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The Florida Cabinet: It it Time for Remodeling?

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I. INTRODUCTION

Most people assume that, in the United States, the Executive branch of state government is controlled by the state’s Governor. That assumption is not true in Florida. In Florida, the Governor shares executive power with other elected executive branch officials, a group designated in the state constitution as the Cabinet.¹ This “plural executive” form of organization has been described as an institution “unique” to Florida.² Is this system an advance worth examination by other jurisdictions or is it a detour on the road to good government that other jurisdictions have correctly ignored?

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1. FLA. CONST. art. IV, § 4(a).

2. TALBOT D’ALEMBERTE, THE FLORIDA STATE CONSTITUTION: A REFERENCE GUIDE 65 (1991). Allen Morris, a longtime observer and commentator on Florida government, seems to concur with this assessment. “Since the Governor shares so much of the traditional executive responsibility with members of an independent Cabinet, it is not surprising that political scientists regard Florida’s system of state government as different from virtually all other states.” ALLEN MORRIS, THE FLORIDA HANDBOOK 1993-94 14 (24th Biennial ed. 1993). Some argue that Florida’s Cabinet system is not that different from other states, noting that attorneys general, treasurers and secretaries of state at the state level are commonly elected. Fred O. Dickinson, Jr., *The Florida Cabinet*, 43 FLA. B.J. 337, 339 (1969). However, the role that cabinet officers play in Florida government is significantly different than the role played by similar officers in other states. Joseph W. Landers, Jr., *The Myth of the Cabinet System: The Need to Restructure Florida’s Executive Branch*, 19 FLA. ST. U. L. REV. 1089, 1103 (1992) (“No other state has an executive branch that even resembles ours in Florida.”).

II. THE CABINET

The Florida Cabinet is part of the Executive branch, but it is not the Governor's Cabinet. Its members are not appointed by the Governor and they do not serve at the Governor's pleasure. Instead, members of the Cabinet are elected independently of the Governor on the same statewide ballot used to elect the Governor.³ The Florida Constitution provides for a Cabinet that consists of six members: a secretary of state, an attorney general, a comptroller, a treasurer, a commissioner of agriculture and a commissioner of education.⁴ The Florida Constitution and the Florida Statutes prescribe the powers and responsibilities of these offices.⁵

Cabinet members discharge some of their powers and responsibilities while acting individually; they discharge others while acting jointly with the Governor and Cabinet; and they exercise still others while acting with other cabinet officers. Where the constitution and statutes provide for a cabinet member to oversee a particular agency of government, that responsibility is discharged individually.⁶ Where the law provides for the Governor and Cabinet to act together to manage an agency or to make certain decisions, cabinet members have a different role. As joint decisionmakers, each acts as a member of a collegial body chaired by the Governor. The Governor is technically not a member of the Cabinet, even when acting with it.⁷

The legal formula for sharing power in this collegial body changes depending on the type of question that the Governor and Cabinet must decide.

Under this system, the governor has no control over the cabinet other than that which comes from being the presiding officer, and, in most cabinet decisions, it is possible for the governor to be outvoted on a given issue. The governor is required to be in the majority for action on certain issues under the provisions of the constitution (such as clemency) or pursuant to statute (such as certain growth management issues), thus giving the governor veto power on those issues even

3. FLA. CONST. art. IV, §§ 4, 5.

4. *Id.* § 4.

5. *See id.*; FLA. STAT. §§ 16 - 19 (1993).

6. The constitution provides certain specified responsibilities for cabinet members, FLA. CONST. art. IV, §§ 4, 5., and provides that the Legislature may place the administration of departments within the Executive branch under the Governor, the Lieutenant Governor, the Governor and Cabinet, a cabinet member, or an officer or board appointed by the Governor, except where otherwise provided in the constitution. *Id.* § 6.

7. MORRIS, *supra* note 2, at 13.

though three cabinet members must join the governor for a decision.⁸

In some situations, cabinet members can act jointly without the Governor. For example, confirmation by three members of the Cabinet can be a substitute for senate approval of appointment to or removal from a designated statutory office, if the statutes so provide.⁹ Also, four cabinet members may send the supreme court a written suggestion that the Governor is incapable of serving as Governor.¹⁰

The Governor is not required to share all executive power with the Cabinet. One area where the Governor does not share executive power is in the area of appointments. It has been estimated that the Governor makes about 4,000 appointments over the course of a four year term.¹¹ The Governor also does not share the power to make the budget for Executive branch agencies and to veto legislation.¹² In addition, the Governor is in direct charge of state agencies that are not under the supervision of cabinet officers or under the control of the Governor and Cabinet collegially.¹³

III. THE DEBATE

Should the Florida Cabinet be abolished? People who care about the organization of our state government tend to have strong feelings on this subject. This is also a question that will likely confront the next Constitutional Revision Commission when it convenes in a few years time. That prediction is based on past history. The Cabinet was on the constitutional revision agenda in 1968 and 1978. In the 1968 Constitution, the Cabinet system was strengthened and given a clearer constitutional mandate. In 1978, the Constitutional Revision Commission recommended that the

8. D'ALEMBERTE, *supra* note 2, at 65.

9. FLA. CONST. art. IV, § 6.

10. *Id.* § 3(b).

11. MORRIS, *supra* note 2, at 12.

12. *Id.*

13. For a good discussion of which agencies are under whose control, see Landers, *supra* note 2, at 1092-93. However, there has been some reorganization of the Executive branch since that article was published, most notably the merger of the Department of Business Regulation to form the Department of Business and Professional Regulation, Ch. 93-220, § 2, 1993 Fla. Laws 1793, and the merger of the Department of Natural Resources and the Department of Environmental Regulation to form the Department of Environmental Protection. Ch. 93-213, 1993 Fla. Laws 2129, 2135-36 (amending FLA. STAT. § 370.017).

Cabinet be abolished, but that recommendation was rejected at the polls.¹⁴ Would the abolition of the Cabinet be a welcome reform, or is the Florida Cabinet a valuable resource that should be better appreciated?

A. *The Origins of the Cabinet*

The origins of the Cabinet have been traced back to the middle of the last century.¹⁵

The first mention of Cabinet officers was in the 1868 *Constitution*, but rather than being elected, they were appointed by the Governor and confirmed by the senate. The 1885 *Constitution* eliminated the word "Cabinet," but established six "administrative officers" who were to be elected and who came to be known as the "Cabinet." In subsequent years, the Legislature began vesting these Cabinet officers with additional duties beyond those established in the *Constitution*, and began establishing collective responsibilities. By 1968 the Governor and Cabinet, in various combinations, served on thirty-five different boards and commissions.¹⁶

The Cabinet system was strengthened in the 1968 Florida Constitution.

The new [1968] constitution not only retains the same six elective Cabinet officials as the old constitution, but actually strengthens their powers by providing a specific constitutional source for statutes creating ex officio boards with the right to appoint officers, hire employees, fix salaries, etc. By contrast to the 1885 Constitution, the Florida Constitution of 1968 nowhere refers to the Cabinet members merely as "administrative officers," expands the legislative empowering clause from ". . . perform such other duties as may be prescribed by law," to ". . . exercise such powers and perform such duties as may be prescribed by law," and specifically authorizes laws placing executive departments under the supervision of the Governor and the Cabinet, or [even] under a single Cabinet member.¹⁷

14. MANNING J. DAUER, *FLORIDA'S POLITICS & GOVERNMENT* 97 (2d ed. 1986) (70% of the voters rejected the proposal).

15. For a more complete discussion of the origins of the Florida Cabinet, see Ira W. McCollum, Jr., *The Florida Cabinet System—A Critical Analysis*, 43 FLA. B. J. 156, 158-61 (1969) and Landers, *supra* note 2, at 1098-1100.

16. Landers, *supra* note 2, at 1099.

17. McCollum, *supra* note 15, at 166-67.

It is unclear whether the Cabinet will be in or out of favor when the next round of constitutional revision begins.

B. *The Arguments*

The arguments for and against the cabinet system are not completely unexpected. Those who support the cabinet system are likely to argue the virtue of entrusting the work of the Executive branch to a number of elected, and hence independently accountable, government officials, rather than to the Governor and his or her appointed assistants. As expressed by one former cabinet member:

The bad effects of the governor appointing system, rather than the elected cabinet system, to oversee the executive branch must be considered. Appointive bureaucracy is one of the great problems continuing to mount on the American governmental scene. The power of the ballot of Floridians in electing or rejecting those who seek cabinet positions is the best possible guarantee for sound administration because of the accountability of each cabinet officer to the people whom he is privileged to serve.¹⁸

At least in theory, elected officials have their credentials and performance tested regularly at the ballot box, and, it is argued, a group of cabinet members chosen in statewide elections could bring to the job a collective wisdom, responsiveness and accountability uncharacteristic of appointed officials.¹⁹ The fact that there has historically been no limit on cabinet members' terms has been advanced as a plus because they are able to accumulate experience and provide continuity beyond that provided by the Governor, who is limited to a maximum of two terms by the constitution.²⁰ Proponents also note that the cabinet system allows the government to "spread the heat" of controversial decisions.²¹

18. Dickinson, *supra* note 2, at 339.

19. "One of the chief distinguishing features of the Cabinet is its ability to benefit from the wisdom and experience of seven men instead of one on important, executive decisions. This is the business-like board of directors' approach to sound executive decision making." *Id.* at 338.

20. *Id.* The adoption of a constitutional amendment that places term limitations on Florida officeholders promises to change this dynamic, but there has been very little discussion of the effect of this change to date. See FLA. CONST. art. VI, § 4 (eight year limit).

21. Governor Fuller Warren said that "spreading the heat" may not be the most elegant way to express it, but that this was one of the purposes of the cabinet system. MORRIS, *supra*

Also, the system allows both Democrats and Republicans to participate in the Executive branch at the same time. While this kind of power sharing between political parties is common in the Legislative branch, it is quite uncommon in the Executive branch. This feature is more significant now that the two party system in Florida has become more vital. Although it was once the exclusive domain of Democrats, the Cabinet today includes four Democrats and two Republicans. Whether a multi-party Executive branch is a benefit or a liability has not been the focus of much serious study. It is also unclear how this new dynamic will effect the chances that the Cabinet will be abolished during the constitutional revision. Since neither party's control of the Governor's Office is certain, will both want to leave open the possibility of participating in the Executive branch through the cabinet system? Also, many cabinet members have come to the Cabinet after serving as elected officials in the Legislative branch. Will the Legislature oppose changes to the cabinet system to preserve their members' opportunities to step up to statewide office after service in the Legislature?

In addition, proponents may contend that the cabinet system allows potential candidates for governor or senator to develop and test their statewide electoral support on the way to other statewide offices. Through their decisions on issues before the Cabinet, cabinet members can develop a track record on issues of statewide importance. Although cabinet members have often aspired to other statewide offices in recent years, surprisingly few have successfully used the Cabinet as a springboard to other offices.²²

Proponents are also likely to point to the openness of cabinet proceedings as a significant virtue of the cabinet system.²³ The proceedings are open to public view and can provide ordinary people with a forum to address the powerful on issues of statewide importance.

Cabinet day—usually a Tuesday—has come to serve as Florida's

note 2, at 14. One commentator critical of the cabinet system has suggested that it is better characterized as "a way to escape the heat." Landers, *supra* note 2, at 1095.

22. For instance, one commentator has observed:

Since 1960, every Secretary of State except one has run for either Governor, Lieutenant Governor or the United States Senate. Since the mid-sixties every Attorney General has run for either Governor or the United States Senate. In the last decade, the Treasurer has twice run for the United States Senate. Interestingly, these attempts by Cabinet officers for political promotion have almost never succeeded.

Landers, *supra* note 2, at 1100.

23. See, e.g., Dickinson, *supra* note 2, at 339.

“town meeting” with the public’s business transacted with a greater degree of openness than may be found in any other state government.

A meeting on Cabinet day affords the public an opportunity to watch State government in operation. Because the Governor and the six Cabinet officers are peers, each responsible basically to the electorate, differences of opinion usually go unconcealed.²⁴

The integration of this “town meeting” role of the cabinet system into the more traditional administrative and judicial process is sometimes awkward,²⁵ but the goal of providing a forum where politics, policy, and law converge during the decisionmaking process seems worthwhile.

Opponents of the cabinet system are likely to see the fact that the Cabinet is elected as a liability. They are likely to see the dynamics of the cabinet system as encouraging political horsetrading and discouraging principled decisionmaking, since an elected Commissioner of Education or Insurance Commissioner, for example, might be tempted to trade votes on issues that come before the Cabinet that are in areas far removed from their area of primary concern in order to win support in the areas important to them. This dynamic may reduce the validity of the proponents’ accountability argument as well, since the Insurance Commissioner and the Commissioner of Education are unlikely to run on, or be called to task for, their environmental record for example, even though as cabinet members they cast many important votes on the environment. Also, opponents may argue that specialists would be more capable administrators of the agencies than cabinet officers or the Governor and Cabinet as a collegiate body, both because specialists are likely to have more expertise than politicians and because specialists would give their full attention to their one job and not divide their time and attention, as the current system requires elected cabinet officials to do. Proponents are likely to respond both that this analysis undervalues the experience and wisdom of cabinet officials and overvalues appointed officials, who are more likely to be chosen for their political connections than for their expertise as administrators.

In addition, the cabinet system is criticized for dividing the executive power of the state. Critics suggest that if the entire executive power of the state was vested in the Governor, the Executive branch would become more

24. MORRIS, *supra* note 2, at 17.

25. See, e.g., *Fox v. Treasure Coast Regional Planning Council*, 442 So. 2d 221, 226 (Fla. 1st Dist. Ct. App. 1983) (compromise plan adopted by Cabinet sitting as the Florida Land and Water Adjudicatory Commission after hearing arguments “from parties as well as comment by interested groups and individuals” remanded because not supported by evidence in the record).

accountable.

Who is held responsible for what? The Governor is generally perceived as the head of the executive branch of government although he has less than total authority over that branch. The Governor is always at risk of being blamed for failures caused by elements beyond his control.

On the other hand, the Governor, as well as Cabinet members, may escape accountability for departments they collectively head. Candidates for Cabinet offices run almost exclusively on issues concerning the departments they will head, and that is generally the basis for their election.²⁶

Opponents also argue that the cabinet system is inefficient. Not only have the Governor and Cabinet been known to spend great amounts of time on small matters,²⁷ the Cabinet has developed a staff structure that places yet another layer of bureaucracy over the operation of the departments that must answer to the Governor and Cabinet. Cabinet aides' sessions "have become virtual 'mini' Cabinet meetings that sometimes last longer than actual cabinet meetings" according to one critic.²⁸

A collection of lawyers, lobbyists, opponents, and proponents plead their causes at these meetings, which have become a virtual prerequisite to appearing before the Governor and Cabinet the following week. After the aides meet and before the Governor and Cabinet convene, the aides brief their principals and recommend how they should vote.²⁹

One summary of the opponents' complaints is that the cabinet system in Florida "results in a weak executive branch, a lack of accountability, poor management, wasted money, and is illogical . . ."³⁰ It has been suggested that the various roles of the Governor, Cabinet, and of various cabinet officers could be reorganized to place most of the Executive branch under the control of the Governor, and that some of those changes would require only statutory changes.³¹

26. Landers, *supra* note 2, at 1094-95.

27. *Id.* at 1096. One oft cited example of this is the hours that were once spent debating the size that green turtles must reach before they could be taken. *Id.*; MORRIS, *supra* note 2, at 15.

28. Landers, *supra* note 2, at 1097.

29. *Id.*

30. *Id.* at 1098.

31. *See id.* at 1100-02.

IV. CONCLUSION

The debate over the cabinet system in Florida is not a new debate. To the extent that the debate is about the merits of election versus appointment, the benefits of choosing government officials based upon their political strengths versus their substantive expertise, it is an old debate that is now being held in a new context. This debate has a familiar ring to it because it is an argument that has echoed down so many corridors of American government over so many years. This debate is repeated as our government institutions are constantly organized and reorganized to respond to the weaknesses in old systems and to help better prepare government to solve new problems that seem increasingly more complex and intractable. As Professor Bernard Shapiro explains:

From the founding of the republic, Americans have embraced two opposing modes of public administration, the democratic and the technocratic. The former, which we might term the Jacksonian tradition, calls for government by the common people themselves, or at least by administrators directly representative of and responsible to the people The opposing, Federalist tradition, first advocated by Hamilton, stresses the need for efficient government and thus the need for an administration staffed not by an ever-changing stream of Know-Nothings, but by experts.³²

The recurring nature of this debate suggests that, while individuals may adopt a position with great conviction, there are no “right” answers to questions like: Which is better, election or appointment? If we are to arrive at some consensus about which system is right for Florida, we must broaden the debate.

More than the narrow arguments about which system makes decision-makers more accountable, or more efficient, are necessary here. We must recognize that even the word “accountability” may mean different things to different people. Both sides in the debate argue their approach as to which makes decisionmaking more accountable: the election of cabinet members or the appointment of department heads by the Governor. One reason behind the debate seems to be that they disagree about what accountability means. What makes someone accountable; their formal accountability through election, or their actual accountability as the system really operates? Cabinet members are directly subject to reelection, but it is rare indeed that

32. Bernard Shapiro, *Administrative Discretion: The Next Stage*, 92 YALE L.J. 1487, 1495-96 (1983).

they are turned out of office, no matter what they have done. Department heads are not elected, but they may either be fired by the Governor, whose reelection is not assured and who is not permitted to stay in office more than eight years, or they may be "fired" by the people themselves when the Governor is rejected at the polls. If accountability means directly subject to reelection, none of these other facts matter.

In discussing efficiency, we must not only argue about which approach is more efficient, we must also consider the importance of efficiency. This should be done both as a philosophical matter, that is, how important is efficiency when balanced against competing interests, and it should be done in context, that is within the totality of circumstances of Florida government. Just because a system is inefficient does not mean it should be abolished. For example, Florida has chosen to adopt an Administrative Procedure Act that is relatively inefficient, when compared with other state administrative procedure acts. This was a choice motivated both by the Legislature's view of the context at the time our state Administrative Procedure Act was adopted, a view that state agencies could not be trusted in their dealings with the public, and their political philosophy, a belief that in the balance between efficiency, accuracy and acceptability, the three normative requirements usually identified in administrative procedure, efficiency was a minor concern. The result was a conscious decision to make the Act less efficient but more protective of individual rights.³³

To date, much emphasis has been placed on apparent weaknesses of the cabinet system (e.g., that it divides executive power) and on the perceived irrationality of some power sharing choices (e.g., why is one department under a cabinet officer, another under the Cabinet and a third under the Governor?), but that alone will probably not be enough to compel people to change the system. People will want to know how well the cabinet system is serving Floridians. The literature as it exists does not answer this question. A complete answer necessarily requires a more explicit discussion of both political philosophy and the larger context of the debate. Until that discussion occurs, we may have difficulty deciding with confidence what changes, if any, should be made to the cabinet system.

33. For a more complete discussion of these points see Stephen T. Maher, *The Seventh Administrative Law Conference Chairman's Introduction to the Symposium Issue*, 18 FLA. ST. U. L. REV. 607 (1991); Stephen T. Maher, *We're No Angels: Rulemaking and Judicial Review in Florida*, 18 FLA. ST. U. L. REV. 767 (1991).