

By the Committee on Crime Prevention, Corrections & Safety  
and Representative Bilirakis

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

House Joint Resolution

A joint resolution proposing an amendment to  
Section 17 of Article I of the State  
Constitution relating to excessive punishment.

Be It Resolved by the Legislature of the State of Florida:

That the amendment to Section 17 of Article I of the  
State Constitution is agreed to and shall be submitted to the  
electors of this state for approval or rejection at the next  
general election or at an earlier special election  
specifically authorized for that purpose.

SECTION 17. Excessive punishments.--Excessive fines,  
cruel and ~~or~~ unusual punishment, attainder, forfeiture of  
estate, indefinite imprisonment, and unreasonable detention of  
witnesses are forbidden. The death penalty is an authorized  
punishment for capital crimes designated by the legislature.  
The prohibition against cruel or unusual punishment, and the  
prohibition against cruel and unusual punishment, shall be  
construed in conformity with decisions of the United States  
Supreme Court which interpret the prohibition against cruel  
and unusual punishment provided in the Eighth Amendment to the  
United States Constitution. Any method of execution shall be  
allowed, unless prohibited by the United States Constitution.  
Methods of execution may be designated by the legislature, and  
a change in any method of execution may be applied  
retroactively. A sentence of death shall not be reduced on  
the basis that a method of execution is invalid. In any case  
in which an execution method is declared invalid, the death  
sentence shall remain in force until the sentence can be

1 lawfully executed by any valid method. This section shall  
2 apply retroactively.

3 BE IT FURTHER RESOLVED that the following statement be  
4 placed on the ballot:

5 AMENDING ARTICLE I, SECTION 17 OF THE STATE CONSTITUTION

6  
7 Proposing an amendment to the State Constitution identical to  
8 a proposed amendment to Section 17 of Article I of the State  
9 Constitution which was approved by a statewide vote in 1998.  
10 The Supreme Court of Florida struck the 1998 amendment in a  
11 ruling in which four of the seven justices found that the  
12 ballot summary was inaccurate. The proposed amendment  
13 expressly authorizes the death penalty for capital crimes and  
14 expressly authorizes retroactive changes in the method of  
15 execution. The amendment changes the prohibition against  
16 "cruel or unusual punishment," currently provided in Section  
17 17 of Article I of the State Constitution, to a prohibition  
18 against "cruel and unusual punishment" to conform with the  
19 wording of the Eighth Amendment to the United States  
20 Constitution. The amendment prohibits reduction of a death  
21 sentence based on invalidity of an execution method and  
22 provides for continued force of the sentence. The amendment  
23 permits any execution method unless prohibited by the United  
24 States Constitution. The amendment requires construction of  
25 the prohibition against cruel or unusual punishment and the  
26 proposed prohibition against cruel and unusual punishment to  
27 conform to United States Supreme Court interpretation of the  
28 Eighth Amendment to the United States Constitution. The  
29 amendment would prevent state courts, including the Florida  
30 Supreme Court, from treating the state constitutional  
31 prohibition against cruel or unusual punishment as being more

1 expansive than the federal constitutional prohibition against  
2 cruel and unusual punishment or United States Supreme Court  
3 interpretations thereof. The amendment effectively nullifies  
4 rights currently allowed under the state prohibition against  
5 cruel or unusual punishment which may afford greater  
6 protections for those subject to punishment for crimes than  
7 will be provided by the amendment. Under the amendment, the  
8 protections afforded those subject to punishment for crimes  
9 under the "cruel or unusual punishment" clause, as that clause  
10 currently appears in Section 17 of Article I of the State  
11 Constitution, will be the same as the minimum protections  
12 provided under the "cruel and unusual" punishments clause of  
13 the Eighth Amendment to the United States Constitution. The  
14 amendment provides for retroactive applicability.

15

16 Specifically, the proposal amends Section 17 of Article I of  
17 the State Constitution, to read as set forth below. The word  
18 ~~stricken~~ is a deletion; words underlined are additions:

19 SECTION 17. Excessive punishments.--Excessive fines,  
20 cruel and ~~or~~ unusual punishment, attainder, forfeiture of  
21 estate, indefinite imprisonment, and unreasonable detention of  
22 witnesses are forbidden. The death penalty is an authorized  
23 punishment for capital crimes designated by the legislature.  
24 The prohibition against cruel or unusual punishment, and the  
25 prohibition against cruel and unusual punishment, shall be  
26 construed in conformity with decisions of the United States  
27 Supreme Court which interpret the prohibition against cruel  
28 and unusual punishment provided in the Eighth Amendment to the  
29 United States Constitution. Any method of execution shall be  
30 allowed, unless prohibited by the United States Constitution.  
31 Methods of execution may be designated by the legislature, and

1 a change in any method of execution may be applied  
2 retroactively. A sentence of death shall not be reduced on  
3 the basis that a method of execution is invalid. In any case  
4 in which an execution method is declared invalid, the death  
5 sentence shall remain in force until the sentence can be  
6 lawfully executed by any valid method. This section shall  
7 apply retroactively.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31