December 8, 2017

DELIVERED VIA EMAIL

RE: CRC Credibility

Dear Chairman Beruff:

We write to express our concern that the CRC and some members are failing to comply with the CRC Rules adopted on June 7, 2017.

In the last few weeks there have been a number of glaring examples of rule violations that are obvious to the public but are apparently being ignored internally.

For instance, Commissioners seem to be working to advance proposals that impact their own interests or those of paying clients. Also, open meeting rules are simply being ignored. And basic meeting procedures established by the CRC have been violated.

It is deeply troubling to see members of the CRC conducting the business of the commission in ways that reflect either ignorance of the rules, as adopted, or a total disregard for them. We write to ask that you look into these issues and act responsibly by letting the public and the Commissioners know what you are going to do to fix these serious violations of the process and ensure that they will not continue.

The citizens of Florida expect, at a bare minimum, that Commissioners appointed to review and recommend revisions to our Constitution are complying with the rules of ethical conduct and process which they adopted.

We have read in the press that one commissioner who is a paid lobbyist for a law firm has filed a proposal that – while highly beneficial for the people of Florida – could create an economic benefit for that law firm. Did the commissioner disclose the special interest of his paying client? Will he recuse himself from the vote on this issue?

And we watched as a member of the Education Committee sponsored, presented, advocated for and, but for a procedural maneuver, would have voted for a proposal that she knew would impact her financially. While we are sure her excuse would be that the proposal would cause her to lose – rather than gain -- money, CRC Rule 2.11 requires Commissioners to refrain from voting on a question “which would inure to a Commissioner’s special private gain or loss; ...”

Rule 2.11 also requires that commissioners file a statement disclosing their private gain or loss. Was that done in either of these cases?
Other actions of the Education Committee on November 27, 2017 raised even more red flags. The proposal mentioned above (that would forbid local school boards to pay their members for their service) was reported unfavorably by a majority of the committee. What happened next dealt a crushing blow to public trust in the CRC.

Poised to adjourn after the unfavorable vote was taken, the Chair was asked by a Commissioner if there was some way to retain the proposal in the committee. The Commissioner indicated that there were discussions behind the scenes as to whether there was some way to overcome the defeat and retain the measure in the Education Committee. The Chair called a short break and the committee members left the room together – obviously to discuss how to handle this situation. After the break and conversations outside of public view, the Chair called for a revote on the excuse that the secretary had failed to call the name of the proposal’s sponsor during the roll call vote.

Calling for a revote was a preposterous charade because even if the sponsor’s vote for the proposal was added to the tally, it would still have resulted in a tie vote – thus defeating the measure. Furthermore, Rule 2.11 should have prevented calling for the vote of the personally interested sponsor. Proving that the trumped up revote was just a pretense, as the roll was about to be called, a commissioner moved to temporary postpone the matter. This was obviously part of the back-room plan that had been developed during the break.

This sort of maneuver contributed exponentially to the suspicion that this CRC is nothing more than, as the Tampa Bay Times recently called it, “a sham.”

In fact, the CRC rules make provision for reconsideration of a vote. Rule 6.5 states:

“When a main question has been made and carried or lost, a Commissioner voting with the prevailing side may move for reconsideration of the question on the same or the next day on which the Commission meets.”

Apparently in their private conversation, none of the Commissioners on the winning side agreed to make such a motion. And this blatant violation was a last ditch effort.

The message the CRC is sending to the citizens of Florida is coming through loud and clear. If rules of procedures and codes of conduct get in the way of proposals that are part of a pre-ordained outcome of this commission – they will be ignored.

We urge you, as Chair, to ask the Rules and Administration Committee to correct this travesty and declare that temporary postponement violated the CRC’s own rules and that the proposal must now be reported unfavorably.

We also urge you, again, to advise CRC members in no uncertain terms that they must follow the Commission’s Rules and fully comply with Florida’s Sunshine Laws. To do otherwise will continue to draw criticism of the CRC actions and doom any proposals that are sent to the ballot.

Floridians deserve better. Please respond to this letter to expressly inform us and the public how you plan to address these violations.

Sincerely,

Howard Simon, Executive Director
Kirk Bailey, Political Director
American Civil Liberties Union of Florida

Liza McMlenaghan, State Chair
Common Cause Florida
Barbara A. Petersen, President
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Rich Templin, Ph.D, Legislative & Political Director
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CC: All CRC Commission Members

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