, § 1, art. II, § 1, cl. 1, art. III, § 1; see also THE FEDERALIST NO. 37, at 190 (James Madison) (Michael Loyd Chadwick ed., 1987).

45. U.S. CONST. art. II, § 1, cl. 1.

46. U.S. CONST. art. II, § 4.

47. "The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them." U.S. CONST. art. II, § 1, cl. 6.

48. See U.S. CONST. art. § 2, cl. 1 (Commander in Chief of the military forces and the pardoning power); see also U.S. CONST. art. I, § 7, cl. 2 (the power to veto).

49. Saikrishna Prakash, *The Essential Meaning of Executive Power*, 2003 U. ILL. L. REV. 701, 806 (2003).

50. *Id.* at 819–20.

51. U.S. CONST. art. II, § 2, cl. 2. As Article III on the judiciary makes no reference to subordinate officers normally found within the courts, such as clerks or marshals, the inclusion of Congress' authority to create offices and vest their appointment solely in the courts is a further limitation on the appointive power of the executive.

opinion pertaining to their duties,⁵² to “take Care that the Laws be faithfully executed,” and to commission all U.S. officers.⁵³

The Executive Article enumerated certain powers and expressly conditioned their exercise, such as requiring senatorial approval of executive appointments. The framers used express language to assure the income of the President was not subject to summary change by Congress, recognizing the practical principle that complete control of a person’s livelihood *de facto* made that person much more tractable to the wishes of the person controlling the compensation. Article II makes several references to subordinate executive officers but only creates the position of Vice President; Congress was to create the remaining offices within the executive branch. Although the U.S. Constitution is a limited grant of authority to the national government, the framers found need to further limit the scope of the executive power vested in the President. Not included in these express conditions was any limitation on the President’s authority to direct and supervise those offices—and officials—placed by law within the executive branch.

B. *The Federalist Perspective of the Executive*

During the public consideration and debate in 1788 over the newly-proposed U.S. Constitution, James Madison defined a republican form of government as one that “derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior.”⁵⁴ Central to the preservation of individual liberty from undue governmental encroachment was the division of government into the three main branches.⁵⁵ As Madison explained, this did not infer there would be no interaction between the branches: “[W]here the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.”⁵⁶

Alexander Hamilton’s contributions on the proposed presidency stressed the need for sufficient authority and autonomy (or “vigor”) in the executive to ensure the government properly functioned and fulfilled its operational obligations to the people. He began this sequence of essays by observing:

52. U.S. CONST. art. II, § 2, cl. 1.

53. U.S. CONST. art. II, § 3.

54. THE FEDERALIST NO. 39, at 203 (James Madison) (Michael Loyd Chadwick ed., 1987).

55. THE FEDERALIST NO. 47, at 260–62 (James Madison) (Michael Loyd Chadwick ed., 1987).

56. *Id.* at 262.

Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy.

....

. . . A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.⁵⁷ Hamilton argued the proposed Constitution met the basic requirements for a sufficiently strong executive, particularly the scope of powers apportioned to the President.⁵⁸ Hamilton noted a key factor in favor of a four-year term of office for the President was the interrelationship between the executive's tenure and the stability of the system for operating the government. Because the Constitution placed multiple responsibilities in the executive branch such that the President would be required to delegate some of these functions to subordinates, Hamilton expected these "assistants" or "deputies" would derive their authority from the President's appointment and would be subject to his direct supervision.⁵⁹

Both as to the executive⁶⁰ and the judiciary,⁶¹ Hamilton acknowledged the practical effect of the constitutional provisions requiring a fixed compensation for the applicable term of service. Congress could neither suborn nor control the authority, discretion, or power of the other branches by manipulating their respective incomes. Without such provision the officials of the other branches naturally would be more attentive to the desires of Congress concerning the execution of their own duties, vitiating the separation of powers. "In the general course of human nature, *a power over a man's subsistence amounts to a power over his will.*"⁶² Consequently,

57. THE FEDERALIST NO. 70, at 380–81 (Alexander Hamilton) (Michael Loyd Chadwick ed., 1987).

58. "The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers." *Id.* at 381

59. THE FEDERALIST NO. 72, at 391 (Alexander Hamilton) (Michael Loyd Chadwick ed., 1987).

60. THE FEDERALIST NO. 73, at 396–97 (Alexander Hamilton) (Michael Loyd Chadwick ed., 1987)

61. THE FEDERALIST NO. 79, at 428 (Alexander Hamilton) (Michael Loyd Chadwick ed., 1987).

62. *Id.* See also *State ex rel. Albritton v. Lee*, 183 So. 782, 790 (1938) (Ellis, C.J., concurring). As observed by former Chief Justice Ellis of the Florida Supreme Court:

It would be in vain to declare that the different departments of government should be kept separate and distinct, while the legislature possessed a discretionary control over the salaries of the executive and judicial officers. *This would be to disregard the voice of experience and the*

the initial Federalist view of executive branch authority presumed the President controlled those subordinates appointed to positions without an enumerated term because their continuation in office and receipt of that income was at the President's sole discretion.

C. *1789: The Congressional Debate on Executive Authority*

The scope of the executive power granted—but not conditioned—by the U.S. Constitution was the subject of intense debate in Congress's first session after the Constitution was ratified. Before the House of Representatives was a bill creating the Department of Foreign Affairs; the section describing the duties and authority of the Secretary who would head that department included a clause expressly providing that the official would be removable from office solely by the President. The House of Representatives debated the impact of this clause for four days, first as a committee of the whole,⁶³ then sitting formally as the body.⁶⁴ Passing the House on June 24, the bill was signed into law and became effective on July 27, 1789.⁶⁵

The House debate centered on whether the power to remove the Secretary was inherently part of the executive power vested in the President. The strongest objection to the clause came from those members who argued

operation of invariable principles of human conduct. A control over a man's living is, in most cases, a control over his actions.

Id. (emphasis added).

63. Composed of all members of the House of Representatives, the "committee of the whole" is a parliamentary device used from the earliest days of the House to provide a more flexible means of discussion on a bill than normally afforded under the main rules of procedure for the House. See Committee FAQs, *What Is a Committee of the Whole?*, OFFICE OF THE CLERK OF THE U.S. HOUSE OF REPRESENTATIVES, http://clerk.house.gov/committee_info/commfaq.aspx (last visited Mar. 21, 2014). The committee of the whole is intended to provide a means for broader and more informal debate by the members on sometimes complex issues. See generally MASON'S MANUAL OF LEGISLATIVE PROCEDURE: NATIONAL CONFERENCE OF STATE LEGISLATURES § 683 (2010).

64. See 1 ANNALS OF CONG., 473–608, (Joseph Gales ed., 1834) (debate on the bill for establishing the Department of Foreign Affairs). The provenance summary of the Archives Library Information Center (ALIC) of the National Archives lists the full title as *The Debates and Proceedings in the Congress of the United States with an Appendix Containing Important State Papers and Public Documents, and all the Laws of a Public Nature, with Copious Index 1st Congress to 18th Congress, 1st session . . . March 3, 1789–May 27, 1824; Compiled from Authentic Sources*, and describes the forty-two volume series as "the first attempt to record the daily proceedings in both houses of Congress. This reprint edition is probably as faithful a report of the debates and proceedings as could be compiled after such a lapse of time." U.S. Nat'l Archives and Records Admin., *Library Resources for Administrative History: Debates of Congress*, ARCHIVES.GOV, <http://www.archives.gov/research/alic/reference/admin-history/congressional-debates.htm> (last visited Mar. 22, 2014).

65. Act of July 27, 1789, ch. 4, 1 Stat. 28; see also THE PUBLIC STATUTES AT LARG[E] OF THE UNITED STATES OF AMERICA (Richard Peters ed., 1845) (published by the authority of Congress 1845).

the removal power must flow from the power to appoint and thus could only be subject to senatorial approval. Others noted that if the U.S. Constitution authorized the sole power of dismissal in the President, then the clause was unnecessary surplusage; if the Constitution did not give such power, Congress should not do so because that would act to impair the implied authority of the Senate to approve removals.⁶⁶ Proponents argued the power to remove appointed officers was an essential executive power incorporated within the constitutional grant to the President because the possible circumstances justifying prompt removal of an officer differed greatly from the deliberate process of appointment.⁶⁷

In his first comments during the debate, James Madison, representing Virginia, agreed the text of the U.S. Constitution was the final authority on the issue. He argued the power of removing appointed officers was inherent in the constitutional design for the executive branch because, if the subordinate officers were not responsible to the President, the President could not fulfill the duties of that office to the nation. The power of removal and the consequent authority of oversight by, and accountability to, the President thus prevented the appointed officers from usurping the executive power.⁶⁸ He pointed out that if any power was inherently executive in nature, it was the power to appoint, oversee, and control “those who execute the laws.”⁶⁹ He argued the power of appointment to office was executive; the constitutional requirement of senatorial confirmation was an exception to an executive power normally belonging alone to a chief executive.⁷⁰ Echoing Madison, Elias Boudinot, representing New Jersey, argued the U.S. Constitution never contemplated making the dismissal of subordinate executive branch officers subject to senatorial approval because such could result in the Senate refusing dismissal, thus compelling the President to retain an officer deemed hostile to the policies and actions of the administration. Because the power to remove officers must exist, “it rests on the President alone. . . . [I]nasmuch as the President is the supreme Executive officer of the United States.”⁷¹

Richard Lee, also representing Virginia, observed the general consensus was the U.S. Constitution vested the power of removing subordinate executive branch officers *somewhere in the government*. He argued the vesting of appointment power by the Constitution implied a concomitant

66. 1 ANNALS OF CONG. at 473–74.

67. *Id.* at 478–79.

68. *Id.* at 479–80.

69. *Id.* at 481.

70. *Id.* at 482.

71. *Id.* at 487–88.

vesting of power to remove officers, although not expressly stated in the text.⁷² Also representing Virginia, Alexander White, arguing the removal of executive officers also required senatorial approval,⁷³ interpreted the clause as an attempt by Congress to grant or assume powers not granted by the Constitution, either expressly or by necessary implication. He understood the core argument of Madison and the proponents of the clause: the power of removal under discussion, neither granted expressly in the Constitution nor inferred from its text, arose from the general nature of executive power.⁷⁴

The proponents' key argument for including the clause was the President's constitutional duty to ensure faithful compliance with the laws. The duty of the executive branch to execute and enforce the laws required the President to appoint and act through assistants; by necessity, the President not only should have a choice in selecting those subordinates but sufficient control over them, including the sole ability to remove appointees when required to fulfill the complete duties of the Presidency.⁷⁵ The lack of such power would deprive the President of any meaningful authority to control subordinate appointees, thus rendering the incumbent unable to discharge the responsibilities of office.⁷⁶ Wondering how the President could be responsible for the faithful execution of the laws but lack control over subordinate executive officers, John Vining⁷⁷ rhetorically asked, "[If you] take away [the President's] controlling power, [] upon what principle do you require his responsibility?"⁷⁸ The power to remove subordinate officers—an inherently executive power separate and distinct from the powers of appointment and senatorial approval—was necessary for the chief executive to fulfill all required duties rather than have the executive function encumbered with unwanted or unfit appointees.⁷⁹ In other words, the power to remove was analogous to the power to control.

Madison posited the debate itself had grown past the immediate issue of the ability to remove the secretary of Foreign Affairs and was now framing a "permanent exposition of the [C]onstitution," embracing not only an examination of the powers inherent in the grants to the executive branch but also the interrelationship of the executive and legislative powers, as well as

72. *Id.* at 545.

73. *Id.* at 473.

74. *Id.* at 533–34.

75. *Id.* at 492–93, 561 (statement of Rep. Fisher Ames of Massachusetts).

76. *Id.* at 509 (statement of Rep. George Clymer of Pennsylvania).

77. *See id.* at 494 (confirming John Vining as a Representative of Delaware).

78. *Id.* at 532 (alteration in original).

79. *Id.* at 541–43 (statement of Rep. Theodore Sedgwick of Massachusetts).

principles of constitutional interpretation.⁸⁰ This included whether the powers authorized under the U.S. Constitution were limited only to those expressly stated or whether the text inferred the granting of such additional aspects of the powers allocated to each branch as necessary to fully exercise their respective express authorities and duties. The duty to ensure faithful execution of the laws necessarily implied that the executive exercise such power as required to meet this responsibility. In this context, express constitutional requirements for exercising certain executive powers, such as the requirement for senatorial approval of appointments, were exceptions to the vesting of full executive power in the President. Linking the power of removal to senatorial approval, where not expressly provided in the Constitution, placed the legislative branch in control of a basic executive power in violation of the separation of powers. Madison argued:

[I]f any thing in its nature is executive, it must be that power which is employed in superintending and seeing that the laws are faithfully executed. The laws cannot be executed but by officers appointed for that purpose; therefore, those who are over such officers naturally possess the executive power.⁸¹

As the express duty to ensure faithful execution of the laws required the President to exercise such power as necessary to meet this requirement, interpreting the power of executive removal as residing only in the President affirmed and completed the proper chain of command from the lowest appointee, through the President, to the people. Thus, the language of the proposed clause, together with the principle that the President had sole power to remove appointed subordinate officers, was consistent with the goal of preserving the peoples' liberty.⁸² Removal of appointed officials was a power originally held by the people, granted through the Constitution as being necessary for the effective operation of the government, and vested in the President because that office is the head of the executive branch, not the Congress.⁸³

The clause at issue was retained in the bill by the committee of the whole but removed later by the House before final passage on June 24, 1789.⁸⁴ Madison was unconcerned with this removal because the greater constitutional principles were established by the House debate: the

80. *Id.* at 514.

81. *Id.* at 519.

82. *Id.* at 514–21.

83. *Id.* at 568–69.

84. *Id.* at 599, 606, 614.

power to remove an executive officer was an inherent part of the powers granted to the chief executive and was not expressly limited by the text of the Constitution.⁸⁵

D. *Andrew Jackson and the Authority of the Executive*

Almost forty-five years later, Andrew Jackson expressed an understanding about the scope of executive power very similar to that espoused by Madison during the 1789 debate. Jackson interpreted the constitutional vesting of executive power and imposing the duty of ensuring the faithful execution of the laws as making the President “responsible for the entire action of the executive department, [and] it was but reasonable that the power of appointing, overseeing, and controlling those who execute the laws—a power in its nature executive—should remain in his hands.”⁸⁶

On July 10, 1832, Jackson vetoed the bill passed to recharter the Bank of the United States.⁸⁷ In 1833, he directed the secretary of the Treasury to remove from the bank all deposits of the U.S. Government, premised in part on the impending expiration of the charter in 1836.⁸⁸ When the Treasury Secretary refused to comply, Jackson dismissed him and nominated a replacement who would implement his directions. The Senate objected to this measure by passing a resolution censuring Jackson’s actions as assuming powers not granted by the Constitution.⁸⁹ During this political struggle, in both his written explanation to the Cabinet for the decision to remove public deposits from the bank and his formal *Protest on the Expunging Resolution*, Jackson expressed his understanding that the scope of the executive power included the authority for actions inherently necessary to meet the responsibilities of office.⁹⁰

By statute, the secretary of the Treasury was required to deposit the federal funds in the Bank of the United States or its branches but was authorized to direct the deposits “otherwise” at any time, provided the reasons for such decision were reported immediately to Congress.⁹¹ Jackson

85. *Id.* at 604. See Saikrishna Prakash, *Removal and Tenure in Office*, 92 VA. L. REV. 1779, 1820–32 (2006) (a comprehensive analysis of the historical context and development of the President’s executive power to remove subordinate officials).

86. THE STATESMANSHIP OF ANDREW JACKSON, AS TOLD IN HIS WRITINGS AND SPEECHES 339 (Francis Newton Thorpe ed., 1909) (alteration in original).

87. *Id.* at 154.

88. *Id.* at 261.

89. *Id.* at 331–32.

90. *Id.* at 261, 325.

91. *Id.* at 265.

concluded the statutory directions to the secretary did not remove that department head from the direction, supervision, or control of the President:

Viewing it as a question of transcendent importance, both in the principles and consequences it involves, the President could not, in justice to the responsibility which he owes to the country, refrain from pressing upon the Secretary of the Treasury his view of the considerations which impel to immediate action. Upon him has been devolved by the Constitution and the suffrages of the American people the duty of superintending the operation of the Executive Departments of the Government and seeing that the laws are faithfully executed. In the performance of this high trust it is his undoubted right to express to those whom the laws and his own choice have made his associates in the administration of the Government his opinion of their duties under circumstances as they arise. *It is this right which he now exercises.*⁹²

When the incumbent Treasury Secretary declined to implement the President's directive, Jackson removed him. Viewing this as usurping the authority over public funds assigned by Congress to the secretary, on March 28, 1834, the Senate adopted a resolution censuring the President. Jackson protested the resolution as beyond the Senate's scope of constitutional authority, possibly even compromising its authority to try impeachments, and requested the resolution be expunged from the record.⁹³

Jackson responded to the specific allegations of exercising power in derogation of the U.S. Constitution asserted in the original draft resolution introduced in the Senate on December 26, 1833, noting the final form of the adopted resolution did not allege any acts violating the Constitution.⁹⁴ Drawing support from the 1789 House debate on the President's authority to remove subordinate executive officers, Jackson argued the Constitution did not limit this power primarily because the President remained responsible for their actions. The President derived the power to remove subordinate executive appointees from the grant of executive power in Article II of the Constitution—the same power under which those appointees remained subject to the President's supervision and control.⁹⁵ The Constitution did not authorize Congress to diminish the President's duty to ensure the faithful execution of the laws nor permit congressional delegation of authority to a subordinate presidential appointee to lessen the vested executive authority of

92. *Id.* at 280–81 (emphasis added).

93. *Id.* at 325–60.

94. *Id.* at 325, 338–39.

95. *Id.* at 342, 347.

the President. Jackson concluded, therefore, that the authority and actions of the secretary of the Treasury regarding the Bank of the United States remained subject to the direction and supervision of the President.⁹⁶

E. *Contemporaneous Allocations of Executive Authority in State Constitutions*

The framers of the U.S. Constitution drew from the colonial history of local representation and the experiences of the thirteen states in drafting constitutions creating republican governments.⁹⁷ The constitutions adopted by the original states and those joining the Union before Florida demonstrated a general understanding about the meaning and scope of executive power, effective limitations on its exercise, and the practical need to articulate executive responsibility in order for the government to function.

By 1787, several state constitutions described the authority vested in their governors as “supreme.”⁹⁸ The phrase is not eighteenth century rhetorical surplusage but a succinct description of the hierarchy of executive authority allocated by the particular constitution. The adjective “supreme” notably was not used in the Executive Article of the U.S. Constitution but appears in Article III where the judicial power is “vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”⁹⁹ The word is used later in the text to denote the hierarchal relationship between the Constitution, federal laws, and treaties with the laws of the states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.¹⁰⁰

Where the Constitution addressed a sharing of power, “supreme” was used to show who had the final authority for exercising that power. This was consistent with the use of the term in state constitutions adopted before and after the federal document.

96. *Id.* at 346–47.

97. *See* LUTZ, *supra* note 41, at 97; *see also* KRUMAN, *supra* note 42.

98. *See* MASS. CONST. of 1780, art. I, pt. II, ch. II, § 1; N.J. CONST. of 1776, art. VIII.

99. U.S. CONST. art. III, § 1, cl. 1.

100. U.S. CONST. art. VI, cl. 2.

In the Massachusetts Constitution of 1780, the governor was the “supreme executive magistrate” but did not possess the complete executive power. Massachusetts expressly confirmed all power resided in and was derived from the people.¹⁰¹ The executive power was limited both by constraints on the governor¹⁰² and by allocating executive functions to officers outside the governor’s control.¹⁰³ Use of the word “supreme” did not connote absolute rule but identified the governor as the chief official with final authority for executive branch functions not otherwise limited by the Constitution. This application reappears in the Pennsylvania Constitution adopted in 1790.¹⁰⁴ Although the governor was vested with the “[S]upreme [E]xecutive power of this [C]ommonwealth,” the secretary of commonwealth was appointed for a term concurrent with the governor’s but performed such other duties as the legislature might require by law.¹⁰⁵

A common pattern ensued among the emerging states: their constitutions first vested the executive power inherent in the people and then limited the exercise of that authority. In most instances, the constitution used similar language for the vesting of power in the governor, limited the exercise of full executive power by allocating authority to subordinate officers, and required the governor to ensure faithful execution of the laws.

Kentucky both vested the supreme executive power of the commonwealth in the governor¹⁰⁶ and required that official to ensure faithful execution of the laws.¹⁰⁷ The Kentucky Constitution expressly required the governor appoint an attorney general who was “commissioned during good behavior”—a limitation on the governor’s ability to remove an appointed officer—and who was required to perform such other duties as provided by law.¹⁰⁸ This latter phrase authorized the legislature to define and refine the attorney general’s scope of duties, limiting the governor’s power to direct the proper execution of the laws. A separate limitation was the required appointment by the governor of a secretary of state who retained office for

101. MASS. CONST. of 1780, art. V, pt. 1.

102. The Massachusetts Constitution created an elected council which the governor was required to convene and take advice from in order to take a number of executive actions. *See id.* art. IV, pt. 2, ch. II, § 1; *id.* art. I, § 3.

103. The executive power of appointment and direct exercise of executive authority were diluted by requiring the state senate and house of representatives, by joint ballot, annually to appoint a number of executive officers, including the secretary, treasurer, receiver-general, commissary-general, notaries public, and even naval officers. *See id.* art. I, pt. 2, ch. II, § 4.

104. PA. CONST. of 1790, art. II, § 1.

105. *See id.* § 15.

106. KY. CONST. of 1792, art. II, § 1.

107. *See id.* § 14.

108. *See id.* § 16.

“so long [as he] behave[d] himself well,”¹⁰⁹ very similar to a phrase in the prior Pennsylvania Constitution.¹¹⁰ Similar language appeared in the Tennessee Constitution.¹¹¹

Ohio similarly vested the supreme executive power in the governor¹¹² but created a new constraint on the executive branch. The Ohio Constitution expressly created the secretary of state as a separate officer appointed by joint ballot of both the houses of the state legislature.¹¹³ The executive power was limited both as to appointments (the secretary was appointed by the legislature) as well as to control (the secretary was required to perform such other duties as required by law).

Virtually identical language vesting the supreme executive power in a state’s governor was used by Louisiana, Indiana, Mississippi, Alabama, Maine, Missouri, Michigan, Arkansas, and Iowa.¹¹⁴ Each new state constitution vested the political power of the people in three branches of government and then limited the chief executive’s scope of authority, both by subdividing and assigning executive functions to subordinate officers and by imposing conditions, such as senatorial advice and approval for appointments, on the exercise of the remaining powers.

For example, the Louisiana Constitution expressly provided for the governor to appoint the secretary of state who would perform such other duties as provided by law,¹¹⁵ terms very similar to those in the Kentucky Constitution. The governor was expressly constrained to appoint judges, sheriffs, and all officers established by the constitution with the advice and consent of the state senate; for other offices created by law, the legislature would prescribe the manner of appointment.¹¹⁶ Indiana, Alabama, Maine, Arkansas, and Michigan opted to appoint certain subordinate executive

109. *See id.* § 17 (alteration in original).

110. It made sense to borrow constitutional language from the original states; the language was already approved by an electorate possibly more familiar with the process of establishing a government acceptable to Congress which would have to approve the document drafted by the hopeful new state.

111. TENN. CONST. of 1796, art. II, § 17.

112. “The supreme executive power of this State shall be vested in a Governor.” OHIO CONST. of 1803, art. II, § 1.

113. *See id.* § 16.

114. ARK. CONST. of 1836, art. V, § 1; IND. CONST. of 1816, art. IV, § 1; IOWA CONST. of 1846, art. 5, § 1 (While the Iowa Constitution was composed and adopted after the drafting of the Florida Constitution in 1838–1839, the text provides a bookend to this territorial period because both states were admitted to the Union in 1845–1846 under the practice of the Missouri Compromise); LA. CONST. of 1812, art. III, § 1; MICH. CONST. of 1835, art. V, § 1; MISS. CONST. of 1817, art. IV, § 1; MO. CONST. of 1820, art. IV, § 1; JEREMIAH PERLEY, THE DEBATES, RESOLUTIONS, AND OTHER PROCEEDINGS OF THE CONVENTION OF DELEGATES, 16, art. V, pt. 1, § 1 (Maine, 1820).

115. LA. CONST. of 1812, art. III, § 19.

116. *See id.* § 9.

officers by vote of the state legislature, limiting the appointment power (and the influence) of the governor.¹¹⁷ Maine retained an executive council “to advise the Governor in the executive part of government” and required the council’s advice and consent for certain executive appointments.¹¹⁸ Other states required senatorial advice and consent for gubernatorial appointments¹¹⁹ or reserved to the legislature the power of appointing officers not otherwise established in the constitution.¹²⁰ Arguably the strongest limits on the exercise of executive power were constitutional requirements for the direct election of executive branch officers, completely bypassing the basic appointment and removal power of the chief executive or any legislative control of the appointment process.¹²¹ Each state, however, followed the federal pattern and held the governor responsible for the faithful execution of the laws.¹²²

A number of states also followed the federal model of protecting the independence of the executive branch. Acknowledging that legislative control of finances for the government, including executive branch salaries, could result in undue influence on the exercise of executive powers, many state constitutions of this period expressly required the compensation of the governor could not be increased or decreased during the term of office.¹²³

The constitutionalism of American states developed between 1789 and 1846 provided for vesting in the executive branch the full executive power inherent within the body politic but controlled this authority by a number of limitations, including creating particular offices filled by elected officials

117. ALA. CONST. of 1901, art. IV, § 23 (Treasurer, Comptroller); ARK. CONST. of 1836, art. V, § 24 (auditor, treasurer); IND. CONST. of 1816, art. IV, §§ 21, 24 (secretary of state, treasurer, auditor); ME. CONST. of 1820, art. V, pt. 3, § 1 and pt. 4, § 1 (secretary of state, treasurer); MICH. CONST. of 1835, art. VII, § 2 (treasurer).

118. ME. CONST. of 1820, art. V, pt. 1, § 8; *id.* pt. 3, § 1.

119. ARK. CONST. of 1836, art. V, § 14 (secretary of state); IND. CONST. of 1816, art. IV, § 1; MICH. CONST. of 1835, art. VII, §§ 1, 3 (secretary of state, auditor general, attorney general, prosecuting attorney in each county); MO. CONST. of 1820, art. V, §§ 12, 22 (auditor of public accounts, secretary of state).

120. MISS. CONST. of 1817, art. IV, § 17.

121. IOWA CONST. of 1846, art. 5, § 17 (statewide election of secretary of state, auditor of public accounts, and treasurer); MICH. CONST. of 1835, art. VII, § 4 (county officials); MO. CONST. of 1820, art. IV, § 1 (county sheriffs and coroners).

122. ALA. CONST. of 1819, art. IV, § 10; ARK. CONST. of 1836, art. V, § 10; IND. CONST. of 1816, art. IV, § 14; IOWA CONST. of 1846, art. 5, § 7; KY. CONST. of 1792, art. II, § 14; LA. CONST. of 1812, art. III, § 15; ME. CONST. of 1820, art. V, pt. 1, § 12; MICH. CONST. of 1835, art. V, § 7; MISS. CONST. of 1817, art. IV, § 9; MO. CONST. of 1820, art. IV, § 8 (Missouri also required the governor ensure that the laws be “distributed” as well as faithfully executed.)

123. ALA. CONST. of 1819, art. IV, § 5; ARK. CONST. of 1836, art. V, § 5; IND. CONST. of 1816, art. IV, § 6; IOWA CONST. of 1846, art. 5, § 14; KY. CONST. of 1792, art. II, § 6; LA. CONST. of 1812, art. III, § 7; ME. CONST. of 1820, art. V, § 18; MICH. CONST. of 1835, art. V, § 18; MISS. CONST. of 1817, art. IV, § 4; MO. CONST. of 1820, art. II, § 6; OHIO CONST. of 1803, art. II, § 6; TENN. CONST. of 1796, art. II, § 7.

directly accountable to the people (not the governor) for their tenure, or occasionally by legislative appointment. While the constraints on executive action chosen by state constitutional drafters limited the scope of authority available to any one official, these framers also acknowledged the need for final accountability to the people for execution of the laws and the functioning of government. As the governor had final responsibility for the basic function of the executive branch, the proper or “faithful” execution of law, the governor was expressly acknowledged as holding final, or “supreme,” executive power to accomplish that duty. State constitutional language acknowledging “supreme executive power” in the governor fulfilled James Madison’s argument in Congress that the chief executive must have sufficient authority commensurate with the scope of constitutional responsibility.

III. THE CONSTITUTION OF 1838: FLORIDA’S FIRST VESTING OF EXECUTIVE POWER

Floridians framed their first constitution informed by fifty years of national experience with written constitutions establishing the principles of executive power. The convention delegates who met on December 3, 1838, in the city of St. Joseph¹²⁴ had numerous examples from both the federal and state constitutions of dividing political power between three branches of government, refining express limitations on the exercise of vested executive power, and creating a necessarily hierarchical allocation of both ultimate accountability and enabling authority for operation of the government.

After Spain ceded East and West Florida to the United States, Congress, by law, combined the two areas into one territory and provided a government for their administration.¹²⁵ The law vested the executive power in the territorial governor, who was appointed by the President with the advice and consent of the U.S. Senate, and separately charged the governor to “take care that the laws be faithfully executed.”¹²⁶

Pursuant to an act of the Territorial Legislative Council,¹²⁷ delegates for a constitutional convention were elected and convened in St. Joseph, Florida. The separate substantive committees into which the members were organized included the committees on the Executive Department, the Judicial

124. W.T. CASH & DOROTHY DODD, *FLORIDA BECOMES A STATE* 47 (Fla. Centennial Comm’n, 1945). The site is near the present location of Port St. Joe, Florida.

125. Act of March 30, 1822, ch. XIII, § 1, 1 Stat. 654–55 (1822) (act establishing a territorial government in Florida).

126. *See id.* at 655, 657.

127. CASH & DODD, *supra* note 124, at 119.

Department, and a committee on “Civil Offices, Officers [sic], and Impeachments and Removals from Office.”¹²⁸

On December 10, 1838, the Committee on the Executive Department reported its initial draft article, section 1 of which stated: “The Supreme Executive power shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Florida.”¹²⁹ Similar to other state constitutions of this period, the draft provided the governor’s compensation was not to be changed during the elected term, the governor could request written information from the officers of the executive branch on matters pertaining to their duties, and the governor was charged with faithful execution of the laws.¹³⁰ Separate provision was made for a secretary of state to keep the register of the governor’s official acts and proceedings as well as other duties required by law,¹³¹ and to be appointed by joint vote of the two houses of the general assembly (the legislative body) for a fixed term of three years. The offices of state treasurer and comptroller would be separately filled by joint vote of the two legislative chambers.¹³² The office of attorney general was provided in the initial draft of the judicial article.¹³³ The attorney general would be elected by joint vote of both legislative chambers and serve for a fixed term of four years but was removable by the governor with the approval of two-thirds of each chamber. Law would fix the compensation of the attorney general.¹³⁴

The Committee on Civil Offices, Officers, and Impeachments and Removals from Office reported separately.¹³⁵ Section 5 of the initial report authorized the general assembly to determine the duration of executive offices not otherwise fixed by the constitution and provided that all officers, other than the governor or judges, could be removed by a two-thirds vote in each chamber, unless otherwise stated in the constitution.¹³⁶ The general assembly would provide, by law, for the appointment or election, and removal, of executive officers for whom the constitution did not make other

128. CASH & DODD, *supra* note 124, at 144. The misspelling may be an error in the original text or the transcription and is corrected in later parts of the transcript. *See, e.g., id.* at 165–66.

129. *Id.* at 153.

130. *Id.* at 154 (proposing §§ 5, 7, 10 as reported by the Committee on the Executive).

131. *Id.* at 155 (proposing § 14 as reported by the Committee on the Executive).

132. *Id.* at 156 (proposing § 23 as reported by the Committee on the Executive). The proposed executive article was very similar to article IV of the Alabama Constitution (1819) with some minor changes for the terms of office of the governor and secretary of state.

133. *Id.* at 164 (proposing § 16 as reported by the Committee on the Judicial Department).

134. *Id.*

135. *Id.* at 165–67.

136. *Id.* at 165–66 (§ 5, Report of the Committee on Civil Offices and Officers, and Impeachments and Removals from Office).

provision.¹³⁷ A separate part of the report provided for removal of all civil officers by impeachment.¹³⁸ The convention ultimately struck section 5 from the provisions on civil officers¹³⁹ but retained the general assembly's authority to provide, by law, for appointments and removals of certain officers and removal, by impeachment, of all civil officers.¹⁴⁰

In the final draft of the proposed constitution, article III on the executive branch included the following sections:

§ 1: Vesting “the Supreme Executive Power” in the governor;

§ 5: Prohibiting the increase or decrease of the governor's compensation during the term of office;

§ 7: Authorizing the governor to require information “from the officers of the Executive Departments” on any issue pertaining to their duties;

§ 10: Charging the governor to ensure the laws were faithfully executed;

§ 14: Providing for the separate appointment of the secretary of state by the general assembly (for a term of four years);

§ 23: Providing for the separate appointments of the state treasurer and comptroller by the general assembly in each regular session.¹⁴¹

Article V on the Judiciary set out the authorization and selection of the attorney general.¹⁴² Article VI, including voting rights, qualifications of state officers, civil offices, and provisions for impeachment and removal from office, placed additional limits on the executive power by authorizing the general assembly to provide for appointment or election, and removal, of certain state civil and military officers, and by subjecting the governor and all civil officers to impeachment and removal.¹⁴³ Adopted by the convention on January 11, 1839, the proposed constitution was ratified by a narrow margin

137. *Id.* at 166 (§ 12, Report of the Committee on Civil Offices and Officers, and Impeachments and Removals from Office).

138. *Id.* at 167 (§ 3, Report of the Committee on Civil Offices and Officers, and Impeachments and Removals from Office: Concerning Impeachments)

139. *Id.* at 214.

140. *Id.* at 227.

141. *Id.* at 307–08, 310.

142. *Id.* at 315.

143. FLA. CONST. of 1838, art. VI, §§ 19, 22; *see also* CASH & DODD, *supra* note 124, at 318.

later that year and became the foundational document of state government with Florida's admission to the Union on March 3, 1845.¹⁴⁴

The 1838 Constitution incorporated concepts of executive power readily familiar to the members of the St. Joseph convention. As with other state constitutions, the draft Florida Constitution vested the full and complete political power of the people in three branches of government, restricted only by express reservations and limitations.¹⁴⁵ Restrictions on the executive power included separating the offices of secretary of state, treasurer, and comptroller from the governor's direct authority by reserving their appointments exclusively to the general assembly. The legislature also had separate authority to provide, by law, for the filling of certain offices or the removal of their incumbents. Protecting the compensation of the governor (and only the governor) prevented attempts to control the chief executive through legislative manipulation of the salary. To fulfill the singular duty of ensuring faithful compliance with the laws and to provide sufficient ability to implement the separate authority to require written information from executive officers, the governor was vested with the hierarchically-superior, or "supreme," executive power. Florida's first framers were familiar and comfortable with vesting the supreme, but not complete, executive power in the governor.

Amendments to the constitution of 1838 anticipated future steps not only to limit the scope of executive power by division among separate officers but also to restrict legislative control of certain executive appointments. On January 6, 1853, the general assembly amended¹⁴⁶ several constitutional provisions to provide for statewide election by the people of the secretary of state, treasurer, comptroller, and attorney general.¹⁴⁷

Florida attempted to secede from the Union by adopting the constitution of 1861, incorporating the Ordinance of Secession. In this version, article III provided limitations on the scope of the vested executive power. Sections 1, 5, 7, and 10 of article III were identical to their corresponding predecessors in the constitution of 1838. The governor was vested with the "supreme executive power" of the state, was to receive a compensation remaining unchanged throughout the elected term, could require written information

144. CASH & DODD, *supra* note 124, at 65, 69–70, 86.

145. *Cotten v. Cnty. Comm'rs of Leon Cnty.*, 6 Fla. 610, (Fla. 1856); *Ponder v. Graham*, 4 Fla. 23 (Fla. 1851).

146. The constitution provided for amendment by two-thirds vote by each chamber of the general assembly, publication of the proposed amendment at least six months before the next election of members to the house of representatives, and subsequent approval by two-thirds majority in each chamber at the next legislative session. FLA. CONST. of 1838, art. XIV, § 2.

147. FLA. CONST. of 1838, art. III, §§ 14, 23; *id.* art. V, § 16 (amended 1853).

from executive officers about their duties, and was responsible to ensure faithful compliance with the laws. The conditions of appointment and terms for the secretary of state, treasurer, and comptroller were identical to the original provisions in the 1838 Constitution and did not provide for the election of these officers.¹⁴⁸ The authority of the general assembly to provide, by law, for certain executive appointments, and the provision making all civil officers subject to impeachment, were retained but renumbered.¹⁴⁹

With the end of the Civil War, the constitution of 1865 was drafted to repeal the Ordinance of Secession and reflect the abolition of slavery, but it did not go into effect. This version retained identical language vesting the supreme executive power in the governor,¹⁵⁰ prohibiting changes to the governor's compensation during the term (but for the first time imposing a minimum amount: \$3,000),¹⁵¹ and identical language for requesting written information¹⁵² and ensuring faithful execution of the laws.¹⁵³ The authority of the general assembly over certain executive appointments¹⁵⁴ and liability of civil officers for impeachment were also continued.¹⁵⁵ The 1865 version would have both reinstated popular election of the secretary of state,¹⁵⁶ treasurer, comptroller,¹⁵⁷ and attorney general¹⁵⁸ and, for the first time, provided for a lieutenant governor.¹⁵⁹

In the turbulent twenty-year period between statehood and the end of the Civil War, Florida took a consistent, intentional approach to the constitutional vesting and restriction of executive power. The constitution adopted for the next period of the state's history, while significantly different, would continue the use of identical language and similar concepts.

IV. 1868–1885: THE RECONSTRUCTED EXECUTIVE

After Congress withdrew recognition of governments in the states of the former confederacy, Floridians elected delegates to a convention to compose a new constitution. Opening on January 20, 1868, in Tallahassee, the

148. See FLA. CONST. of 1861, art. III, §§ 1, 5, 7, 10, 14, 23; see also *id.* art. V, § 15.

149. See *id.* art. VI, §§ 15, 18.

150. See FLA. CONST. of 1865, art. III, § 1.

151. See *id.* § 6.

152. See *id.* § 8.

153. See *id.* § 11.

154. See *id.* art. VI, § 15.

155. See *id.* § 18.

156. See *id.* art. III, § 15.

157. See *id.* § 23.

158. See *id.* art. V, § 18.

159. See *id.* art. III, § 4.

convention was notable for the struggle between conservatives and Radical Republicans, the flight of delegates to nearby Monticello, and the seizing of power by conservative elements.¹⁶⁰ The final draft adopted by the convention and approved by the people included provisions describing the powers of the governor identical to their counterparts in the constitutions of 1838, 1861, and 1865, while revising prior limitations on exercising that power. The result was a much stronger chief executive.

Once again, the executive article, using language substantially-identical to that in the prior versions of the Florida Constitution, emphasized the vesting of supreme executive power in the governor,¹⁶¹ the authority of the governor to request written information from officers of the “administrative department,”¹⁶² and placed solely on the governor the duty to ensure that the laws were faithfully executed.¹⁶³ Article V differed significantly from earlier versions of the executive article by providing an elected lieutenant governor,¹⁶⁴ expressly conditioning the exercise of executive clemency power by requiring the governor to act in conjunction with the justices of the state supreme court and the attorney general,¹⁶⁵ and creating a cabinet of eight officers all appointed by the governor with the advice and consent of the senate.¹⁶⁶ A new article on the “Administrative Department” reiterated the creation of the cabinet and specified the scope of duties for each officer.¹⁶⁷ The amount of compensation for the governor, lieutenant governor, each cabinet officer, the justices of the supreme court and judges of inferior courts, and members of the legislature was stated as a fixed amount.¹⁶⁸

One of the most important distinctions between the 1868 Constitution and its predecessors was the broad expansion of the governor’s power to appoint and remove specific officers, restricting the legislature to providing for the election or gubernatorial appointment of state, county, and municipal officers not otherwise addressed in the constitution.¹⁶⁹ With the advice and

160. See CHARLTON W. TEBEAU & WILLIAM MARINA, *A HISTORY OF FLORIDA*, 230–33. (3rd ed. 1999); Jerrell H. Shofner, *The Constitution of 1868*, 41 FLA. HIST. Q. (No.4) 356, 356–74 (1963).

161. FLA. CONST. of 1868, art. V, § 1.

162. See *id.* § 5.

163. See *id.* § 6.

164. See *id.* § 14.

165. See *id.* § 12.

166. See *id.* § 17. The cabinet included the secretary of state, attorney general, comptroller, treasurer, surveyor general, superintendent of public instruction, adjutant general, and commissioner of immigration. With the governor these formed the Board of Commissioners of State Institutions.

167. See *id.* art. VII.

168. See *id.* art. XVI, § 4.

169. See *id.* art. IV, § 27.

consent of the Florida Senate, the governor was authorized to appoint or remove the tax assessor and the collector of revenue for each county. Without referral to the senate, the governor had exclusive authority to appoint, in each county, a treasurer, county surveyor, superintendent of common schools, and five county commissioners, subject only to specific restrictions on the grounds for the governor removing such individuals from office.¹⁷⁰ The governor also had authority to appoint a state attorney in each judicial circuit and the sheriff and clerk of circuit court in each county, subject to senatorial advice and consent.¹⁷¹

One early writer asserted substantial parts of the 1868 Constitution were derived from the Nevada Constitution of 1864.¹⁷² A more recent commentator interpreted the document not as imposed by outside elements but as drafted by local Floridians.¹⁷³ Regardless of its origins, the 1868 Constitution removed some earlier limits on executive power by providing expressly for gubernatorial appointment of the cabinet members, albeit with the advice and consent of the senate. A number of amendments were proposed in 1870, including election of the cabinet members, but the primary change for the executive branch was the approved consolidation of the offices of surveyor general and commissioner of immigration into the commissioner of lands and immigration.¹⁷⁴ Amendments approved on May 4, 1875 provided the governor with the line-item veto for appropriations bills and restricted requests for advisory opinions from the supreme court to questions affecting the governor's executive powers and duties.¹⁷⁵

Moving from versions of a constitution with a more dominant legislative branch to one with fewer limitations on the executive, Florida continually demonstrated a fundamental understanding of the scope of power vested in the executive. The means implemented for controlling that power's exercise included both dividing executive authority among several officers and restricting (or enabling) the governor's authority to appoint such officers. By 1885, elements in the state drew together to restrict the executive.

170. *See id.* art. V, § 19. The grounds for unilateral removal were limited to willful neglect of duty, violation of the state criminal laws, or incompetency.

171. *See id.* art. VI, § 19.

172. *In re Exec. Commc'n*, 13 Fla. 687, 695 (Fla. 1870) (Westcott, J., concurring).

173. Shofner, *supra* note 160, at 366.

174. Fla. Const. Revision Comm'n, unpaginated transcript (April 4, 1871), <http://www.law.fsu.edu/crc/conhist/1871amen.html> (document titled *Amendments, General Assembly, 1871: Ratification of Articles I–IX, for Submission to People at Election*).

175. *Id.*

V. 1885–1966: THE RESTRICTED EXECUTIVE

Where the 1868 Constitution strengthened the chief executive by expanding the governor's authority to directly appoint state and local officers, at the expense of prior legislative control, the Constitution drafted in 1885 greatly restricted the executive power. In place of broad appointment authority, the governor would be "assisted" by six separately-elected executive branch officers.¹⁷⁶ The 1885 Constitution provided the governor with some authority over appointing county commissioners, but seven different local offices would be filled by direct election. This document demonstrated Floridians' continuing familiarity with the scope of vested executive power and their ability to limit the governor's direction and supervision of executive branch actions by expressly dividing authority between several officers, limiting the range of functions allotted to such officers, requiring senatorial approval before exercising certain powers, and requiring direct election of numerous officials. As stated by Judge Maxwell¹⁷⁷ on the opening day of the convention, "[i]n this country in our day there is little, if anything, left for discussion as to the cardinal principles of government. These are settled. Americans have no further occasion to do more than adjust those principles to practical working functions."¹⁷⁸

Consistent with the state's prior practice, the drafters of the 1885 Constitution used identical language vesting the supreme executive power in the governor.¹⁷⁹ Language substantially similar to the 1868 Constitution made the governor responsible for ensuring the faithful execution of the laws,¹⁸⁰ referenced the ability to request written information from executive branch administrative officers,¹⁸¹ and continued to restrict certain clemency authority by requiring the governor to act in accord with the justices of the supreme court and the attorney general.¹⁸² To avoid undue legislative

176. FLA. CONST. of 1885 art. IV, §§ 21, 22, 23, 24, 25, 26 (secretary of state, attorney general, comptroller, treasurer, superintendent of public instruction, and commissioner of agriculture.) The commissioner of agriculture was assigned the duties of the former commissioner of lands and immigration together with responsibilities for state agriculture (as provided by law) and oversight of the state prison. The Office of Lieutenant Governor was eliminated.

177. Augustus E. Maxwell, circuit judge from Escambia County at the time of the convention. Justice Maxwell served on the Florida Supreme Court 1865–1866 and 1887–1891. He served as temporary chair at the opening of the convention.

178. JOURNAL OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF FLORIDA 4 (1885).

179. FLA. CONST. of 1885, art. IV, § 1.

180. *Id.* § 6. Interestingly, the drafters adjured that "[t]he Governor shall take care that the laws be faithfully executed," similar to the language first used in the 1838 Constitution. *Id.*

181. *Id.* § 5.

182. *Id.* § 12.

influence, the 1885 Constitution again protected the income of the governor and other executive officers by specifying the exact amount of their annual compensation.¹⁸³ The drafters retained the limitation on advisory opinions from the supreme court to questions affecting the governor's executive power and duties.¹⁸⁴

The 1885 Constitution continued the practice of creating senior executive branch officers separate from gubernatorial control but required they be elected at the same time, and for the same term, as the governor.¹⁸⁵ This restricted the executive power of the governor not only by allotting certain functions to separate constitutional officers (or authorizing the legislature to allocate other functions to these officers by law) but by excluding them from the governor's removal power, and consequently the ability to direct and superintend their actions, through their election directly by the people. Together with the governor, they continued to serve as the Board of Commissioners for State Institutions. Requiring their concerted action on matters the legislature prescribed by law was yet another method of limiting the exercise of executive power by any single officer.¹⁸⁶

For the first time, the Florida Constitution included a separate article specifying provisions for county and city government.¹⁸⁷ This new article further restricted both the executive and legislative powers by providing for direct elections of several local officers. The governor still appointed five county commissioners, subject to senatorial advice and consent,¹⁸⁸ but in each county the clerk of the circuit court, sheriff, constable, tax assessor, tax collector, county treasurer, county superintendent of public instruction, and county surveyor were directly elected by the people. In turn, these local officers were restricted in their authority because the legislature controlled their powers, duties, and compensation.¹⁸⁹ The 1885 Constitution expressly stated the conditions for gubernatorial suspension of elected or appointed officers, which power was limited to officers not subject to impeachment and

183. *Id.* § 29. The amounts specified were reduced from the 1868 constitutional provision and this new section did not include the compensation of the judicial branch, which was moved to article V, section 9.

184. *Id.* § 13.

185. *Id.* § 20.

186. *Id.* § 17.

187. FLA. CONST. of 1885, art. VIII. The 1838 Constitution was silent on this issue, but some provision was made in the legislative articles of subsequent constitutions. *See also* FLA. CONST. of 1861, art. IV, § 24; FLA. CONST. of 1865, art. IV, § 20 (authorizing the legislature to provide for the incorporation of towns); FLA. CONST. of 1868, art. IV, § 21 (requiring the legislature to "establish a uniform system of county, township, and municipal government").

188. FLA. CONST. of 1885, art. VIII, § 5.

189. *Id.* § 6.

to specific types of misconduct such as malfeasance or the commission of any felony. Senatorial consent was required for the removal from office of an officer not subject to impeachment.¹⁹⁰

The 1885 Constitution served as the state's organic law until it was replaced in 1968; however, it was subject to a number of amendments over that span of time, including changes modifying the limitations on executive power. The first of these removed the supreme court justices from the exercise of the clemency power, placing such decisions with the governor, secretary of state, comptroller, attorney general, and commissioner of agriculture.¹⁹¹ In 1900, the voters approved an amendment for the direct election of county commissioners, removing their appointment from the governor and the consent of the senate.¹⁹² The governor later was given broader authority over the appointment of officers in the state militia, who would serve at the governor's pleasure.¹⁹³

Periodically, the legislature proposed amendments for consideration by the voters.¹⁹⁴ A 1942 amendment created the Game and Freshwater Fish Commission as a discrete entity within the executive branch. Composed of five members appointed by the governor with the advice and consent of the senate, the commissioners would serve five year terms and exercise separate authority over "the management, restoration, conservation, and regulation" of various wildlife within the state.¹⁹⁵ The commission exercised not only executive power, such as regulating methods of taking game, but also certain actions akin to legislative authority, such as specifying hunting seasons and controlling the use of money deposited in the state Game Fund.¹⁹⁶ In 1963, the voters amended the executive article to provide for quadrennial elections of the governor and the other constitutional executives (now called the cabinet) beginning in 1966, so the elections would not occur in the same year as that for U.S. President.¹⁹⁷

Efforts at comprehensive revision of the 1885 Constitution increased after World War II with limited success. Amendments were proposed,

190. FLA. CONST. of 1885, art. IV, § 15.

191. Fla. JR 3, 1895 Leg., (1895) (amending FLA. CONST. art. IV, § 12).

192. Fla. SJR 44, 1899 Leg. (1900) (amending FLA. CONST. art. VIII, § 5).

193. Fla. CS for HJR 281, 1913 Leg. (1913) (amending FLA. CONST. art. IV, § 16). On the same ballot the voters approved Fla. JR 547, 1913 Leg. (1913) (amending FLA. CONST. art. V, § 1) (providing for judicial compensation to be set by law.).

194. Fla. SJR 88, 1941 Leg. (1941) (amending FLA. CONST. art. XVII, § 3); Fla. HJR 118, 1947 Leg. (1947) (amending FLA. CONST. art. XVII, § 1); Fla. HJR 368, 1963 Leg. (1963) (amending FLA. CONST. art. XVII, § 4); Fla. SJR 115, 1965 Leg. (1965) (adopting FLA. CONST. art. XVII, § 2).

195. Fla. CS for SJR 28, 1941 Leg. (1941) (adopting Fla. Const. art. IV, § 30).

196. *Id.*

197. Fla. CS for HJR 428, 1963 Leg. (1963) (amending FLA. CONST. art. IV, §§ 2, 20)

particularly concerning legislative apportionment, taxation, local government, and education, but many were rejected by the voters.¹⁹⁸ In 1955, the legislature created the Florida Constitution Advisory Commission to study and report recommended revisions of the 1885 Constitution before the 1957 legislative session.¹⁹⁹ Based on that report, the legislature submitted substantial revisions to almost all articles of the constitution for voter consideration in 1958. Before that election, the Florida Supreme Court struck most of the proposed revisions from the ballot, including those for the executive article. The court ruled the inclusion in each separately-proposed amendment of a clause preventing the revised article from taking effect unless and until all fourteen of the proposed amendments were approved, linking these revisions in a “daisy-chain,” was an impermissible attempt to circumvent the textual conditions for revising the constitution.²⁰⁰

The revised executive article included in the proposed 1958 amendments incorporated prior changes to the 1885 text while adhering to basic principles about the executive power. The first section would have consolidated several of these principles but continued to use language substantially identical to all prior constitutions: the supreme executive power was vested in the governor who also was charged with faithful execution of the laws. The exercise of executive power would have been limited by continuing direct election of the six other officials comprising the cabinet, requiring the governor to perform certain duties either in accord with some or all of the cabinet officers or with the advice and consent of the senate, providing for the legislature to structure certain duties of executive officers by law, or outright limitations on specific actions such as suspending fines or forfeitures.²⁰¹

Authorized by a constitutional amendment approved in 1964,²⁰² the legislature passed a bill in 1965 creating an entity called the Constitution

198. *Florida's Constitutions: The Documentary History*, FLA. CONST. REVISION COMM'N, <http://www.law.fsu.edu/crc/conhist/contents.html>.

199. Fla. SJR 555, 1955 Leg. (1955) (creating Florida Constitution Advisory Commission). As stated in the joint resolution, the legislature was concerned not only about archaic provisions accrued over time in the constitution but also about proper representational apportionment, as well as revising and reorganizing the language for clarity and comprehension. National scholarly influence also played a role. New Jersey (1947) and Connecticut (1955), for example, had recently adopted revised constitutions, and the Territory of Alaska was preparing for the convention later that year that would compose the constitution for statehood. The Alaska Constitution would be described by a contemporary author as a significant example of a modern constitution. *See*, John S. Hellenthal, *Alaska's Heralded Constitution: The Forty-Ninth State Sets An Example*, 44 A.B.A. J. 1147 (1958).

200. *Rivera-Cruz v. Gray*, 104 So. 2d 501, 503, 505 (Fla. 1958).

201. Fla. CS for HJR 11-X, 1957 Leg. (1957) (proposing revised FLA. CONST. art. IV) (removed from the ballot by *Rivera-Cruz*, 104 So. 2d at 501).

202. Fla. HJR 368, 1968 Leg. (1964) (creating FLA. CONST. art. XVII, § 4) (authorizing the legislature to propose a comprehensive revision of the 1885 Constitution.)

Revision Commission (“1966 study commission”) to study and prepare suggested revisions for legislative consideration.²⁰³ The members of the 1966 study commission considered extensive materials, including the abortive proposals from 1958, and fashioned a complete revision of the constitution. From 1967–1968 the legislature took the work of the 1966 study commission as a basis for rewriting the final version of the proposed new constitution approved by the voters in November 1968; however, the executive article retained the same basic language about the fundamental role of the governor that always informed Florida constitutionalism.

VI. 1966–1968: CREATING THE MODERN EXECUTIVE

The studies, discussions, and final recommendations of the 1966 study commission forged the frame of the constitution ratified by the voters in November 1968. The 1966 study commission discussed at length various familiar restrictions on the exercise of executive power, such as dividing functions among multiple elected constitutional officers, senatorial advice and consent for appointments, and legislative authority to set executive duties by law, but also wrestled with providing a practical approach to coherent organization of the executive branch. Some of these issues resolved by the 1966 study commission were renewed again during the legislative deliberations of 1967–1968; notably, whether the scope of direction and supervision within the executive branch would arise under the constitution or be left for the legislature to set by statute. After due consideration, the legislature expressly and unequivocally rejected legislative control over the governor’s direction and supervision of executive branch officials. The resulting constitution of 1968 provided authority for reorganizing the executive functions within the traditional constitutional construct of the executive power.

A. *Preliminary Concepts for the 1966 Study Commission*

In a letter to Chesterfield Smith,²⁰⁴ the recently appointed chair of the 1966 study commission, Florida Supreme Court Justice Millard F.

203. Act effective 1966, ch. 65–561, 1966 Fla. Laws 561. This 1966 study commission is to be distinguished from the Constitution Revision Commission authorized by FLA. CONST. art. XI, § 2, and from the Taxation and Budget Reform Commission authorized by FLA. CONST. art. XI, § 5. The 1966 study commission was neither created by the 1885 Constitution nor authorized to place any proposed amendments or revisions before the voters. Its only purpose was to report back to the legislature.

204. Chesterfield H. Smith (1917–2003). President, The Florida Bar (1964–1965); President, American Bar Association (1973–1974). Appointed Chair of the 1966 study commission on December 21, 1965. (Florida Archives, Record Group 001006, Series 719, Carton 1, Folder 1).

Caldwell²⁰⁵ succinctly stated his concerns about the scope of the commission's work.²⁰⁶ He was wary of the potential for doctrinal confusion and litigation over any new language used in a complete rewrite and thought the newly formed commission should limit its recommendations only to correcting deficiencies in the 1885 Constitution. Caldwell was not alone in sharing advice, solicited or not, with Smith and the study commission because revising the Florida Constitution had been a topic of general concern for years.²⁰⁷ On the narrower topic of revising the executive branch article, Secretary of State Tom Adams²⁰⁸ responded to an inquiry from Smith by urging the election of cabinet officers be retained as an effective check and balance in the executive branch.²⁰⁹ Dallas Albritton, an attorney in Tampa, thought just the opposite; he believed the existing cabinet system did not serve the people because no one person was accountable to the public for the actions of the body.²¹⁰

Smith had his own ideas about the work of the 1966 study commission. Declining a separate project because of his responsibilities as commission chair, Smith observed the commission was "a body charged with . . . preparing a new Constitution for our state."²¹¹ He thought a "modern state constitution" should have certain attributes: consistency with the U.S.

205. Millard F. Caldwell, Jr. (1897–1984). Governor of Florida (1945–1949); Justice, Florida Supreme Court (1962–1969); Chief Justice 1967–1969).

206. Letter from Millard F. Caldwell, J., to Hon. Chesterfield Smith (Jan. 17, 1966) (available at Fla. Dep't of State, Fla. State Archives, Record Group 001006, Series 719, Carton 1, Folder 2).

207. In his own letter to Smith, Albert L. Sturm, director of the Institute of Governmental Research at Florida State University, remarked on the national academic debate over state constitution reform (or creation, in the case of Alaska and Hawaii) and urged the 1966 study commission to request "a series of analytical, factual studies covering the major areas of the constitutional system . . . [to] present in a concise form the issues confronting the members." Letter from Albert L. Sturm, Dir. of the Inst. of Govt Resch., to Chesterfield Smith, Chairman Fla. Const. Revision Comm'n (Jan. 28, 1966) (alteration in original) (available at Fla. Dep't of State, Fla. State Archives, Record Group 001006, Series 719, Carton 1, Folder 2). Sturm included a thirty page bibliography referencing sources ranging from the constitutions of Alaska and Puerto Rico to specific articles on the Florida Constitution, such as Thomas E. David, *The Case for Constitutional Revision in Florida*, 3 MIAAMI L.Q. 225 (1948–1949), and Manning J. Dauer & William C. Havard, *The Florida Constitution of 1885—A Critique*, 8 U. FLA. L. REV. 1 (1955).

208. Thomas Burton Adams, Jr (1917–2006). Florida Senate (1956–1960); Florida Secretary of State (1961–1971); Florida Lieutenant Governor (1971–1975).

209. Letter from Tom Adams, Fla. Sec'y of State, to Chesterfield H. Smith, Chairman of Fla. Const. Revision Comm'n (Apr. 11, 1966) (available at Fla. Dep't of State, Fla. State Archives, Record Group 001006, Series 719, Carton 1, Folder 5).

210. Letter from A. Dallas Albritton, Jr, Fla. Att'y, to Earl Faircloth, Fla. Att'y Gen. (May 17, 1966) (available at Fla. Dep't. of State, Fla. State Archives, Record Group 001006, Series 719, Carton 1, Folder 5).

211. Letter from Chesterfield H. Smith to C. Edward Patton, Jr, Comm. for Gov't of the People (Feb. 3, 1966) (available at Fla. Dep't. of State, Fla. State Archives, Record Group 001006, Series 719, Carton 1, Folder 3).

Constitution, a bill of rights “guaranteeing . . . basic personal and property rights,” and it should provide a sound framework for government with a balance of power between the branches.²¹² He also thought the document should provide clear terms and ample authority for the exercise of the allotted powers and the terms used should be in “clear, simple language, readily intelligible to the average citizen.”²¹³ The constitution should contain matters fundamental to establishing and guiding government and not address details more appropriately dealt with by statute. Finally, there should be proper provision for amendment.²¹⁴ These concepts reflected the general approach of the study commission, but their deliberations demonstrated an informed understanding of the traditional role of the executive.

B. *Debate in the 1966 Study Commission on the Scope of Executive Authority*

The initial discussion of the proposed executive article prepared by a new study commission’s Committee on the Executive focused more on the new section 4 rather than article IV, section 1. The first section incorporated terms from separate sections of article IV in the 1885 Constitution, including the traditional vesting of supreme executive power in the governor, the governor’s authority to request written information from all executive state or county officers, and the requirement that the governor ensure the faithful execution of the laws; there was little initial debate.²¹⁵ Section 4, on the other hand, was new: a proposed complete restructuring of the executive branch by reducing the plethora of the administrative agencies, boards, and departments to no more than thirty.²¹⁶ The legislature would be charged with reorganizing the agencies into the limited number of departments, and the executive branch would provide the leadership necessary for administering the government.²¹⁷

212. Letter from Chesterfield H. Smith, Chairman of Fla. Const. Revision Comm’n, to John E. Mathews, Jr, Fla. Sen., *et. al.* (Mar. 21, 1966) (available at Fla. Dep’t of State, Fla. State Archives, Tallahassee, Fla.).

213. *Id.*

214. *Id.*

215. Fla. Comm. on Florida Constitution Revision, edited transcript of debate, vol. 24 at 255 (1966) (available at Fla. Dept of State, Fla. State Library, Tallahassee, Fla.) [hereinafter Debate of Study Commission].

216. *Id.* at 566–69. The proposed § 4 was discussed during debate on proposed amendment 11 to the executive article, which would have eliminated the maximum number. The amendment failed.

217. Debate of Study Commission, *supra* note 215, at 570–71, 589 (statements of Commissioners Joseph C. Jacobs & Warren N. Goodrich). Mr. Jacobs noted at the time the number of existing agencies, boards, etc. was not even fully known; he estimated the total to range between 136 to 156 different entities.

Providing for the administration of these reorganized agencies was more contentious. The initial proposal to the study commission of article IV, section 4 required the agencies be placed by law under the administration of “the governor, the governor and cabinet, a cabinet officer, or an officer or board appointed by and serving at the pleasure of the governor.” Exceptions were provided for administration as otherwise provided in the constitution, senatorial advice and consent when required by the legislature, and for boards authorized to grant and revoke licenses for regulated occupations.²¹⁸ Commissioner C.W. Young proposed a markedly different amendment.²¹⁹ Rather than limit the legislature’s options to mere supervision of executive branch functions by elected constitutional officers, this amendment simply proposed “[t]he administration of each department, the governance of which is not expressly provided herein, shall be placed by law.”²²⁰

Discussion of the Young amendment was postponed to December 6, 1966.²²¹ Commissioners Warren N. Goodrich and Elmer O. Friday questioned whether the amendment could be construed as allowing the legislature to place executive departments solely under one or more non-elected individuals and avoid any supervision by elected executive officials. In response, Young referred to the allocation of supreme executive power in article IV, section 1 as ensuring elected cabinet members would continue to control all executive branch functions.

Commissioner Robert M. Ervin began his comments by stressing the importance of the properly supervised exercise of executive power in Florida. He was concerned about using any language that could encourage attempts to allocate the oversight of executive functions to individuals with no direct responsibility or accountability to the electorate. Adopting the “specific groupings” as provided in the original language of proposed new section 4 was the “best, most proven, the most practical and most responsive type of government.”²²² These comments were echoed by others.²²³ The Young amendment failed.²²⁴

The final version of the 1966 study commission proposed revision providing for executive branch reorganization reads:

218. These board members would be appointed for fixed terms and removable only for cause.

219. See Debate of Study Commission, *supra* note 215 at 1133 (The bound version was organized by topic after completion of the transcript, resulting in some page numbers being out of sequence). Actually, it was an amendment to pending amendment 12 to the proposed executive article.

220. *Id.* at 191.

221. *Id.* at 184–95.

222. *Id.* at 187–89.

223. Commissioner Goodrich emphasized the necessity of the executive functions remaining under the supervision of the elected executive officials. *Id.* at 190–92.

224. *Id.* at 195.

Section 4. Executive departments.—All functions of the executive branch of state government shall be allotted among not more than thirty departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, except that:

- (a) The governor and the cabinet shall exercise with respect to the policies of executive departments those powers provided by law.
- (b) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office.
- (c) Boards authorized to grant and revoke licenses to engage in regulated occupations shall be assigned to appropriate departments and their members appointed for fixed terms, subject to removal only for cause.
- (d) The governor may, by executive order, propose any reorganization of the executive branch, to a regular session of the legislature within seven days following the convening thereof, and such proposal shall become law on the adjournment sine die of the regular session unless either house of the legislature disapproves the same by majority vote.²²⁵

The debate and work product in the 1966 study commission demonstrated the commissioners' concern for and adherence to the basic principles of Florida constitutionalism pertaining to the powers of the executive branch. Separating executive functions among several cabinet officers in addition to the governor prevented the accrual of excessive power in one individual; requiring election of these officers made them directly responsible to the voters while preventing the governor from exerting too much influence on all executive functions.²²⁶ Bringing organization and coherence to the agency structure within the executive branch was necessary; however, supervision of these functions by elected officials was vital for

225. Fla. Comm'n on Fla. Const. Revision, Proposed Revised Constitution of Florida, 24–25 (1966) (available at Fla. Dep't of State, Fla. State Library, Record Group 001006, Series 727, Carton 1, Folder 4).

226. As argued by Commissioner John E. Mathews: “[T]he people have a right to look toward Tallahassee and know [who will] . . . be exercising the executive authority.” Debate of Study Commission, *supra* note 215, at 221 (alteration in original).

proper control and direction of the exercise of executive power.²²⁷ Among the goals summarized by the 1966 study commission in its formal transmittal of the recommendations to the governor, cabinet, president of the senate, and speaker of the house, the commission included strengthening individual liberty, providing adequate checks and balances between the three branches of government, fixing responsibility for executive action so the electorate could evaluate the performance of each officer, and making the constitution understandable while preserving the historical, traditional, and philosophical concept of government in Florida.²²⁸

C. 1967–1968: Drafting and Ratifying the New Constitution

Separately considering the 1966 study commission draft, the Florida House and Senate developed similar versions for a proposed new constitution. Key differences in the executive article, particularly concerning reorganization of the executive branch and the allocation of supervisory responsibility for the resulting agencies, were reconciled between August 1967 and June 1968. Public discussion of the final proposed constitution leading up to the election, and the summary description placed on the ballot, showed no substantial deviation from the 1885 constitution in allocating responsibility for administering the executive branch, and the people ratified the constitution of 1968 with an understanding of vesting executive power similar to that which informed their forebears.

1. August 1967: Primacy of Elected Constitutional Officers Over the Executive Branch

The governor called the legislature into special session beginning January 9, 1967 to receive the finished proposal from the 1966 study commission and expeditiously prepare the proposed constitution for voter consideration in a special election anticipated for April 1967;²²⁹ however, because the U.S. Supreme Court disapproved the apportionment of the Florida Legislature on January 9, 1967,²³⁰ the special session was

227. Fla. Comm'n on Fla. Const. Revision, Excerpt Dec. 14, 1966, at 6–8 (available at Fla. Dep't of State, Fla. State Archives, Record Group 001006, Series 719, Carton 3, Folder 1) (statement of Chairman Smith).

228. Letter from Chesterfield H. Smith, Chairman of the Fla. Const. Revision Comm'n, to Claude Kirk, Fla. Gov., et al. (Jan. 7, 1967) (on file with the Florida State Archives, Record Group 001006, Series 719, Carton 3, Folder 4).

229. FLA. H.R. JOUR. 1 (Spec. Sess. July 31, 1967). The house received the 1966 study commission draft on Jan. 9, 1967.

230. See *Swann v. Adams*, 385 U.S. 440 (1967).

extended for the purpose of reapportionment²³¹ and constitutional revision was delayed. Some legislative consideration began during the 1967 regular session.²³²

Not every revision suggested by the 1966 study commission's proposed draft was universally acclaimed, including the new language on executive branch reorganization laid out in proposed article IV, section 4. Responding to a request from the speaker of the Florida House of Representatives for a list of provisions that could be removed and make the house draft less controversial, the director of the legislative council²³³ suggested omitting article IV, section 4 entirely or simply retaining the following language from existing article IV, section 27 of the 1885 Constitution: "The Legislature shall provide for the election by the people or appointment by the Governor of all State and county officers not otherwise provided for by this Constitution, and fix by law their duties and compensation."²³⁴

Representative Edward S. Whitson, Jr thought the new language, and the omission of former article IV, section 27, represented a radical change in governmental administration by removing a valuable check on the legislature's ability to circumvent executive accountability to the electorate by delegating authority to unelected subordinate officials.²³⁵ In agreeing with these concerns, Governor Claude Kirk echoed James Madison's comments in the 1789 floor debates:

I [heartily] endorse your position against any departure from the gubernatorial appointive powers. Good government requires the Governor to maintain a strong position, as the people have charged him with the responsibility of the general supervision and operation of state government.

231. FLA. H.R. JOUR. 22–23, (Extraordinary Sess. Jan. 10, 1967).

232. *Journal of the Senate* 31 closely followed the original 1966 study commission proposal for article IV, section 4. See FLA. JOUR. 25 (Reg. Sess. 1967).

233. A joint endeavor of the house and the senate, the legislative council performed a number of operational and administrative functions for the legislature, including the recently-added task of statutory revision that was moved from the office of the attorney general to the legislature by ch. 67–472, Florida Laws. In 1969, the council was converted into the Joint Legislative Management Committee, which was renamed the Office of Legislative Services in 1998. See Act of May 22, 1998, ch. 98–136, § 4, 1998 Fla. Laws 1574; FLA. STAT. § 11.147 (2014) and historical notes. A succinct but thorough description of the Division of Law Revision and Information appears in the Preface to the 2014 edition of the Florida Statutes. See Preface: Division of Law Revision and Information, available at <http://www.leg.state.fl.us/Statutes/Preface14.pdf>.

234. FLA. CONST. of 1885, art. III, § 27.

235. Letter from Ed. S. Whitson, Jr, Rep. Pinellas County, to Claude R. Kirk, Jr, Gov. of Fla. (Aug. 1, 1967) (available at Fla. Dep't of State, Fla. State Archives, Record Group 001006, Series 719, Carton 3, Folder 7).

*When one has the duty to perform he should be able to discharge this responsibility by being given the tools with which to carry out his duties.*²³⁶

A governor's office internal memo preferred the 1966 study commission draft of article IV, section 4, to a proposed senate edit reducing the number of allowed departments to twenty, but questioned the purpose for the language in study commission draft section 4(a) restricting the governor and cabinet to controlling the policies of executive agencies only as the legislature provided by law. Not surprisingly, the governor's office strongly endorsed the language in study commission draft section 4(d) providing for reorganization of the executive branch by executive order.²³⁷ Emphasis on these two subsections would frame the legislative debate on the proposed new section.

During a special session convened to address junior college funding, the legislature, by concurrent resolution, requested the governor convene another special session on constitutional revision, which request the governor obliged.²³⁸ Called into special session beginning July 31, 1967, the legislature made significant progress, and the governor effectively extended the call for the session to September 1, 1967 to allow completion of the work.²³⁹

By August 8, 1967, the separate drafts in each chamber retained most of the original 1966 study commission's version of the executive branch reorganization section but deleted proposed article IV, section 4(d), authorizing the governor to propose administrative reorganization by executive order.²⁴⁰ During August 15–30, 1967, the house developed its version by expressly rejecting amendments authorizing legislative control over the supervision of the executive branch agencies by the elected officers and by re-including the provision for gubernatorial-driven reorganization. On August 15, 1967, a proposed amendment, identical to the Young amendment offered in the debates of the study commission (authorizing the administration of all executive agencies not otherwise provided by the constitution to be allocated by law), was offered to the

236. Letter from Claude R. Kirk, Jr, Gov. of Fla., to Edward S. Whitson, Jr, Rep. District 50 (Aug. 3, 1967) (available at Fla. Dep't of State, Fla. State Archives, Record Group 001006, Series 719, Carton 3, Folder 7) (emphasis added) (The original text uses "hardly" but the context implies a transcription error substituting "hardly" for "heartily").

237. Memorandum from Wade L. Hopping (Aug. 28, 1967) (articles III and IV of the proposed constitution) (available at Fla. Dep't of State, Fla. State Archives, Record Group 001006, Series 719, Carton 3, Folder 7).

238. Fla. SCR 1739, 1867 Leg. (Fla. 1967).

239. FLA. H.R. JOUR. (Spec. Sess. 1967). Under the 1885 Constitution a special session convened by the governor was limited to 20 days. FLA. CONST. of 1885 art. III, § 2.

240. FLA. S. JOUR. 44 (Spec. Sess. Aug. 8, 1967).

house draft and defeated.²⁴¹ A separate amendment was accepted to revise article IV, section 4(a) from the 1966 study commission draft to read: “The governor and cabinet shall exercise those powers provided by law.”²⁴² Another amendment reinstated to the house draft the provision for the governor to recommend administrative reorganization to the legislature by executive order.²⁴³

August 30, 1967 saw the house adopt two significant amendments to the proposed section on executive branch reorganization. The first reduced the maximum number of departments (excluding those otherwise provided in the constitution) from thirty to twenty-five.²⁴⁴ The second deleted the entire proposed text of article IV, section 4(a) that would have authorized the legislature to set the extent of control exercised by the elected constitutional executive officers over the executive branch, and re-designated the remaining subsections.²⁴⁵

By the end of the special session in the summer of 1967, both chambers repeatedly considered proposals for legislative control of the authority exercised by elected officials over the executive branch agencies. First the senate, then the house rejected such legislative control as an additional limitation on the constitutional authority of elected officials, particularly the governor, to direct and supervise the implementation of policy by the administrative agencies. When the house re-engrossed its version of the proposed text, the only difference with the senate draft was not over direction and supervision of the executive branch by the elected officials but simply whether the governor could order administrative agency reorganization.²⁴⁶

241. Fla. HJR 271 (1967) at 22 (proposed FLA. CONST. art. IV, § 4) (Florida Archives, Record Group 001006, Series 727, Carton 2, Folder 7).

242. Fla. HJR 115 (1967) at 23 (proposed FLA. CONST. art. IV, § 4(a)) (Florida Archives, Record Group 001006, Series 727, Carton 2, Folder 7).

243. Fla. HJR 117 (1967) at 22 (proposed FLA. CONST. art. IV, § 4(d)) (Florida Archives, Record Group 001006, Series 727, Carton 2, Folder 7).

244. Fla. HJR 657 (1967) at 22 (proposed FLA. CONST. art. IV, § 4) (Florida Archives, Record Group 001006, Series 727, Carton 2, Folder 7).

245. Fla. HJR 700 (1967) at 23 (proposed FLA. CONST. art. IV, § 4(a)).

246. Letter from Rep. Murray H. Dubbin, Chair of the Joint Interim Constitution Revision Comm'n, to Sen. John E. Mathews, Co-Chair (Sept. 11, 1967) (enclosing a copy of HJR 657 (1967) (proposed FLA. CONST. art. IV, § 4 (now renumbered § 5))) (available at Fla. Dep't of State, Fla. State Archives, Record Group 001006, Series 727, Carton 3, Folder 7). A draft of the Florida Constitution prepared by the House and Senate Style and Drafting Subcommittee included a side-by-side comparison of the treatment of article IV, § 5(c). Fla. H. & S. Subcomm. on Style and Drafting (draft of Sept. 29, 1967) (proposed revised constitution).

2. 1968: Final Version of the Constitution Submitted to the Voters

Between October 9, 1967 and June 24, 1968, a joint legislative Interim Constitutional Revision Committee (“Interim Committee”) continued refining the proposed revisions. Throughout its discussions, the Interim Committee left unchallenged and unchanged the language in proposed article IV, section 1(a), vesting supreme executive power in the governor and holding that officer responsible to ensure the faithful execution of the laws. The new section on executive branch reorganization was discussed and revised but only to include the lieutenant governor as an additional official to whom the legislature could allot the management of an administrative agency²⁴⁷ and to remove the house preference for proposing executive branch reorganization by executive order.²⁴⁸

The governor called a special session beginning June 24, 1968 to complete work on the constitution revision.²⁴⁹ The senate version of the revised draft, SJR 2-2X (68), differed from the house version, HJR 1-2X (68), in part by using a different numbering for proposed article IV, resulting in the section on executive branch reorganization becoming article IV, section 6. Each chamber adopted their respective versions of the proposed revisions.²⁵⁰ Both versions were referred to a Joint Conference Committee, which approved amendments to HJR 1-2X (68),²⁵¹ including the final form and numbering of article IV, sections 1 and 6. The requisite three-fifths majorities in each chamber approved HJR 1-2X.²⁵²

Public discussion before the November election was more concerned with the impact of constitutional changes on issues ranging from taxes to local government than on the nuances of managing the executive branch. Some comments emphasized improved public control over future textual

247. COMM. ON INTERIM CONSTITUTION REVISION (Oct. 10, 1967) (available at Fla. Dep’t of State, Fla. State Library, Record Group 001006, Series 727, Carton 5, Folder 4) (minutes of meeting).

248. COMM. ON INTERIM CONST. REVISION (June 17, 1968) (available at Fla. Dep’t of State, Fla. State Library, Florida Archives, Record Group 001006, Series 727, Carton 6, Folder 4) (minutes of meeting).

249. FLA. S. JOUR. 92 (Spec. Sess. July 1, 1968) (proclamation of the governor).

250. On June 26, 1968, the House passed HJR 1-2X (1968) and the senate passed SJR 2-2X. *See* FLA. S. JOUR. 70 (Spec. Sess. June 27, 1968); FLA. H.R. JOUR. 1-2 (Spec. Sess. June 26, 1968). On June 28, the senate amended and passed HJR 1-2X; on July 1, the house amended and passed SJR 2-2X by inserting its version of HJR 1-2X. *See* FLA. S. JOUR. 66, 86 (Spec. Sess. June 28, 1968); FLA. H.R. JOUR. 56, 61 (Spec. Sess. July 1, 1968).

251. FLA. H.R. JOUR. 4 (Spec. Sess. June 25, 1968).

252. FLA. S. JOUR. 132 (Spec. Sess. July, 1968); FLA. H.R. JOUR. 89, 99 (Spec. Sess. July 3, 1968). The Florida Constitution at the time required the legislature to adopt proposals to amend the constitution by three-fifths majority vote in each chamber before the proposed amendment could be submitted to the electorate. FLA. CONST. of 1885, art. XVII, § 1.

changes due to the expanded methods for constitutional amendment.²⁵³ An analysis of changes to the executive article examined impacts on the authority of the elected officers and only noted the provision for supervision of administrative agencies would be assigned by statute.²⁵⁴ The official notice about conducting the vote on the new constitution with the general election simply printed the entire text of the revisions without comment.²⁵⁵ Opponents argued the changes would “increase centralized government” but appeared to preserve “present principles of state and local government.”²⁵⁶

A copy of the publicly printed sample ballot simply used the heading “Proposed Revision of the Constitution of 1885,” under which appeared three separate sections, each with a separate selection between “For” and “Against” the revision.²⁵⁷ Section number 1 included the proposed executive article and read:

Proposing a revision of the Constitution of 1885 generally described as the Basic Document embracing the subject matter of all the Constitution except for Articles V (Judicial Department), VI (Suffrage and Elections), and VIII (Local Government). Article V (Judicial Department) to be carried over from the present Constitution in its entirety.²⁵⁸

Voters approved the proposed revisions, including the new executive article, on November 5, 1968.

CONCLUSION

The revisions to the executive article approved in 1968 were consistent with Florida’s historical understanding of the executive branch. Continued without substantial change or debate was the vesting of “supreme executive power” in the governor, retaining the necessary hierarchy of responsibility among the elected constitutional officers. The governor remained solely responsible to ensure the proper execution of the laws, essentially accountable for the core purpose of the executive branch. After considering

253. *Legislature OKs Fla. Constitution*, PANAMA CITY HERALD, July 3, 1968, at 1; *Faircloth Says New Constitution Good*, PANAMA CITY NEWS, Nov. 2, 1968 at 3 (quoting Fla. Att’y Gen. Earl Faircloth’s summary of the revisions).

254. *Our Proposed New Constitution*, FT. PIERCE NEWS TRIB., Oct. 1, 1968, at 4.

255. *Proposed Revision of the Constitution of 1885 to be Voted on November 5, 1968: Notice of Election*, FT. PIERCE NEWS TRIB., Sept. 6, 1968, at 7.

256. Local Committee for Integrity in Government, *Vote Against Proposed New Constitution*, PANAMA CITY NEWS, Oct. 30, 1968, at 5 (advertisement).

257. *Sample Ballot: Instructions to Voters*, PLAYGROUND DAILY NEWS, Oct. 30, 1968, at 11.

258. *Id.*

options to limit, by statute, the scope and extent of elected official supervision over the executive branch agencies, and expressly rejecting any such extension of legislative authority, the legislature approved a new constitutional provision to reorganize the executive branch within the context of continued executive authority for the direction and control of appointed subordinates. Finally, because neither the constitution itself nor public presentations about the revisions, whether in support or opposition, noted any fundamental change in the responsibility of elected executive officers for the direction and supervision of administrative agencies, the approval by the people placed executive branch reorganization firmly within Florida's traditional understanding of executive power.