5-1-2005

Concurrent appointments and issues of race on boards and commissions: a case study of African-American appointments and three Florida boards

Marcella G. Washington

Clark Atlanta University

Follow this and additional works at: http://digitalcommons.auctr.edu/dissertations

Part of the Political Science Commons

Recommended Citation
ABSTRACT

POLITICAL SCIENCE

WASHINGTON, MARCELLA G. B.A. LINCOLN UNIVERSITY, PA, 1972
M.A. ATLANTA UNIVERSITY, 1975

CONCURRENT APPOINTMENTS AND ISSUES OF RACE ON BOARDS
AND COMMISSIONS: A CASE STUDY OF AFRICAN-AMERICAN
APPOINTMENTS AND THREE FLORIDA BOARDS

Advisor: Dr. William H. Boone

Dissertation dated May 2005

This study examines patterns of appointments to Florida boards and commissions as that system developed a dominant form. The research describes the constitutional history of Florida politics as it affected a sustained system of appointed boards and commissions. It examines the racial impact of the concurrent appointment system with particular attention to the representation of African Americans on state boards and commissions and the racial politics that developed on selected boards as African Americans became more representative on these bodies.

In this study, “concurrent appointments” are defined as complicated appointment procedures in which multiple authorities, such as the governor, executive officials, legislative leaders, nominating commissions, state judges, department heads, and members of local councils and commissions simultaneously appoint members to boards.
and commissions. African Americans comprise 14.6 percent of the Florida population and have historically been excluded from full participation in the political system. In order to measure inclusion of the group, this work studied concurrent appointment schemes and the racial politics and agendas of Florida boards and commissions during the tenure of two Florida governors, Lawton Mainor Chiles, Jr. (1991-1998) and John Ellis “Jeb” Bush (1999-Present).

Three Florida boards were selected for this study because of their prominence in appointment politics, diversity issues, and racial conflicts during this period. The boards selected were (1) the Florida Supreme Court Racial and Ethnic Bias Study Commission and its critique of the Florida system that uses concurrent appointments to select judicial nominating commissions, (2) the Florida Board of Regents (3) and, the Board of Trustees, Florida Community College at Jacksonville.

This study concludes that the concurrent appointment process limits African-American representation on boards and commissions in the state of Florida, and it also finds that racial politics are significant and very often prevalent on boards that are designed to be neutral and free from partisan considerations.
CONCURRENT APPOINTMENTS AND ISSUES OF RACE ON BOARDS AND COMMISSIONS: A CASE STUDY OF AFRICAN-AMERICAN APPOINTMENTS AND THREE FLORIDA BOARDS

A DISSERTATION

SUBMITTED TO THE FACULTY OF CLARK ATLANTA UNIVERSITY

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR

THE DEGREE OF DOCTOR OF PHILOSOPHY

BY

MARCELLA G. WASHINGTON

DEPARTMENT OF POLITICAL SCIENCE

ATLANTA, GEORGIA

MAY 2005
ACKNOWLEDGEMENTS

I wish to thank and recognize the members of my dissertation committee, Drs. William H. Boone, Marvin Haire, and Alex W. Willingham (Williams College), for their advice, support and steady guidance as I researched and pursued this topic.

Ms. Suzie Still, Florida Bureau of Elections Records, was a great source of information on the Florida appointment process. I wish to thank her for her valuable assistance.

I extend a special thanks to the library staff at the Florida Collection of the Jacksonville Public Library for its professional assistance in this project. The law library at the Florida Coastal School of Law, and the South Campus librarians at Florida Community College at Jacksonville were also helpful to me, and I thank them as well.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>ii</td>
</tr>
<tr>
<td>LIST OF TABLES</td>
<td>vi</td>
</tr>
<tr>
<td>CHAPTER</td>
<td></td>
</tr>
<tr>
<td>1  INTRODUCTION OF THE STUDY</td>
<td>1</td>
</tr>
<tr>
<td>The Problem</td>
<td>1</td>
</tr>
<tr>
<td>The Governor and the Cabinet: A Board Sharing Power</td>
<td>4</td>
</tr>
<tr>
<td>An Emerging Issue in Research and Political Strategy</td>
<td>7</td>
</tr>
<tr>
<td>Methodology</td>
<td>9</td>
</tr>
<tr>
<td>Sources</td>
<td>12</td>
</tr>
<tr>
<td>2  THE SUBJECT AND ITS COMPONENTS</td>
<td>15</td>
</tr>
<tr>
<td>Overview</td>
<td>15</td>
</tr>
<tr>
<td>Representation on Boards and Commissions</td>
<td>16</td>
</tr>
<tr>
<td>Gubernatorial Appointment Power</td>
<td>19</td>
</tr>
<tr>
<td>Florida Politics and Government</td>
<td>24</td>
</tr>
<tr>
<td>Rearranging Gubernatorial Appointment Power</td>
<td>33</td>
</tr>
<tr>
<td>Summary</td>
<td>44</td>
</tr>
<tr>
<td>3  DIVERSITY AND APPOINTMENT POLITICS</td>
<td>47</td>
</tr>
<tr>
<td>Overview</td>
<td>47</td>
</tr>
<tr>
<td>A Review of Concurrent Appointments</td>
<td>47</td>
</tr>
<tr>
<td>Diversity and the State Reports</td>
<td>50</td>
</tr>
<tr>
<td>The Florida System of Boards and Commissions</td>
<td>54</td>
</tr>
</tbody>
</table>
CHAPTER

Community College Boards.................................................................121

Board of Trustees, Florida Community College at Jacksonville..........123

Summary...............................................................................................134

6 CONCLUSION....................................................................................137

Concurrent Appointments and Racial Representation........................138

Pivotal Role of the Executive ...............................................................141

Race Relations in Policy Making..........................................................142

Accountability in Appointments–A Critical Frame...............................144

Recommendations...............................................................................144

BIBLIOGRAPHY....................................................................................147
# LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Grand Total of Active City Appointees and Number of Appointees by</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>Race, Gender, and Disability for Calendar Year 2000 as of December 31</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Grand Total of Active County Appointees and Number of Appointees by</td>
<td>66</td>
</tr>
<tr>
<td></td>
<td>Race, Gender, and Disability for Calendar Year 2000 as of December 31</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Grand Total of Active State Appointees and Number of Appointees by</td>
<td>67</td>
</tr>
<tr>
<td></td>
<td>Race, Gender, and Disability for Calendar Year 2000 as of December 31</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Grand Total of All Active Appointees and Number of Appointees by</td>
<td>67</td>
</tr>
<tr>
<td></td>
<td>Race, Gender, and Disability for Calendar Year 2000 as of December 31</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Governor Chiles: Appointee Statistics by Race and Gender,</td>
<td>68</td>
</tr>
<tr>
<td></td>
<td>January 8, 1991–December 12, 1998</td>
<td></td>
</tr>
<tr>
<td></td>
<td>January 8, 1991–December 12, 1998</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Governor Bush: Appointee Statistics by Race and Gender,</td>
<td>69</td>
</tr>
<tr>
<td></td>
<td>January 5, 1999–August 29, 2003</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Governor Bush: Appointee Statistics by Political Party Affiliation,</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td>January 5, 1999–August 29, 2003</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Judges in Florida State Court System by Race as of January 27, 2003...</td>
<td>87</td>
</tr>
</tbody>
</table>
CHAPTER 1
INTRODUCTION OF THE STUDY

The Problem

Renowned American political scientist Harold D. Lasswell defines politics as "who gets what, when, and how."\(^1\) In this case study, appointed boards and commissions in Florida are examined to determine who gets appointed, how they are appointed, and how board members react to minority demands when the boards are confronted with racial issues and become more racially diverse. These issues are raised because appointed boards and commissions are dominant features in Florida politics. Moreover, a complex appointment process, identified in this study as “concurrent appointments,” is often used to appoint the boards and commissions. Concurrent appointments are procedures that allow multiple authorities, such as the governor, executive officials, legislative leaders, nominating commissions, state judges, department heads, members of local councils, and local commissions to simultaneously appoint members to boards and commissions.

Although the concurrent appointment process is not well-understood, it is not unique to Florida. The practice is used in other states and on the federal and local levels.

However, Florida is somewhat unique because there are approximately 850 appointed boards, commissions, councils, and committees that operate in Florida government.\(^2\) The dominance of boards and commissions in Florida government commands an observation of their roles and appointment procedures. Racial representation on Florida boards and commissions is an area observed.

African Americans represent 14.6 percent of the Florida population\(^3\) and have historically faced racially motivated election laws such as the poll tax, the white primary and voter purges, which effectively disfranchised them as a group. Although these procedures have been abandoned due to invalidation by the courts or by acts of Congress, racial discrimination continues in the Florida electoral system. The 2000 presidential election was the most recent example of discrimination where African Americans were singled out and their votes disproportionately invalidated.\(^4\)

In Florida, African Americans and other racial minorities face discrimination in appointments as well. Minorities are underrepresented on appointed boards and commissions in the state. Issues of representation, diversity, and racial politics are raised: who gets what, when, and how. This thesis holds that concurrent appointments are limitations on African-American appointments. The study examines boards as political agencies and considers racial politics on Florida boards in light of the appointment process. Collegiality and uniformity are watchwords of board politics. An unstated rule

---


\(^3\)University of Florida, Bureau of Economic and Business Research, comp., *Florida Statistical Abstract 2003*, Table 1.01 (Gainesville: University Presses of Florida, 2003), 4.

is that boards are above politics and created to carry out public policy, for the public
good. But this study shows that racial politics can often guide decisions made by boards
and commissions.

African-American participation in government has often been discussed, but their
board representation is seldom included as a part of that discussion. Rather, political
participation is routinely discussed in terms of voter registration, election campaigns and
electoral office holding. The early work on the new Southern conditions has focused on
such topics, and hence, do not account for the changes and the reconstitution of politics
and governing authorities in the Southern states. Civil Rights organizations gave high
priority to these issues as well, especially voter registration.

In this study, the researcher examines the process of appointments to state boards
and commissions as a measure of the way politics has changed and as a way to pinpoint
challenges yet remaining. Representation on appointed boards and commissions is
another component to be explored in the arena of politics and civil rights. The researcher
is guided by the same general concern as students of electoral politics, i.e., the quality of
change in minority political participation, but the focus here is on access to appointed
positions and monitoring boards, and the racial politics that develop as they become more
representative.

The study draws on appointment data in the case of Florida boards, to introduce
the reader to concurrent appointment patterns and to unveil the impact of those patterns
on the diversity of the policy-making and advisory boards. The focus is on diversity in
racial representation, and the study will contribute to and expand on the rich literature on
race and politics developing after the Civil Rights Movement and the implementation of the Voting Rights Act.5

The concurrent appointment process is presented as a special case that explains how Florida government operates to limit minorities' access to the political system, with attention to both minority appointments and the race relations on boards. Such information expands on the knowledge of these matters and suggests strategies for further research and practical reform measures. This study concludes with recommendations that seek to enhance board diversity in Florida, raise the minority community’s interest and influence in the appointed board process, and encourage Florida elected officials to simplify and modify the appointment process in the state.

The Governor and the Cabinet: A Board Sharing Power

As has been noted, Florida maintains a pattern of governance by boards and commissions. A dramatic example of the pattern is the state executive branch, known as the governor and the cabinet. The governor and the cabinet operate as a board, and assume the functions of other boards. For example, the governor and the cabinet meet and set policy in their official capacities as the Board of Trustees of the Internal Improvement Fund, the State Board of Administration, and the agency head of the Department of Law Enforcement.6 All told, the governor and the cabinet, or designated members thereof, are represented on at least thirteen state boards and commissions.

---


6Florida Constitution, art. 4, sec. 4.
Executive power sharing, including the sharing of appointment power, is characteristic of the Florida governor/cabinet system. The process started formally in the racial politics of the Reconstruction era. Republican governors of the era exercised broad appointment power. The constitution under which they governed allowed the governor to appoint the cabinet, state judge, and all county officials.\(^7\) For the advancement of their careers and victories for the Republican Party, the Reconstruction governors sponsored the appointment of African Americans to state and local offices.\(^8\) In turn, the appointment of blacks to public office motivated the white Democratic leadership to place restrictions on gubernatorial appointment power. The Democrats achieved their goal by advocating home rule, or the election of county officials, tightening restrictions on voting rights, and fortifying shared governance between the governor and cabinet.

At the end of Reconstruction, a new constitution was adopted that stripped the governor of broad appointment power and provided that the "administrative officers" (i.e., the cabinet) would be elected.\(^9\) Under the 1885 constitution, the governor and the cabinet were designed to be a collective unit that shared power by operating together as a board for state institutions.\(^10\)

Although a similar provision was written into the 1868 document, the 1885 charter provided for the election rather than the appointment of administrative officers.


\(^{10}\) *Florida Constitution of 1885*, art. 4, sec. 17.
The structural change rearranged the political association between the governor and administrative officers. Being elected to office, cabinet officers were designed to be independent and not beholden to the governor for largess and favor.

Over a period of time, a process of board selection and governance evolved. As boards and commissions grew in number, appointment power was meted out and shared. Among the beneficiaries were the governor, members of the cabinet, legislative leaders, department heads, nominating commissions, local councils, and local commissions. The use of multiple appointing authorities or concurrent appointments became immersed in Florida politics.

The system has been carried over to the present day. When the current constitution was ratified in 1968, the cabinet was composed of six members, including the attorney general, secretary of state, treasurer, comptroller, commissioner of education, and commissioner of agriculture. In January 2003, due to constitutional revision, the number of elected cabinet officials was reduced. Presently, the cabinet is comprised of three elected state officers (i.e., the attorney general, commissioner of agriculture, and the chief financial officer). The reorganization of the cabinet enhances the governor's power, because the number of elected executives with whom he shares power is reduced. Despite these structural changes in the cabinet, collective governance in the executive branch will continue because it is the cornerstone of Florida's government. For instance, a reduction in cabinet membership has not resulted in a significant reduction in the number of appointed state boards.

Because appointment power is randomly arranged and involves multiple appointing authorities, diversity on boards and commissions has become an issue in
Florida politics. However, Florida is not the only state that has placed diversity on boards and commissions on the public agenda. The issue of diversity on boards and commissions is emerging in state and local politics.

An Emerging Issue in Research and Political Strategy

Diversity on state boards and commissions is becoming a visible issue in social science and policy research. In 2002, for example, the Connecticut Office of Legislative Research conducted a study to determine what other states have done to encourage diversity on state boards and commissions. The study revealed that most states have laws that encourage ethnic, racial and gender balance, and that eight states require appointing authorities to achieve diversity. As documented in the report, the states of Connecticut, Florida, Kentucky, Missouri, North Carolina, Oregon, Rhode Island, and Tennessee all generally require appointing authorities to strive for diversity on state boards, commissions, committees, and councils. Of the eight states listed in the report, Florida is the most populous and racially diverse.

Florida law specifically requires appointing authorities to ensure that appointments to boards and commissions reflect diversity by race, gender, and disability. The issue of diversity on appointed boards and commissions was first placed on the Florida public agenda during the administration of Democratic Governor Lawton Chiles (1991-1998). In 1994, Chiles signed legislation requiring appointing authorities to

---


12Governor Chiles died December 12, 1998, three weeks before the expiration of his second term.
ensure that their appointments to boards and commissions accurately reflect the proportion that minority populations represent in the total state or local population. In crafting the law, legislators recognize that boards and commissions play a vital role in shaping public policy for Florida. Section 760.80 is titled “Minority representation on boards, commissions, councils, and committees,” and it requires authorities who appoint statutorily created boards and commissions to submit to the Florida secretary of state an annual report identifying appointments by race, gender, and, disability.

The most recognized appointing authority in state government is the governor. Governor Chiles strongly implemented Sec. 760.80 to the benefit of African Americans. During his tenure, he administered more than 12,000 appointments. The number of African Americans appointed by Chiles was 1,872, or 14.6 percent of his appointments. This number is significant because the governor exercised real appointment equity. African Americans represent 14.6 percent of the state’s population.

Republican Governor John Ellis “Jeb” Bush was elected in 1998. In 2002, he became the first Republican governor in the history of Florida to be re-elected. Bush has publicized his interest in diversifying membership on boards and commissions in the state. But after four and a half years as governor, his minority appointments record is not comparable to the minority appointments made by Chiles. As of August 2003, Bush

---

13Florida Statutes, sec. 760.80 (2003).

14Ibid.

made 5266 appointments; 597 or 11.3 percent of these appointments are African Americans.\(^{16}\)

**Methodology**

In this study, the focus is on concurrent appointments, diversity in racial representation, and racial politics on boards and commissions in Florida. Attention is given to three interconnected issues that are related to the composition and operation of boards: (1) how the use of concurrent appointments on boards and commissions became pervasive in Florida politics, (2) the impact of concurrent appointments on minority inclusion and board diversity, and (3) the media coverage and public attention given to racial politics on boards.

A review of state laws and Florida constitutional history reveals a process of appointed boards emerging as appointment politics clash with electoral politics. In 1994, the state of Florida recognized that boards and commissions not only play a vital role in shaping public policy for Florida, but that racial and gender diversity on boards and commissions was a priority and goal to be achieved.

This study views diversity on boards and commissions in light of competing interests in Florida politics. Appointment power is always shifting and changing. The governor is in competition with other authorities, such as the cabinet and state legislators, for appointments made to boards and commissions. Boards are constantly being created and reorganized; power is dispersed. In Florida, appointed boards are seldom...

abolished. They thrive on the concurrent appointment system and continue to grow. Coupled with the concurrent appointment process, racial politics on boards and commissions is an intriguing study. An examination of racial issues on boards and commissions is also captivating because boards often operate out of the public eye, as they endeavor to present a public image of collegiality and goodwill.

For these reasons, three Florida boards were selected for study: (1) the Racial and Ethnic Bias Study Commission, (2) the Florida Board of Regents, and (3) the Board of Trustees, Florida Community College at Jacksonville.

The Racial and Ethnic Bias Study Commission was established by the Florida Supreme Court in 1989. Members of the commission were appointed in part to study the reasons for the lack of diversity in the Florida judicial system. One of the concerns addressed by the Racial and Ethnic Bias Study Commission was the process by which judges were appointed through recommendations made by judicial nominating commissions, also known as JNCs. But the nominating commissions themselves are not diverse. Up until 2001, three appointing authorities, including the governor, appointed members to judicial nominating commissions. State law currently authorizes the governor to co-sponsor appointments to the nominating commissions. This study includes information from the reports and recommendations of the Racial and Ethnic Bias Study Commission and describes the changes in appointment procedures to judicial nominating commissions as appointment power shifted to the governor.

The two higher education boards were selected because education became the key issue in state politics in the post Civil Rights Era and continues as a critical issue into the

---

new century. The Board of Regents administered the State University System (SUS) until it was abolished in 2001. In its place, eleven local university boards of trustees sprung to life. The political ramifications of these new boards are unfolding. This study includes a description of the appointment procedures, racial composition, and racial politics of the Board of Regents and the newly-minted university boards. An acknowledgement is made to the Florida Board of Governors, which was established in 2003 to reinstate a centralized State University System, and to assist the governor in appointing local university boards. Moreover, the higher education boards were selected because they were at the center of well-publicized, race-centered controversies during the 1990s. For instance, in 1996-1997, the District Board of Trustees, Florida Community College at Jacksonville was at the center of a racially-charged, locally-publicized presidential selection process that threw dirt on its façade of collegiality. This study examines that case.

The case study method is used to examine the concurrent appointment process, to measure African-American appointment opportunities, and to observe racial politics on boards and commissions. The case study brings an understanding of a complex issue or object and can extend experience or add strength to what is already known through previous research.

Robert E. Starke is one of the many scholars who have written on the case study method. Starke asserts that in the social science literature the case study is featured by descriptions that are complex and holistic, involving a myriad of "not highly isolated
variables."\textsuperscript{18} He goes on to state that data are likely to be gathered by observation and a writing style that is informal, perhaps even narrative.\textsuperscript{19} One purpose of the case study is to explain complex social issues and to build on theories. Therefore, the case study is suitable for this dissertation because of the myriad and complex nature of the study and its components.

In this work, the state of Florida, with which the researcher is familiar, is the case studied. The focus is on one state, but the aims are to provide information that can lead to inferences about other states that operate concurrent appointments and encourage additional research into both appointments and racial politics on boards. Research is very limited on concurrent appointments and diversity on boards and commissions. Sources are current, and the procedures complex.

Sources

Multiple sources of data were used including a survey of the literature on appointment politics and Florida government, gubernatorial history and politics, conversations with African-American board members, a survey of African Americans appointed to judicial nominating commissions, observation of board meetings, newspaper clippings, and officials state documents that quantify minority appointments in Florida and the states that issue such reports. Specific sources of data follow:

1. Published materials on the development and form of Florida politics and government administration that identify the larger context.


\textsuperscript{19} Ibid.
2. Official State Documents: These materials consist of three sources or documents that are published by the state: Appointees Statistics, Board Membership and Demographics, and the Minority Appointment Report. Appointee Statistics are compiled by the Governor’s Appointments Office and document the total number of gubernatorial appointments by race, gender, and party affiliation. The Board Membership and Demographics report is also compiled by the Appointments Office for each board that the governor appoints a member or members. The document is a record of the race, gender, party affiliation and tenure of the board membership. The Minority Appointment Report is an annual compilation of all appointments made in the state as outlined in Florida Statutes, and is published by the Florida Department of State. The report lists the governmental appointing authority and all appointments by race, gender and disability.

3. Annual Reports and other official publications such as official Minutes.

4. A survey administered to twenty-six African Americans appointed to judicial nominating commissions in order to gauge their views on concurrent appointments and racial politics on commissions. The survey was mailed to the homes of the commissioners on December 17, 2002. Commissioners were asked to return the survey by December 30, 2002. Fifteen of the commissioners retuned the survey. Three were returned for incorrect home addresses.

5. Observation of the meetings of the Board of Trustees, Florida Community College at Jacksonville.

6. Newspaper clippings and news reports on race-centered conflicts that occurred during board policy-making.

The study is organized into six chapters. Chapter 2 is titled The Subject and its Components. This chapter reviews representation on boards, Florida’s political culture, and an historical perspective of gubernatorial appointment power in the state.

Chapter 3 brings into focus the patterns and issues that affect the concurrent appointment process as it is used to appoint boards and commissions. This chapter examines the appointment process on boards and commissions in Florida, and the policies that affect diversity on appointed boards and commissions in other states. It also highlights the special circumstances that make diversity on boards and commissions an important issue in Florida politics.
The Racial and Ethnic Bias Study Commission published three reports that are the focus of chapter 4. This chapter concerns race and appointment politics in the Florida judiciary. It covers the recommendations of the Racial and Ethnic Bias Study Commission, as they relate to appointments made to the twenty-six judicial nominating commissions in the state.

Chapter 5 reports on the racial and appointment politics associated with two selected higher education boards. The Florida Board of Regents and the District Board of Trustees, Florida Community College at Jacksonville are the focus of the chapter.

Chapter 6 concludes the study and provides recommendations for reforms in the appointment process in Florida and race relations on boards.
CHAPTER 2
THE SUBJECT AND ITS COMPONENTS

Overview

This chapter brings together the salient and interrelated components of the study. It begins with a summary of articles and reports written on the matter of representation and diversity on boards and commissions. On the state level, appointment power is generally assumed to belong to the governor. Therefore, an explanation and a general consideration of gubernatorial appointment power are provided to anchor the study. A brief review of Florida’s political and historical culture describes the social environment in which Florida politics operate. The study further relates these discussions to the constitutional history of gubernatorial appointments in the state and shows that issues of race have motivated the rearrangement of gubernatorial appointment power in the state of Florida. These issues are reviewed as a way to introduce the broader context of the Florida system of government by appointed boards and commissions, and the racial imperative of African-American representation on boards and commissions.
Representation on Boards and Commissions

Florida has a long history of placing boards and commissions in charge of governmental affairs. However, the idea of placing boards in charge of public-sector activities was initiated on a broader scale in the Progressive era (1900-1917). During this period, reform-minded activists supported a process of citizen representation on boards as an avenue to better transport democracy throughout the political system. There is not much written on the subject of appointment to public boards and commissions. The majority of studies that have been compiled focus on private and corporate boards of trustees.

Jerry Mitchell, a scholar who has studied the subject, contends that unlike private-sector boards, government boards have been created for various reasons including to try out different approaches to governance.¹ Mitchell holds that it is the experimental character of boards that results in the fact that no well-developed theory guides their operation.² He categorizes boards by using four normative theories of representation: trustee, delegate, status, and symbolic representation. According to the trustee model, public servants are supposed to act in the public interest without regard to competing interests and demands. In his account, Mitchell is critical of the theory, noting that “It is hard for people to divorce themselves from society’s values, political realities, and their

²Ibid., 161.
own ideologies."³ Delegate representation means that appointees act on behalf of the people who appointed them. Mitchell sees two problems with this theory.⁴ First, board members often serve longer terms than the officials who appointed them. Second, board members are under no legal requirement to act on the behalf of the appointing authority. Status representation is of special interest to this study because it advances the idea that there is a need in government to have a diversity of perspectives. Mitchell promotes the idea that boards give average citizens an opportunity to participate in governance, and provides minorities and other disadvantaged groups with an opportunity to control programs.⁵ Symbolic representation is described as a process in which boards merely rubberstamp policies determined by experts and managers. As such, board members are seen to rarely engage in discussion of issues, or even bother to attend board meetings.⁶

Mitchell concludes with the observation that theories of representation are relevant to an understanding of board membership. The emphasis on the public interest may explain the difficulty in predicting how boards will act. As to accountability, Mitchell is unsure if changing the composition of boards would affect policy decisions. Finally, he indicates that while the professional staff of boards is influential, board members could still use their position to exercise a degree of independence from the staff.⁷

³Ibid.
⁴Ibid., 162.
⁵Ibid.
⁶Ibid., 163.
⁷Ibid., 166.
Existing research on the appointment of women and racial minorities to boards and commissions focuses more on the local level of political systems. Cheryl Farr writes an interesting account on the appointment of women and minorities to local advisory boards.\(^8\) While accepting the value of gender and ethnic group inclusion on appointed boards, Farr cautions that one cannot expect those people to hold specific views based solely on gender, race or ethnicity.\(^9\) She also notes that diversity on local boards is a goal to be accomplished in politics. Farr writes that the more important question for many local officials is whether their community's current and future population is effectively represented in appointed positions on boards and commissions.\(^10\)

Appointment equity is the measurement of minority appointments to boards in relationship to their percentage in the population. A study of ten cities in Texas, where the Mexican-American population was at least 18 percent of the total population, was conducted to gauge whether a change from at-large to electoral districts impacts the appointment of minorities to local boards. The authors found that a change in the electoral system did increase minority appointments, but they also found that local governmental structure is not as important to achieving appointment equity as the minority group's representation on city council and the percentage of the city that is minority.\(^11\)

---


\(^9\)Ibid., 14.

\(^10\)Ibid., 15.

Representation on appointed boards and commissions has come to symbolize models of inclusion, minority group status, and expansion of democracy though the appointment of women and racial minorities to public policy boards. Who exercises appointment power in state government is critical to the debate of who is appointed to boards and commissions. Although this thesis holds that multiple appointing authorities limit minority appointments of African Americans to boards and commissions in Florida, research on state appointments primarily focuses on the governor.

**Gubernatorial Appointment Power**

On the state level, appointment power is generally assumed to be assigned to the governor. Appointments are delegated to the governor in his or her role as the state’s chief executive. However, the governor has not always had a strong handle on appointments. During the colonial era, governors were appointed by the crown and held considerable power over colonial governments. Part of the American revolt against the British focused on the governor. The people feared and distrusted the executive because of the colonial experience. For that reason, executive appointment power was curtailed in the state constitutions. In the South Atlantic states, the governor was held in check by an executive council chosen by the legislature whose advice and consent was needed for policy decisions.\(^\text{12}\)

Thad L. Beyle, an expert on state politics, asserts that reforms in state government have increased gubernatorial appointment power. The strong governor is one who has full discretion and authority to appoint. Governors who approve rather than initiate

appointments are weak. The weakest governors are those who neither appoint nor approve, but rather are limited to dispensation by a separately elected body or board. In another report, Beyle holds that executive power sharing diminishes gubernatorial power and executive accountability. He notes that “Who is in charge often becomes a question that bedevils those wanting to make a change or to respond to a problem; and no matter who is in charge, it is too often the governor who is blamed for whatever happens in state government.”

The institutional or formal powers of the governorship are those delegated by state constitutions and statutory provisions. In his study of gubernatorial power, Beyle uses the “appointive power index” developed by the Council on State Governments, which ranks the governors institutional power on a five-point scale. On this scale, the average score is 3.0. Governors from the states of Pennsylvania and West Virginia rank high on the index and have strong appointment power, but governors in the states of Georgia, Oklahoma, and Florida rank low on the index and their appointment power is weak.

Political scientist Diane Kincaid Blaire acknowledges that state government is better served when the governor appoints top-level administrators, such as members of the state cabinet, agencies and program directors. Blaire contends that the enormity of appointments governors are required to make introduces a tedious and time-consuming

---


factor to gubernatorial duties. Constant state reorganization and the dispersion of power among elected executive officials also compromise gubernatorial appointment power.16

Coleman Ransone argues that individuals appointed by the governor are more likely to carry out the wishes of the governor than those policy makers not selected by the governor.17 Gubernatorial appointment power is limited if the term of an appointed official does not coincide with the governor’s tenure in office. Political appointees, whose tenures in office do not coincide with that of the governor, view the state chief executive as slightly less than influential than those whose appointments coincide with the governor’s term in office.18

Appointing power can be a bridge builder in race relations. If the governor really means business on equal opportunity and affirmative action, his or her appointments of women and minorities in office will send a message.19 However, strengthening gubernatorial appointment power does not guarantee the inclusion of women and racial minorities to public office. Since 1996, the Center for Women in Government and Civil Society, located at the University at Albany, State University of New York, has conducted a study of state appointed policy makers.20 Policy makers are defined as

---


19Ransone, The American Governorship, 42.

20Center for Women in Government and Civil Society, Appointed Policy Makers in State Government: The National Profile (Albany: University at Albany, State University of New York, Fall
department heads and top advisors in the offices of state governors (i.e., chief of staff, legal advisor, press secretary, government liaison, and heads of boards and authorities). Research conducted by the Center reveals substantial racial and gender appointment gaps at these levels. A representation ratio was established and calculated by dividing the percentage of policy leader positions awarded to racial minority appointees by the percentage of people of color in the state’s population. The Center reports that, in 1990, racial minorities comprised 24.6 percent of the U.S. population, yet held only 12 percent of gubernatorial policy leadership appointments in state government.21 Throughout their reports, a constant echo rings; racial minorities and women are dramatically underrepresented as appointed policy makers. Party affiliation of the governor does affect appointment trends. Democratic governors appoint 1.3 times the proportion of women and 1.5 times the proportion of African Americans to top policy positions as do Republican governors. Republican governors appoint twice the proportion of Latinos to top policy posts as Democrats.22 In the Center’s most recent study, published in 2004, it reports that African-American women gained in the number of high-ranking executive


22Ibid., 2.
positions. The Center notes that “between 1999 and 2003, the number of African-
American women appointees across the country increased from 50 to 66.” But the
Center for Women in Government and Civil Society also reports that even as Census
2000 recorded substantial changes in the race and ethnicity composition of the U.S.
population, the demographics of policy leaders changed very little between 1999 and
2003.

Diversity in gubernatorial appointments is dependent on a number of variables, as
explained by Riccucci and Saidel in their research on the demographics of gubernatorial
appointees. The race, gender, party affiliation, and appointive power of the governor, as
well as the percentage of minorities in the state, are some of the factors that must be
considered in gauging diversity in appointments. Among their findings, African
Americans are more likely to be appointed to office by Democratic governors, while
Latinos or Hispanics are more likely to be appointed by Republican governors.

Governors are generally authorized to appoint individuals to public policy
positions such as boards, commissions, councils, and committees. Even though white
males are the recipients of most gubernatorial appointments, the issue of diversity in
appointments to boards and commissions is emerging and gaining interest in social
science research.

---


24Ibid., 2.

Florida Politics and Government

The question of who exercises appointment power in Florida politics is an important one because the state is populous, dominated by boards and commissions, and is racially diverse. Florida still demonstrates an Old South political culture. While racial minorities compose over thirty-three percent of its population, they are underrepresented on appointed boards that dominate state politics and affairs. An examination of the state's political and historical environment is presented to show a pattern of racial intolerance, gubernatorial styles, and a political system that encourages exclusion of minorities from state politics and public affairs.

Florida is the fourth most populous state in the United States. Census 2000 counted 15,982,328 Florida residents. African Americans represent 14.6 of the state's population. Hispanics or Latinos are the largest racial minority, representing 16.8 percent of the population. While Asian-American and Native-American populations stand at 1.7 percent and 0.3 percent respectively.

Florida is a highly transient state with a large immigrant population. This characteristic of a large immigrant population is a defining feature of Florida politics and political culture. Moreover, Florida acts as a magnet, attracting migrants who seek the good life, citizens who advocate low taxes, retirees, and laissez faire economics. There is no personal income tax.

---

26 University of Florida, Bureau of Economic and Business Research, Florida Statistical Abstract 2003, Table 1.01 (Gainesville: University Presses of Florida, 2003), 4.

27 Ibid.
In fact, Florida's political culture evokes a public attitude of estrangement from the state's political and economic problems. As a result, the state is up for grabs to candidates and political parties that best represent and enunciate the themes of low taxes and limited public services. Politicians who understand the rivalries and alienation among the competing groups (i.e., African Americans, Cuban immigrants, the elderly, whites who are native and new arrivals) can easily exploit the political environment. Florida politicians conveniently prey on voters' resentment of taxes and government-sponsored programs. Two observers of Florida politics, Tom Fiedler and Lance deHaven-Smith, write the reason for these trends: "This, above all, is a place fractured by geography, by cultural barriers, by economics, by lingering loyalty to former homestates."28 The authors hold that it is difficult to sway Florida voters against an anti-tax, limited government agenda. Allegiance to the state is weak, because many of the state residents are transients with no strong roots or ties to Florida and its history.

A number of published books, articles, and dissertations examine the historical and political status of Florida's governors and executive branch. Florida historian Canter Brown, Jr., for example, has written the political biography of Ossian Bingley Hart.29 Hart was a founder of the Republican Party in Florida. He was a strong Unionist during the Civil War and the first native Floridian to be elected governor. Hart was also considered an early proponent of equal rights for blacks. Governor Hart appointed a number of blacks to public office including Jonathan Gibbs, Florida's first African-


American Superintendent of Instruction.30 Others have commented on the complex connection of Florida governors to big business. These commentators find a strong tendency towards using government in the interest of big business. Upon the demise of Reconstruction and return of Democratic Party control, the floodgates of migration were flung open. Land speculators, capitalists, and railroad magnets were invited into Florida to grab land, accumulate wealth, and profit during the Gilded Age (1877-1893).31

In the 1920s, the growth of the Ku Klux Klan and continued racial conservatism rivaled attempts to lure big business and promote tourism to Florida’s semitropical paradise. Victoria H. McDonell writes about the transformation of Florida from agriculture to an urban economy. The 1924 Florida gubernatorial campaign was the turning point.32 Democrat John W. Martin, a former mayor of Jacksonville, was elected. According to McDonell, Martin was victorious because he advocated an ambitious road building program to increase tourism and boost the state’s economy. She describes this as the basis of Florida’s transformation from an agricultural to an urban economy, noting “Florida leaped from its past agricultural orientation into a modern, urban-oriented future.”33

Samuel Proctor’s biographical sketch of a Florida governor advances the view that the state had at least one populist governor in the twentieth century. Elected


33Ibid., 50.
governor in 1904, Napoleon Bonaparte Broward is recognized as spokesman for white labor and farmers in the state. Though African Americans were disenfranchised and denied political rights, Broward was considered the exponent of the little man and the opponent of Florida corporations and business elites. The presence of African Americans, however, was a liability and he recommended their removal at a reasonable price and transported to a territory purchased by the United States.34

Race and politics have been constant running mates in Florida gubernatorial campaigns. The “cracker politics” that grew up during the 1920s represented a sense of pride in Florida’s Southern heritage. Wayne J. Flynt has written an account of the “Cracker Messiah.” The author traces the life and political career of Sidney Catts, a Baptist minister born in Alabama, who became governor of Florida in 1920. Catts campaigned and won the election on a platform that advocated anti-Catholic sentiments and white supremacy.35

One of the most thorough analyses of Florida politics was published over fifty years ago by V.O. Key, Jr. Key portrays Florida as a state which championed the theme, “Every Man for Himself.”36 He compares Florida politics to the factional patterns in the other states and attributes Florida’s difference to its huge area, geographical configuration, and diversity of population and economic interests. In Key’s view “Florida’s huge area and its peculiar geographical configuration obstruct the formation of


state-wide political organizations.” Key ranks Florida high in political atomization. He observes that few Florida politicians exert real influence beyond their own county, and he considers the state “not only unbossed, but also unled.” According to Key, coalition politics is difficult to achieve in Florida, because each candidate for county office runs without collaboration with other local candidates.

LeRoy Collins was governor of Florida from 1955-61. In the literature that is written on Florida governors, he is generally considered the moderate voice of reason on issues of race relations. Collins governed the state during the turbulent years of school desegregation. Tom R. Wagy surveys the political activities of this governor in his study. Wagy portrays Collins as the politician who brought Florida into the twentieth century by promoting big business, industry, and tourism while at the same time pronouncing a moderate point of view on race relations. Robert Howard Akerman presents a similar view of Collins. Akerman asserts that Florida managed to avoid the racial turmoil that occurred in states like Alabama and Arkansas in the 1950s because Collins, with the support of the state press and the public, averted strife. While he promised to use the lawful powers of his office to preserve segregation, Collins always insisted that a moderate course of integration was the best method for the state.

---

37 Ibid.
38 Ibid., 82.
Though outdated in reference to the present-day constitution, Daisy Parker's research is useful for its analysis of governor/cabinet conflicts and rivalries. Parker includes a chapter on executive power sharing that developed in Florida as a result of ex-officio boards and the irregular patterns of operation that accompany the arrangements. Historical treatments of the governorship and the powers of the governor outlined in the research are of assistance in understanding the evolution of executive authority and power distribution in Florida politics.

A somewhat different approach to understanding the Florida executive branch is presented by James Milton Dennis, another Florida scholar, whose study was undertaken after adoption of the 1968 Constitution of Florida. His research examines attempts by the Florida legislative and executive branches to reorganize the bureaucracy and streamline state administration. Dennis recognizes five predominant actors in the reorganization theatre: the chief executive and his aides, independently elected executives (the Florida cabinet), appointed executive officers of state agencies, state regulated private interests, and legislative reorganization committees. Florida's executive branch was reorganized with the pledge that there would be no more than twenty-five executive departments created.

Florida politics is also examined in various studies compiled on the states. In the 1960s, Florida was a state with limited opportunities for manufacturing, low union

---


43Florida Constitution, art. 4, sec. 6.
membership, and a high contrast between rural and urban regions. Rural-urban clashes over reapportionment and the fact that Florida tended to vote Republican for president while electing Democrats to state office are two other items of political note. In another appraisal of southern politics, Neil R. Peirce defines the State of Florida as "The Man-Made State." Specifically, Florida is portrayed as a state of retirees, senior citizens, military installations, wealthy migrants, and free spending tourists. A similar translation is reiterated in another publication that describes Florida as a "State of Exiles." Rapid population growth and a heavy influx of immigrants are dominant features of Florida politics. Characteristically, the state is identified by regional customs, cultures, and politics. For example, Cuban immigrants play a dominate role in Miami politics. Palm Beach is a haven for the rich yacht club set. The West Coast encompassing Pensacola is described by some Floridians as the "Cracker Riviera." Tourism is the feature of Central Florida and Orlando. Northeast Florida, anchored by Jacksonville, is culturally attached to South Georgia and Dixie.

Kallina has published an account on the political career of the first Republican governor of Florida in the twentieth century, Claude Roy Kirk, Jr. Kirk was elected in 1966 and served one term. Florida was still a state dominated by Democrats, but Kirk is credited with ushering in an era of two-party politics in Florida state government. Under his administration, a new state constitution was adopted in 1968. Kirk, however, disliked

---


the cabinet system, referring to the governor and cabinet as "the seven dwarfs." He believed that members of the cabinet diffused authority so as to make it impossible to hold state officers accountable. In his work, Kallina discusses the clash of power between Kirk and the cabinet noting, "Kirk was determined to establish the supremacy of the governor over members of the cabinet." Governor Kirk did not succeed in this endeavor; the 1968 constitution reestablished the prominent role of the cabinet in Florida government.

Lawton M. Chiles, who served as governor from 1991-98, is viewed as a problem-solver and leader in Crew’s account written about the leadership style of the Florida governor. During his first term, Governor Chiles sought to reorganize state government. He advocated abolishing a number of agencies and departments, while merging others. He tried to enhance the governor’s veto power and control over the budget. Equally as important was the author’s contention that Chiles was a governor who could be trusted. Crew notes that "His values are honesty and humility, and many observers attributed his victory to his ability to get Floridians to trust him."50

Colburn and Scher provide a comprehensive study of Florida gubernatorial politics in the twentieth century. The authors include a survey of campaign tactics and agendas of the governors, as well as how Florida governors approached issues of race.

---


48Ibid.


50Ibid., 85.
relations. As to appointments, the authors found that Florida governors have sought to appoint qualified and capable people to office; however, the authors see a paradox in gubernatorial appointments. They insist that the governor must not surround himself with "yes men" because they may isolate him from the general affairs of state. They also believe that a governor who appoints individuals who are too independent might compound the governor's attempts to control his administration.\footnote{David R. Colburn and Richard K. Scher, \textit{Florida's Gubernatorial Politics in the 20th Century} (Gainesville: University Presses of Florida, 1980), 135.}

\textit{The Florida Handbook} is published biennially.\footnote{Allen Morris and Joan Perry Morris, comps., \textit{The Florida Handbook 2001-2002} (Tallahassee: Peninsular Publishing, 2001).} It is a useful reference to the history of state politics, constitutional evolution and government procedures. In addition, the publication serves as a dictionary of past and present state power holders.

Three contemporary textbooks on Florida politics were written in the 1990s.\footnote{Thomas R. Dye, \textit{Politics in Florida} (Upper Saddle River, New Jersey: Prentice Hall, 1998); Robert J. Huckshorn, ed. \textit{Government and Politics in Florida} (Gainesville: University Presses of Florida, 1998); David R. Colburn and Lance deHaven-Smith, \textit{Government in the Sunshine State: Florida Since Statehood} (Gainesville: University Press of Florida, 1999).} The most current and comprehensive of these works is by Colburn and deHaven-Smith. The authors note that Florida has an unusual political environment because of its extensive urban and regional diversity. Colburn and de Haven-Smith recognize the atomized nature of the Florida cabinet. They make reference to the system as collegial, noting that "This collegial form of government makes Florida unique among the fifty states and a source of considerable frustration for state governors."\footnote{Colburn and deHaven-Smith, \textit{Government in the Sunshine State}, 47.} The authors suggest
that while the constitutional design supports the theory of governor and cabinet working in tandem, the Florida cabinet system limits the powers of the state's chief executive.

Florida politics is recognized more in a historical setting than contemporary political trends. Moreover, rapid growth and development, shifting political alliances, and changes in government structure indicate that Florida politics require a constant and steady update. A void would be filled if a project were to be undertaken to write an annual edition, examining and analyzing Florida's institutions of government.

**Rearranging Gubernatorial Appointment Power**

The stage is set for an examination of the evolution of government by appointed boards and commissions as practiced in Florida. Florida has numerous boards and commissions that are selected by multiple appointing authorities. This system of government by appointed boards and commissions emerged gradually, but purposefully in Florida politics. That process is described drawing on the state's constitutional history.

Six state constitutions have been written for Florida. Conservative Democrats from rural counties governed Florida during most of its history and they would write all but one of the state's constitutions. These documents are important to this study because they display a pattern of political rearrangement of gubernatorial appointment power. Appointment power tends to be arranged differently in various constitutions.

When admitted to the Union in 1845, Florida was a frontier state with few inhabitants. The issue of statehood was first brought before voters in 1838 after Congress provided for a two-house legislature. "A census taken that year listed a population of
48,223 persons, of whom 21,132 were slaves and 958 were free blacks.\textsuperscript{55} Although the number was 8,000 fewer than the number required for statehood, a constitutional convention drafted a document and submitted it to the people who ratified it by a close vote.\textsuperscript{56} An interesting aspect of the constitutional convention was that only three of the delegates in attendance were native Floridians. "The fifty-six members came from twenty-six states in the Union. Four were foreign born, and only three were Florida born. Lawyers and planters were most numerous."\textsuperscript{57} The governor, elected for four years, was not allowed to succeed himself and his departmental administrators (secretary of state, treasurer, and comptroller of public accounts) were appointed by the legislature. The legislature also selected judges, the attorney general and local prosecutors.

Conservative Democrats controlled the governor's office since the state's inception. A sign that Florida Democrats intended to conserve a cabinet-type board system was shown in 1855 when they created an ex-officio board, the Board of Trustees of the Internal Improvement Fund. The board was established to assist private corporations, develop state lands, and was composed of the governor and departmental officers. Under the system, the governor and executive officers (the comptroller, the treasurer, the secretary of agriculture, and the registrar of state lands) maintained their separate executive positions, and they operated as a board that issued and secured bonds for railroad and canal projects.

\textsuperscript{55}Michael Gannon, \textit{Florida: A Short History} (Gainesville: University Press of Florida), 37.

\textsuperscript{56}Ibid.

\textsuperscript{57}Charlton W. Tebeau, \textit{A History of Florida} (Coral Gables: University of Miami Press, 1971; reprint January 1987), 126 (page citation is to the reprint edition).
Six years later, the Civil War intervened. The state seceded from the Union on January 10, 1861. The Confederate constitution reduced the governor's term of office to two years. Legislators appointed the secretary of state, treasurer, and comptroller of public accounts. However, the governor was empowered to appoint state judges with two-thirds consent of the Senate.

In 1865, a meeting was convened in Tallahassee to annul the Ordinance of Secession and restore Florida to the Union. A new constitution was written. Blacks were only made competent as witnesses in criminal proceedings involving other blacks. Jurors were selected from white males. The governor was elected for a four-year term, with provision for succession. Gubernatorial appointment power was limited to Supreme Court judges. In addition to the governor, the executive branch consisted of a secretary of state, an attorney general, a comptroller, and a treasurer. This document was operative for a short time as Congress rejected President Andrew Johnson's plan for returning the states of the Confederacy to their pre-war status. With the onset of Reconstruction, Florida came under the rule of a military governor, and another constitution was written.

In accordance with the Reconstruction Acts, a constitutional convention assembled in January of 1868. African Americans comprised a sizeable number of the delegates. Canter Brown, Jr., records that, "Of the initial forty-six delegates, eighteen

---


59 Florida Constitution of 1865, art. 16, sec. 2.

60 Ibid., art. 16, sec. 3.
were blacks." Republicans held the majority, but the party was divided. Two groups were organized, largely with black support, but under different leadership (centered on the organizations known as the Lincoln Brotherhood and the Loyal League of America), and the third was a group of Unionists who came to be known as Scalawags. The faction associated with the Lincoln Brotherhood and the Loyal League first dominated the convention. In protest, the more moderate Scalawags left the convention. They later rallied and seized control of the convention. Consequently, the less radical elements of the Republican Party wrote the constitution.

The resulting constitution was the first to use the term "cabinet." Under the constitution, the governor and members of the cabinet were authorized to sit as the Board of Commissioners of State Institutions. This board was authorized to have "supervision of all matters connected therewith, in such manner as shall be prescribed by law." Adopted in May of 1868, the document allowed the governor broad appointment power. He was authorized to appoint the cabinet and state judges. Also, in each county, the governor appointed an assessor of taxes, treasurer, surveyor, superintendent of common

---


63 The cabinet consisted of the secretary of state, attorney general, comptroller, treasurer, surveyor general, superintendent of public instruction, adjutant general, and commissioner of immigration. All were appointed by the governor.


65 Florida Constitution of 1868, art. 5, sec. 20.
schools, and five county commissioners. The judicial article empowered him to appoint three Florida Supreme Court justices for life. The governor was authorized to appoint circuit judges for eight-year terms and sufficient justices of the peace in each county. He appointed a state attorney in each circuit. Gubernatorial appointments were also authorized for sheriff and clerk of the court in the counties.

Florida historian Peter D. Klingman writes about the Florida Republican Party and Reconstruction. He maintains that the governor's appointment power resulted in state Republicans appointing blacks to office. Klingman notes that "In those counties with large or majority black populations, Republican governors often appointed Negroes to fill these offices." Republicans depended heavily on the newly enfranchised freedmen for electoral victories. Since the governor had the authority to appoint state and county judges, the power was used as a means of rewarding black Republicans.

One of the most important areas of development in Florida at the time was education. Republican Governor Harrison Reed appointed Jonathan Gibbs, Florida's only African-American cabinet member during Reconstruction to the position of secretary of state in 1868. Gibbs was later appointed superintendent of public instruction.

---

66Ibid., art. 5, sec. 19.
67Ibid., art. 6, sec. 3.
68Ibid., art. 6 sec. 7.
69Ibid., art. 6, sec. 15.
70Ibid., art. 6, sec. 19.
72Ibid., 24.
superintendent, Gibbs developed the state’s first public school system. Moreover, the 1868 document provided for the public education of all children in the state, without distinction or preference.73  The constitution instructed the legislature to provide a uniform system of common schools and tuition-free university.74  Suffrage was also granted to every male over the age of twenty-one, regardless of color.75

Jonathan Gibbs was one of many African-American appointed officials who served in Florida during Reconstruction. Florida historian Canter Brown, Jr. explores the lives and careers of the appointed and elected African-American politicians in the state from 1867-1924. Corresponding with the timeframe of Reconstruction, most of the officials appointed or elected served from 1867-1877. Brown holds that because there were few nonagricultural jobs, the state offered employment possibilities through appointments to local office. The state paid in scrip, which limited the rewards. On the other hand, a federal appointment brought more financial security.76 The federal government paid in hard cash, and appointed positions were very desirable, especially in the customs service and the post office.

However, the issues of gubernatorial appointment power and extension of suffrage and rights to African Americans were the agents that led to the demise of the 1868 document. By 1877, conservative Democrats regained control of the executive.

---

73 Florida Constitution of 1868, art. 8, sec. 1.
74 Ibid., art. 8, sec. 2.
75 Ibid., art. 14, sec. 1.
Shortly thereafter, agitation for a new constitution began.77 Opposition centered around two provisions of the constitution: the governor's power to appoint local officials (or home rule for black-belt counties), and suffrage restrictions in those same counties. Klingman notes that at the end of Reconstruction, pressure was placed on Democrats to rewrite the state constitution:

Ever since 1876, there had been pressure on Democrats, especially those who resided outside the black-belt counties, to rewrite the document. In these white-dominated counties, Democrats complained most about the governor's appointive power, outmoded since the overthrow of Reconstruction. Black belt Democrats, on the other hand, feared quick restoration of home rule to Florida counties. Without protection, the Negro majorities in these counties would return Republicans to office.78

In the eyes of Democrats of the era, Florida's Reconstruction governors were seen as unworthy public officials whose political agenda included the appointment of blacks to public offices traditionally held by white males. Democrats sought home rule to settle the issue. For the Democrats, home rule symbolized white rule and a return to election, rather than the gubernatorial appointment of county officials. Democrats also sought to place secure barriers on African-American voting rights, so as to enable them control of state and local politics. Republican control of state politics was untenable to Democrats. Therefore, white Democratic county leaders advocated an immediate change in the status quo. Florida historian Edward C. Williamson summarizes the reasons why the county leaders desired to change the status quo. He writes, "First, they wanted a governor with

77Klingman, Neither Dies Nor Surrenders, 94-111.
78Ibid., 95.
limited powers who could be controlled. Second, they wanted home rule by Democrats. Third, they wanted the state government run at bargain prices.”79

Government at “bargain prices” has always been an overriding objective of Florida politicians from 1876 to the present. Florida historian Samuel Proctor describes the political culture as one that promotes cutbacks and restraints on government spending.80 Democratic Governor George F. Drew’s tenure (1877-1881) coincided with the end of the Reconstruction era in Florida. During his administration, the legislature cut the county school tax by half. Many counties found it difficult to keep schools open and pay teachers’ salaries. A convict lease system was introduced to pay for the cost of housing and caring for prisoners. Chattahoochee was converted from a prison to an insane asylum in order to save the state from boarding the insane in other institutions. The state did not have an institution of higher learning until 1884.81

Florida chartered the first disfranchising constitution after Reconstruction. A convention was set for 1885. The Democrats held a sizable majority at the constitutional convention. Of the 108 delegates, eighty-two were Democrats, twenty-three were Republicans, and three were Independents.82 Unlike the 1868 meeting, only seven of the delegates to the 1885 meeting were men of color. Peter Klingman explains the issues that mattered most to the delegates, stating that “The issues that mattered most to Republicans


81Ibid.

and Negroes were suffrage, poll taxes, and the governor's appointive power." Under the constitution adopted, the cabinet system became more formal and entrenched. The governor was stripped of broad appointment power, and the administrative officers (members of the Florida cabinet) were elected instead of appointed. A provision, carried over from the 1868 document that the governor and administrative officers constitute a Board of Commissioners of State Institutions, remained. State Supreme Court judges were elected, rather than appointed. Salaries of state officials were reduced. The legislature was authorized to impose a poll tax. The tax was adopted in 1889.

Except for county commissioners, who remained appointive until 1900, all local officials were elected. The idea of authorizing the governor to appoint county commissioners was not to enhance his power at the grass roots or local level. Florida historian Edward C. Williamson asserts that the provision was really a tool to deprive the Republicans of offices in the black-belt. Williamson states, "A governor was expected to rubber-stamp the appointments of the nominees selected by county Democrats."

At the same time, the legislature instituted a multiple ballot box voting system. Voters were required to deposit ballots in separate boxes for each of the principal officers and separate polling places were established for national and state elections. The system worked against the voter because in order for the ballot to count it had to be deposited in the correctly marked ballot box for each office. These devices coupled with

---

83 Klingman, Neither Dies Nor Surrenders, 96.
84 Florida Constitution (1885), art. 6, sec. 8.
85 Williamson, Florida Politics in the Gilded Age, 140-41.
intimidation and violence against African Americans quickly restored the Democratic Party to power. As Williamson explains, “Florida was now safely in the hands of the white voters. The county leaders had gained the home rule which they had so long desired. At Tallahassee the governor and the elected cabinet provided collective executive leadership rather than the single leadership of the governor.”\(^{87}\) For the next century, conservative, rural Democratic Party politics dominated in Florida.

Currently, the state is governed under the Florida Constitution of 1968. The constitution was charted during the era of federal government’s re-emergence in issues of apportionment, redistricting, and racial equality. Talbert D’Alemberte notes that “The U.S. Supreme Court in *Baker v Carr* (1962) and its progeny resulted in a tremendous reallocation of power within all state legislatures, and few of these legislatures had been as poorly apportioned as that of Florida.”\(^{88}\) A state legislature that was apportioned to favor rural interests over rising urban elites prompted the Florida legislature to consider constitutional revision. By the time the state moved towards revision in 1965, demands for legislative reapportionment were increasing throughout the state, particularly in South Florida.

In January 1967, the United State Supreme Court declared Florida’s legislative districts unconstitutional.\(^{89}\) Elections were ordered based on new reapportionments. The action resulted in a state legislature that was more representative of the metropolitan


areas of the state. Nonetheless, Democrats in control of the legislature were at odds with Republican Governor Claude Kirk over constitutional changes. Therefore, a compromise was set. Power sharing would continue between the governor and the elected cabinet. One observer of the Florida cabinet system placed the compromise in a historical perspective, writing that “It had nothing to do with logic or management analysis; rather it was the result of political compromises and historical precedent.”

Under the Constitution of 1968, the word “cabinet,” which was removed under the 1885 document, was restored. When the constitution was first adopted, the cabinet consisted of six members. In 2003, the cabinet was reduced to three state elected members, the attorney general, commissioner of agriculture, and the chief financial officer. Rivalries within the cabinet system are anticipated. A constitutional provision is made to settle disputes, because the governor and three-member cabinet constitute an even number. In the event of a tie vote of the governor and cabinet, “the side on which the governor voted shall be deemed to prevail.” There is also a “little cabinet.” The little cabinet represents the agencies under control of the governor including, for example, the Florida Lottery, the Department of Management Services, the Department of Community Affairs and the Department of Corrections. Each of these agencies has boards, councils, panels, and commissions under its control. It has been acknowledged that the Florida executive branch is purposefully disorganized. Fiedler and deHaven-Smith describe the cabinet as a throwback to the past, contending that “The Cabinet is a

---


91*Florida Constitution*, art.4, sec. 4.
vestige of post-Civil War Florida when voters, who were mostly white males, preferred distributing power to concentrating it in the governor, who in those years might be controlled by Yankees."92

The salient characteristics of Florida’s constitutional evolution have been threefold: limiting gubernatorial appointments by imposing an elected cabinet system, restricting the suffrage of African Americans, and administering policy in the form of ex-officio and appointed boards and commissions.

Summary

Florida has the fourth largest African-American population in the nation behind New York, California, and Texas. Blacks have strong roots and ties to the state. Florida historian Michael Gannon remarks, “For most of Florida history as part of the United States, African-Americans formed nearly one-half of the population.”93 In the face of huge white and Hispanic immigration the African-American population was reduced to 14.6 percent in 2000.94

Although there are a few studies on contemporary black Florida, a review of the literature written on blacks in Florida suggests that publications lack a comprehensive and thorough analysis of the topic.95 Most of the studies are historical in nature or are

93Michael Gannon, Florida: A Short History, 142.
94Florida Statistical Abstract 2003, Table 1.01, 4.
95See for example, John Burt, Jr., “Black Participation in Florida: A Test of Three Explanations” (Ph.D. diss., Florida State University, 1982); Manning Dauer, Florida and the United States Voting Rights Act of 1965 (Gainesville: University of Florida Press, 1982); Charles U. Smith, ed., The Civil Rights
principally devoted to a city, a town or a region of the state. An examination of race
and politics in a statewide perspective is needed and long overdue.

Florida is interesting because it continues to display an Old South legacy. It
maintains a culture of low taxes, limited government services, individual self-reliance,
and racial intolerance. These themes permeate throughout Florida’s history and politics.
However, the state is portrayed commercially as a semi-tropical retreat for tourists and a
retirement Mecca for the elderly.

Florida’s government is studied because appointed boards and commissions are
dominate features in state politics. Moreover, the state has an executive branch that
operates as a board. The governor and cabinet serve in their official capacities, as well as
ex-officio members of other state boards and commissions. For example, the governor
and the cabinet are also the State Board of Administration, the Financial Services
Commission, and the State Board of Executive Clemency.

Movement in Florida and the United States: Historical and Contemporary Perspectives (Tallahassee:
Father and Son Publishing, Inc., 1989); David R. Colburn and Jane L. Landers, eds. The African American
Heritage of Florida (Gainesville: University of Florida Press, 1995); James Button, Scott Richard, and
Evelyn Bethune, “A Look at the Second Generation of Black Elected Officials in Florida,” State and Local
Government Review, 30, no. 3 (Fall 1998): 181-89; Abel A. Bartley, Keeping the Faith: Race, Politics, and
Social Development in Jacksonville, Florida, 1940-1979 (Westport, Connecticut: Greenwood Press, 2000);
Robert W. Saunders, Sr., Bridging the Gap: Continuing the Florida NAACP Legacy of Harry T. Moore
(Tampa: University of Tampa Press, 2000).

96See for example, David R. Colburn, Racial Change and Community Crisis: St. Augustine,
Florida 1877-1980 (New York: Columbia University Press, 1985); James W. Button, Blacks and Social
Change: Impact of the Civil Rights Movement in Southern Communities (Princeton, New Jersey: Princeton
University Press, 1989); Barbara Hunter Walch, New Black Voices: The Growth and Contributions of
Sallye Mathis and Mary Singleton in Florida Government (Jacksonville: Barbara Hunter Walch, 1990);
Kevin McCarthy, Black Florida (New York: Hippocrene Books, 1995); Michael D’Orso, Like Judgement
Day: The Ruin and Redemption of a Town Called Rosewood (New York: G.P. Putnam’s Sons, 1996);
Abraham D. Lavender and Adele S. Newson, eds., Black Communities in Transition: Voices from South
Florida (Lanham, Maryland: University Press of America, 1996); Marsha Dean Phelps, An American Beach
for African Americans (Gainesville: University Press of Florida 1997); Marvin Dunn, Black Miami in the
Twentieth Century (Gainesville: University Press of Florida, 1997); Glenda Alice Rabby, The Pain and the
Promise: The Struggle for Civil Rights in Tallahassee, Florida (Athens: University of Georgia Press,
1999).
The system of government by boards and commissions emerged gradually during the racially-charged Reconstruction era. From 1868-1877, Republicans held the governor's chair. During that time, they sponsored the appointment of African Americans to state and local offices. White Democrats viewed the practice as intolerable and upon restoration of Democratic rule a new constitution was written that stripped the governor of most appointment power. The 1885 constitution provided for election, rather than appointment of state and local officials. Democrats instituted a poll tax and a white primary that, along with other disfranchising tactics, denied African Americans the vote and restricted their opportunities to gain elected office.

Meanwhile, the cabinet system became entrenched and its members served with the governor as ex officio members of other state boards. Over a period of time, more boards and commissions were created to carry out state policy. As boards and commissions grew in number, appointment power was extended to other elected and appointed officials. Once planted, the concurrent appointment process thrived in the Sunshine State and grew to be the standard for appointing boards and commissions.

Chapter 3 continues the inquiry with a closer examination of the concurrent appointment practice in Florida. It addresses public policy that stipulates board diversity in the states, and it highlights the special circumstances that make diversity on boards and commissions an important issue in Florida politics.
CHAPTER 3
DIVERSITY AND APPOINTMENT POLITICS

Overview

This chapter brings into focus the patterns and issues that affect the concurrent appointment process as it is used to appoint boards and commissions. An explanation of how current appointments impact the doctrine of separation of powers is offered. Then consideration is given to the states that have legislation mandating diversity on boards and commissions. A review of the Florida practice of concurrent appointments on boards and commissions follows. The chapter concludes with an examination of appointment diversity as an issue in the state of Florida and complements it with tables to document the actual numbers of minorities appointed in one year.

A Review of Concurrent Appointments

In Federalist No. 77, Alexander Hamilton considered concurrent appointments as detached links in the chain of democracy. Government accountability could not be achieved through multiple appointing authorities. He described the council of appointment system that was used in New York as one that consisted of from three to five
persons, of whom the governor is always one. Hamilton distrusted the system, because appointments were made in secrecy, with the opportunity for mischief ever-present. Hamilton describes the process that was used in New York: "This small body, shut up in a private apartment, impenetrable to the public eye, proceed to the execution of the trust committed to them."

The concurrent appointment process is widely used on the state and local levels. However, despite the strong appointment power of the President of the United States, concurrent appointments are not forsaken at the federal level. An example of a scheme is found in appointments made to the United States Commission on Civil Rights. Eight members are appointed to the commission. Four are presidential appointees, two selected by the Speaker of the House, and two are the choice of the President pro tempore of the Senate. Concurrent appointments are used to appoint members to the Federal Election Commission. Multiple appointing authorities are also in place for members to federal boards established under the Help America Vote Act (HAVA). One of these boards, the Election Assistance Commission Standards Board, has 110 appointing authorities. Fifty-five are selected by state election officials and fifty-five by local election officials.

In the state of Florida, concurrent appointments haunt the doctrine of separation of powers. In irregular order, members of the cabinet, legislative leaders, nominating...
commissions, and department heads participate in appointments to boards and commissions. A 1994 Florida Supreme Court case concerning the reappointment procedures for state compensation judges reiterates the problem. At issue was the governor's failure to reappoint an official after he was given a vote of confidence by a statewide nominating commission, jointly appointed by the governor and the Florida Bar. The petitioner in the suit, John Paul Jones Jr., sought a writ of mandamus from the Supreme Court. In 1992, Jones—who had served twenty years as a state compensation claims judge—sought reappointment by Florida Governor Lawton Chiles to another four-year term. Chiles refused to validate the retention vote by the statewide commission and declined to reappoint Jones.

The Florida Supreme Court held that the governor acted within his legal authority by not reappointing Jones. Further, it ruled that compensation judges were under the authority of the executive branch of Florida government and invalidated a portion of Section 440.45 of the Florida Statutes. The section was ruled unconstitutional because it unconstitutionally encroached on the power of the governor to appoint executive branch officers.5

Another issue over separation of powers and appointments arose in the state of Oklahoma. In 1996, Oklahoma Governor Frank Keating sought to have the Oklahoma Supreme Court rule on the constitutionality of legislative leaders appointing members to

5Jones v. Chiles, 638 So. 2d 48, (Fla. 1994).
boards and commissions, but the Oklahoma Supreme Court refused to assume jurisdiction in the case.  

One state has taken direct action against the process. Rhode Island proposed a constitutional amendment for the November 2004 ballot. The issue that voters considered was "Separation of Powers." Voters were asked to ratify a measure that draws clear distinction between the three branches of government. One section of the resolution prohibits state senators and representatives from serving on appointed boards and commissions. The measure amends the constitution and gives the governor authority to appoint all members of boards and commissions which exercise executive power. Voters approved the measure by 77.9 percent.

**Diversity and the State Reports**

Diversity on state boards and commissions is an emerging issue in social science research. In 2002, the state of Connecticut published a study that examined what other states have done to encourage diversity on state boards and commissions. The Connecticut Office of Legislative Research published the report. The study found that although most states have laws that encourage ethnic, racial, and gender balance, only

---


7Rhode Island General Assembly, R 293, Separation of Powers [joint resolution on-line] (Providence: 2003 Rhode Island General Assembly, accessed 16 March 2004); available from http://www.rilin.state.ri.us/PublicLaws/law03/res03/res03293.html; Internet.

eight states require appointing authorities to achieve this diverse balance. Connecticut, Florida, Kentucky, Missouri, North Carolina, Oregon, Rhode Island, and Tennessee generally require appointing authorities to strive for diversity on state boards, commissions, committees and councils.  

Language providing for diversity on boards varies among the states. Missouri and Oregon have the strongest statutory language. Missouri requires the governor to take affirmative action to create diversity. In Oregon, all appointing authorities must implement the state’s affirmative action policy in their appointments. North Carolina, however, seeks to establish gender rather than ethnic balance.

Connecticut’s law differentiates between appointments made by the governor or a legislator and those made by multiple authorities. When the governor or a legislator is the appointing authority, a good faith effort must be made to ensure that the membership of the board reflects the state’s gender and racial diversity. Multiple authorities for a single board must coordinate their efforts to facilitate compliance.

In Rhode Island, each person responsible for appointments to any board or commission must ensure to the fullest extent possible that the composition reflects the diversity of the state’s population. Tennessee has duplicated the language from Florida.

---

9Ibid.

10Missouri Revised Statutes, sec. 620.120 (1997).

11Oregon Revised Statutes, sec. 182.100; sec. 236.115 (2003).


Appointing authorities are asked to make a conscientious effort to select from among the most qualified, those people who would ensure that the membership of boards, commissions, councils, and committees accurately reflect the proportion that each minority group represents in the state population. In the state of Kentucky, the governor can appoint minorities to boards, "If the membership of a board or commission reflects a proportion of a minority group less than that of the state's total population."

Four of the eight states, Florida, North Carolina, Oregon, and Rhode Island, require an annual report on minority appointments be given to the governor, legislature and or secretary of state. Connecticut mandates a biennial report to the secretary of state.

North Carolina publishes the Appointment Reporting Index. The index includes the appointing authority, the names of the affected boards, the number of appointments made, the percentage of the total appointments, and the number of male and female appointments. The Index does not, however, provide the aggregate numbers of appointments, only the numbers of appointments made for the reporting period.

Rhode Island produces a minority report, but it is not comprehensive. The state does not provide any summary statistics on the minority member’s statistics of their state boards. Thus, while the membership of individual boards is documented, there are no aggregate data.

Connecticut’s biennial report is interesting. The state’s 2001 report, “Diversity of Appointees on Connecticut State Boards and Commissions,” is a comprehensive report of

---

minority appointments in the state.\textsuperscript{18} The Connecticut report includes an executive summary, a historical background, and tables and statistics to inform the reader of the process used in the state and the outcomes. The report documents, "More than half of the reporting bodies (58.8\%) had only white appointed members."\textsuperscript{19} The report further states, "Blacks comprise 7.1 percent of appointed membership as opposed to 9.1 percent of the general population."\textsuperscript{20} The report relates and compares the data from the previous report to the current report. Connecticut state researchers found that "Since the last biennial reporting period in 1999, there has been no significant improvement or regression in the gender and racial diversity of the appointed membership of the reporting state boards and commissions."\textsuperscript{21}

The 2001 report concludes that judgment regarding gender and racial composition should be made only after a thorough review of the appointing process and the membership requirements for the body. The state officials concede that it is difficult to diversify every state board because, "Many of the reporting bodies have members appointed by more than one authority, and many have quite narrow requirements for some or all positions, which limit the pool of persons eligible for appointment."\textsuperscript{22}


\textsuperscript{19}Ibid.

\textsuperscript{20}Ibid.

\textsuperscript{21}Ibid.

\textsuperscript{22}Ibid.
Of the eight states identified as mandating diversity on boards and commissions, Florida is the most populous and racially diverse. The state has numerous boards and commissions that use concurrent appointments to fill appointed positions.

The Florida System of Boards and Commissions

In state politics, appointed boards and commissions are not well-researched or analyzed. However, as institutions of government, boards and commissions are important because they perform a myriad of functions such as regulating businesses, administering higher education, providing public services, nominating judges, and advising executive, legislative and judicial officials. One scholar, Cyril O. Houle, explains the political relevancy of boards saying, "Most of the affairs of American life are controlled or influenced by boards."23 Another expert on appointed boards is John Carver who sees such boards as the institutions under which government operates. Carver notes, "The elected forums of our political jurisdictions are board-like structures: Congress, state legislatures, city councils, and county commissions."24

Boards and commissions are dominant features in Florida government. The functional difference between a commission and a board of trustees is a matter of jurisdictional control. For administrative purposes and procedures a commission is established within an executive department and is generally independent of the head of

---


the department or the governor. A board of trustees is appointed to serve as adjunct to a department or state agency in order to carry out a dedicated public policy.\textsuperscript{25}

When Governor-elect Jeb Bush began his transition to office in 1998, his transition team discovered that the governor had the responsibility of appointing members to approximately 850 boards, commissions, and other bodies throughout the state.\textsuperscript{26} A thorough review of executive boards and commissions was undertaken. In January 2000, the Department of Management Services (DMS), an agency under the Executive Office of the Governor, issued a report. The transition team originally counted 850 state boards for review but DMS amended the number to 522 for their study. Some of the boards the agency originally counted were boards with local and state responsibilities. Other boards were required by the federal government. Based on this information, the transition team narrowed the number of boards and commissions to be reviewed to 522, representing those in the executive branch which were under the jurisdiction of an agency.\textsuperscript{27}

The DMS considered the proliferation of boards as a problem for state government. "Each year more and more boards are created resulting in an unmanageable layer of government."\textsuperscript{28} The agency found that there was no organized procedure to determine the number of boards or their accountability to the public. Questions were raised: "How many actual boards and commissions exist in the executive branch

\textsuperscript{25}Florida Statutes, sec. 20.03 (2003).

\textsuperscript{26}Florida Department of Management Services, Boards and Commissions Review (Tallahassee: Executive Office of the Governor, January 2000), 2.

\textsuperscript{27}Ibid., 2.

\textsuperscript{28}Ibid., 61.
agencies? How much do the State’s boards and commissions cost Florida taxpayers? How many state employees serve as commission or board staff?29 The agency found that answers to these questions are not easily determined. The DMS staff reports that if they cannot answers these questions, then how can Florida boards and commissions be held accountable to the citizens they purport to serve?30

The DMS recommended that the state fundamentally change the way it reviews and evaluates boards. It supported a new Sunset Act that required department heads to recommend continuation, reform or abolition of boards to the legislature every five years, rather than the ten years as previously required. In the 2001 legislative session, HB 501 was passed. This bill abolished forty-two executive boards. However, the legislature did not take action to implement a Sunset Review process, as recommended by the DMS.

In a follow-up to the DMS report, the Florida Senate Committee on Governmental Oversight and Productivity published an interim report on boards and commissions.31 The committee’s interim report recommended that the state executive branch give reason to the legislature as to whether an advisory board would be continued, revised, or abolished. The Committee on Governmental Oversight and Productivity recommended that the 2003 Regular Session take up the measure. In the 2003 Session, Senate Bill 1404 was crafted and filed to address the recommendations of the Committee on Governmental

29Ibid., 2.

30Ibid.

Oversight and Productivity, but the bill was never reported out of committee. A similar bill was proposed in the 2004 session, but it, too, failed to pass.

A bureaucratic system of governing boards is so much a part of Florida politics that the legislature is not inclined to change the system. Moreover, the state of Florida has numerous boards and commissions that use concurrent appointments. Politics is ever-present on the boards. An example of high-stakes politics on boards was seen on the Florida Elections Canvassing Commission in 2000. The commission certifies all state elections. Prior to the 2000 presidential election, the three-member commission consisted of the governor, secretary of state, and director of the Division of Elections. In the event that any member of the commission was unavailable to certify the returns of an election, that member was replaced by a substitute member of the cabinet as determined by the director of the Division of Elections.32

Because of the disputed 2000 presidential election in Florida, the process of appointing a substitute to the commission was amended in 2001. Asserting that an image of impropriety would prohibit him from participating in a contested election that involved his brother, George W. Bush, Florida Governor Jeb Bush removed himself from the commission’s certification of the presidential election. The authority designated to fill the vacancy was the Director of the Division of Elections, Clay Shaw, who was appointed to his position by Florida Secretary of State Katherine Harris.33 Shaw filled the vacancy and appointed Florida Commissioner of Agriculture Bob Crawford to fill Governor’s

32Florida Statutes, sec. 102.111 (2000).

33In 2002, Katherine Harris was elected to the U.S. House of Representatives. She represents Florida Congressional District 13.
Bush’s position on the commission. However, the selection of Crawford was a highly political, if not partisan appointment. Crawford was a registered Democrat, who supported the presidential campaign of George W. Bush. On November, 26, 2000, the three-member commission certified George W. Bush as the winner of the presidential election in Florida.

While Katherine Harris and Jeb Bush were publicly rebuked for their handling of the election, Republican legislators saw an opportunity in the flawed appointment system for further empowerment. Appointments to the Elections Canvassing Commission were changed so that the governor would determine and decide who was appointed. The statute, as amended, provides that the Elections Canvassing Commission be composed of the governor and two members of the cabinet selected by the governor. If a member is unable to serve for any reason, the governor appoints a remaining member of the cabinet. If no member of the cabinet is available for appointment, the remaining commissioners appoint another elected official to fill the vacancy.

Another concurrent appointment process is the design used in appointing the Florida Public Service Commission. The commission is powerful because it regulates utilities in the state. The governor appoints five commissioners to four-year terms. However, to be considered for a commission post, a potential appointee must first be nominated by another board, the Public Service Commission Nominating Council. There are nine members on the council. The appointment procedure is as follows: three

---


members, including one member of the House of Representatives, are appointed by the speaker; three members, including one member of the Senate, are appointed by the president of the Senate; and three members are selected and appointed by a majority vote of the other six members. The council recommends to the governor no fewer than three persons for each vacancy occurring on the Public Service Commission. During his tenure, Governor Chiles appointed two African Americans to the powerful board. Jeb Bush has further diversified the commission by appointing three minorities, one African American and two Hispanics.

Appointments are shared in other ways as well. In the case of disability of the state attorney general, the governor, or the attorney general may appoint another person to perform the duties of the attorney general.

Appointment Diversity at Issue in Florida

Politics in the state of Florida is characterized by numerous appointed boards and commissions. Appointed boards and commissions play a vital role in state affairs, and their influence and prominence are noted throughout the state constitution and statutes. However, the issue of diversity on Florida boards and commissions is relatively new. During the 1990s, Florida began a process of writing legislation to address diversity on boards in order to reflect the racial diversity of the state.

Minority appointments, in particular African-American appointments, to state boards and commissions did not become an issue in Florida until Lawton Chiles became

---


37 Florida Statutes, sec. 16.02 (2003).
governor in 1991. It was during the Chiles' administration that legislation was passed to promote more minority appointments. In the 1994 legislative session, the legislature acknowledged intent to recognize the importance of balance in the appointment of minority and nonminority persons to membership on regulatory boards, commissions, councils, and committees. But the law also allows appointing authorities to be flexible with how they implement minority appointments. The paramount concern was not to achieve racial diversity on boards in Florida. Instead, code words were used to instruct appointing authorities to use their discretion and to select the "best-qualified candidates" for appointment. With the proviso that the appointing authority appoints the best-qualified candidates, the legislation established five classifications for minority person: African American, Hispanic American, Asian American, Native American or an American woman.

In appointing members to boards and commissions, appointing authorities are to practice appointment equity. Included in the statute is the language that the appointing bodies are to select those persons whose appointment would ensure that the membership of the board accurately reflects the proportion that each group of minority persons represents in the population of the state as a whole. The goal of appointment equity applies to state as well as local boards, commissions, authorities, and councils. Furthermore, the statutes state that whenever a board is created to address a specific issue

38The term "nonminority" is statutory language.
39Florida Statutes, sec. 760.80 (2003).
40Ibid.
41Ibid.
relating to minority groups, the appointing authority is to give weight to the minority
group that the board is created to serve.

The law also takes the issue of multiple appointing authorities into consideration. However, there is no statutory provision to compel cooperation among the authorities. Instead, the legislation relies on goodwill among confederates. Identical to the Tennessee provision, Florida law states that if multiple appointing authorities appoint a board, they shall consult each other to ensure compliance with the law.

Under Section 760.80, appointing authorities are to submit an annual report to the secretary of state that verifies their minority appointment totals. Appointing authorities are required to submit an annual report to the chief elections officer in Florida, the secretary of state. The report discloses the number of appointments made during the preceding year from each minority group and the number of “nonminority” appointments made. These numbers are to be expressed both in numerical terms and as a percentage of the total membership of the board, commission, council, or committee.

Governor Chiles also established the Commission on African-American Affairs\(^\text{42}\) to make recommendations that could improve the social, economic and political status of African Americans in the state. Increasing the number of African-American appointments was an issue and an area of concern for the commission. Members of the commission viewed appointments as opportunities to enhance representation and

\(^{42}\text{Governor Chiles created the fifteen-member commission in 1993. It lost funding in 1995, when the state budget was cut. However, the commission is still present in the statutes.}\)
participation in Florida politics. Moreover, the Florida Commission on African-American Affairs supported the vision that gubernatorial appointments adequately reflect the racial composition of the state.

From the beginning of his tenure in office until his death in December 1998, Governor Chiles sought to increase minority and women appointments to state boards and commissions in Florida. According to statistics provided by the Governor’s Office, Chiles appointed 1,872 African Americans, representing 14.6 percent of gubernatorial appointments. Appointment equity was achieved in the Chiles administration because the percentage reflects the group’s population in the state.

But his tenure was not free of tension over African-American appointments to boards and commissions. One example was the appointments to the Florida Constitution Revision Commission (CRC). Florida is the only state to mandate that a Constitution Revision Commission be convened once every twenty years. The governor, Speaker of the House, President of the Senate, and Chief Justice of the Florida Supreme Court concurrently appoint the thirty-seven member commission. The state attorney general is an ex-officio member. The CRC last met from 1997 to 1998. Before the members were appointed, the appointing authorities selected members for a five-person Constitution Revision Commission Steering Committee. All members appointed were white males. The committee was charged with disseminating information to the public regarding the


45Florida Constitution, art., 9, sec., 2.
revision process and developing proposed rules of procedure as well as developing issues for consideration by the commission.

Minority groups expressed concern that problems associated with the appointing process could inhibit diversity on the commission:

Citizens' groups and individuals appearing before the steering committee have cautioned that the appointing authorities should be sensitive to the needs of all Floridians and should create a commission that is inclusive and representative of Florida's diverse population. One source of concern is the fact that four different appointing authorities could, without prior coordination or at least without some effort to work together, independently overload the commission with one group or another.46

Members of the steering committee agreed to coordinate their appointments to ensure that the CRC would represent diversity. When the CRC was appointed in 1997, three African-Americans were appointed to the commission. Governor Chiles appointed two African-American male commissioners.47 The Speaker of the Florida House Representatives, Daniel Webster of Orlando, appointed an African-American female.48

*Florida Statutes* are replete with the language of board diversity. For instance, in one part of the statutes, the board of directors of Enterprise Florida, the principal economic development organization for the state is created.49 The governor, legislative leaders, department heads, and a member of the cabinet concurrently appoint the board. To enhance the prospects of minority inclusion on the board of directors, the legislature

---


47Chiles appointed Clarence E. Anthony, the Mayor of South Bay, and H.T. Smith of Miami, former president of the National Bar Association.

48Webster appointed Jacinta Mathis, an attorney from Orlando.

recommends that the appointing authorities consider if the board's membership reflects the racial, ethnic, and gender diversity of the state's population.

Another provision commands diversity for the statewide commission that sends nomination lists to the governor to fill the position for compensation judges. Fifteen members are appointed to the statewide nominating commission. The governor appoints five, five are appointed by the Florida Bar, and these appointees select five electors to serve with them on the commission. Each appointing authority is informed that at least one of their appointments must be of a minority group.50

Despite safeguards that are written to ensure diversity, the concurrent appointment process is a challenge to minority inclusion on boards and commissions. Although Florida has sufficient statutory language that mandates, instructs, or recommends appointing authorities to practice diversity in their appointments, the Minority Appointment Report reveals that many authorities simply do not comply.

The 2000 Minority Appointment Report

The Minority Appointment Report provides the composite minority appointments compiled by the Florida Department of State, Division of Elections.51 Cities, counties, and state agencies submit reports. Each reporting agency identifies the affected board, commission, task force or council, the total number of active positions, the number of appointments administered in that year, and the breakdown by race, gender, and disability.

---


51Florida, Department of State, Division of Elections 2000 Minority Appointment Report (Tallahassee: Division of Elections, 2001).
For the 2000 Minority Appointment Report, 170 cities submitted a report to the state. Of this number, 85 cities reported no African-American members on boards and commissions. Only 3 cities reported an Asian American member. One hundred forty-one boards appointed by city authorities, reported no Hispanic members. One city, the City of Hawthorne in Alachua County, was found to have Native Americans represented on their boards.52

The report documents 2,475 appointments made by cities in 2000, but only 170 of these appointments went to African Americans. The aggregate city numbers are even more revealing, a grand total of 4,681-city appointments were reported. African Americans represented 356 or 7.6 percent of the total appointments. A number of the appointing authorities did not identify appointments by race. The number of city appointees by race, gender, and disability is documented in Table 1.

Table 1. Grand Total of Active City Appointees and Number of Appointees by Race, Gender, and Disability for Calendar Year 2000 as of December 31, 2000

<table>
<thead>
<tr>
<th>Race</th>
<th>Grand Total</th>
<th>Total for the Year</th>
<th>Gender</th>
<th>Grand Total</th>
<th>Total for the Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>African American</td>
<td>356</td>
<td>170</td>
<td>Male</td>
<td>2938</td>
<td>1621</td>
</tr>
<tr>
<td>Asian</td>
<td>7</td>
<td>6</td>
<td>Female</td>
<td>1338</td>
<td>805</td>
</tr>
<tr>
<td>Hispanic</td>
<td>156</td>
<td>142</td>
<td>Unknown</td>
<td>405</td>
<td>49</td>
</tr>
<tr>
<td>Native American</td>
<td>14</td>
<td>120</td>
<td>Total</td>
<td>4681</td>
<td>2475</td>
</tr>
<tr>
<td>Caucasian</td>
<td>3626</td>
<td>2043</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unknown</td>
<td>522</td>
<td>102</td>
<td>Disabled</td>
<td>19</td>
<td>13</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4681</strong></td>
<td><strong>2475</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Florida, Department of State, 2000 Minority Appointment Report (Tallahassee: Division of Elections, 2001), 35. In the Minority Appointment Report, the number of disabled appointees is included in the total reported for gender.

52The author compiled these numbers by counting all the city boards and then counting those with no African-American, Asian, Hispanic or Native-American members. Any errors or omissions are solely the responsibility of the author.
Two hundred and six county authorities submitted a report in 2000. Of that number, 139 boards had no African-American members. Table 2 documents that the 2000 grand total of county appointees was 1629. African Americans held 111 of the appointed positions. Hispanics did not fare better; they held only 24 county board appointments.

Table 2. Grand Total of Active County Appointees and Number of Appointees by Race, Gender, and Disability for Calendar Year 2000 as of December 31, 2000

<table>
<thead>
<tr>
<th>Race</th>
<th>Grand Total</th>
<th>Total for the Year</th>
<th>Gender</th>
<th>Grand Total</th>
<th>Total for the Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>African American</td>
<td>111</td>
<td>41</td>
<td>Male</td>
<td>1015</td>
<td>482</td>
</tr>
<tr>
<td>Asian</td>
<td>4</td>
<td>3</td>
<td>Female</td>
<td>439</td>
<td>212</td>
</tr>
<tr>
<td>Hispanic</td>
<td>24</td>
<td>14</td>
<td>Unknown</td>
<td>175</td>
<td>21</td>
</tr>
<tr>
<td>Native American</td>
<td>1</td>
<td>0</td>
<td>Total</td>
<td>1629</td>
<td>715</td>
</tr>
<tr>
<td>Caucasian</td>
<td>1280</td>
<td>588</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unknown</td>
<td>209</td>
<td>69</td>
<td>Disabled</td>
<td>24</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1629</strong></td>
<td><strong>715</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Florida, Department of State, 2000 Minority Appointment Report (Tallahassee: Division of Elections, 2001), 41. In the Minority Appointment Report, the number of disabled appointees is included in the total reported for gender.

The grand total of state appointees in 2000 is listed in Table 3. These appointments are made by state agencies, departments, and members of the cabinet. African Americans and Hispanics appointments do not reach equity under these state authorities. Of the 275 designated state appointments made in 2000, African Americans received 35 appointments; Hispanics received 23, Asians 4, and Native Americans 0 appointments.
Table 3. Grand Total of Active State Appointees and Number of Appointees by Race, Gender, and Disability for Calendar Year 2000 as of December 31, 2000

<table>
<thead>
<tr>
<th>Race</th>
<th>Grand Total</th>
<th>Total for the Year</th>
<th>Gender</th>
<th>Grand Total</th>
<th>Total for the Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>African American</td>
<td>72</td>
<td>35</td>
<td>Male</td>
<td>313</td>
<td>151</td>
</tr>
<tr>
<td>Asian</td>
<td>7</td>
<td>4</td>
<td>Female</td>
<td>254</td>
<td>124</td>
</tr>
<tr>
<td>Hispanic</td>
<td>50</td>
<td>23</td>
<td>Unknown</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>Native American</td>
<td>4</td>
<td>0</td>
<td>Total</td>
<td>575</td>
<td>275</td>
</tr>
<tr>
<td>Caucasian</td>
<td>430</td>
<td>208</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unknown</td>
<td>12</td>
<td>5</td>
<td>Disabled</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>575</strong></td>
<td><strong>275</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Florida, Department of State, 2000 Minority Appointment Report (Tallahassee: Division of Elections, 2001), 49.

In a broader perspective, the grand total of all appointees demonstrates an even greater disparity in appointment equity for racial minorities in the state of Florida. The grand total as outlined in Table 4, recounts the number of appointees whose race was classified as unknown. The number represents 10.6 percent of the appointments.

Table 4. Grand Total of All Active Appointees and Number of Appointees by Race, Gender, and Disability for Calendar Year 2000 as of December 31, 2000

<table>
<thead>
<tr>
<th>Race</th>
<th>Grand Total</th>
<th>Total for the Year</th>
<th>Gender</th>
<th>Grand Total</th>
<th>Total for the Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>African American</td>
<td>554</td>
<td>250</td>
<td>Male</td>
<td>4340</td>
<td>2284</td>
</tr>
<tr>
<td>Asian</td>
<td>18</td>
<td>13</td>
<td>Female</td>
<td>2076</td>
<td>1156</td>
</tr>
<tr>
<td>Hispanic</td>
<td>237</td>
<td>181</td>
<td>Unknown</td>
<td>589</td>
<td>70</td>
</tr>
<tr>
<td>Native American</td>
<td>20</td>
<td>12</td>
<td>Total</td>
<td>7005</td>
<td>3510</td>
</tr>
<tr>
<td>Caucasian</td>
<td>5432</td>
<td>2878</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unknown</td>
<td>744</td>
<td>176</td>
<td>Disabled</td>
<td>50</td>
<td>26</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7005</strong></td>
<td><strong>3510</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Executive Office of the Governor compiles *Appointee Statistics*. These statistics document the number of appointments the governor makes by race, gender, and political party affiliation. During his tenure, Governor Chiles made a total of 12,820 appointments. Of that number, 1,872 were African Americans. Table 5 documents the race and gender composition of appointments made by Chiles.

Table 5. Governor Chiles: Appointee Statistics by Race and Gender, January 8, 1991–December 12, 1998

<table>
<thead>
<tr>
<th>Race</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amer. Indian</td>
<td>85</td>
<td>44</td>
<td>129</td>
</tr>
<tr>
<td>Asian</td>
<td>16</td>
<td>14</td>
<td>30</td>
</tr>
<tr>
<td>Black</td>
<td>1060</td>
<td>812</td>
<td>1872</td>
</tr>
<tr>
<td>Hispanic</td>
<td>538</td>
<td>442</td>
<td>908</td>
</tr>
<tr>
<td>Pacific/Islander</td>
<td>24</td>
<td>14</td>
<td>38</td>
</tr>
<tr>
<td>White</td>
<td>6007</td>
<td>3764</td>
<td>9771</td>
</tr>
</tbody>
</table>

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>0.66%</td>
<td>0.34%</td>
</tr>
<tr>
<td></td>
<td>16</td>
<td>0.12%</td>
<td>0.11%</td>
</tr>
<tr>
<td></td>
<td>1060</td>
<td>8.27%</td>
<td>6.33%</td>
</tr>
<tr>
<td></td>
<td>538</td>
<td>4.40%</td>
<td>3.45%</td>
</tr>
<tr>
<td></td>
<td>24</td>
<td>0.19%</td>
<td>0.11%</td>
</tr>
<tr>
<td></td>
<td>6007</td>
<td>48.86%</td>
<td>29.36%</td>
</tr>
</tbody>
</table>


Political party affiliation is always a factor in appointment to office. As Table 6 demonstrates, over 60 percent of Lawton Chiles’ appointments were Democrats. However, both Chiles and Bush appointed individuals who did not register a political party affiliation or who were not registered voters.

<table>
<thead>
<tr>
<th>Party</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrat</td>
<td>4888</td>
<td>3430</td>
<td>8316</td>
</tr>
<tr>
<td>Republican</td>
<td>2066</td>
<td>1040</td>
<td>3106</td>
</tr>
<tr>
<td>Independent</td>
<td>211</td>
<td>147</td>
<td>358</td>
</tr>
<tr>
<td>Unknown</td>
<td>545</td>
<td>460</td>
<td>1005</td>
</tr>
<tr>
<td>Not Registered</td>
<td>20</td>
<td>13</td>
<td>38</td>
</tr>
</tbody>
</table>

As of August 29, 2003, Bush’s African-American appointees stood at 597. Table 7 indicates that at the beginning of his second term in office, Governor Bush has appointed less than one-third of the African Americans appointed during the tenure of Governor Chiles.

Table 7. Governor Bush: Appointee Statistics by Race and Gender, January 5, 1999–August 29, 2003

<table>
<thead>
<tr>
<th>Race</th>
<th>Male</th>
<th>Female</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amer. Indian</td>
<td>48</td>
<td>46</td>
<td>0%</td>
<td>94</td>
</tr>
<tr>
<td>Asian</td>
<td>27</td>
<td>17</td>
<td>0%</td>
<td>44</td>
</tr>
<tr>
<td>Black</td>
<td>345</td>
<td>251</td>
<td>4.77%</td>
<td>597</td>
</tr>
<tr>
<td>Hispanic</td>
<td>332</td>
<td>225</td>
<td>4.84%</td>
<td>587</td>
</tr>
<tr>
<td>Pacific Islander</td>
<td>9</td>
<td>5</td>
<td>0%</td>
<td>14</td>
</tr>
<tr>
<td>Unknown</td>
<td>9</td>
<td>8</td>
<td>0.15%</td>
<td>32</td>
</tr>
<tr>
<td>White</td>
<td>2154</td>
<td>1741</td>
<td>33.06%</td>
<td>3898</td>
</tr>
</tbody>
</table>

Governor Bush’s appointments by party affiliation are captured in Table 8. Bush has appointed an unprecedented number of Republican women to office, reflecting 25.5 percent of his total appointments, as of August 2003.


<table>
<thead>
<tr>
<th>Party</th>
<th>Male</th>
<th>Female</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democrat</td>
<td>571</td>
<td>626</td>
<td>3</td>
<td>1200</td>
</tr>
<tr>
<td>Independent</td>
<td>106</td>
<td>87</td>
<td>0</td>
<td>193</td>
</tr>
<tr>
<td>Not Registered</td>
<td>94</td>
<td>101</td>
<td>0</td>
<td>195</td>
</tr>
<tr>
<td>Republican</td>
<td>1939</td>
<td>1343</td>
<td>4</td>
<td>3286</td>
</tr>
<tr>
<td>Unknown</td>
<td>214</td>
<td>166</td>
<td>12</td>
<td>392</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2924</td>
<td>2323</td>
<td>19</td>
<td>5266</td>
</tr>
</tbody>
</table>


These statistics confirm that in the state of Florida African Americans, and other racial minorities are underrepresented on boards and commissions. In Florida city, county, and state government, white males dominate appointed positions.

Both Governor Chiles and Governor Bush increased the number of women appointed to office. It is striking, however, that Chiles appointed more African-American females to office than the total of all of Bush’s African-American appointments in the data presented.
Summary

An explanation of concurrent appointments was presented as a way to demonstrate how power is allocated on certain boards and commissions in the state of Florida. Appointing authorities are numerous, but not well-defined or identifiable in state politics and affairs.

Florida is a state that is characterized by advisory, regulatory, and general policy boards and commissions operating the political system. Agencies in Florida have issued reports recommending that the state restrain the dominance of boards and commissions by abolishing or reorganizing the entities. However, state legislators have been unwilling to pass legislation that would mandate abolition or revision of the present structure.

The issue of who is appointed to boards and commissions is changing as race and gender representation are factored into board membership. Diversity on boards and commissions is the emerging trend. In Florida, membership on boards and commissions is to be reflective of the general population. However, as the 2000 Minority Appointment Report displays, diversity on Florida boards has yet to be achieved.

The study continues by observing the case of appointments on judicial nominating commissions in Florida, as the Florida Supreme Court Racial and Ethnic Bias Study Commission critiqued their appointment process in its reports to the Florida judiciary in the 1990s.
CHAPTER 4
THE CASE OF JUDICIAL NOMINATING COMMISSIONS

Overview

Another area where one can observe the appointments process is in the selection of state judges, an area of the U. S. federal system that has been controversial and volatile for most of the country's history, especially in the past century. This chapter briefly describes the larger context, the reform and current practice in Florida, and draws on the experience there to look at the relationship of appointment diversity in this area of judicial appointments.

The Florida experience is captured in a series of special reports and recommendations starting with the 1990-91 Florida Supreme Court Racial and Ethnic Bias Study Commission. This chapter draws on material in those reports including recommendations on improving minority appointments to the judicial nominating commissions (JNCs). The chapter also observes the statutory changes in appointment procedures to judicial nominating commissions since the election of Governor Jeb Bush and the politics associated with racial diversity in the Florida judiciary and the nominating commissions.
Diversity in the Selection of State Judges

Unlike the federal system, states use a variety of methods and procedures to select judges. The selection of state judges fall into five general categories: partisan election, non-partisan election, legislative appointment, gubernatorial appointment, or merit selection through nominating commissions. The procedures are intriguing and there is some mixing of the methods ensuring that any given state's system could vary substantially from another's presenting difficult issues of comparison.

A wealth of information is published on judicial selection procedures demonstrating the vitality of the subject as an area of concern for legal and social science researchers and for reformers. These writings mainly compare and contrast merit selection to popular election of state judges. This body of research is too vast to include in this study, but a sample of the works is noted with attention to recent writings on the larger selection process¹ and to those focused on Florida as a single state.²

Florida: The Selection Process

For most of Florida history, state judges were elected. Issues of judicial corruption and ethics charges brought against judges in the 1970s gave rise to demands for change. In 1976, voters amended the constitution and adopted the Missouri Plan, or “merit selection and retention.”³ The reform would apply to selection at the appellate level, which includes the Florida Supreme Court and five District Courts of Appeals. Appellate judges are initially appointed, but they retain their office through periodic merit retention elections. In this process, appellate judges are placed on the ballot for a retention vote in the general election after their appointment. Voters are simply asked to retain or to not retain the appellate judge.

The reforms of 1976 left the state with a judicial selection system that is a mixture of appointment and election. Judges at the trial level (in Florida these are called “circuit” and “county” judges) are initially appointed to office, but must later run for office in a contested non-partisan election. All state appellate, circuit, and county judges serve six-year terms.

---

³In 1940, Missouri became the first state to adopt the nonpartisan court or merit plan to select state judges.
Florida voters were asked to extend merit selection to circuit and county judges in the 2000 election. The Florida Constitution Revision Commission (CRC) made recommendations to this effect when it met from 1997-1998. In an omnibus proposal concerning the judiciary, the CRC placed local options on the ballot, which allowed voters to opt-in for merit selection and retention of circuit and county judges, instead of election. The vote was held in each of the twenty state judicial circuits, and in each of the sixty-seven counties. By wide margins, both measures failed. Merit selection for state circuit and county judges was perceived as taking away the right of voters to elect judges. Instead of all judges being selected by merit selection and retention, the voters’ rejection of the local option retained the merit plan for state appellate judges only.

The key state agencies responsible for merit selection are the judicial nominating commissions (JNCs). Judicial nominating commissions are political bodies, but their appointment procedures are not often questioned. Research specific to diversity and the nominating commissions is limited. In 2002, Malia Reddick conducted an extensive survey of the literature and found that the empirical research focused on two aspects of judicial nominating commissions: the extent to which commission members and their nominees reflect the diversity of the larger community and the role of politics in the nominating process. These two aspects are explored in this study as they relate to judicial nominating commissions in Florida government, illustrating another example of the appointment process that can be studied. Attention is turned to that particular case.

---


There are twenty-six judicial nominating commissions in Florida, representing the Florida Supreme Court, the five District Courts of Appeals, and the twenty judicial circuits. Except for deliberations, the proceedings of the judicial nominating commissions and their records are open to the public. From 1976 until 2001, Florida used an elaborate concurrent appointment scheme to appoint members to the judicial nominating commissions. For each commission, three of the nine commissioners were appointed by the governor, three were appointed by the Board of Governors of the Florida Bar, and those six commissioners unilaterally appointed three other laypersons.

The system was changed in 2001 to give the governor a stronger role in appointing members to the commissions. Each commission has nine members, appointed by the governor and the Florida Bar. Whenever there is a judicial vacancy, the jurisdictional judicial nominating commission announces the vacancy, screens applications, and interviews candidates. The commission then sends to the governor a list of between three to six names from which the governor selects to fill the judicial office.

Since his election in 1998, Florida Governor Jeb Bush, with support from the Republican-controlled state legislature, has attempted to reign in judicial nominating commissions and change the appointment process. For example, SB 2000 was introduced in 1999 and would have allowed the governor to appoint an alternate member to a circuit judicial nominating commission who was a resident of a county in which no other member resided. In the 2000 Regular Session, another bill was introduced to allow legislative leaders to appoint two of the nine members to each of the nominating commissions.

---

6Florida Constitution, art. 5 sec. 11.
commissions. These measures lingered. However, events in Florida surrounding the 2000 presidential election stirred Republican legislators to act decisively. When the Florida Supreme Court\(^7\) ruled in favor of Democratic Nominee Al Gore in his attempts to recount votes in the state, Republicans cried foul. They contended that the Florida Supreme Court was an ally of the Democratic Party because Democratic Governor Lawton Chiles had appointed the judges.\(^8\) More bills were introduced in the legislature to reign in the judicial system.

In the 2001 Regular Session, Florida lawmakers acted and passed a bill to change the way the commissions were appointed.\(^9\) The bill was sent to its procedural recipient, Governor Jeb Bush. Bush signed the bill into law on June 19, 2001 and became the immediate beneficiary of its largess. The new judicial appointment process is a modification of the previous one and enhances the governor’s appointment power. Each judicial nominating commission retains the nine members. But the Florida Bar no longer directly appoints members. Instead, the Bar has four slots or seats on the commissions. A list of three attorneys is submitted to the governor for each of these positions by the Board of Governors of the Bar. The governor then selects the appointee from the list of nominees recommended for that position, but he may reject all the nominees and request that the Board of Governors submit a different list of names. The governor

\(^7\) In the 2000 Regular Session, Republicans had also sought to have the Chief Justice of the Florida Supreme Court appointed by the governor, and to increase the membership of the Court from seven to nine members. The measure, SJR 1590, was withdrawn and never debated in the legislature.

\(^8\) Governor Chiles appointed five of the Florida Supreme Court justices. However, one appointment, that of Justice Peggy Quince, was jointly shared by Chiles and Governor-elect Jeb Bush.

independently appoints five more members, including two other members of the Florida Bar. Commissioners serve four-year terms.

Under the current law, the governor must consider two different types of lists regarding the Florida judiciary. First, the governor must consider a list of names from the Florida Bar recommending appointments to the nominating commissions. Second, the governor must consider a list of between three and six names from the jurisdictional judicial nominating commission when a judgeship becomes vacant. Nevertheless, his appointment power—though tempered by the degree of participation in the process by the Florida Bar—is elevated and enhanced under the statute.

The law retains a provision from the previous statute. Appointed and elected officials are allowed to serve on judicial nominating commissions.\(^{10}\) It also contains a provision that was vetoed in 1998 concerning county representation. When appointing members to the nominating commissions, the governor is to take into consideration the adequacy of representation of each county within the judicial circuit.\(^{11}\) Because each circuit is made up of counties with varying populations and demographics, the governor by this directive could use his discretion to interpret "adequate representation" to pack the judicial nominating commissions with appointees from less populous and less racially diverse counties. In 1998, Governor Chiles vetoed a measure similar to the one that is currently written in the statutes. Chiles rejected SB 418 on the grounds that it would affect diversity in the judicial system. The bill required that the judicial nominating

\(^{10}\)Ibid.

\(^{11}\)Ibid.
commission for the twenty judicial circuits include a representative from each county
in the circuit.

Governor Chiles used the case of the Second Judicial Circuit to demonstrate that
the idea was unworkable. In his veto message Chiles wrote:

In the Second Circuit, there are six counties, including Leon County and
Liberty County. Leon County has over 2,500 practicing attorneys in good
standing with The Florida Bar, but Liberty County has only one. Under
this bill, the appointing authorities would be compelled to place the one
attorney from Liberty County on the judicial nominating commission,
regardless of that individual’s qualifications or desire to serve.

I have long been supportive of a diverse and representative judiciary. My
appointments to the bench have reflected that support, and I believe that
diversity on the bench leads to a stronger justice system for all Floridians.
I am also concerned that, if allowed to become law, this bill will tend over
time to erode the diversity that we have struggled so hard to bring to
Florida’s judiciary.12

Furthermore, the changes in appointments to judicial nominating commissions
have not radically altered the concurrent appointment process in the judiciary, because
concurrent appointments are still used to fill vacancies on other judicial boards. For
example, members on the Judicial Qualifications Commissions and the Justice
Administrative Commission are selected by concurrent appointments. The Judicial
Qualifications Commission recommends to the Florida Supreme Court removal of state
judges, and the Justice Administrative Commission provides budgetary, accounting and
personnel services to state attorneys and public defenders. State judges, the Board of
Governors of the Florida Bar, and the governor appoint the fifteen-member Judicial

---
12 Florida Governor Lawton Chiles, Veto Message, 21 May 1998 [veto message on-line]
(Tallahassee: Executive Office of the Governor, accessed 26 June 2003); available from
Qualifications Commission. Four members are appointed to the Justice Administrative Commission. The method of appointment prescribed: two attorneys appointed by the president of the Florida Prosecuting Attorneys Association, and two public defenders appointed by the president of the Florida Public Defenders Association.

Lack of Diversity Cited in Special Reports on the Florida Judiciary

The evolution of a new judicial selection policy would develop in the context of a rising concern about the diversity of the judiciary. The issue would arise slowly over the past decade. It was officially placed on the public agenda when the Florida Supreme Court established the Racial and Ethnic Bias Study Commission.

By administrative order, The Racial and Ethnic Bias Study Commission was formed on December 11, 1989. The twenty-seven-member commission was appointed by Chief Justice Raymond Ehrlich and was represented by members from minority communities in the state of Florida. Commissioners were specifically asked to address the question, "What, if any, changes should be made in the manner of selecting judges to increase the racial and ethnic diversity of the bench?" The commission was established as a committee of the Florida Supreme Court. Its primary function was to study whether racial and ethnic bias exists in the administration of justice in the state judicial system.

---

13 Florida Constitution, art. 5, sec. 12.

14 Florida Statutes, sec. 43.16 (2003).

15 Florida Supreme Court, Chief Justice Ehrlich, Administrative Order (Tallahassee), 11 December 1989.
Chief Justice Ehrlich encouraged the appointed commissioners to make recommendations for legislative, executive, or judicial action designed to correct any actual or perceived inequalities or biases uncovered by its study. Ehrlich authorized the commission to operate for two years. To the position of chair, Ehrlich appointed Frank Scruggs, an African-American lawyer and, at the time, secretary of the state's Department of Labor. Justice Leander J. Shaw, Jr., the only African-American member of the seven-member Florida Supreme Court, was appointed vice chair. The commission published two reports, one in 1990 and a follow-up study in 1991. In 2000, the Florida Supreme Court revisited the recommendations of the study commission and published a retrospective.

In the 1990, the first study was conducted. Twenty-two of the twenty-six nominating commissions responded. The survey documented that of the racially diverse commissions seventy-seven or 90.8 percent of the commissioners were white males. Eighteen minorities, eleven African Americans and five Hispanics, held positions on judicial nominating commissions, representing 9.2 percent of the membership. Moreover, twelve of the twenty-two responding commissions had no minority members.

---

16 Frank Scruggs currently works as an employment lawyer with the law firm Greenberg Traurig, P.A., Miami and Ft. Lauderdale.

17 Justice Leander J. Shaw, Jr. retired from the Florida Supreme Court in January 2003.


19 Florida Supreme Court, “Where the Injured Fly for Justice” (1990), 17.
Because the judicial selection process was a paramount concern, commissioners stressed the fact that only 5.6 percent and 3.6 percent of the membership of the judicial nominating commissions were respectively, African American and Hispanic.

The Racial and Ethnic Bias Study Commission also reported an interesting aspect on concurrent appointments and racial diversity. Ten of the eighteen minorities appointed were appointed by the commissioners themselves, rather than by the Florida Bar or by the Governor's Office. The reason for this phenomenon is not clear. The affected judicial nominating commissions are not identified in the study. It could well be that the six commissioners took it upon themselves, in these few instances, to practice diversity in their appointments.

Through its exhaustive examination of the Florida judiciary, the Racial and Ethnic Bias Study Commission found that minorities are underrepresented and discriminated in almost every facet of the state judicial system, especially in judicial appointments. Further, there are a minuscule number of minority judges, bailiffs, court clerks, and staff assistants. There is no fair and equitable minority representation on juries. Minorities are also underrepresented on other state judicial boards, such as the Board of Bar Examiners, the Judicial Qualifications Commission, and the Justice Administrative Commission.

Commissioners concluded that the judicial appointive system, as it was structured and implemented in Florida, had failed to achieve racial and ethnic diversity. They found
that the exclusion of minorities from the judicial selection process was a factor in the lack of diversity on the bench, noting further that "Judicial nominating commissions with no minority members are less successful in obtaining minority applicants for judicial vacancies than commissions which include minority members."23

Still, some progress was made after the release of the first report. By 1991, when the follow-up report was released, more minorities were members of judicial nominating commissions. Governor Lawton Chiles, who took office in January 1991, was credited with initiating the change in the racial composition of the commissions. Twenty-three of the governor's twenty-six appointments were racial and ethnic minorities. "With these appointments, Governor Chiles boosted the representation of African Americans from 7.8% to 19% of all JNC members, and Hispanics from 4% to 4.4%."24 The Florida Bar, on the other hand, did not fare as well in diversifying its appointments. The report found that "of the Bar's 26 appointments, 19% (n=5) were to African Americans."25

The Florida legislature sought a remedy to the racial imbalance on judicial nominating commissions. Legislation was passed in 1993 that required minorities and women be represented on judicial nominating commissions.26

This legislation was in effect for less than two years, before it was challenged on the grounds that it was an unconstitutional quota. A white applicant, who had sought appointment by the Florida Bar to the Judicial Nominating Commission for the Fourth

23Ibid., Executive Summary, x.


25Ibid., 3.

26Florida Statutes, sec. 43.29 (2000).
District Court of Appeals, challenged the statute.\textsuperscript{27} The United States District Court, Southern District in Miami, ruled in his favor. The court ruled that there was no compelling interest to justify the race and gender-based quota imposed by the provision, nor was it viewed as tailored narrowly enough to advance its asserted goals.\textsuperscript{28} The measure, being no longer enforceable, was kept on the books as a voluntary guideline to appointing authorities until the new process for appointing commissioners was passed in 2001.

The Racial and Ethnic Bias Study Commission was not the only study commission to transmit the view that the lack of African-American representation on nominating commissions was a direct barrier to minority participation. The Florida Commission on African-American Affairs, appointed by Governor Chiles in 1993, similarly observed that the racial composition of the judicial nominating commissions was a barrier to minority judicial appointments. Members of the latter commission reported to state officials that, “One of the barriers to African Americans being appointed to judicial vacancies was found to be the lack of African Americans serving on the Judicial Nominating Commissions.”\textsuperscript{29}

In 2000, the Florida Supreme Court compiled a ten-year retrospective on the recommendations made in the 1990-91 commission reports. Both governors, Chiles and Bush, are recognized for increasing minority appointments to the Florida Bench. The

\textsuperscript{27}The Fourth District Court of Appeals includes the 15\textsuperscript{th}, 17\textsuperscript{th}, and 19\textsuperscript{th} Judicial Circuits, and is headquartered in West Palm Beach.


Florida Supreme Court comments that “minority judicial appointments increased significantly under the gubernatorial terms of former Governor Chiles. Similarly, Governor Bush has appointed minorities to judicial nominating commissions, and continues to call for a more diverse judiciary.” As to the role of the judicial nominating commissions, the Supreme Court cautions that “the public needs assurances that JNC appointments are explainable and accountable.” Furthermore, the Supreme Court counsels the Florida Bar to take account of the diversity of their appointments to the nominating commissions, as the Bar was a strong advocate for adoption of the Missouri Plan for all judges in the state.

State officials are also advised to take notice of the low number of minority lawyers. While minority judges are dramatically underrepresented in the state’s judicial system, the number of minority lawyers is equally severe. The Florida Supreme Court reports that in 2000, only 2 percent of Florida lawyers were African-American, 7 percent were Hispanic, and Asian American and other ethnic minorities were less than 1 percent.

The Supreme Court’s ten-year retrospect also documents the increased number of minority judges on the Florida bench. Minority trial judges increased from 5.8 percent in 1990 to 11.4 percent in 2000. On the District Court of Appeals minorities increased to

---


31Ibid., 3.

32Ibid., 41.
14.7 percent in 2000 from 3.5 in 1990. Two African Americans sat on the seven-member Florida Supreme Court in 2000, enhancing minority membership to 14.2 percent.\textsuperscript{33}

Yet, the number of minority judges is still sparse. Of the 859 state judges who sat on the Florida bench in January 2003, only 56 were African American and 51 were Hispanic. In the ten-year retrospective report, the Florida Supreme Court bemoans the disparity, recommending that "until the Florida courts fully reflect the diversity of our citizens, leaders in all three branches of government should reiterate their aspirations for diversity among both judicial nominating commission membership and judicial appointees."\textsuperscript{34}

The striking underrepresentation of African American and other racial minorities on the Florida bench is demonstrated by the numbers. Because minorities are underrepresented on the judicial nominating commission, this fact is reflected in the composition of state judges.

The racial composition of judges on the Florida Supreme Court, the five District Courts of Appeals, the Circuit Courts, and the County Courts as of January 27, 2003 is documented in Table 9.

\textsuperscript{33}Ibid., 3.

\textsuperscript{34}Ibid.
The Florida Supreme Court Racial and Ethnic Bias Study Commission reported racial disparities and inequities existed and endured beyond the paltry number of minority state judges. Members of the commission concluded that the process used to appoint members to judicial nominating commissions had to be reformed so that the system would be more amenable to minorities being appointed. The legislature attempted to do so in 1993, the measure was overturned in court. In 2001, for reasons not wholly connected to the recommendations of the study commission, a new process for appointing the judicial nominating commissions was implemented.

Jeb Bush and Diversity on Judicial Nominating Commissions

Early in his administration, Bush pronounced an interest in diversifying the Florida judiciary. The homepage of the Governor's Appointment Office states that judicial diversity is a high priority for Governor Bush. However, there is a proviso,
"Governor Bush believes that a diverse judiciary can and should be achieved without the use of quotas."

In 1999, Bush formally requested that judicial nominating commissions submit the names of more minorities for consideration to the bench. Bush also urged judicial nominating commissions to eliminate any informal barriers that affected the diversity of the lists and asked eleven of the panels to choose more potential judges. His approach was conciliatory as he wrote, "I am not asking you to supplement your lists only with women or minorities. I am asking you to take a hard second look to determine whether there are additional qualified applicants that should be considered for judgeships." His request was not treated seriously. The commissions refused Bush's request to add more women and minorities to their lists of judicial nominees.

Assistant State Attorney Bruce Bartlett, the chair of the Sixth Circuit Judicial Nominating Commission, openly rebuffed the governor by saying, "Our function is not to pick a person because they are a woman or a black female—it's to pick the most qualified candidate." Michael Stutzke, chair of the Nineteenth Circuit Judicial Nominating Commission, denounced Bush's appeal. He wrote to Governor Bush, "To suggest that there were any informal barriers that may have unintentionally affected the

---


37The Sixth Judicial Circuit comprises Pasco and Pinellas counties.


39The Nineteenth Judicial Circuit encompasses Indian River, Martin, Okeechobee, and St. Lucie counties.
diversity of the list' suggests a motivation that questions the integrity of the commission.40

Nevertheless, when an opportunity was presented to diversify the bench, Bush did not always seize it. When a judicial vacancy occurred in St. Johns County in May 2000, the Seventh Circuit Judicial Nominating Commission41 submitted to the governor a list, which included the name of an African American. Bush rejected the list and requested more names. This was done because a St. Johns County Republican claimed that none of the three nominees lived in St. Johns County. One of the nominees was Roland Blossom. St. Johns County Republican Chairwoman Linda Balsavage wrote to Bush protesting the three nominees. She stated that the three candidates selected by the Judicial Nominating Commission were either Democrats or did not live in St. Johns County. The retiring judge was a Republican female, and Balsavage informed the governor that Republicans expected the vacancy to be filled with a St. Johns County Republican female. One of the other nominees, Patti Ann Chistensen, said she was a Republican and a resident of the county. Even so, Balsavage insisted that, at the time of the nomination, Christensen lived in Putnam County. Christensen recounted that she had a weekend home in Putnam County, but she practiced law and lived in St. Johns County. For his part, Blossom maintained that he had practiced law in St. Johns County before he became an assistant county attorney.42 The other nominee was Clyde Wolfe, a Democrat of St. Augustine.

41The Seventh Circuit Judicial Nominating Commission includes Flagler, Putnam, St. Johns, and Volusia Counties.
42Roland Blossom later assumed the position of City Attorney of Deltona, Florida.
The Seventh Circuit Judicial Nominating Commission refused to send Bush additional names. The acting commission chairman, Charles Tindell, was reported to say that the commission had only reached outside of St. Johns County to include Blossom in order to increase the diversity of the list of nominees. He also stated that the commission had fulfilled its constitutional duty and sent to the governor the three nominees that were most qualified. Jeb Bush submitted and eventually appointed Christensen to the judgeship. St. Johns County Republican Chair Balsavage accepted the governor’s appointment. She said of Christensen’s appointment, “Of the three, she would be the least objectionable.”

Jeb Bush has taken a measured approach to judicial diversity. When given the opportunity to appoint minority judges, Bush has not always acted accordingly. The Florida Times-Union reported that “of the 15 people he chose from the first slate of candidates, three were women and one was black. But the governor passed up the opportunity to appoint seven other women or minorities.” Because of the new appointment procedures, Governor Bush has appointed all the current members of the judicial nominating commissions. Despite his embrace of judicial diversity, Bush’s minority appointments have been reserved. There are 234 members appointed to judicial nominating commissions in Florida. When Bush made his initial appointments in 2001, twenty-six African Americans and twenty-two Hispanics received appointments to the

---


commissions. Of these commission appointments, the Third Circuit, Fifth Circuit, and Fourteenth Circuit Judicial Nominating Commissions had no minority representation. An Asian female was Bush’s only minority appointment to the Twentieth Circuit Judicial Nominating Commission, which covers Charlotte, Collier, Glades, Hendry and Lee counties. Hispanics were the majority on the Eleventh Circuit Judicial Nominating Commission, which covers Dade County. On the other hand, African Americans did not represent the majority on any of the commissions, but they did represent two of the nine commissioners on five of the twenty-six judicial nominating commissions.

Black Republican Commissioners

To supplement this study a survey was mailed to twenty-six African Americans who were members of judicial nominating commissions as of December 2003. The survey was administered in order to gauge their opinions about their appointment and any racial animosity that they may have observed in their capacity as commissioners. The survey was brief and asked six questions. (1) How were they appointed to the commissions? (2) What was their explanation of the concurrent appointment process?

---

46Florida, Executive Office of the Governor, Board Membership and Demographics, Judicial Nominating Commissions, Boards 00162-00187 (Tallahassee: Governor’s Appointment Office, 2003).


48The commissions represent the Fifth Appellate District (Palm Beach County), the Fourth Judicial Circuit (Duval, Nassau, and Clay counties), the Eighth Judicial Circuit (Alachua, Baker, Bradford, Gilchrist, Levy, and Union counties), the Ninth Judicial Circuit (Orange and Osceola counties), and the Nineteenth Judicial Circuit (Indian River, Martin, Okeechobee, and St. Lucie Counties).
(3) To what extent were they aware of the concurrent appointment process? (4) Did they perceive it as a barrier to minority appointments? (5) Had they encountered racial issues that affected the decisions made by the commission? (6) To what degree was race a factor in their appointment to office?

Because of the enhanced gubernatorial appointment power, all but one of the commissioners responded that the governor had directly selected them. When asked if appointment by a single authority or concurrent appointment by multiple authorities allowed more opportunities for African-American appointments, most commissioners responded that they were unsure as to which of the two options allowed more opportunities for African-American appointments. However, several commissioners tempered their answer with statements such as, “Governor Bush, based on what I’ve seen and experienced, has a great commitment to diversity in his appointments.”

The African-American commissioners relayed that they had not directly encountered issues of race that affected board decisions. Their answers were more general, and procedural. The sentiment expressed was that the nominating commissions would address diversity when deliberating on candidates to include in recommendations, and that it was very positive to do so since the governor emphasized diversity.

Commissioners did not downplay race as a consideration in their appointments to office. But they did hold that it was not the decisive factor in their appointments. One

---

49 Although an explanation and an example of concurrent appointments were given in the letter sent to the commissioners, it may be that these new members had no real familiarity with the concept. All but one of the commissioners was directly appointed by the governor, not upon recommendation of the Florida Bar, or by the other commissioners.

50 Comment received from author’s survey sent to African-American members of the JNCs on December 17, 2002.
commissioner, Cleve Warren from Jacksonville, listed three factors as the basis for appointment: racial diversity, political affiliation and capacity. The sentiment expressed was that the decisive factors for the appointment were being black and being of the same party as the governor.\textsuperscript{51}

African-American affiliation with the Republican Party held an advantage in Bush's appointments to the judicial nominating commissions. Twenty-three of the twenty-six African-American commissioners identified their political party affiliation. Seventeen were listed as belonging to the Republican Party, three were members of the Democratic Party, and one was listed as an Independent. The governor directly appointed twenty of the commissioners, while six were appointed by the governor upon recommendation of the Florida Bar.\textsuperscript{52} The occupations of the African-American commissioners are listed as businessmen/businesswomen, lawyers, educators, church administrators, and correctional officers.

Commissioner Warren was adamant that African Americans should be appointed and should serve on boards. However, he did not judge all boards to be equal in stature. Warren felt that African Americans should be shrewd about appointments to boards. He felt that blacks should look to see which boards have power and influence, and then seek appointment to those boards. The message he conveyed was that some boards are more powerful than others, and that African Americans should seek out the powerful boards for appointment. He also cautioned that any study done on African-American appointments

\textsuperscript{51}The remarks were taken from the survey and phone interview with Fourth Judicial Circuit Commissioner Cleve Warren on December 19, 2002.

\textsuperscript{52}Florida, Executive Office of the Governor, \textit{Board Membership and Demographics}, Judicial Nominating Commissions, Boards 00162-00187 (Tallahassee: Governor's Appointments Office, 2003).
to boards should be focused on whether or not blacks were on powerful boards, such as judicial nominating commissions and the Public Services Commission.

On the issue of concurrent appointments, Warren was less clear. However, he agreed that a single appointing authority allows more opportunity for African Americans to be appointed to office.

In one way, Cleve Warren, who heads a financial consultant group, represents the small pool of African-American Republicans from which Republican officials can appoint. He has held numerous appointments. In addition to his appointment to the judicial nominating commission, he has served as executive director of Florida’s Black Business Investment Board. His most recent appointment was in May 2004, when he was appointed by Jacksonville Republican Mayor John Peyton to the Jacksonville Transportation Authority. At the same time he stepped down from another board, the Jacksonville Economic Development Company (JEDCO) Board to be its interim president.

Summary

African Americans and other minority groups are underrepresented as officials in the Florida judicial system. As of January 2003, there were 859 judges serving in the Florida judiciary. Of this number, fifty-six were African American and fifty-one were Hispanic. African Americans represent 14.6 percent of the state’s population, while

---

53Florida, Office of State Courts Administrator, Judicial Listing (Tallahassee: Florida Supreme Court, 2003), 1-34.
Hispanics compose 16.8 percent. The two groups combined constitute 31.4 percent of the state’s population, but hold 12 percent of state judgeships.

There are structural reasons for the low number of minority judges. In 1990, the Florida Supreme Court Racial and Ethnic Bias Study Commission reported that judicial nominating commissions were dominated by white males, with few minorities serving on the commissions. They also found that the racial composition of the judicial nominating commissions affects diversity on the bench.

The at-large election system for circuit and county judges also affects diversity on the Florida bench. Racial polarized voting has resulted in fewer minority state circuit and county judges. However, the federal courts have sided with the state against any attempt to change state circuit and county judicial elections. The United States Court of Appeals, Eleventh Circuit held that any modification in electoral schemes would needlessly interject racial politics into the judicial system. In ruling against Davis in her petition to have Florida create sub-districts from which African Americans would have a chance to win judicial elections, the Eleventh Circuit held that Davis’s subdistrict scheme would “simply exchange present misgivings about whites successes in at-large judicial elections for new qualms from those who would view lawyers elected from Davis’s new subdistricts as representatives of racial groups rather than as neutral jurists.”

---

54 University of Florida, Bureau of Economic and Business Research, comp., Florida Statistical Abstract 2003, Table 1.01 (Gainesville: University Presses of Florida, 2003), 4.

55 Davis v. Chiles, 96-3547 (11th Cir. 1998). See also, Nipper v. Smith, 39 F. 3d 1494 (11th Cir. 1994).

56 Ibid, Davis v. Chiles.
In a broad perspective, the factors that account for the lack of diversity on the Florida bench are racial polarized voting, at-large judicial districts, majority-white judicial nominating commissions, and Florida’s racially conservative political culture.

The process of concurrent appointments is changing in Florida, but it has not been eliminated. As new boards and commissions are established, new appointment schemes are created. Chapter 5 examines some of these changes as boards and commissions in the Florida higher education system are abolished, restructured, and reformed using different appointment methods and procedures.
CHAPTER 5
THE CASE OF TWO HIGHER EDUCATION BOARDS

Overview

Florida higher education boards have undergone more transformation and reorganization than the judicial nominating commissions observed in the previous chapter. Reconstruction of the judicial nominating commissions centered on changing the process used to appoint members to the commissions by enhancing gubernatorial appointments power, and gradually promoting diversity on the nominating commissions. Education governance reorganization, on the other hand, has been more deliberate and focused on abolishing one board system and recreating another board system in its place. The issue of diversity on these boards was secondary to enhancing gubernatorial and legislative powers, and placing education policy-making in the hands of Republican elected and appointed officials.

The roots of reorganizing state education boards were planted in 1998. In that year, voters approved a constitutional amendment proposed by the Constitution Revision Commission (CRC), which separated the State Board of Education from the elected cabinet. The State Board of Education became an appointed body.¹

¹Proposition 8, 1998 General Election Ballot, "Restructuring The Cabinet."
The formal process of education governance reorganization began in 2001. It is based on a series of interlocking boards, all under the aegis of the Florida Board of Education, appointed by the governor. It is a complicated and bureaucratic arrangement. In addition to the reorganized Florida Board of Education, there are eleven state university boards, twenty-eight community college boards, the Commission for Independent Education, and the Council for Education Policy Research and Improvement. There is also a constitutional board, the Florida Board of Governors. This board is designed specifically to oversee state universities and to share in the appointment of university boards of trustees with the governor.

This chapter examines some of the political circumstances that involved the abolition of the Florida Board of Regents, the rise of local university boards, and the establishment of the Florida Board of Governors. It reports on a 1996-97 case of racial animosity on the District Board of Trustees, Florida Community College at Jacksonville (FCCJ). It comments on the variations in public and media scrutiny of a local board as compared to a statewide board when controversial issues, such as direct charges of racism, surface on the board. Furthermore, the chapter observes the interesting phenomenon of nonresidents being appointed to university boards in the state of Florida. All of these factors come together as the governor gained the authority to appoint university boards in 2001, only to lose some of the appointment power upon establishment of the Florida Board of Governors in 2003. Once more, shifts in appointment power and racial politics on Florida boards are observed.
The Florida Board of Regents and Racial Politics

The Florida Board of Regents was created in 1965 and consisted of the commissioner of education and thirteen members appointed by the governor. Before the board was abolished in 2001, it had control of the entire State University System (SUS). During most of its history, the Florida Board of Regents operated in relative anonymity and with little public interest in its proceedings. However, beginning in 1998, the board confronted a series of racial controversies, which thrusted it onto the public stage.

The first controversy began when Dr. Adam W. Herbert, Jr., the first African-American Chancellor of the board, was considered for appointment to this position. Herbert served in Jacksonville as President of the University of North Florida (UNF) from 1989-98. When the chancellor's position became vacant in October 1997, Adam Herbert’s name was floated as a potential candidate for the position. In their search for a chancellor, the Board of Regents drew on a rarely used exception to the Florida Sunshine Law. Members of the search committee agreed to only announce the finalists to encourage more candidates by protecting their identity.1 After the formality of interviews, regents appointed Adam Herbert to the chancellor position in January 1998.

Before beginning his career as the appointed chancellor and administrative head of the Board of Regents, Herbert was confronted with a character attack. In December 1997, the president of the University of Florida (UF), Dr. John V. Lombardi, publicly attacked Herbert’s personality and politics, calling Herbert an “Oreo.”2 During a small holiday party at the president’s home, Lombardi was asked to describe Dr. Herbert, who

---

1Thomas B. Pfankuch and Mary MacDonald, "Herbert up for chancellor, UNF president to be interviewed by search committee," *Florida Times-Union*, 30 December 1997, A-1.

was then a finalist for the chancellor’s position. Dr. Lombardi called him an “Oreo,” meaning, as he explained, black on the outside white on the inside.

In the Jacksonville community, it was debated whether or not the concept accurately portrayed the character of Adam Herbert. His close ties to Jacksonville’s corporate community projected him in the image of a Chamber of Commerce man. Meanwhile, several testimonials were given favoring Herbert’s race credentials. Lombardi, on the other hand, was the recipient of real support. He was projected as an overall champion of minority enrollment and inclusion at UF. Leaders of the UF Black Student Union went to meetings of the Board of Regents to defend Lombardi’s progress in breaking down racial barriers at the university. State Senator Betty Holzendorf, an African-American from Jacksonville, also threw her support behind Lombardi.3

Once the issue reached the Board of Regents, the Regents Chairman Steve Uhlfelder4 offered a deal in which Lombardi would step down as president and head an academic institute at UF. The arrangement fell through, as legislators and big-money UF contributors rushed to Lombardi’s defense. Ben Hill Griffin III,5 a wealthy contributor to the University of Florida, threatened the Board of Regents if they attempted to force Lombardi out. Hill sent letters to state newspapers in support of Lombardi. He wrote, “If anyone is leaving, it will be the Chairman of the Board of Regents Steve Uhlfelder and

3Ibid.

4Uhlfelder is an attorney with a practice in Tallahassee. In addition to the fact that he was Chairman of the Board of Regents, he also served as Executive Director of the 1997-1998 Constitution Revision Commission. He currently serves on the Florida Board of Governors.

5Ben Hill Griffin is the grandfather of former Florida Secretary of State Katherine Harris.
those regents that supported a move to unseat President Lombardi."6 A Special Meeting of the Board of Regents was held on January 27, 1998, to discuss the fate of Dr. Lombardi. Regent Chairman Steven J. Uhlfelder opened the meeting with remarks reflected in the minutes:

He said that over the past several weeks, there had been an unfortunate situation which had occurred at the University of Florida. It was important for the Board to address this matter although it was unfortunate that this should be the first Board meeting for Chancellor Herbert. He said that there had been so much press attention given to this issue, and that he would wish for as much attention to the far more important issues of the Board of Regents. He said he wanted to be clear that this controversy had not been started by him or by members of the Board. He said, however, it was the responsibility of the Board to resolve this matter. He added that during the past several weeks, he had learned a great deal. He said that as a leader, it was important to keep an open mind and open heart and for people to come to a reasoned solution.7

Lombardi next addressed the Board of Regents and read his letter of apology:

Over the past several weeks I have had the benefit of extensive conversations with various members of the Board about a wide range of issues that have concerned them. It is clear that my interactions with Board members have not been as effective, collaborative, and respectful as I would have liked, and that you have every right to expect. In various ways, I have not lived up to the standards that the Board expects of its president, and for that failing I apologize to all of you.8

Board members were invited to speak and most were sympathetic to Dr. Lombardi. Several regents stated that it was time for the board to move beyond the issue, rise above the controversy, and reestablish goodwill. Commissioner of Education Frank


8Ibid., 4.
Brogan said that he knew Dr. Lombardi to be a passionate and outspoken individual. Regent C. B. Daniels said that it was important for the board to move on so that all could come together as a united board with one focus to support the universities. Audrea I. Anderson, the only African-American regent, was critical of Lombardi’s behavior. She commented that leaders of universities are role models. The minutes further reflect her remarks: “She said that it was important that they be clear what triggered this meeting was a racist remark; it was important to acknowledge that, and she would hold President Lombardi accountable for that remark.”

Throughout the controversy, Dr. Herbert remained low-key and inaccessible to the media. There were rumors that he wanted Lombardi out and that he would quit if Lombardi stayed in the position. Herbert responded to the rumors by stating that he was only concerned the debacle could make the board look weak. In a press account he comments, “I had neither the desire nor the intention to be a weak chancellor reporting to a powerless board. Under those circumstances I would have preferred going back to the University of North Florida, and I was prepared to do that.”

Members of the Board of Regents found themselves in more trouble when three-fourth of the Florida Senate agreed to sponsor legislation that would reduce the power of the board. A bill, SB 758, was introduced in the 1998 Regular Session that would have

---

9Ibid., 8
10Ibid., 9.
11Ibid., 10.
reduced the terms of the regents from six to four years. It would have also opened up
the presidential search process and stricken statutory language that prohibited the board
from granting tenured faculty status to any college president terminated by the board.
The legislation died in the Senate, but the momentum to abolish the board grew.
Although Lombardi sent letters of apology to Chancellor Herbert and the Board of
Regents, he was put on probation for six months. The political damage being already
done, Dr. Lombardi resigned his position effective November 1, 1999.13

As John Lombardi tendered his resignation, a second storm was brewing over the
lack of minority representation on the Board of Regents. There was concern because the
term of the only remaining African American on the board was ending in August 1999.
Regent Audrea I. Anderson, a community college administrator, was a Lawton Chiles
appointee.

During his tenure in office, Governor Chiles appointed two African-American
regents. But since 1996, no graduate or student of Florida A and M University (FAMU),
the state’s historically black university, had served on the board. Black legislators were
vocal about the fact that after August 1999, there would be no African-American
representation on the board. And when Governor Bush appointed two white men to
vacant positions on the board, State Senator Darryl Jones of Miami, leader of the Florida
Conference of Black Legislators, criticized the board’s racial composition. He said, “It’s
disappointing to see a board as important as the Board of Regents, lacking diversity.

13Lombardi stayed on at the university, where he taught history and directed the Center for Studies
in the Humanities and Social Sciences. In 2002, he was appointed Chancellor, University of
Massachusetts, Amherst.
There are members of the caucus who are very disappointed."14 In Tallahassee, FAMU students and alumni protested the lack of diversity as well as the lack of FAMU representation on the board. Florida Governor Jeb Bush responded. In October 1999, he announced the appointment of an African American to the Board of Regents.15 James Corbin, a 1956 FAMU graduate and the managing partner of an asset management company was appointed to the board.

The third racially divisive issue was presented to the Board of Regents in 1999. Controversy erupted in July 1999 when the Board of Regents refused to establish law schools at FAMU and Florida International University (FIU). Both FAMU and FIU are state universities with predominantly minority student enrollments, FAMU (African-American) and FIU (Hispanic). At one time, FAMU had a law school, but in 1965, the legislature voted to transfer funding from FAMU to Florida State University (FSU) to build a law school there. FAMU and FSU are both located in Tallahassee.

Administrators at FAMU and FIU made strong appeals in favor of establishing the law schools. But Chancellor Adam Herbert argued that the law schools would be an inefficient use of state money and opposed the idea. Herbert found merit only in the argument that Florida needed more minorities in the legal profession, not more state-
funded laws schools. A majority of the regents agreed with Herbert, and the board voted against establishing the law schools.\textsuperscript{16}

The 2000 Regular Session of the legislature reversed the action of the board and voted to create the law schools and a medical school proposed for Florida State University, which the board also opposed.\textsuperscript{17} The Board of Regents was directed to commence the planning of a college of law at Florida International University on its campus in Miami. However, the law school at the historically black university, FAMU, would not be located on the Tallahassee campus of the university. Instead, the FAMU law school would be located somewhere in the Interstate-4 corridor surrounding Orlando.

A five-member selection committee was appointed by FAMU to consider the location of the law school. Orlando, Tampa, and Daytona Beach made bids to serve as the site for the law school. But just as legislative politics dictated that FAMU would lose its law school to FSU in the 1960s, the site of the FAMU law school became more a matter of legislative wrangling and power plays, than providing an environment that would attract African Americans to law school. The interests of Florida's legislative leaders came first.

House Speaker-designate Tom Feeney is from Oviedo, a bedroom community of Orlando. Senate President-designate John McKay is from Bradenton, a neighbor of Tampa. Sen. Mckay has said that if FAMU doesn't put its law school in Tampa, why then, it might not get a law school, period.

\textsuperscript{16}MacDonald, "Regents reject proposal for 2 law schools," \textit{Florida Times-Union}, 16 July 1999, B-1.

\textsuperscript{17}The Speaker of the Florida House of Representative, John Thrasher of Jacksonville, sought to dismantle the Board of Regents when the board voted against a medical school for FSU. Thrasher, an alumnus of FSU, strongly supported the establishment of a medical school there. He amended the House proposed budget for fiscal year 2001 to strip the agency of most of its funding. His amendment did not carry, but he was rewarded when the Education Governance Reorganization Act was implemented. He was appointed to the Board of Trustees, Florida State University, and assumed the chair.
Rep. Feeney thinks, no, the committee choice should be respected. The Board of Regents, which the Legislature voted to abolish this past session, recognizes the futility of it all and tells lawmakers to go ahead and put FAMU's school wherever they want. Gov. Bush, trying to preserve the fiction of a high-minded board immune to political whims, says, no, the board should choose a place and everybody else should honor it.18

The committee voted to select Orlando. A permanent facility for the FAMU law school opened in 2002.

Fourth and chief among the racially charged issues that faced the Board of Regents was an anti-affirmative action order known as the One Florida Initiative. Announced by Governor Bush in November 1999, the One Florida Initiative eliminates race and ethnicity as a factor in university admissions. Bush advanced the initiative by arguing that the proposal's Talented 20 component would aid minority enrollment because many students attend schools with predominately African-American or Hispanic populations. Talented 20 guarantees admission to the top 20 percent of students in Florida public schools if the students pass core courses.

The Board of Regents supported the governor's initiative but agreed to go slow on the measure at its November 1999 meeting. Students from FAMU showed up at the board meeting with placards and signs, demonstrating opposition to the plan. Chancellor Adam Herbert, on the other hand, supported the One Florida Initiative from its inception. He sought to move the board toward quick acceptance. And he steered members of the board towards a fast-track adoption of the plan.

The initiative was met with immediate opposition from African-American, Hispanic, labor, and women's groups in the state. Protests and demonstrations were held

---

18S. V. Date, "When will FAMU law school see justice?," Palm Beach Post, 24 September 2000, 3-E.
throughout the state. In January 2000, two African-American legislators, Representative Tony Hill (Jacksonville) and Senator Kendrick Meek (Miami), held a 25-hour sit-in demonstration in the office of Lieutenant Governor Frank Brogan. Hill and Kendrick ended their sit-in when Governor Bush agreed to hold public hearings on the initiative.19 Hearings were held in Tampa, Miami, and Tallahassee. Opponents attended hearings in large numbers and spoke against the measure. A month later, the Board of Regents unanimously approved One Florida.

After postponing a vote on the initiative twice, the Board of Regents adopted the One Florida plan at its February 17 meeting. The unanimous vote came after a four-hour public hearing in which dozens of people spoke against the plan and protested that One Florida could prevent minority students from going to college. The Florida cabinet followed suit and voted in favor of the initiative. The vote was 4-2. Democratic members of the cabinet, Attorney General Bob Butterworth and Insurance Commissioner Bill Nelson, voted against the plan. Agriculture Commissioner Bob Milligan was absent because of illness. But the other cabinet members, Secretary of State Katherine Harris, Commissioner of Agriculture Bob Crawford, Commissioner of Education Tom Gallagher, as well as Governor Jeb Bush, voted in its favor. In an address to the cabinet before the vote was taken, Regent Steven Uhlfelder told the members that he was satisfied that no harm would come to African Americans under One Florida. Uhlfelder

---

paternalistically declared, "If in my heart and soul, I thought this was going to hurt
the African-American community, I would not have supported it."20

The Florida Chapter of the National Association for the Advancement of Colored
People (NAACP) filed suit in state court against the board’s approval of the plan.
NAACP lawyers argued that the Board of Regents did not possess the authority to adopt
and implement the One Florida Initiative. However, Charles Adams, an administrative
judge, decided that the board was acting under its authority and ruled against the civil
rights group in July 2000.21

The actions taken by the Florida Board of Regents, and other state officials on
four racially sensitive issues, reflect a general dismissive and paternalistic attitude
towards minority interests and affairs. What has been observed is the difficulty involved
in holding an appointed board accountable. With very little success, African Americans
and other minority groups responded to board decisions by strongly demonstrating their
opposition to the One Florida Initiative and seeking more diversity on the board.

Without a doubt, the Florida Board of Regents exercised enormous power. Power
afforded: selecting university presidents, planning system wide rules, policies, and
implementing procedures for the universities. The state legislature, especially after the
Republican Party gained majority in 1996, acted to diminish the powers of the board.
Regents angered some legislators when board members sought to dismiss the former
president of the University of Florida because he had made racially insensitive remarks.
Legislators overrode the regents when the board refused to establish a medical school and

20Jim Saunders, “Cabinet ends university preferences,” Florida Times-Union, 23 February 2000,
A-1.
21Jeffrey Selingo, “Judge Upholds Florida Plan to End Affirmative Action,” The Chronicle of
two law schools favored by lawmakers. Florida lawmakers acted to place more control of higher education in the hands of boards they created, appointed by a governor they trusted. The goal was accomplished in two years.

Education Governance Reorganization

Florida legislators began the process of education reorganization in 2000. One of the first boards slated for abolition was the Florida Board of Regents. Members of the Board of Regents, Chancellor Herbert, and university presidents opposed abolition of the board. They mounted a campaign against termination and met with Governor Bush and legislative leaders. The university presidents were concerned that legislators had not given sufficient consideration and study to reorganization.

Nonetheless, education reorganization was expedited. Reorganization legislation called for the creation of a transition board to accomplish a smooth transition from the elected State Board of Education to the appointed Florida Board of Education. The transition board was named the Education Governance Reorganization Transition Task Force. Legislative leaders and the governor appointed members to the task force. Three state legislators were appointed to the eleven-member transition team. One Hispanic female, Maria Teresa Rojas, a public school administrator, was the only minority appointed by Bush. The Education Governance Reorganization Transition Task Force, chaired by State Senator Jim Horne of Orange Park, held hearings in 2000. Instead of

---


23In addition to Horne, House Speaker Johnnie Byrd, John Thrasher, and T.K. Wetherell, the former speaker and president of Tallahassee Community College, were appointed to the task force.
delaying or postponing transition as the chancellor and the university presidents had advocated, the legislature accelerated creation of the Florida State Board of Education. Task force members issued a report on March 1, 2001. In the report members of the task force recommended an immediate reorganization of public education in the state with emphasis on local control, coordinated through the Florida Board of Education.\textsuperscript{24}

Although his name was publicly raised as a possible candidate for the position of commissioner of education, Herbert believed that his efforts to save the Board of Regents were futile and resigned as chancellor. His resignation became effective March 2, 2001.\textsuperscript{25} He returned to Jacksonville and the University of North Florida. On July 1, 2001 the Board of Regents was officially abolished.\textsuperscript{26}

The elected commissioner of education held his position until January of 2003. However, formal preparation for education reorganization started in 2001. The process was designed around boards, with the abolition or merger of five education boards and the establishment of fourteen new ones.\textsuperscript{27} The Florida Board of Education was


\textsuperscript{26}Herbert assumed the position as executive director of the Florida Center for Public Policy and Leadership Development at the University of North Florida. The Center studies and seeks solutions to problems in areas such as public education, the environment, criminal justice, and health care. In June 2003, Dr. Herbert was appointed president of Indiana University, becoming the school’s first African-American leader.

\textsuperscript{27}In addition to the Board of Regents, the legislature abolished the State Board of Community Colleges and the Postsecondary Education Planning Commission. The State Board of Independent Colleges and Universities, and the State Board of Nonpublic Career Education were merged into a new board, the Commission for Independent Education. Another board, the Council for Education Policy Research and Improvement, was also established and placed under the Office of Legislative Services.
established as a body corporate, consisting of seven members who are residents of the state appointed by the governor. Bush practiced diversity in appointing the board. Three minorities were appointed. Two were African American, Julia Johnson, an attorney and former chair of the Florida Public Services Commission, and Talmadge W. Fair, chair of the Liberty Charter School in Miami. Charles Garcia, an investment banker who is Hispanic, was also appointed to the board.

Florida’s new education governance requires the Florida Board of Education to appoint the commissioner of education, a position that was previously elected and had cabinet status. The Florida Board of Education appointed Jim Horne, the state senator who had overseen the transition, to the position in 2003.

Diversity on University Boards

Education reorganization arranged each of the eleven state universities under authority of a local board of trustees. Each board was composed of fourteen members. Thirteen of the trustees were appointed by the governor. The student body president of the university was also a voting member. Board members serve four years. Florida law informed the governor that he “shall consider diversity and regional representation in appointments to university boards.”

\(^{28}\text{Florida Statutes, sec. 229.004 (2001).}\)

\(^{29}\text{Citing a desire to spend time with his family, Commissioner Horne resigned his post on August 31, 2004.}\)

\(^{30}\text{Florida Statutes, sec. 229.008 (2001).}\)

\(^{31}\text{Ibid.}\)
A pronounced goal of the Bush Administration was to practice diversity in appointing boards and commissions. In his first round of appointments to the eleven university boards, Bush’s stated objective of diversity was somewhat achieved. Even though two-thirds of his appointments were whites, each of the eleven boards had at least one African-American member.  

Nine of the twenty-six African Americans appointed by Bush were members of the Board of Trustees, Florida A and M University. Governor Bush appointed sixteen Hispanics, six of whom served on the Board of Trustees, Florida International University. No Asian was appointed to the boards, though Asians make up about 5 percent of the university system.

State residency is not a prerequisite for appointment to university boards of trustees; out-of-state residents are eligible for appointment. When Bush made his initial appointments in 2001, fifteen non-state residents were appointed and represented on six university boards. The Board of Trustees, Florida A and M University and Board of Trustees, New College of Florida (Sarasota) had the highest number of out-of-state residents, four each. Prominent among African-American out-of-state residents were

32Executive Office of the Governor, Board Membership and Demographics, University Boards, Boards 01687-01697 (Tallahassee: Governor’s Appointments Office, August 2001).

33Executive Office of the Governor, Board Membership and Demographics, Board of Trustees, Florida A and M University, Board 01691 (Tallahassee: Governor’s Appointments Office, August 2001).

34Executive Office of the Governor, Board Membership and Demographics, Board of Trustees, Florida International University, Board 01694 (Tallahassee: Governor’s Appointments Office, August 2001).


37Florida A and M University, New College of Florida, University of Central Florida, University of Florida, University of South Florida, and Florida State University had out-of-state members on their boards.
Haywood P. Swygert, president of Howard University in Washington, D.C. to the Board of Trustees, University of South Florida, and the Virginia Secretary of Education Wilbert Bryant to the Board of Trustees, Florida A and M University. 38

In the Florida media, the appointment of out-of-state residents to university boards was treated as routine and uneventful. The Governor’s Office defended the appointment of nonresidents. The administration’s intention was to project a business-like image on the board. Sherry Plymale, an aide to the governor, explained that trustees can live in any state: “When you look at corporate boards of directors, you’re not limited to a little region. It’s one way to ensure us that we get high-caliber boards.” 39

In certain regions of the state, the news media raised questions about the corporate nature of the university boards. By examining Board Membership and Demographics, the St. Petersburg Times reported that two-thirds of the 132 people Governor Jeb Bush appointed were either lawyers or business people. 40 Six of the trustees had no college degree or ended their formal education with a community college diploma. Fewer than a dozen of the governor’s appointees were characterized as academics, people who have spent a substantial portion of their professional lives in a classroom. 41 Tom Auxter, who serves as president of the United Faculty of Florida (the faculty union), commented that faculty at the universities were nervous about the power of the new boards of trustees. Auxter saw warning signs in the appointments, stating, “It makes some people nervous to

---

38Executive Office of the Governor, Board Membership and Demographics, Board of Trustees, University of South Florida, Board 01688 (Tallahassee: Governor's Appointments Office, August 2001).


41Ibid.
note that most of the members of these boards are not educators—they are from the
business sector, and they believe that the way to run things properly is to run a university
like a business."42

Introducing the Florida Board of Governors

Education reorganization was incomplete when Bush appointed members to the
local university boards of trustees. In 2003, the governor had to reappoint members to
the same boards he had appointed in 2001. The reason for this movement was to
reinstate a statewide board for the universities. A group, Education Excellence for
Florida, led by Democratic United States Senator Bob Graham, organized an initiative
petition drive to restore a statewide university board by amending the state constitution.43
Graham, a former two-term Florida governor, warned that dissolution of the Board of
Regents, in favor of individual boards, would “politicize” higher education by giving
state lawmakers too much say in the oversight of Florida universities.

Republican Party leaders, university trustees, some university presidents, and the
Florida Board of Education mounted opposition to the constitutional initiative. They
organized Floridians for Education Reform. The chairwoman, Carolyn K. Roberts, had
been a member of the Board of Regents and was a member of the Florida Board of
Education. Roberts and her supporters argued that education governance reform was

42Peter Schmidt, “Revamping of Education Governance in Florida Reveals a New Political Order,”

43Jeffrey Selingo, “Florida Moves to Scrap Board of Regents in Favor of Local Universities,” The
working in Florida, and there was no reason to make changes in the higher education system.

Eleven constitutional proposals were on the November 5, 2002, General Election ballot in Florida. Three of the proposals were concerned with the volatile issue of public education in the state.\textsuperscript{44} The campaign to ratify the education amendments was fierce, especially, the focus on No. 9: “Amendment to Reduce Class Size.” The “Graham Amendment,” or No. 11: “Local Trustee and Statewide Governing Board to Manage Florida’s University System,” was debated mostly in academic circles. Voters did not pay close attention to this issue, as they did to the Class Size Amendment. Bush was careful not to criticize the idea of lowering class sizes, because it resonated strongly with many voters whose children were packed in overcrowded schools. Instead, many Republicans used the argument that reduction in class size would be too costly and would deprive other public services of cash. Florida voters, however, were in the mood to favor reform in public education. All of the education amendments were ratified.

The newly created constitutional board, the Florida Board of Governors, has seventeen members of which the governor appoints fourteen.\textsuperscript{45} The other three members are ex-officio. They include the commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the president of the Florida student association, or the equivalent. Members serve seven-year terms and are confirmed by the Florida Senate.

\textsuperscript{44}The proposals were all constitutional initiatives and placed on the ballot as, No. 8 “Voluntary Universal Pre-Kindergarten Education,” No. 9 “Florida’s Amendment to Reduce Class Size,” and No.11 “Local Trustees and Statewide Governing Board to Manage Florida’s University System.”

\textsuperscript{45}\textit{Florida Constitution}, art. 9, sec. 7.
Florida Governor Jeb Bush, who had championed the idea of local university boards and opposed the idea of the Florida Board of Governors, was able to manipulate the political situation to his benefit. In December 2002, Bush announced his appointments to the Board of Governors. Bush’s agenda was well-planned and worked perfectly for him; ten of his original fourteen appointments to the Board of Governors were sitting university trustees and board members, such as Carolyn Roberts and Steven Uhlfelder. 46 Roberts, one of Bush’s initial appointees to the Florida Board of Education and the leader of the group opposed to creation of the Florida Board of Governors, was appointed to the Florida Board of Governors and selected its chairwoman. Former Regent Uhlfelder vacated his seat on the FSU board when Bush appointed him to the Board of Governors. Two African-American females who held seats on university boards were also appointed. Ava L. Parker, a Jacksonville attorney and former University of Central Florida trustee, is a member of the Florida Board of Governors. Dr. Castell V. Bryant, from Miami Dade Community College, formerly served on the FAMU board before being appointed.47 Bush also appointed a Hispanic former legislator, Miguel DeGrandy, and an Asian American physician, Zachariah P. Zachariah, to the board.

The responsibilities of the Florida Board of Governors are to operate, to regulate, to control, and to be fully responsible for the management of the entire university system.


47 Executive Office of the Governor, Board Membership and Demographics, Florida Board of Governors, Board 01743 (Tallahassee: Governor’s Appointments Office, January 2003).
These responsibilities include defining the distinctive mission of each state university.\textsuperscript{48} Despite the constitutional language, one of the first actions of the Board of Governors was to pass a resolution that supported the continued administration of the universities by the local boards of trustees.

Notwithstanding its constitutional status, the Florida Board of Governors failed to achieve the role that backers anticipated: the power to oversee and administer state universities. The Florida Board of Governors played a low-key role, as the Florida Board of Education and the local university boards of trustees administered higher university education policy. From January 2003 to August 2003, Governors met six times. Two of the meetings were by telephone conference call. One of the members, Steven Uhlfelder, indicated that the Board of Governors will eventually assume more power and responsibility. But he cautioned that until there was a structure in place it would not be wise for the board to meddle in legislative affairs: “You just irritate the Legislature,” he said.\textsuperscript{49}

**Reappointing University Boards of Trustees**

As a result of the new constitutional board, changes were made in the appointment process and tenure for the members who sit on university boards of trustees. Concurrent appointments are now shared between the governor and the Florida Board of Governors. The university boards of trustees consist of thirteen members, six citizen members appointed by the governor and five citizen members appointed by the Board of

\textsuperscript{48}Florida Constitution, art. 9, sec. 7.

\textsuperscript{49}Mary Ellen Klas, “Education AWOL?” Florida Trend, August 2003, 58.
Governors. In addition, the chair of the faculty senate and the president of the student body of the university are also members. Out-of-state residents may still be appointed. Tenure for members of the local boards of trustees was increased from four to five years.

The local university boards have authority to create new bachelor’s and master’s degrees programs, conduct presidential searches, develop strategic plans, and establish personnel programs for university employees. The Board of Governors must ratify or confirm the appointment of university presidents, and the Board of Governors oversees creation of new doctorate programs.

Due to establishment of the Florida Board of Governors, all of the local university boards had to be reappointed using a concurrent appointment formula: six appointed by the governor, five appointed by the Florida Board of Governors. Governor Bush retained most of his original appointments. Several of these appointees were state Republican Party officials, former legislators, and former members of the cabinet. For instance, John E. Thrasher, the former Speaker of the Florida House retained his seat on the FSU board. James C. Smith, former secretary of state, became an FSU trustee in 2003. Two party leaders also received appointments: Toni Crawford, former chair of the Duval County Republican Party, was appointed to the UNF board in 2001, and former Republican State Party Chairman, Al Cardenas, has a seat on the FAMU board.

When Bush made his initial appointments in 2001, twenty-six African Americans and sixteen Hispanics were represented on the university boards. These numbers fell

---

50 *Florida Constitution*, art.9, sec. 7.

slightly when the Board of Governors shared in the concurrent appointment process.

As of January 2003, twenty-four African Americans and fourteen Hispanics were on university boards of trustees.\(^{52}\) All of the university boards, except the University of Central Florida in Orlando, had African-American members. Governor Bush appointed more minorities than did the Board of Governors, but not decisively so. Of the twenty-four African Americans trustees appointed, Bush appointed fifteen. Nine were appointed by the Board of Governors. The governor appointed ten of the fourteen Hispanics; the remaining four were appointed by the Board of Governors.\(^{53}\)

The number of out-of-state resident trustees was reduced from fifteen to nine. Five universities have at least one out-of-state trustee. Florida A and M, the University of Central Florida, University of West Florida, and Florida State University each have one nonresident trustee. The University of Florida has two nonresident trustees. New College of Florida (Sarasota) has three nonresidents on the board.\(^{54}\)

University trustees were predominantly businessmen, lawyers, retired law enforcement officials, and pastors. Of the 121 appointments made by the governor and the board, only 3 had a background in education. A member of the St. Lucie School Boards was appointed to the Board of Trustees, Florida Atlantic University. The Seminole Community College president is on the Florida State University board. A campus president from Florida Community College at Jacksonville was appointed to the Board of Trustees, University of North Florida.

\(^{52}\)Executive Office of the Governor, *Board Membership and Demographics*, University Boards, Boards 01687-01697 (Tallahassee: Governor’s Appointments Office, January 2003).

\(^{53}\)Ibid.

\(^{54}\)Ibid.
There is a pattern developing in the newly organized university structure. Former state and local officials are being appointed university presidents. In January 2003, T.K. Wetherell, who served as speaker of the Florida House from 1990 to 1992, was appointed president of Florida State University. Wetherell holds a doctorate from FSU and was president of Tallahassee Community College for six years. Florida's former lieutenant governor is president of Florida Atlantic University (FAU) in Boca Raton. Frank Brogan, who had also served as commissioner of education before becoming lieutenant governor, took office in March 2003. John Delaney, the former mayor of Jacksonville, was selected president of the University of North Florida (UNF) in May 2003.

Florida has instituted an education governance reorganization structure that is complex and bureaucratic. The system is based on a multilayer board structure with each board, by some means, connected to the other. The “superboard” is the seven-member State Board of Education appointed by the governor. Below that layer are eleven university boards of trustees whose members are appointed by the governor, and by another constitutional board, the Florida Board of Governors. The seventeen-member Florida Board of Governors was designed to control appointments to the local university boards, and to manage state universities. But as it has been shown, Florida politics can be manipulated to bend the rules. Supporters of Amendment 11, which established the Board of Governors, were not politically astute enough to tailor the amendment with language prohibiting the governor from appointing sitting university trustees to the

---

55 Former Florida Commissioner of Education Betty Castor began this practice when she was appointed as president of the University of South Florida in 1994. She served in that post until 1999.
Florida Board of Governors. It has resulted in a system characterized by cronyism, secret deal making, and favoritism for the few.

Local university boards are new to Florida. Their powers and roles are still unfolding. But local college boards are not new to state politics. Community colleges in Florida have been governed by local boards for almost half a century. These boards are at a different angle in the higher education pyramid. They are independent, self-governing, authoritative public bodies. Attention is now turned to that structure.

Community College Boards

Community colleges are significant components in the Florida higher education system. Florida has twenty-eight community colleges compared to eleven state universities. More students are enrolled in Florida community colleges than in state universities. During the 2003-2004 academic year, 375,293 students were enrolled in Florida community colleges. The universities had approximately 230,000 students enrolled. The state views community college as sharing an integral role with the universities. Three community colleges offer bachelor’s degrees in limited areas, with the trend towards more community colleges following suit.

An interesting component in the emergence of Florida community colleges is that these institutions evolved out of a merger between formerly segregated African-American and white community colleges. Between 1949 and 1966, twelve black junior colleges operated as institutions of higher learning in Florida. All but one of these institutions was

---

56 Florida Department of Education, “Fall Headcount Enrollment, Figure A”, The Fact Book: Report for the Florida Community College System (Tallahassee: Florida Department of Education, February 2004), 15.
established after the landmark 1954 United States Supreme Court school desegregation ruling in *Brown v. Board of Education*.

Each community college has a local board of trustees. All of these boards are appointed by the governor, confirmed by the Florida Senate. The number of members appointed to a community college board varies based on the number of school districts in the college’s jurisdiction. When representing one school board district, the board is composed of five members. State law dictates that not more than nine members are to be appointed when two or more counties are served. It is noted that community college boards of trustees, though more numerous than the university boards, have fewer minority members appointed. Bush has also appointed all of the trustees who sit on these boards. There are 209 community college trustees. As of August 2003, there were twenty-eight African Americans, sixteen Hispanics, and one Pacific Islander appointed to community college boards. Three community colleges, Chipola Junior College (Marianna), Lake City Community College, and St. Johns River Community College (St. Augustine) had no minority board members.

The local community college boards tend to their own affairs. They have broad powers, which include the responsibility to govern their respective community college, to set policies, and to appoint the president. However, these local boards do not receive the statewide media attention and consideration given to university boards and commissions. It is a feature of Florida politics that local control means noninterference

---


from state officials, even when a racially-charged issue threatens the credibility of the board. An observation of a racial controversy that occurred on one community college board, the District Board of Trustees, Florida Community College at Jacksonville follows.

**Board of Trustees, Florida Community College at Jacksonville**

Florida Community College is located in the “Bold New City of the South,” Jacksonville. Jacksonville has a city-county consolidated government structure. When the city consolidated with Duval County in 1968, African Americans represented more than 40 percent of the Jacksonville population. After consolidation, the African-American population was reduced to 22 percent. In the view of many African Americans in Jacksonville, the move to consolidate was motivated by fear on the part of whites that a racial minority would become a majority, and would take control of city politics. In her study of Jacksonville black politics, Barbara Hunter Walch writes, “A number of African Americans who opposed consolidation stressed the lessening of black political strength in Jacksonville from a growing 40.5 percent in the city to about 22 percent in the county that would result from the new plan.”

Jacksonville historian James B. Crooks contends that consolidation resulted in fewer African Americans holding office and wielding power. Comparing cities such as Atlanta, Richmond, and Birmingham, which elected black mayors during the years of consolidation, Crooks states, “In contrast, consolidated Jacksonville with its 27 percent

---

African American population elected four out of nineteen district council members but filled only one citywide electoral slot.\textsuperscript{61}

African-American politics in Jacksonville has been limited by the structure of consolidation and a political culture that promotes racial intolerance. In 2002, the Jacksonville Community Council, Incorporated (JCCI) issued a report on race relations in Jacksonville. The study committee found and documented race-based disparities in employment, education, neighborhoods and housing, criminal justice, health, and the political process. JCCI summarized that “The persistence of these disparities in Jacksonville has inhibited efforts to improve race relations.”\textsuperscript{62}

It was against the backdrop of consolidation and constant racial tensions in Jacksonville that Florida Community College at Jacksonville (FCCJ) was established in 1966. In the same year that Jacksonville became a consolidated city, control of community colleges in Florida was transferred from local school boards to boards of trustees appointed by the governor.

Florida Community College at Jacksonville is the fourth largest of the twenty-eight community colleges in the state. Its service area includes Duval and Nassau counties. It ranks third in the number of African-American students enrolled—falling behind Miami Dade College and Broward Community College. During the 2003-2004 academic year, there were 6,154 African-American students enrolled at FCCJ out of a

\textsuperscript{61}James B. Crooks, \textit{Jacksonville: The Consolidation Story, From Civil Rights to the Jaguars} (Gainesville: University Press of Florida, 2004), 211.

\textsuperscript{62}Jacksonville Community Council Incorporated, “Beyond the Talk: Improving Race Relations” (Jacksonville: Jacksonville Community Council Incorporated, Summer 2002), 1.
total student body of 25,692. However, the number of African-American faculty members has not kept pace. In 2003, out of 353 full-time faculty members, only 45 or 12.7 percent were African Americans.

Florida Community College at Jacksonville has the distinction of being the first public educational institution in Duval or Nassau County to operate on an integrated basis. Nonetheless, this distinction would not extend to the selection of its chief executive. Thirty years after the college was established, the Board of Trustees, Florida Community College at Jacksonville brought a different form of distinction or recognition to the college. The racial politics that had long defined Jacksonville was played out on the board over the selection of a college president.

The controversy at FCCJ began when the position of college president became vacant in 1996. A search committee was appointed to interview and screen candidates. Initially, the screening process was routine and uninteresting. However, once the process resulted in three finalists the stakes were raised on the board and within the community at-large. Two of the three finalists selected by the screening committee were African Americans. Only one African American served as president of a community college in the state of Florida at the time.

---


66In 1995, Dr. Robert W. Judson was appointed president of Pasco-Hernando Community College.
Throughout the presidential selection process, two African Americans were members of the eight-member board. The two African-American trustees, John Allen Wiggins, Sr., a businessman who served as chairman of the board, and Ronald R. Austin, a Jacksonville attorney, both supported an African American being appointed FCCJ president. This was especially significant because one of the two African-American finalists, Dr. Dennis P. Gallon, was a campus president at FCCJ. Moreover, Gallon was a twenty-one-year employee of the college and had moved up from instructor to vice president, and then to one of the five campus presidents at the college. The other African-American candidate, Dr. Charles Green, had previously served as president of the Houston Community College System (HCCS) in Texas. Green was released from his HCCS contract after serving less than five years as its chancellor. Both men were academically qualified for the position; Dr. Gallon received his Ph.D. from the University of Florida, while Dr. Green’s degree was from the University of Texas.

On October 1, 1996, the FCCJ Board of Trustees voted 5-3 to offer the job to Donald Cameron, the only white finalist and president of Guilford Technical Community College in Jamestown, North Carolina. Dr. Cameron’s credentials included a doctorate in education from Nova University. The vote was along racial lines. Trustees Wiggins and Austin voted for Charles Green. Another member of the board, Connie C. Hufstetler, representing Nassau County, also voted for Dr. Green. Dennis Gallon, on the other hand, did not receive a single vote. Both Chairman Wiggins and Trustee Austin said that they


68Dr. Cameron’s academic credentials include a doctorate in education from Nova University; while Drs. Green and Gallon earned Ph.D. at the University of Texas and the University of Florida, respectively.
personally supported Gallon. But conceding that there was no support on the board for Gallon’s candidacy, they threw their support behind Green. That was just the beginning.

Five days after being offered the position, Donald Cameron met with John Wiggins. Wiggins in turn took Cameron to his church to meet ostensibly with his minister and to pray. But while visiting Abyssinia Baptist Church, Dr. Cameron was reportedly told by Wiggins that “there were concerns in the African-American community” about his selection. Besides Wiggins and Cameron, two other African Americans attended the meeting. Abyssinia’s Rev. Tom Diamond and C. Ronald Belton (who later came to serve as Chairman of the State Board of Community Colleges) were in attendance as well.

On his return to North Carolina, Dr. Cameron announced that he would turn down the FCCJ offer and remain on as president of Guilford Technical Community College. The announcement by Cameron threw the board into uproar.

Trustee Wiggins confirmed that he had met at the church with Cameron and that he had, indeed, expressed some concerns about African-Americans’ reaction to Cameron’s appointment. But he affirmed, “I don’t think that came into play in Cameron’s decision to remain in North Carolina. He said he was more concerned there

---


70Under the Education Governance Reorganization Implementation Act, the State Board of Community Colleges was abolished in 2001.
wasn’t an 8-0 vote on the board for him, but we tried to explain that was no problem, that he was the president.”71

Dr. Cameron claimed that he had better career opportunities in North Carolina and had chosen to remain at his institution, Guilford Technical College. He did acknowledge that his meeting with Wiggins, Reverend Diamond, and Belton contributed to his decision: “I wanted to make sure that I evaluated that situation with my family. I’m not going to say I was surprised by it. Those three gentlemen were just laying it on the table.”72

War was waged over Dr. Cameron’s rejection of the offer. At an October 17, 1996 meeting of the FCCJ Board, tensions were high. Trustee Howard Kelley questioned the legality of Chairman Wiggins’ meeting with Dr. Cameron. He asked the Governor’s Office to conduct an investigation:

Today I am asking the Governor’s Office to conduct an independent investigation into the conduct and actions of Trustee John Wiggins regarding his involvement and interference in the selection of a president for Florida Community College at Jacksonville. A full, independent investigation is required to determine if Mr. Wiggins’ actions constitute unethical, illegal or improper conduct as a trustee.

Mr. Wiggins’ behavior has jeopardized and tainted the selection process. He has exceeded his authority as trustee and as chairman.73

---

71Florida Times-Union, 16 November 1996.

72Ibid.

73Minutes, Florida Community College at Jacksonville, District Board of Trustees Workshop, October 17, 1996, 3.
Kelley also claimed that Wiggins had used the threat of a letter from the NAACP questioning the Board's selection of Cameron as a device to intimidate and dissuade Dr. Cameron.74

Trustee Ronald Austin criticized Kelley, saying,

I think that is grandstanding. I have received numerous calls, all of them unsolicited, from people in North Carolina and Tallahassee regarding actions behind the scene, conduct of Mr. Kelley and several other members of this Board, but I don't think it is in the best interest of this Board to be asking for this narrowly focused investigation. If an investigation is to take place then it should encompass the entire Board.75

Trustee Robert Selton added his assault, commenting that "Dr. Cameron stated that the word was out that FCCJ would have a black president, that he was an insider and the Chairman of the Board John Wiggins was soliciting recommendation letters for that candidate."76 Kelley also charged Wiggins with instructing the FCCJ legislative liaison to solicit and prepare letters for state legislators and others to sign that demonstrated support for FCCJ Kent Campus President Dennis Gallon. Kelley and Selton instigated a move to ouster Wiggins as chairman, but nothing came of that.77

Over a number of weeks, the Florida Times-Union gave front page cover to the story. The newspaper reported that the board was in turmoil over accusations that Donald W. Cameron turned down the offer, deciding to stay put after being told his selection had raised concerns from the city's African-American community. The

74Ibid., 4.
75Ibid.
76Ibid., 6.
newspaper was less reluctant to thoroughly investigate the racial animosities on the board.

Trustee Ronald Austin, however, took the matter up with Governor Chiles. He wrote to the governor and voiced his displeasure with FCCJ’s majority-white board. Austin offered the letter for reprint to a black-owned newspaper. Austin described the board as a body obsessed with preventing an African American from holding a position as president of the college. He was unwavering in his protest:

The fact that the white candidate declined to accept and the reasons for it are red herrings. Members of this board, with the aid of others, have deliberately fostered rumors about the minority board members as a means of justifying their efforts to eliminate African Americans from consideration for the presidential position. Those efforts represent historical patterns. Fortunately, there are many individuals in this city and throughout the state who are committed to rising above the documented historical patterns of racial bias. This board, as it is presently constituted, is not.78

Governor Chiles refused to get involved in the controversy, advising trustees to seek mediation instead.79 As the controversy heightened, Dennis Gallon withdrew his name as a finalist. Several months later Gallon was offered, and accepted, the position as president of Palm Beach Community College. Gallon’s withdrawal left Charles Green, the former chancellor of the Houston Community College System, as the only finalist. The board was at odds as to whether another search should be undertaken or whether to offer the job to Dr. Green. The two African-American members of the board strongly advocated the selection of Green as the logical procedural recipient. However, Kelley,


Selton, and other members of the board wanted to re-open the presidential selection process. After more discussion, the board voted against the measure.

On March 4, 1997, the Board voted again for a president. Two candidates, Charles Green and Steven F. Wallace, the president of Inver Hills Community College in Minnesota, emerged. Fifteen months into the presidential search process, the board split 4-4 on the two finalists. The African-American board members voted with two white female board members to select Green.80

The candidates were invited back for more interviews. In the meantime, a report, prepared by G.H. Herrera & Company was released to the FCCJ Board. The consulting agency had been hired by the Houston Community College Board of Trustees to examine Green’s management style after he and the board had a “little falling out.” According to the report, Dr. Green had left his HCCS position under fire. It also said that the college system under Green’s leadership was pervaded by a serious morale problem and stacked with bureaucracy.81 Dr. Green denied the allegations but the anti-Wiggins faction on the FCCJ Board used this to erode support for Green.

More racial intrigue followed. At the April 1, 1997 board meeting, Chairman Wiggins advised the board that he had a presentation related to Dr. Green and the Herrera consultant report. Trustee Selton noted that such a presentation was inappropriate because the item was already on the agenda. Wiggins responded that he thought each board member should present his or her views. Trustee Austin weighed in by

80Trustee Connie Hufstetler of Naussau County, who originally voted for Dr. Green, changed her vote in the second round and supported Wallace. In addition to Wiggins and Austin, the trustees who supported Green were Kimberly K. Winstel and Martha Barrett, two white businesswomen. All of the white male members of the board voted for Wallace.

admonishing Selton that it was inappropriate for him to argue with the chairman.

When Wiggins asked the opinion of the other board members, Austin noted that the chairman had the prerogative to make his presentation.82

On May 6, 1997, the FCCJ Board of Trustees selected Steven R. Wallace as its president. The vote was 6-2. Once again the vote was along racial lines. Chairman Wiggins and Co-Chair Austin voted for Green; the other six white members of the board gave Wallace their endorsements.

The researcher had a telephone interview with former Chairman John Wiggins on January 24, 2003. He was forceful in his view that white board members did not appreciate the ability of an African American to assume the presidency. Wiggins professed that the white members of the board never intended to appoint a black man president. He claimed that the issue at the church was overblown because some of the other board members had invited candidates to attend white churches, social clubs, and the like. Chairman Wiggins also lamented what he viewed as a lack of support from the African-American community. He thought that the community could have been more active. He added that there was support from African-American leaders, Congresswoman Corrine Brown, State Senator Betty Holzendorf, and Willye F. Dennis of the NAACP. But the community at-large did not get involved, and he offered that as part of the reason the board voted as it did.83

To avoid future tie votes, in 1997 the Florida legislature voted to add an additional member to the board. Instead of eight members, the board was increased to

82Minutes, Florida Community College at Jacksonville, District Board of Trustees, April 1, 1997, 5.
83Comments from a personal telephone conversation the researcher had with Mr. John Wiggins on January 24, 2003.
nine. Although hastily crafted, the legislation met its legislative goal: to ensure that Florida Community College at Jacksonville shall have an odd number of trustees.\textsuperscript{84} Two other community colleges, Dayton Beach Community College and Okaloosa-Walton Community College, have boards with eight members, but the law does not apply to them.

The number of African Americans on the board was increased to three members, when a vacancy occurred and Governor Chiles appointed educator Earlene T. Lockett to the vacant position. Governor Chiles also reappointed Trustee Howard Kelley, and in 1997 he was elected chairman of the board.

By May 1998, Kelley’s and Lockett’s appointments, along with those of two other members of the board, were in limbo. The Republican-controlled Florida Senate refused to confirm 154 appointments to community college boards made by Governor Chiles. Anticipating a November gubernatorial victory for Jeb Bush, the Republican senators held off confirmation until the 1999 legislative session.\textsuperscript{85} Nevertheless, Chiles reappointed the four FCCJ trustees.

When he was elected, Jeb Bush reappointed Trustee Earlene T. Lockett. However, he refused to reappoint the other trustees who had been selected by Chiles. John Wiggins and Ronald Austin terms ended in 1999. Two African-American Democrats currently sit on the FCCJ Board of Trustees. In addition to Lockett, Bush appointed a Jacksonville business executive, N. Wyman Winbush II, to the board in 1999. Both list Democrat as their party affiliation.

\textsuperscript{84}Florida Statutes, sec. 1001.61 (2003).

\textsuperscript{85}Randolph Pendleton, “4 posts in limbo at FCCJ,” \textit{Florida Times-Union}, 5 May 1998, B-1.
The terms of all of the FCCJ board members who appointed Stephen R. Wallace president have expired. However, the residuals of bad feelings and racial distrust still permeate within the political climate at FCCJ.

Summary

Since the turn of the new century, Florida public officials have been experimenting with higher education governance. Emboldened by a constitutional amendment that reorganized the cabinet and made the Florida Board of Education an appointed board, Republican state legislators and Florida Governor Jeb Bush dismantled the statewide university board system and rebuilt it to their specifications. The board that had statewide jurisdiction to manage universities, the Florida Board of Regents, was abolished in 2001. In the view of many state lawmakers, the Board of Regents was too independent and acted without proper consultation with the legislature. The new system reorganized the State Board of Education to oversee a seamless state education system from K-20. Assisting the board are other higher education boards. These include eleven state university boards, the Commission for Independent Education, the Council for Education Policy Research and Improvement, and twenty-eight community college boards, among others. Except for the Council for Education Research and Improvement, which is under authority of the legislature, Governor Jeb Bush was empowered to appoint all members of the education boards.

A constitutional board, the Florida Board of Governors, designed to restore statewide administration of universities, was approved by Florida voters in 2002. The governor has the authority to appoint all but two members of the Board of Governors. To
properly administer the universities, the constitutional amendment that created the Board of Governors stipulates that the fourteen-member board share appointments to the university boards with the governor. The concurrent appointment process used to appoint university boards has implications for the future and diversity on the university boards. When the governor appointed the boards, a few more minorities were appointed. The number of minorities declined slightly when the governor shared appointments to the university boards with the Board of Governors. But there still is no minority appointment equity on the boards. In fact, with the establishment of the local university boards of trustees, Florida politics retreats to its historical pattern of local control as an expression of sentiment for the Old South and restraint on urban populations whose interests would be better served by a statewide higher education board. With these patterns in mind, it is estimated that minority influence on higher education issues, limited though it may be in Florida, will decline.

Throughout education governance reorganization, diversity on boards and commissions was a side issue. The establishment of local university boards was the paramount concern. These local university boards were empowered by the Florida Board of Governors to manage their own affairs with limited coordination by the Florida Board of Governors and the State Board of Education. However, the political arrangement is not secure. Instead, it signals a steady and continued cycle of board competition and conflict.

Race is an issue on higher education boards. But it is transient. It surfaces on the board, lingers for a short time and dissipates as appointed officials assume their positions of gentility and group cohesion. Undaunted by the sting of electoral rebuke, and
insulated from public attention, members of boards and commissions are not forced to examine the consequences of their racial actions, attitudes and politics. For example, when news was reported that John Lombardi had labeled Adam Herbert an “Oreo,” FCCJ Chairman Howard Kelley expressed complete and utter surprise that such an incident could occur. Kelley, a UF graduate, commented, “I can’t tell you how shocked I was when I read it in the paper. It was like shades of days of yore.”86 Mr. Kelley needed only to have recalled his involvement in the 1996-97 presidential selection process at FCCJ to see the light. During that time, the District Board of Trustees, Florida Community College at Jacksonville openly displayed racial polarized voting, and racial animosity when selecting a president. White trustees dug in their heels and refused to seriously consider appointing an African American to the presidency. Therefore, Mr. Kelley’s analogy to “days of yore” is not far off the mark in describing race relations in Jacksonville and at FCCJ.

This study concludes with some observations and comments on the Florida system of boards and commissions, and how the concurrent appointment process affects diversity in state government and public affairs. Recommendations for reform are also offered.

In this dissertation, the researcher conducted a case study to examine diversity on boards as it relates to the concurrent appointment process and race relations in the state of Florida. The study theorized that concurrent appointments limit minority representation on boards and commissions. Further, it held that racial politics on boards are not generally examined or studied in political science. This study showed that matters of race are important issues in the composition and operation of boards and that left unexamined, race relations on appointed boards and commissions will not be considered relevant in the context of civil rights and equal justice. This study focused on appointment procedures, race, and diversity on boards. Research is limited in this area of black politics. In this study, the researcher attempted to fill a void.

Diversity on appointed boards and commissions is becoming a significant issue in social science research. Florida is interesting to study in this regard because it is a populous, racially diverse state with a government that operates under authority of numerous appointed boards and commissions. Approximately 850 boards, commissions, councils, and committees operate in Florida government. Overseeing the system is a
governor/cabinet structure, which operates as a board. Legislative attempts to significantly reduce the number of boards, commissions, and councils have failed.

Concurrent Appointments and Racial Representation

V.O. Key, Jr. accurately described the Florida political culture as one that advanced the doctrine of "Every Man for Himself." When Key surveyed Florida in the 1940's, the Democratic Party was the dominant state party. Key observed a flawed and undisciplined political party system. Each politician tended to his own affairs, and held power locally without the collaboration or participation of other party members. At the start of the twenty-first century, Florida is politically, but not structurally, different from how Key described it. Republicans now dominate the state. The Florida Republican Party is more disciplined and better organized than the fractured Democratic Party examined by Key. However, Key's theory that politician hold power separately, and exclusive of other party regulars, still holds sway in Florida politics.

Individual and separate power centers drive the concurrent appointment process. The system is geared towards appointing authorities having their own spheres of influence. Even the governor is in constant competition for his share of appointments. The dispersal of appointments to multiple authorities guarantees that each appointing authority will garner some power—however limited or transient. Save the statutory or constitutional requirements defining appointee qualifications, these authorities independently make their selections. In a few cases, minorities benefit. For example, prior to the 1990 Racial and Ethnic Bias Study Commission report, some judicial nominating commissions were found to practice board diversity by free will. The few
nominating commissions that did practice diversity at that time voluntarily took it upon themselves to apply racial diversity for their commission membership, but guarantees of continued minority appointments were not to be garnered from these actions. The all-white commissioners offered minorities a favor, not a right to an appointment, because there was no legislation requesting diversity on boards in Florida until 1994.

The statutes have been amended to instruct appointing authorities to take race into consideration as they engage in making appointments. But as demonstrated by state records, African Americans and other minorities are still underrepresented on boards and commissions in Florida. While multiple authorities who appoint boards are invited to consult with each other to ensure that diversity is achieved in their appointments, Florida law is deliberately silent on exactly how these authorities should consult. A serious commitment by legislators to further define and clarify Section 760.80, “Minority Representation on boards, commissions, councils and, committees,” is a challenge and a threat to the culture. Florida politicians hold power individually in a free market style of governance, thus the concurrent appointment process is popular and not subject to change. But the system has to change because it discriminates against racial minorities who are underrepresented on public boards that should include them in proportion to their numbers in the population.

In the state of Florida, diversity on boards and commissions is a statutory illusion. Statutory language gives the impression that diversity is desired, and can be achieved. A process is laid out and ground rules set. Appointing authorities are required to submit an annual report to the secretary of state, which documents their appointments by race,
gender, and disability. However, there are problems with the report and the Florida law. The *Minority Appointment Report* is not as thorough or useful as it should be, because it does not present a clear description of minority appointments to state boards and commissions. For example, the report includes appointment statistics for some state boards and commissions, but not for others. It is not always clear who is exercising appointment power. Instead, the report states in several places that unidentified “Multiple Authorities” participate in board appointments. Who or what is a multiple authority is not defined. A review of the report shows that some of the boards appointed by multiple authorities were not appointed differently than boards which had no such qualifier. Population demographics of cities and counties that submit reports are not provided. This information is vital if researchers are to compare the number of minority appointments as they reflect the proportion that each group represents in the population, and as required by law. As the 2000 *Minority Appointment Report* demonstrates, these local councils and commissions are even less inclined to practice racial diversity in appointments.

There is no enforcement provision or penalties applied if appointing authorities do not exercise diversity in their appointments, as requested by law. In addition, there is no guarantee that racial minority representation will be fully realized on appointed boards and commissions in Florida because the law allows authorities to circumvent race by appointing an American woman to fill a board vacancy.
Pivotal Role of the Executive

When a governor is committed to diversity, the commitment is reflected in appointments. Democratic Governor Lawton Chiles made minority appointments to boards and commissions a priority, and he implemented a plan. During his administration (1991-1998), Chiles administered more than 12,000 appointments, of which African Americans represented 14.6 percent or 1,872 of these appointments. This is a significant number because the governor exercised real appointment equity: African Americans represent 14.6 percent of the state’s population. The governor’s party affiliation is a factor as to whether or not more African Americans are appointed to office. Democratic governors appoint more African Americans to office than Republican governors. Democratic Governor Lawton Chiles gave substance to the fact. He appointed more African Americans to public office than any other governor in the history of the state of Florida.

Jeb Bush has served as governor since January 1999. As of August 29, 2003, Governor Bush administered 5,266 appointments. African Americans were appointed to 597 or 11.57 percent of the positions. In comparison to Chiles, Republican Governor Bush’s African-American appointee statistics are lagging far behind. Bush has articulated a vision of diversity in state government, but this vision of diversity is reflected in his appointment of a record number of white Republican women to state offices.
Race Relations in Policy Making

Race issues and race relations on appointed boards were considered as part of this research. A number of events were documented that highlighted issues of race and board reactions to the issues. The actions over racial issues on boards that were studied in Florida ranged from benign neglect by board members to outright racial intolerance, and challenged the collegial facade projected where appointed boards are seen as body that works together to advance the commonweal.

One board under examination was the District Board of Trustees, Florida Community College at Jacksonville (FCCJ). It provided a fitting case as a result of racial tensions that arose when the board began the process of selecting a college president in 1996. The board chair was African American and supported an African-American candidate for the position of college president. White members of the board opposed the black candidate and publicly accused the chairman of working to undermine the board’s choice and of deliberately dissuading the white candidate from accepting the post. Accusations of racism, secret deal making, and collusion plagued the board. The story played out in the media for months, but the state government treated it as a local concern, and did not intervene.

With appointment and racial politics always in mind, the Florida Board of Regents and its successors, the eleven newly-minted university boards of trustees, were also examined. The Board of Regents was abolished in 2001, but it left a legacy of racial strife and discourse in its wake. The former President of the University of Florida (UF) took it upon himself to publicly label an African American, who had been selected by the Board of Regents as its chancellor, an “Oreo”—black on the outside, white on the inside.
Apologies were made by the former president, as the board tried to hush up the controversy. However, the issue had received so much media attention that the UF president ultimately had to resign his position.

Race relations on boards receive media attention. The Florida experience shows that boards with statewide jurisdiction receive more media attention than local boards when they engage in racial politics. But the research suggests that as more boards become localized, racial politics will become less publicized or known. There are political consequences for a localized university structure. It is difficult for average citizens to mount a campaign to respond to board actions, especially when the board is appointed by state officials. Local appointed boards, more autonomous and clandestine in form, do not receive as much media and public attention, even when the issues they confront hold ramifications for the future of race relations and diversity in state government and on the board.

Racial issues did not matter as much to Republican African-American commissioners who were appointed to judicial nominating commissions in Florida. These commissioners were not dissatisfied with the appointment process. A survey distributed to the commissioners revealed that they saw no direct connections between concurrent appointments and racial diversity on boards and commissions in Florida. In their responses, the commissioners viewed race as part of board procedure and protocol. The governor emphasized diversity, therefore diversity was routinely discussed when deliberating on candidates for judicial vacancies. A systematic consideration that race was a major factor in their appointment to public office was dismissed in favor of party affiliation, qualifications, and knowledge of the process.
Accountability in Appointments—A Critical Frame

Concurrent appointment schemes are often projected as models of participatory government, but careful scrutiny of their operation shows that multiple appointing authorities i.e., those making simultaneous appointments to boards and commissions, confuse government accountability, and the doctrine of separation of powers. Government accountability is better achieved when a single appointing authority, such as the governor or the mayor exercises appointment power. In that regard, the line connecting the appointed official to the elected official is clear and direct. More to the point, legitimacy and accountability of the appointing authority in exercising appointments are based in the electoral system. Appropriately, elected chief executives appoint executive boards and commissions.

Besides the lack of accountability inherit in the process, concurrent appointments present obstacles because the complexity of appointment schemes requires appointees to be acquainted with the authorities entrusted with carrying out the appointments. Those individuals wishing to secure appointments must be known to elected and appointed officials: the governor, department heads, legislative leaders, members of the cabinet, and board members, if an appointment opportunity is to be secured. As a result, appointments take on an even more exclusive and club status.

Recommendations

The researcher has offered a critique of concurrent appointments and identified consequences of the procedures on African-American appointments to state boards and commissions in Florida. This study concludes with some recommendations.
1. Legislation defining minority representation on boards and commissions should be consolidated into one section of the statutes. At present, the language is too spread out and, as written, trivializes the process.

2. Florida should reform the process by which it collects and reports data on these appointments. All appointing authorities should be required to submit a report. The governor and legislature should coordinate their evaluations of the report and institute policies that would guarantee the full implementation of Section 760.80.

3. Publicity and availability of information is important to help citizens become familiar with the report, and track legislation being proposed on appointed boards. Black newspapers in the state of Florida should be more observant of appointed board politics and report on emerging racial issues on the boards, including the lack of minorities on the boards.

4. The Florida State Conference of Black Legislators (the Black Caucus) should take several specific initiatives: introduce a resolution denouncing the Florida concurrent appointment process as it relates to minority appointments, and release it to the Florida press.

5. The Florida State Conference of Black Legislators should advocate the creation of a board that monitors minority appointments to all state and local boards and commissions.

6. The governor should appoint this minority appointments monitoring board. Members should be recommended by the major civil rights organizations in the state and represent all minority persons as defined in the statutes, and the board should be well funded and required to do an annual report to the public.

7. A professional association of African-American appointed officials should be formed in the state of Florida. This organization could assist the minority appointments monitoring board, and serve as a resource for minorities and present strategies to address racial issues as they emerge on appointed boards and commissions in the state.

8. A project, similar to a voter education project, should be to undertaken by the Florida civil rights community in order to inform minorities about the appointment process. Workshops and conferences should be periodically organized to assess the status of minority appointments.
Concurrent appointment schemes should be addressed on all fronts. More research focusing on board diversity and concurrent appointments is needed. Studies should be undertaken to analyze procedures used to appoint state and local boards and commissions. A thorough analysis of statutory language, racial composition of boards, and the minority appointment reports issued by the states could be the areas of focus. It is recommended that a research project be undertaken in the states to gauge the opinions, attitudes, knowledge, and comprehension of minority elected officials on concurrent appointments. On the federal level, an examination of boards that use concurrent appointment schemes would be useful. For example, the Federal Elections Commission, the Commission on Civil Rights, and boards established under the Help America Vote Act are appointed by multiple authorities. What other federal boards use the pattern? How many of these federal boards are associated with civil rights, voting rights, and elections? How diverse are the boards? These are some of the issues that should be considered as appointments to boards and commissions are formally placed on the civil rights agenda.
BIBLIOGRAPHY

Books and Dissertations


Florida Documents


Reports


State Statutes


Kentucky. Michie’s Kentucky Revised Statutes (Westlaw, 2003).


Oregon. Oregon Revised Statutes (Salem: Legislative Counsel Committee, 2003).


Journals and Periodicals


______. Florida and the Black Migration.” *Florida Historical Quarterly* 57, no. 3 (January 1979): 267-88.


**Newspapers**

*Florida Times-Union.* 16 October – 16 November 1996.


Palm Beach Post. 24 September 2000.

St. Petersburg Times. 20 November 2000.


Other Sources

Author’s notes from telephone interview with former FCCJ Board Chairman John Allen Wiggins, Sr., January 24, 2003.

Author’s notes from telephone interview with Fourth Judicial Circuit Commissioner Cleve Warren, December 19, 2002.

Minutes. District Board of Trustees, Florida Community College at Jacksonville, March 4, 1997.

Minutes. District Board of Trustees, Florida Community College at Jacksonville, April 1, 1997.


Minutes. District Board of Trustees, Florida Community College at Jacksonville Workshop, October 17, 1996.

Internet Sources


