

# CHARTER REVIEW COMMISSION

October 13, 2021

A Charter Review Commission (CRC) Meeting was held at the Murdock Administration Center, 18500 Murdock Circle, Room B106, Port Charlotte, Florida at 3:00 P.M. on October 13, 2021.

## Call to Order

The Meeting was called to order at 3:08 p.m. by Vice Chairman William Abbatematteo.

## Roll Call

The following CRC members were present:

William C. Abbatematteo, V-Chair

Patricia W. Aho

Jeffrey K. Anlauf

Donna L. Barrett

Cherie A. Burnett

Steve A. Drake

Donald McCormick

Theresa H. Murtha

Donna C. Peterman

Richard J. Pitz

Adam James Riley

William B. Schafer

Bob White

## Alternates

Rob Humpel, 1<sup>st</sup> Alternate

Suzanne Graham, 2<sup>nd</sup> Alternate

James Coalwell, 3<sup>rd</sup> Alternate

The following members were absent: William J. Dryburgh and Cyril F. Schrage.

**Others present:** Robert H. Berntsson, Attorney.

## **Citizens' present:**

David Kesselring and Mike Moses.

## **I. Approval of Minutes:**

**MOTION WAS MADE BY DONNA BARRETT AND SECONDED BY WILLIAM SCHAFER TO APPROVE THE SEPTEMBER 8, 2021 MINUTES.**

**MOTION CARRIED 12:0**

## **II. Membership Update:**

Vice-Chairman Abbatematteo reported on Membership changes since the CRC September meeting.

Effective September 27, 2021, Member Stephen Vieira resigned from the Charter Review Commission.

On September 28, 2021, the Board of County Commissioners appointed Bob White as voting member to the CRC to replace Stephen Vieira. In addition, the Commissioners appointed Rob Humpel as 1<sup>st</sup> Alternate, Suzanne Graham as 2<sup>nd</sup> Alternate and James Coalwell as 3<sup>rd</sup> Alternate.

On September 30, 2021, Chairman William Dryburgh placed Bob White on the Constitutional Officers subcommittee; Rob Humpel on the Administration/Staff subcommittee; Suzanne Graham on the Constitutional Officers subcommittee and James Coalwell on the Other Boards and Agencies subcommittee.

Vice Chairman Abbatematteo welcomed the new members to the Charter Review Commission and asked each new member to introduce themselves:

Bob White – Executive Director of the Charlotte County Chamber of Commerce, a ten-year resident and very involved with the business community and the county.

Rob Humpel – President of Florida Premier Contractors, resident since 1996, a contractor for the last ten years, vested in the community with children in the schools and with wife’s personal business.

Suzanne Graham - Massey Service, Director of Government Affairs, a resident since 1981, served on the Charter Review Commission in 2010, past president of Charlotte-Desoto Building Association.

James Coalwell – Charlotte State Bank & Trust, Vice President in Commercial Lending, 15 years in local banking, active in several volunteer boards.

Vice Chairman Abbatematteo requested that Attorney Robert Berntsson give a brief overview of the Sunshine Law. Attorney Berntsson briefly reviewed the following details of the Sunshine Law. 1. All meetings are given public notice and minutes are taken. 2. Should two of you on the Commission talk on the phone, that is deemed a meeting. 3. You cannot talk about any business that is likely to come before the Commission. 4. The same rules must be adhered to for all subcommittees of the Commission. 5. There are criminal and civil penalties if the policy is not followed, and decisions made can be undone if there is found to be a violation. Vice-Chair Abbatematteo also advised that when responding to an email do not “reply all” if other Commission members are on the email or “cc” other members. If you wish to communicate with other members, send the communication to the Administrative Assistant who will send it to the appropriate members.

### **III. Citizen Input on Agenda Items**

Citizen David Kesselring provided a written document to the Charter Review Commission regarding a proposal for restoring Separation of Powers and Election of Charter Review Members. (The document with Mr. Kesselring’s justification is an attachment with these Minutes.)

Mr. Kesselring made the following proposals to add to the Charter:

1) Sec. 2.3 D. County Attorney – “Under no circumstances shall the county attorney take any action that can be construed in any way to violate the rights of the people or well-established law. The County Commission shall not delegate legislative or judicial authority to the county attorney. None of the authority of the County Sheriff shall be delegated to the County Attorney. An attempt to do so shall be grounds for immediate removal of the county attorney and/or the county commissioners.”

2) Sec. 2.3 A. (5) Executive Branch -"Under no circumstances shall the county administrator take any action that can be construed in any way to violate the rights of the people or well-established law. The County Commission shall not delegate legislative or judicial authority to the county administrator. None of the authority of the County Sheriff shall be delegated to the County Administrator. An attempt to do so shall be grounds for immediate removal of the county attorney and/or the county commissioners."

3. Sec. 4.2 C. (1) Change wording from "shall be appointed by the board of county commissioners" to "shall be elected district wide by the electors in each district."

Citizen Mike Moses made the following comments:

I am interested in political succession and believe it starts at the precinct level. I am disappointed that not more rank and file individuals are included on this Charter Review Commission. The four new members represent banks, business, construction, and promotion of business. Being appointed by the County Commissioners, this is not surprising as this is their frame of reference. I have watched some of the Charter Review Commission meetings and realize some good things are being discussed. I am not saying you are not doing your jobs, but I would ask that future Charter Review Commissions take into consideration the membership of the rank and file.

**MOTION WAS MADE BY WILLIAM SCHAFFER AND SECONDED BY DONNA BARRETT TO CLOSE CITIZEN INPUT.**

**MOTION CARRIED 12:00**

#### **IV. Old Business**

**a. Requested Reports:** 1) 2020 Sales Tax Extension Fund; 2) City of Punta Gorda 2020 Sales Tax Revenue; 3) Florida Statute 212.055. These reports were requested at the last meeting and provided for your information and comment.

#### **b. Sub-committee Reports:**

**i. Administrative Staff:** Chair Barrett reported that the committee has gone through several member changes with one member resigning, one member moving to another committee and one new member added. The interview process is completed. The minutes and recordings are being reviewed before we have our next meeting to discuss what we want to present to this Board.

**ii. Board of County Commissioners:** Chair Abbatematteo reported that one person has been interviewed. The next meeting is October 20 at 11 a.m. to interview Administrator Hector Flores and Clerk of the Court, Roger Eaton. We chose to interview these individuals, (even though they were interviewed by another committee), because of their relation to the County Commissioners and some issues that we wanted to review.

**iii. Constitutional Officers:** Chair Schaffer reported that they have two new members who have been assigned to this committee. Chair Schaffer also commented, for the record, "I understand that they applied for the job and that anyone who applied was appointed by the Commissioners". We

are meeting later to welcome the new members and explain where we are in the process and set our next meeting date within the next month.

**iv. Other Boards:** Chair Murtha reported that all interviews with the various agencies have been completed. The committee is meeting on November 18<sup>th</sup> to exchange ideas as to what issues we might want to present to the Board. Chair Murtha raised a legal question that came out of several discussions with interviewees regarding a question on casino gambling. *"If the State of Florida passes Casino Gambling, should there be a provision in the Charter for allowing Charlotte County to decide on whether to allow it within the County?"* We were told we can't go against State law. Another issue involved Residency in the county for public officials and we were again told it was against State law. What can we do? Are we able to make proposed changes? Attorney Berntsson replied that there are certain changes that are preempted by law, but he would have to research which ones. He advised that any issue the committee felt strongly about should be brought forward to the Commission for discussion and then requested that he research the issue. Vice Chair Abbatematteo reported that four other Florida Charters included language about casino gambling and that while it may be in their Charter, maybe it is not legal. Attorney Berntsson agreed that there are things in our Charter that case law has later changed and has nullified the language. He also advised that the committees complete their reports and if the issues they raise are something the Commission wants to pursue, then he would research the matter.

#### **V. New Business**

a. Approval of Big W Law Firm Statement for Services provided: October 1, 2021 Statement for Services in the amount of \$843.75.

**MOTION WAS MADE BY DONNA BARRETT AND SECONDED BY WILLIAM SCHAFFER TO APPROVE THE BIG W LAW FIRM'S STATEMENT FOR SERVICES IN THE AMOUNT OF \$843.75.**

**MOTION CARRIED 12:0**

b. Approval of CRC Expense Report – April through September 2021. Member Barrett questioned how the budget items were broken down in the report. This will be researched.

**MOTION WAS MADE BY DONNA BARRETT AND SECONDED BY WILLIAM SCHAFFER TO APPROVE THE CRC EXPENSE REPORT FROM APRIL THROUGH SEPTEMBER 2021.**

**MOTION CARRIED 12:0**

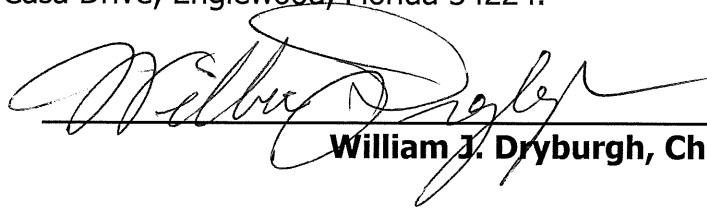
c. November 10, 2021 meeting location change: Due to scheduling conflicts, the Charter Review Commission was asked to move the location of the November meeting from Tringali Park to the Ann & Chuck Dever Regional Park, Large Multi-Purpose Room, Englewood, Florida. A map and directions were provided to the members.

**VI. Discussion:** Chair Abbatematteo polled the members for any comments or questions. Member Donna Barrett welcomed the new appointees to the Charter Review Commission.

**VII. ADJOURNMENT:**

**MOTION WAS MADE BY DONNA BARRETT AND SECONDED BY WILLIAM SCHAFER TO ADJOURNED THE MEETING AT 3:42.**

Next meeting will convene on November 10, 2021 at 3 p.m. at the Ann & Chuck Dever Regional Park, Large Multi-Purpose Room, 6961 San Casa Drive, Englewood, Florida 34224.

  
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**William J. Dryburgh, Chair**

**DATE ADOPTED:** 11/10/2021

## Elected Charter Review Members

Change item C. (1) in the County Charter from "shall be appointed by the board of county commissioners" to "shall be elected district wide by the electors in each district"

- Why are Charter Review members NOT elected? The County Charter is extremely important to all the residents of the county and we should have a say in who is making changes to our charter.
- Election offers a more direct role in potential changes to rules guiding county government by we the people.
- There is a chance at having a much more representative group on the Board.
- The Commissioners already have too much power and don't represent many large cross-sections of the residents of Charlotte County. Why should they also have the authority to choose those that make decisions regarding the structure of our local government for at least six years if not for generations?
- Sarasota has an elected Charter Review Board and has much, much more participation than Charlotte County. 50 to 100 people can show up to their meetings as opposed to a few or even no attendees at all in Charlotte County. The fact that Sarasota already has an elected Charter Review Board and it's success shows that this isn't some kind of far-fetched idea.
- As candidates are running for the Charter Review, communicating with voters, they are also announcing the Review meetings are occurring and even explaining what it is all about. In Charlotte County a large majority of the residents don't even know that we have a charter much less that there is a review of it every six year.
- It is much less likely that a small group will get to entirely steer all reviews of the Charter. It is less likely that what is proposed or not proposed to amend the charter will be controlled by only a few. We all have to live with this charter.
- Many highly qualified individuals with extensive understanding of the function and role of government who have no chance of being appointed would be able to run for a Board position.
- If someone makes the effort to run for a seat at the charter review, they are much less likely to leave before finishing.

David Kesselring

## Restore Separation of Powers

In every level of our American government, a takeover by bureaucrats and administrators is occurring. Politicians, unwilling to study Constitutional issues and/or unwilling to take responsibility for violations of the people's rights, have delegated much of the authority originally delegated to them by the people to unelected bureaucrats and even lawyers. Charlotte County is no exception. Some small transfers of decision making most likely need to be given to County employees, but we must be very careful just how far that goes.

Here are two glaring examples. The County attorney and the county administrator can make any rule that comes to their mind in all our previously public buildings and they have done just that. Even though there are plenty of laws in place to protect the public in public places, the county attorney and previous county administrator added a rule that no citizen can document anything that goes on in any public buildings without specific permission of the county administrator. If anyone enters any public building with a camera in Charlotte County, they will be immediately trespassed from their own public building for a year. The County Attorney and administrator created this administrative rule enforced as law (legislative), they give the orders to enforce it (executive) when they feel like it (I guess when they are in a bad mood or wish to retaliate against certain citizens). The County attorney also sets up the court and hires the magistrate (judicial). The Constitution and law are not allowed as a defense in this "court."

A second example is the aggregation of public records requests. The current Sunshine law and many state attorney opinions clearly state that aggregation is not legal for many reasons, yet the records department has made up their own rule to do exactly this.

I'm sure there are numerous other administrative laws that violate the citizens of Charlotte County, but the only real recourse is to get some large legal firm involved which is almost an impossible as they are extremely overburdened by existing corruption. There is currently no real protection for the people. That was the answer from one commission who said if they violate your rights, you have the court.

As James Madison put it, combining these powers into one branch would be "the very definition of tyranny."

In *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), the Supreme Court held that "Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested." Why should it be different at the local level?

This suggestion for a change in the charter very specifically adds the stipulation that certain legitimate or illegitimate authority not be delegated to unelected officials.

(Current wording)

David Kesselring

### 2.3 D. County attorney

There shall be a county attorney selected by the board of county commissioners who shall serve at the pleasure of the board. The county attorney shall not be under the direction and control of the county administrator but shall, instead, be responsible directly to the board of county commissioners.

I suggest adding the following paragraph to the end of section 2.3D.

“Under no circumstances shall the county attorney take any action that can be construed in any way to violation the rights of the people or well established law. The County Commission shall not delegate legislative or judicial authority to the county attorney. None of the authority of the County Sheriff shall be delegated to the County Attorney. Any attempt to do so shall be grounds for immediate removal of the county attorney and/or the county commissioners.”

(Current wording)

Sec. 2.3

Executive branch

A. The county administrator.

(1) The county administrator, appointed by, and responsible to, the board of county Commissioners, shall be the chief administrative officer of the county and shall be responsible for all administrative matters and operations under the authority of the board of county commissioners.

(2) The county administrator shall be appointed on the affirmative vote of four (4) members of the board of county commissioners on the basis of administrative ability and qualifications, pursuant to requirements specified by ordinance, and shall reside within the county while so employed.

(3) The county administrator’s salary shall be set by the board of county commissioners.

(4) The county administrator may be removed with or without cause upon an affirmative vote of four (4) members of the board of county commissioners, or upon the affirmative vote of three (3) members at two (2) separate board meetings held at least two (2) weeks apart. Grounds for removal for cause shall include flagrant neglect of duty, physical or mental incapacity, conviction for the commission of a felony, violation of any statute relating to conduct of public employees, or such other grounds as may be provided by ordinance.

I suggest adding the following paragraph as item (5) in section 2.3 Executive branch A.

“Under no circumstances shall the county administrator take any action that could be construed in any way to violate the rights of the people or well established law. The County Commission shall not transfer legislative power to the county administrator. None of the authority of the County Sheriff shall be delegated to the County Administrator. Any attempt to do so shall be grounds for immediate removal of the county attorney and/or the county commissioners.”



You can basically substitute most of the references to the federal government in each of these articles with “Charlotte County Government” and any agencies within our own local departments.

## **The Hill: Supreme Court will take on ‘fourth branch’ of bureaucracies**

By OLIVER DUNFORD

As every schoolchild knows, the federal government is divided into the legislative, executive and judicial branches. This separation of powers was designed to ensure that government does not become oppressive. As James Madison put it, combining these powers into one branch would be “the very definition of tyranny.”

Unfortunately, the three branches of government have surrendered some of their powers to an unofficial “fourth branch” composed of government agencies that combine legislative, executive and judicial powers. This fourth branch doesn’t wield all of the government’s power — the three traditional branches still function — so we don’t live under tyranny in America. But as we allow unaccountable bureaucrats to accumulate more and more power, we move closer to the tyranny feared by Madison.

On Friday, the U.S. Supreme Court announced it would consider the constitutionality of one particularly unaccountable federal agency: the Consumer Financial Protection Bureau (CFPB). Created in response to the 2008 financial crisis, the CFPB enjoys vast legislative, executive and judicial powers. And is it virtually immune from oversight.

Here’s why this is problematic. The CFPB may prescribe rules and regulations under various consumer-protection laws; enforce conduct that it may define as “unfair, deceptive or abusive”; and adjudicate its own enforcement actions

and impose legal and equitable remedies. Right away, you'll notice by that brief description that the CFPB captures the roles and responsibilities of all three branches of government under one roof. So much for separation of powers.

So let's say your company is accused of violating a CFPB rule. The CFPB can sue you in court or — at its sole discretion — subject you to an administrative-enforcement hearing, administered by the CFPB. If you don't like the CFPB's in-house decision, you can appeal — to the CFPB's director. And only after the director's decision could you seek review in a court of law.

But the deck is stacked even then, because courts are required to defer to the CFPB's factual findings and legal conclusions. The ultimate outcome of this concentration of discretionary power, together with its significant independence of the three traditional branches of government, is arbitrary and abusive government.

In wielding these vast, discretionary powers, the CFPB is largely immune from oversight by the other branches of government. For example, the agency receives funding outside the appropriations process, so it doesn't have to answer to Congress. Further, the agency is led by single "director," who is appointed to a five-year term and cannot be removed by the president except for "inefficiency, neglect of duty or malfeasance in office" — even if the agency director carries out policies contrary to the wishes of the democratically elected president.

Supporters of rule by unaccountable "fourth branch" agencies argue that their independence and discretionary powers insulate them from politics, which supposedly allows them to respond quickly and efficiently to the complexities of the modern world. But it's dubious, at best, to believe that government employees are immune from politics, and efficiency and convenience do not trump constitutional protections.

But leaving those questions aside, imagine if we applied the arguments made by "fourth branch" enthusiasts to law enforcement. Imagine that the police not only could interpret or rewrite criminal statutes as they wish but also could act

as prosecutor and judge. What do you think a defendant's chances of success would be?

But it gets worse. Under current Supreme Court jurisprudence, agencies are allowed to establish new rules through litigation. This means that administrative agencies can prosecute you for conduct that was previously legal.

So, imagine a cop pulls you over for driving 30 mph in a 35-mph zone. Again, the police decide to prosecute you themselves, instead of in court. At the hearing, you make the reasonable argument that you can't be guilty, since you were driving under the speed limit. No matter. The department's prosecutor argues that, upon further consideration and for the public's safety, it's too dangerous to drive over 25 mph in that zone. The department's "judge" agrees, and finds you guilty.

Small businesses and individuals face the same kind of arbitrary, change-the-rules-as-you-go treatment from the CFPB. It's hard to run a business and plan for the future if you don't know what the rules are and can't predict with some reasonable certainty what they'll be next week. And if a small business happens to catch the CFPB's attention, it must defend itself in an administrative proceeding in which constitutional protections are watered down, if not ignored.

The good news is that there's a way forward that would help restore the federal separation of powers to its rightful place in government: The Supreme Court can put an end to the arbitrary power wielded by the CFPB and other "fourth branch" agencies. Pacific Legal Foundation has asked the court to do just that in a friend-of-the-court brief. By granting this case, the court can help ensure that we have "a government of laws, and not of men."

**The Deep State: The Headless Fourth Branch of Government**  
By Ryan McMaken

School children learn that there are three branches of government: the legislative, executive, and judicial. In actual practice, however, there are *four* branches of government. The fourth is what for decades now has been called a "headless fourth branch of government," the administrative state.

As early as 1937, in a "Report of the President's Committee on Administrative Management," the authors write:

*Without plan or intent, there has grown up a headless "fourth branch" of the Government, responsible to no one, and impossible of coordination with the general policies and work of the Government as determined by the people through their duly elected representatives.*

The problem of waste and lack of accountability in this fourth branch, the report notes, has "been clearly recognized for a generations and ha[s] been growing steadily worse decade by decade."

### **The Spoils System and the Permanent Bureaucracy**

The report isn't wrong. By the late nineteenth century, "civil service reform" had ended the old system "spoils system" and the advent of lifelong "professional" civil servants, brought the establishment of a bureaucratic class which saw its interests and loyalties as separate from the elected civilian government. This detachment from elected policymakers meant the administrative state was not terribly concerned with either efficiency or responsiveness to the public. It became an interest group all its own, but with far more power than any *ordinary* interest group.

The creation of the professional civil service had been a victory over the legacy of the populist Andrew Jackson who had demanded a move away from the old "professional" bureaucracy established by the Federalists. Jackson denounced the professional bureaucrats, concluding such persons "acquire a habit of looking with indifference upon the public interests and of tolerating conduct from which an unpracticed man would revolt." Instead, the Jacksonians insisted "rotation" in government offices "constitutes a leading principle in the republican creed."

In practice, of course, this new non-political bureaucracy was anything but unbiased. Over time, the bureaucracy became self-consciously devoted to the "merit" system under which the bureaucrats imagined they gained and retained their offices by virtue of their own excellence.

Nonetheless, this problem of the bureaucracy as self-interested class would have remained quite limited were the powers of the bureaucracy more limited. Yet with the advent of the New Deal under Franklin Roosevelt, the size, scope, and power of the administrative state multiplied.

### **The Bureaucracy Takes Over the Functions of the Other Branches of Government**

Moreover, as the New Deal progressed, the regulatory agencies came to assume all the powers that were *supposed* to be reserved to the branches of government that were given specific powers in the federal constitution. In his book *Ex America* (aka The People's Pottage) Garet Garrett described this transformation:

*These agencies have built up a large body of administrative law which the people are obliged to obey. And not only to they make their own laws; they enforce their own laws, acting as prosecutor, jury and judge; and appeal from their decisions to the regular courts is difficult. ... Thus the Constitutional separation of the three governmental powers, namely, the legislative, the executive and the judicial is entirely lost."*

Thus, thanks to the rise of this fourth branch of government, an American is subject to laws not passed by any Congress, and subject to judicial punishments not commanded by any court of law. It's all done "administratively" but nonetheless allows the agencies to "make and execute their own laws."

Read more

<https://mises.org/wire/deep-state-headless-fourth-branch-government>