

OPEN MEETING

CONSTITUTIONAL AMENDMENTS PUBLICATION COMMITTEE

COMMISSIONERS:

ELAINE F. MARSHALL, Chair, North Carolina Secretary of State
JOSH STEIN, North Carolina Attorney General
PAUL COBLE, Legislative Services Officer

Room 105
Campbell University
Norman Adrian Wiggins School of Law
225 Hillsborough Street
Raleigh, North Carolina

July 31, 2018
9:30 a.m.

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A P P E A R A N C E S

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1 (Proceedings commenced at 9:30 a.m.)

2 SECRETARY MARSHALL: Good morning, Ladies and
3 gentlemen. I'm Elaine Marshall, Secretary of State. And we
4 are here today to begin conversation, discussion under the
5 duty of the -- the Constitutional Amendment Publication
6 Committee. This is a committee composed of three
7 individuals: The Secretary of State by virtue of the office,
8 the Attorney General by virtue of office, and the
9 Legislative Service Officer of the General Assembly by
10 virtue of office.

11 We note the presence of Mr. Stein, Attorney
12 General and, of course, I'm here; but we note the absence of
13 Mr. Coble. We will wait a few more minutes to see if he
14 does show up.

15 I'd like to notice that it is a few minutes after
16 9:30 in the morning, and we are at the location of the
17 announcement setting the Constitutional Amendment
18 Publication Commission meeting.

19 I'd like to address just a few information matters
20 while we're waiting. Yesterday, I spoke to the Chairman of
21 the Board of Elections and Ethics, Andy Penry, and indicated
22 -- is that better? Of course. That's terrible. I'm sorry.
23 Is that still okay? Yeah. Okay. You want me to start
24 over? I think my voice is kind of loud enough.

25 Mr. Penry said that he would send someone from the

1 Board of Ethics and Elections here to let us know on the
2 record exactly what deadlines they're working with.
3 So I note the presence of Josh Lawson here. Josh, if you'll
4 give us your title and tell us what information this
5 Commission needs to know regarding any deadlines on printing
6 and publications.

7 MR. LAWSON: Thank you, Madam Secretary. My name
8 is Josh Lawson. I'm the general counsel for the State Board
9 of Elections -- thank you -- general counsel for the State
10 Board of Elections and Ethics Enforcement. I was asked to
11 come here today to answer any questions that you may have.
12 You've indicated that it would be helpful to know some of
13 the printing deadlines for the ---

14 SECRETARY MARSHALL: Yes.

15 MR. LAWSON: --- official voter guide. The
16 official voter guide is mandated by statute. We print
17 roughly 3.4 million guides and distribute them to every
18 residential address in the state. The Department of
19 Administration, which ordinarily handles the purchasing and
20 contracting for that guide, failed to get that out to -- for
21 bid in a timely manner, so we are now working to go around
22 regular procurement processes and coordinate with the vendor
23 that has in the past produced this for the state.

24 We don't have a definite deadline for the
25 printing. The RFP had indicated a deadline in July. The

1 deadlines that we do have by statute are the deadlines set
2 out for actual distribution, and that is the distribution of
3 the guide must be between September 20th and October 11th.
4 We're not allowed to go earlier than September 20th or later
5 than October 11th. But we believe that we are able to
6 accommodate, likely, whatever the Commission is able to get
7 us up and to the point that we would otherwise be printing
8 ballots, which is sometime during the week of August 6th.

9 SECRETARY MARSHALL: Is there a definite date
10 during the week of August 6 for the commencement of ballot
11 printing?

12 MR. LAWSON: There's not, because there's not a
13 contract in place with the printer.

14 SECRETARY MARSHALL: Okay.

15 MR. STEIN: May I ask a follow-up, Madam
16 Secretary?

17 SECRETARY MARSHALL: Please, Mr. Stein.

18 MR. STEIN: What is the relationship between the
19 printing of the ballots and the printing of the voter
20 guides? I don't understand that.

21 MR. LAWSON: There's -- there's no direct
22 correlation. It just happens to be that in past practice
23 when we have gotten our materials over to the printer for
24 the voter guide by -- around that same week of the 6th, they
25 have been able to hit their production mark and distribute

1 it out throughout the state. So it just happens to be that
2 the same general week of the 6th would likely be the same
3 production time.

4 MR. STEIN: But if the statutory requirement is
5 that it has to be distributed by October 11th, I -- I've
6 sent many direct mail pieces and know how quickly they can
7 be turned around. My guess would be as long as we had
8 something to you by late September, theoretically, then it
9 can get to a printer and distributed to meet the statutory
10 deadline. Is there any reason that understanding's wrong?

11 MR. LAWSON: No. The statute, you're right, it
12 does set out what is the earliest date we're permitted to
13 distribute and what's the latest date. We've noticed that
14 in places in the state where mail is not delivered as
15 quickly, we get complaints from people who have already
16 started the early voting process. So our objective is
17 always to supply voters with as much information as quickly
18 as possible.

19 MR. STEIN: That -- that -- that is a value that I
20 -- I share, and I -- I just want to make sure. Well, we
21 lost some time to the -- if Mr. Coble doesn't show today,
22 we're losing time. And what I don't want to have happen is
23 if Mr. Coble doesn't show till next week, then that does --
24 that would somehow inhibit the ability for the public to get
25 whatever explanations this Commission creates.

1 MR. LAWSON: Our commitment and our board has
2 directed in its meeting on the 18th that we work as closely
3 as possible with the Commission informing you informally of
4 all the deadlines that arise. These are the ones we have as
5 of today. That may change later this afternoon. And I'm
6 happy to supply to your respective staffs whatever
7 information we have.

8 MR. STEIN: And just to be clear, because I really
9 -- I understand that there's been an historical legacy where
10 the explanation has gone to the printer at the same time,
11 the week of August 6th, but I really see absolutely no link
12 between the two. The ballot needs to go -- the ballot needs
13 to go because the ballot needs to be printed because you
14 oversee voters. And to the extent we can get this done
15 earlier and distributed, that's great, but often -- the
16 earliest we can mail it out was in September -- 20th. What
17 did you say?

18 MR. LAWSON: The earliest arrival date is
19 September 20th.

20 MR. STEIN: Yeah. So that would be in the mail by
21 September 15th. August 6th is six weeks before -- five to
22 six weeks before that. So I don't feel the August 6th has
23 any constraint or relevance to what we are doing.

24 MR. LAWSON: This is just a practical previous
25 indication that we've had from the same printer, because the

1 volume of paper spent to print four million guides is
2 substantial, and that contracts goes out of state in order
3 to meet those production deadlines. The shipping is carried
4 out from a vendor here in Raleigh, and they prioritize the
5 western part of the state where it takes longer first,
6 working east.

7 MR. STEIN: Okay.

8 SECRETARY MARSHALL: And to make it clear for the
9 public, the printing deadline for the ballots is for
10 whatever caption and the language that the General Assembly
11 included in the bill placing it on the ballot. Whereas, the
12 voter guide includes the caption and the summary from the
13 Commission.

14 MR. LAWSON: That's right. The board, in its
15 discretion, has determined that it's appropriate to include
16 the ballot information having to do with the amendment. The
17 only thing necessary under statute is the appellate guide
18 with reference to the bios and things submitted by those
19 running for appellate office.

20 SECRETARY MARSHALL: Any other questions?

21 MR. STEIN: No. Thank you.

22 SECRETARY MARSHALL: Thank you. Mr. Lawson, you
23 can go. Thank you very much.

24 MR. LAWSON: Thank you.

25 SECRETARY MARSHALL: You can go on. I note from

1 my handy-dandy digital apparatus here that it is now 9:40,
2 ten minutes after the appointed hour. Let me bring everyone
3 up to date as to what happened yesterday afternoon.

4 At 3:58 p.m., I received a communication
5 electronically from Mr. Coble as follows:

6 "Dear Secretary Marshall and Attorney General
7 Stein: Given the announcement today at 2:00 p.m.
8 on the House floor that the General Assembly will
9 hold a session this Saturday, the 4th, at 11:00
10 a.m. to override the governor's veto on House Bill
11 3 of the extra session, I propose the commission
12 cancel this week's meetings and take up its work
13 Monday the 6th, Tuesday the 7th, and, if needed,
14 Wednesday the 8th.

15 "Given that HB 3 makes any captions adopted
16 by the Commission 'null and void' and prohibits
17 them from appearing on the ballot used in the 2018
18 general election, I do not think that it is
19 prudent for the Commission to meet until it knows
20 the outcome of the Saturday session, and that it
21 would be more prudent for us to meet once we know
22 the scope of the work to be accomplished. I make
23 this suggestion in order to avoid further
24 politicizing the work of the Commission and to
25 avoid additional controversy.

1 "Therefore, I will not attend any meetings of
2 the Commission this week. However, I plan to meet
3 on Monday the 6th and/or Tuesday the 7th as it is
4 my understanding from previous communications with
5 you that you are both available on the 6th and the
6 7th. I also understand that the meeting location
7 -- the meeting location has been reserved for both
8 days. Paul Y. Coble, Legislative Service Officer,
9 North Carolina General Assembly."

10 Upon receiving that communication, I responded and
11 copied the Attorney General as follows:

12 "Dear Mr. Coble: I am in receipt of your
13 3:58 p.m. e-mail today regarding the
14 constitutional amendments" -- and, by the way,
15 mine is 5:11 -- "I'm in receipt of your 3:58 p.m.
16 e-mail today regarding the Constitution Amendments
17 Publication Commission. Notwithstanding your
18 prediction that the General Assembly will override
19 the governor's veto of HB 3, even if that is the
20 case, the duty of the Commission to prepare
21 summaries remains. We can use tomorrow's time
22 wisely to accomplish this statutory mandate.

23 "In fact, President Pro Tem Berger
24 reiterated that the Commission will retain its
25 duty to prepare summaries in the upcoming election

1 in his July 26th letter to me, and we attached a
2 copy of it. Now that I have learned of your
3 concerns, I believe the better way to proceed is
4 for you to attend the meeting tomorrow as planned.
5 At that time, we can make" ---

6 (Alarm goes off.)

7 SECRETARY MARSHALL: That's what happens when you
8 go through a door marked "don't go through."

9 "Now that I have learned your concern, I
10 believe that the better way to proceed is for you
11 to attend the meeting tomorrow as planned. At
12 that time, you can make a motion to postpone the
13 caption writing until after Saturday's session.
14 If you make such a clean motion, I will support
15 it. Then the Commission can go forward to perform
16 its clear statutory duty to prepare summaries of
17 each proposed amendment. Sincerely, Elaine F.
18 Marshall."

19 There was no further response to my e-mail of 5:11.
20 It also was hand-delivered to the Legislative Service
21 Officer's office down there. There was oral communication
22 from I'm not sure whom, but someone in the office, that he
23 would not be attending. But we, again, would have desired
24 his attendance here. So we have copies of these letters for
25 members of the press somewhere.

1 MS. HAYNES: They've been handed out.

2 SECRETARY MARSHALL: Been handed out. Okay.

3 Good. I would like for us to consider this a work session,
4 because there are items that we can do. I believe it is the
5 task of this Commission to enable the voters to knowingly
6 decide and choose which way they want to vote on these
7 constitutional amendments.

8 So I also want to thank a number of people for
9 allowing for us to be here at this particular place at this
10 particular time. I certainly want to thank the Campbell
11 University School of Law for allowing us to use the
12 facility. It's better than any of the rooms we have at the
13 Secretary of State's office.

14 We're exceedingly grateful to Dean Rich Leonard
15 and his great staff here for assistance. He's been in this
16 morning, but he's been back out. There are three other
17 activities going on in this building. So while the students
18 may not be here, there are a lot of other things going on.
19 It is a wonderful resource to have this here in downtown
20 Raleigh.

21 I want to thank also their management staff, their
22 technology staff, and their security staff. They have been
23 absolutely incredibly helpful with this activity. We also
24 want to thank the State Capitol Police, R. E. Hawley, Chief
25 Deputy, for being here today.

1 And I'm also grateful to the patience and effort
2 of commissioners' staffs who have worked to cooperate to
3 make this happen. My own Secretary of State staff have been
4 handling everything from building a website, which I urge
5 you to visit at sosnc.gov, to getting coffee here -- and by
6 the way, it's outside at this end. There's also water out
7 there, so please feel free to -- you can bring beverages in
8 here; feel free to go ahead and do that. My great thanks
9 also to Glenda Biggerstaff of WordServices, Incorporated,
10 who is our court reporter here today.

11 I want to publicly express thanks to everyone who
12 sent draft comments regarding these six proposed amendments.
13 I want to let everyone know that we have been reading them,
14 and I expect you may see phraseology that you tendered as we
15 proceed on writing these at some point. So we will craft
16 summaries at an appropriate time.

17 We have with us the state's lawyer, Mr. Stein. I
18 know that his staff has worked very hard backing him up. We
19 wouldn't be so good if we didn't have such good staff,
20 right?

21 MR. STEIN: It's certainly true.

22 SECRETARY MARSHALL: Yeah. Thank you. The other
23 items I want to note are in the nature of housekeeping. The
24 restrooms are -- that are located nearest to us are down the
25 hallway beyond the lobby to the right. Water and coffee

1 outside; and if you need your caffeine cold, there are
2 vending machines located on the second floor. Go to the
3 elevator in the main hall, second floor, and then left into
4 the common area.

5 So the last thing I ask is that we just kind of
6 take the Boy Scout motto and leave this place better than
7 when we found it. They've been very gracious, and so if we
8 can all get rid of our trash as we head on out, that would
9 be -- that would be very grateful.

10 Mr. Attorney General, I propose we do a discussion
11 on these amendments in the order in which the session laws
12 were enacted. And -- I'm sorry. Mr. Attorney General, I
13 will give the floor to you for comments.

14 MR. STEIN: Well, thank you, Secretary Marshall.
15 Thank you for the work you've done now but more importantly
16 the work you've done leading up to this session. I know
17 that your team has been doing excellent hard work to -- to
18 prepare us today, and I thank all the folks from the
19 Department of Justice who have helped to prepare us as well.

20 I -- I'm disappointed that our third commissioner,
21 Mr. Coble, isn't here today. The only issue that's
22 outstanding on the veto override is whether a few-word
23 caption is included with the description, which will be one
24 to three or four paragraphs, depending on the amendment, of
25 what we do to explain what the amendment does. And so the

1 fact that that override session has not yet occurred is
2 irrelevant to the work -- the bulk of the work that we do,
3 which is to draft these explanations. And he was the one
4 who first suggested this date, and so that -- that makes it
5 all the more perplexing and unfortunate.

6 The other thing I would like to say is I agree
7 with your strategy of just going through them individually
8 in order. But what this exercise has forced me to do by
9 reading these amendments so carefully is to appreciate the
10 incredible disconnect between the words that the voters will
11 be voting on on the ballot and what the amendments actually
12 do that I -- I'm very concerned. Particularly, the two that
13 give me greatest pause are the amendments having to do with
14 boards and commissions and judicial appointments.

15 What I fear is that the voters are going to go in
16 to get a beautiful birthday cake and see this wonderful
17 picture with all this accurate beautiful description about
18 what it's gonna taste like, and then when they get home and
19 eat it, it's cat food. And they don't like the taste it
20 leaves in its mouth. And so I think we will be able to do
21 this work, to explain what these amendments do. I'm
22 confident that we can do that.

23 But when the voters go in to vote, they don't vote
24 on the explanation. They vote on the description that's on
25 the ballot. And there's not even in the voting booth an

1 asterisk on it where they can go and refer and read the fine
2 print. So on the one -- they're seeing this, you've won a
3 \$1 million, but there's not even an asterisk to say, but,
4 no, you didn't.

5 And -- and so I want to do this work. We're going
6 to do conscientiously. We're going to explain what these
7 amendments do. But I'm generally concerned that no matter
8 how well we do with that work that the voters are ultimately
9 going to be dis-served because what they're voting on does
10 not reflect what they're actually going to do if they
11 approve these amendments.

12 SECRETARY MARSHALL: That same sentiment was
13 reflected in a number of the drafts that we received from
14 citizens who did fine comb through the -- the language of
15 the amendments and compared them to the existing
16 Constitution and raised an awful lot of questions about what
17 the amendments really do, what they don't do, what they
18 affect, what they don't affect. And I think putting these
19 in context to the existing Constitution and laws of this
20 State is very, very important, and -- and that's the
21 challenge of this Commission.

22 So I agree with you that misleading and/or
23 confusion, Trojan horse, or pig in a poke is what we say
24 down in the country ---

25 MR. STEIN: Yeah.

1 SECRETARY MARSHALL: --- is what the citizens may
2 be looking at it when they vote for these amendments. So
3 would you prefer to take the two amendments that you have
4 the most concern with first?

5 MR. STEIN: Not -- it's not necessary that we ---

6 SECRETARY MARSHALL: Okay.

7 MR. STEIN: --- do that. I just felt sufficiently
8 strongly that I wanted to raise those.

9 SECRETARY MARSHALL: Okay. So any other comments
10 we can -- okay. The first one was Session Law 2008-96
11 [sic]. Most people call it the right to hunt and fish. And
12 we're going to go through our notes on these. We have draft
13 language.

14 I do need to say that the -- the Commission's
15 challenge is to write these in simple and commonly used
16 language. There are certain scientific research tools that
17 are out there, readability tools, grade-level tools. And it
18 is not a hard fast rule, but it certainly is an objective to
19 try to get the summary to somewhere in the neighborhood of
20 350 words, if we possibly can, so that the public doesn't
21 lose interest and at least gets down to -- through --
22 through it all. It will not be a difficult challenge to get
23 through it all.

24 This does give a new right to people, hunting and
25 fishing. And it strikes me that there's nothing in here

1 that really discusses what are the traditional means to
2 hunt, fish, and harvest wildlife. I have a lot of friends
3 in the mountains, and they tell me that setting a fire to
4 get animals out was what many of our occupants of western
5 North Carolina Native Americans did. Is there any
6 prohibition against that in the amendment language here?

7 MR. STEIN: Another way people have traditionally
8 hunted is they used massive bear traps, bear claws, which
9 the legislature has of late regulated because they -- they
10 capture animals and put them through a lot of pain. And so
11 I -- I agree with you that there's no definition of what
12 traditional methods means.

13 Another question that's very unclear from the
14 amendment is the limitation that says that it -- there are
15 two ways in which this right is subject. One is to -- laws
16 by the General Assembly; and two, by rules adopted pursuant
17 to an authority granted by the General Assembly. And I
18 think what that generally means is the North Carolina
19 Wildlife Commission because they set rules and it's been
20 granted by the General Assembly.

21 But then there are -- are two limitations on that
22 -- on that -- on the subject two clause to promote wildlife
23 conservation manage -- and management or to preserve the
24 future of hunting and fishing. Those are the only two
25 reasons why clearly the Wildlife Commission can put a

1 limitation on this. What's unclear is whether those
2 limitations of promoting management, conservation, and
3 preserving the future of hunting and fishing also apply to
4 the General Assembly.

5 Professor Orth from UNC in the comments, which you
6 invited from the public, argued that he thought it would
7 limit the General Assembly as well as the Wildlife
8 Commission, which then begs the question are there other
9 reasons why one would want to limit hunting such as public
10 safety or animal cruelty, that this limitation would remove
11 from the General Assembly. And so I just think it's -- it's
12 unclear from this wording what -- what will -- the courts
13 ultimately will decide.

14 SECRETARY MARSHALL: I think it's also unclear,
15 since this does not address fresh water versus saltwater,
16 recreational fishing versus commercial fishing, you know,
17 what laws can control or -- or again, back to wildlife
18 harvest and the traditional methods. Yeah. It -- it seems
19 to be an awful lot of unanswered questions.

20 MR. STEIN: Let me add another one. What does it
21 mean to be a preferred means of managing, controlling
22 wildlife? Does that mean that if there is a wildlife issue
23 that there can't be other ways of controlling, like fencing
24 that the Wildlife Commission and legislature would be forced
25 to allow hunting in that circumstance, and what are the

1 impacts on local government ordinances?

2 So this is a one-paragraph, short amendment, the
3 right to hunt, fish, and harvest wildlife. But I think
4 we've now identified eight questions which are unanswered,
5 and I think that it puts it on us to figure out how to
6 explain that uncertainty to the public that when they vote
7 for this, that there are certain questions that are -- we
8 just don't know the answer ---

9 SECRETARY MARSHALL: Okay.

10 MR. STEIN: --- to.

11 SECRETARY MARSHALL: Any other thoughts on this
12 one?

13 MR. STEIN: There is not.

14 SECRETARY MARSHALL: Okay. The next one would be
15 Session Law 2008-110 [sic], which is commonly known as
16 victims' rights. This law does expand the number of
17 individuals who could take advantage of this right by
18 extending it to victims of property crimes, crimes against
19 the person. And then those crimes, that if committed by a
20 juvenile, would be also falling into that category, victims
21 of juvenile crime.

22 For the benefit of the public, juvenile crime is
23 handled in a specialized court. They're generally not
24 called defendants, and crimes as juvenile acts, and they're
25 juveniles in the court system. But we currently have this

1 amendment in the Constitution. It does provide by law,
2 which means there are automatic, certain rights that -- that
3 inure to the particular victims.

4 How does this expand those rights other than the
5 different classes of crimes? I kind of read it saying that
6 the automatic right doesn't exist anymore. It's going to
7 exist when the victims ask for them.

8 MR. STEIN: Well, I think -- first of all, I agree
9 with the way you structured this in that this is already in
10 our Constitution, and there is already statutory -- there's
11 a statute that gives broader effect to this amendment. And
12 I think some of what this amendment will do is remove the
13 discretion of the General Assembly about whether or not or
14 how to grant a right.

15 So you'll see a number of instances where the
16 language is now upon request -- upon request, whereas before
17 it used to say as prescribed by law where the General
18 Assembly had the right to essentially not grant it at all.

19 So I think in a number of ways it more -- it gives
20 crime victims more certainty that the rights that are
21 enumerated they actually can avail themselves of as long as
22 they request it. I agree with your analysis that it expands
23 the number of crimes -- the number of crimes of which a
24 victim now is entitled to these rights. So I think it -- it
25 -- I think expanding crime victim's rights is an accurate

1 characterization of what this does.

2 One thing that I'll -- I'll note, and this is just
3 -- in the language that folks will be voting on, it says
4 that it establishes certain absolute basic rights, and these
5 rights are not absolute. And so this is just another
6 example where the language from which people will be voting
7 is they think they're getting something, but they're
8 actually not getting absolute rights, and that the amendment
9 does not ensure the enforcement of these rights.

10 In fact, what it says is is that -- if you look in
11 the language in (1b), Enforcement of the Rights, the General
12 Assembly shall further provide, by general law, a procedure
13 whereby a victim may assert their rights provided in this
14 section. So it essentially says the enforcement piece is to
15 follow by whatever the General Assembly does or does not do.

16 So I think that we can explain what this does so
17 that folks understand that it's an expansion of the rights
18 they have under current law and explain how it expands those
19 rights. But I -- I -- I just want to note that -- that the
20 language folks are voting on is not what the amendment
21 actually does.

22 SECRETARY MARSHALL: And this has no
23 implementation legislation with it per se. Although, it
24 does have a structure that they could amend. We did ask the
25 staff of the General Assembly for the publicly available

1 fiscal notes, and this was the only one that had a fiscal
2 note. And the cost of this to the citizens would -- was
3 estimated at \$8 million.

4 MR. STEIN: And I've seen another analysis of --
5 of \$30 million. And -- and my question to you is: Do you
6 think that that is something that the voters would want to
7 know in explaining the amendment, and that people want --
8 they -- they may want rights, but they also want to know
9 what the rights cost them as taxpayers. And is that the
10 type of information you think we should include in the
11 explanation?

12 SECRETARY MARSHALL: I -- I would think so, yes.

13 MR. STEIN: Okay.

14 SECRETARY MARSHALL: And going back to the one we
15 just did, the one on hunting and fishing, there was no
16 fiscal note available to the public on that one.

17 MR. STEIN: Okay.

18 SECRETARY MARSHALL: So we have no idea what that
19 might cost.

20 MR. STEIN: Thank you.

21 SECRETARY MARSHALL: Are there any other comments
22 on this one? Okay. The next one is 117, Session Law
23 2008-117 [sic] on boards and commissions. This is a very
24 interesting amendment to me, potential amendment. The
25 caption would make you think it was mostly about elections

1 and appointment of an elections board or ethics and
2 elections board. But when you delve into it, it affects
3 much more than that. And the caption, if you just read it,
4 you would think it had to do with one board, a very
5 important board, but one board.

6 But my analysis of this is that it basically
7 affects the separation of powers in the Constitution of
8 North Carolina, and it greatly limits -- it completely
9 limits the governor in appointing positions that currently
10 are appointable by him. Do you have a comment on that?

11 MR. STEIN: This amendment, if enacted, would
12 represent the most radical restructuring of our government
13 in 150 years, since the Civil War. And I agree with you.
14 The primary impact is to completely change the separation of
15 powers. It doesn't clarify the separation of powers. It
16 changes it so that the powers which exist right now, in
17 separation of powers, is the judiciary, the legislature, and
18 the executive. And it would essentially give the
19 legislature unfettered power to run the executive branch,
20 which takes power away from the voters.

21 The voters right now elect you. They elect the
22 governor. They elect me. The voters, only one -- 1/120th
23 elect the Speaker of the House. Only 1/50th elect the
24 President Pro Tem of the Senate. And so for most voters,
25 they would not be able to choose the person who executes the

1 laws.

2 There's nothing in this amendment that would limit
3 them, the legislature, from creating a commission on the
4 Secretary of State and have it entirely composed of their
5 appointees and to dictate to you every single function that
6 you do, and same thing with the Attorney General, same thing
7 with the Commissioner of Labor, let alone the entire
8 governor's administration.

9 SECRETARY MARSHALL: Would that go so far as to
10 the governor's cabinet, for his appointment of cabinet
11 members?

12 MR. STEIN: I don't know. There's an open
13 question whether they can actually affect who the governor
14 appoints in the cabinet position. But what they can do is
15 even if the governor appoints that person, my reading of
16 this, is they can absolutely neuter that person and
17 completely control the actions of that person. So that
18 there is now a commission of Department of Health and Human
19 Services that establishes all policies and programs and
20 dictates to the administration how that work will be carried
21 out.

22 This is a consolidation of power, not a separation
23 of power. And when you read what the voters are going to be
24 voting on, it says to clarify the appointment authority of
25 the legislative and judicial branches. As I said, it's not

1 clarifying. It's radically changing to take power away from
2 voters, and it has zero to do with the judicial branch.
3 This is, in fact, an error. It's the legislative and
4 executive branch. It's not the legislative and the judicial
5 branch.

6 So what the voters are actually going to be voting
7 on is factually incorrect, let alone fail to express the
8 radical significance of taking a power to run and execute
9 the government away from the governor and giving it to the
10 legislature.

11 SECRETARY MARSHALL: Contains pretty draconian
12 language, also, that the -- the powers of the legislature
13 shall be faithfully executed as enacted.

14 MR. STEIN: The ---

15 SECRETARY MARSHALL: You know, everybody gets to
16 vote for the governor. Everybody does not get to vote for
17 every member of the legislature. This is just a huge shift
18 in the way people need to be looking at how their government
19 could be operating.

20 MR. STEIN: As I said, it would -- it would
21 restructure North Carolina government in a way unprecedented
22 in 150 years, and I -- I do not know of any state in the
23 Union in which the legislature has this amount of
24 consolidated power over the executive branch.

25 And, you -- you know, a lot of this -- when you

1 look back at history and why our country came into being in
2 the first place, it was because there was too much power in
3 the king. And what our forefathers said was is we want to
4 have a government which we rule. And -- and the way we're
5 going to do it, because we understand human nature, is we're
6 not going to put too much power in any one or two people.

7 SECRETARY MARSHALL: It's called checks and
8 balances.

9 MR. STEIN: Checks and balances, separation of
10 powers; it is in our Constitution. It is in the United
11 States Constitution. It's in every constitution of every
12 state in the Union. And -- and The Federalist Papers, this
13 is what Madison wrote in Federalist No. 51.

14 "In order to lay a due foundation for that
15 separate and distinct exercise of the different
16 powers of government which to a certain extent is
17 admitted on all hands to be essential to the
18 preservation of liberty, it is evident that each
19 department should have a will of its own and
20 consequently should be so constituted that the
21 members of each should have as little agency as
22 possible in the appointment of the members of
23 others."

24 So what this amendment will do is absolutely turn
25 the foundational principles of our government on its head by

1 giving the legislature exclusive appointment over the
2 members of the executive branch. And it's -- as I said,
3 it's gravely concerning not only as a matter of policy, but
4 primarily because there is absolutely nothing in the
5 language that the voters will vote on that would let them
6 understand the import of what this amendment will mean.

7 SECRETARY MARSHALL: The one other part of this,
8 if you're ready to go on, is the actual board, what they
9 call the Bipartisan Board of Ethics and Elections that
10 currently has nine members, which uneven numbers are very
11 helpful on boards. And this would -- well, it was an
12 eight-member board, and then it went to nine, and now it's
13 back to eight with this amendment, which is a recipe for
14 gridlock.

15 MR. STEIN: Absolutely. And -- and that
16 consequence is not apparent in the language folks will be
17 voting on.

18 Just -- just another word on -- on the
19 disingenuousness of the word to clarify. The Constitution
20 has a separation of powers provision. The legislative,
21 executive, and supreme judicial powers of the state
22 government shall be forever separate and distinct from each
23 other. It is bedrock to ensuring that the people maintain
24 their liberty, and so that -- the meanings to those words
25 have actually been given clarity by the North Carolina

1 Supreme Court.

2 There were recent litigation, one by a Republican
3 governor, one by a Democratic governor. And in the McCrory
4 case, the court made clear that the -- the legislature
5 oversteps its power when it grants itself the power to
6 appoint the majority of members to any board or commission.
7 And then in the Cooper case, it said that the legislature
8 oversteps its power when it requires half of the members of
9 a commission to be of a party separate from the governor
10 because it takes away the governor's ability to execute
11 according to his will, because the voters, the people,
12 choose the governor.

13 And so this amendment would absolutely overrule
14 those two purposes and -- and restructure the separation of
15 powers, as I said. So that it's now a consolidation of
16 power in the legislature. And so it's just wrong to say
17 that it's clarifying the appointment authority.

18 SECRETARY MARSHALL: And it does more than
19 overturn those more recent cases. It goes all the way back
20 to the early 1980s in the Wallace v. Bone case, which has
21 been the -- the standard that our judicial system has gone
22 by to oversee the actions -- overreach of any of the
23 branches -- other branches.

24 MR. STEIN: So my -- my -- I believe that you and
25 I and Mr. Coble, if he appears, will be able to explain what

1 the -- this amendment does and the dramatic impact it will
2 have on people's power to choose and control their
3 government. But we can do that and come up with the perfect
4 and accurate description, but my grave concern is that's not
5 what the people are voting on when they go in the ballot --
6 and they look on the ballot. And I don't know if there's
7 any way to -- to fix that concern.

8 SECRETARY MARSHALL: Yeah. We have no right to
9 change what actually appears on the ballot.

10 Okay. The next one would be 118, Judicial
11 Vacancies. The public understands that from time to time
12 people cannot serve out their term due to whatever reason or
13 reaching mandatory retirement. There could be just a
14 variety of reasons. And at that point, traditionally, the
15 governor has the obligation, the authority to appoint. In
16 some cases, the bar of the districts make recommendations of
17 folks to the governor to consider.

18 This would create what is called a merit
19 commission. However, I can't find a single phraseology in
20 here that says what standards would be used to determine the
21 qualifications of folks that would be considered for
22 position on a bench. I mean, we do have a requirement to
23 hold a law license, but beyond that, there seems to be no
24 definition of how any suggestions would go forward. I find
25 that incredibly troubling for the public.

1 I also, in looking through these, have determined
2 and -- and believe that parts of this would make -- would
3 take away the governor's veto power, in essence. There is
4 an amendment that -- again, that's not reflected in the
5 caption at all about what the governor can veto. In fact,
6 it's very disingenuousness to call it a sunshine amendment
7 because it sort of goes hand-in-hand with the last
8 discussion we had about power to the legislature.

9 MR. STEIN: Yeah.

10 SECRETARY MARSHALL: If -- if it's up -- the
11 section -- in Section 5 of this bill that was passed added
12 two sections to the section of the legislative part of the
13 Constitution, which limits the governor to -- gives -- takes
14 away his ability to veto things like local legislation.
15 Those are local issues and the governor doesn't have the
16 right to veto those.

17 They have added a section (e) and (f) to these.
18 (a), (b), (c), and (d) in the denial of the right to veto
19 sets out a specific purpose and then says "and no other
20 matter." And no other matter -- "and no other matter"
21 appears at the end of these where the governor is denied the
22 right to veto.

23 These two that they now want to add do not contain
24 "and no other matter," which to my reading means that a bill
25 going forward with a judicial nomination in it could contain

1 other major legislation. It could contain the budget of the
2 State, and the governor would be denied the right to veto
3 it.

4 MR. STEIN: I read it the exact same way. This --
5 this is an effective elimination of the gubernatorial veto,
6 which is an important part of our checks and balances, one
7 in which it's a fundamental part of how our government
8 operates. The legislature has the ability to override a
9 veto if they can get a three-fifths vote.

10 But I -- I believe that there's a -- if you look
11 at (e) and (f) that there's no limitation that it says and
12 containing "no other matter," (a), (b), (c), and (d) all
13 have that clause, which contains no other matter or/and
14 containing no other matter, meaning that the governor --
15 they can -- the governor cannot veto those.

16 But if -- that means if they put a local bill or
17 an appointments bill in another bill, the governor could
18 veto it. By putting (e) and (f), which has to do with
19 judicial vacancies without having that phrase, and
20 containing no other matter, exactly, just put it in as one
21 small provision in a 300-page budget bill, and the governor
22 is then neutered from vetoing the budget. I -- I think
23 that, again, dramatic shifting of power from one branch
24 separate and independent of the other so that it moves to
25 the legislature, and it's not -- it's not reflected in what

1 the voter -- the folks will be voting on.

2 I -- I -- I personally feel that this is the most
3 deceptive and misleading budget caption of them all. What
4 the voters will be voting on is -- it says a nonpartisan,
5 merit-based system, relies on professional qualifications
6 instead of political influence. There is nothing that
7 guarantees any one of those four things. The legislature
8 will determine what the qualifications are. And let's say
9 it's 20 years of practice. Let's say it's ten years of
10 practice. Whatever it is, there will be hundreds of people,
11 potentially thousands of lawyers who -- who meet whatever
12 those qualifications are.

13 It sets it up as if there's a three-step process
14 in nominating judges. But effectively, it's a one-step
15 process in which the legislature controls. The legislature
16 -- the legislature could nominate the Speaker of the House
17 and the President Pro Tem, both of whom are long-serving
18 excellent lawyers. And the governor of North Carolina would
19 have to choose either the President Pro Tem or the Speaker of
20 the House. Does the governor have a -- a real role in that
21 process? I -- I don't think so.

22 SECRETARY MARSHALL: Because he's limited to the
23 two names that are sent forward ---

24 MR. STEIN: Precisely.

25 SECRETARY MARSHALL: --- by the legislature.

1 MR. STEIN: And political influence, the -- the --
2 the legislature -- there's nothing that fetters the
3 legislature's choice. It could be the biggest donor in the
4 world. It could be the most -- it could be his best friend.
5 It could be -- it could be anything.

6 SECRETARY MARSHALL: It could be somebody with a
7 number of bar reprimands, disciplinary actions.

8 MR. STEIN: So this is the perfect example of the
9 voters thinking they're getting the prettiest, most
10 intricate, beautiful birthday cake, and it comes away with
11 dog food. And we -- again, I think we can explain. We can
12 explain that the legislature has the most central role, the
13 ability to choose anybody who -- who may have the most
14 partisan and political orientation, and the governor has to
15 choose that. I think we can explain that to voters. I
16 think we can explain that it effectively eliminates,
17 conceivably, the governor's veto authority.

18 But our explanation could be absolute crystal
19 clear. And if the voters, I think, read that and understood
20 what they were voting on, I have absolute faith in whatever
21 they decided. If that's the system they wanted, I have
22 faith in that. But that's not what they're voting on.
23 They're voting on this saccharine sweet candy language,
24 which is not real.

25 SECRETARY MARSHALL: And there are also a number

1 of little other fish hooks in here where folks -- the Chief
2 Justice could make some appointments if the governor didn't
3 do something in a short period of time. The fact that some
4 folks could have an interim judicial position without having
5 to face the voters for a very long period of time extended
6 out a long ---

7 MR. STEIN: I -- I think that's a very important
8 point that needs to be underscored. Is that -- currently,
9 if there's a vacancy, the governor will appoint, but the
10 next election, it goes back to the voters because the
11 Constitution makes it clear that the voters choose their
12 judges. Here, it's the next election after the election of
13 the next General Assembly. So if the Legislature were to
14 create two new Supreme Court judgeships in November and ---

15 SECRETARY MARSHALL: Which they could do.

16 MR. STEIN: --- which they could do, and the
17 language, by the way, leads it to believe that it's just
18 vacancies that occur when a judge leaves. But it also would
19 apply theoretically ---

20 SECRETARY MARSHALL: To newly created ---

21 MR. STEIN: --- to newly created positions. That
22 they could then appoint their preferred choice or give the
23 governor -- effectively appoint him because the governor has
24 to choose one of their two people, and then there will be
25 four years till they would go before the voters. That's

1 half the term of a Supreme Court justice. Again, a radical
2 change in the way our government currently operates where
3 the voters have control, and it's taking it away from the
4 voters and giving it to the legislature.

5 SECRETARY MARSHALL: All under the very misleading
6 sunshine ---

7 MR. STEIN: Correct.

8 SECRETARY MARSHALL: Let me also say on these
9 serious constitutional amendments that this State has a long
10 line but has been used most recently in the last several
11 years on interpretation of the intent of folks, because
12 there may be some conversation that it wasn't their intent.
13 But the judges have to look at the plain meaning of the
14 words on the paper. There -- the recent line of cases of --
15 from '14, '15, and '16, that they -- they got to stay true
16 to the words ---

17 MR. STEIN: Uh-huh.

18 SECRETARY MARSHALL: --- that -- that they can't
19 take words out. They can't add words in. So it's very
20 important when you're looking at the omission of that, and
21 no other matter, that it's not supported by case law, that
22 you could read more into it.

23 MR. STEIN: It is uncertain what the courts would
24 do. But that's how I read it.

25 SECRETARY MARSHALL: Any more comment on this one?

1 Okay. Session Law 2008-119 [sic] is the one regarding
2 taxes. And anecdotally, people are talking to me about,
3 well, it's great they're going to lower my tax rates. I
4 don't see anything in this that's going to lower next year's
5 tax rate. Do you?

6 MR. STEIN: No. And -- and this, again,
7 absolutely easily comprehensible, easy for us to explain to
8 the voters what it is, but the language that the voters are
9 voting on is a constitutional amendment to reduce the income
10 tax rate. It doesn't do that.

11 SECRETARY MARSHALL: But that ---

12 MR. STEIN: It reduces the maximum allowable
13 income tax rate from ten to five, but ---

14 SECRETARY MARSHALL: Currently ---

15 MR. STEIN: --- peoples' ---

16 SECRETARY MARSHALL: --- it's at ten percent.

17 MR. STEIN: Peoples' income tax rate will not be
18 reduced, but that's what they think they're voting on.

19 SECRETARY MARSHALL: What happens if there's a
20 serious downturn or another Hurricane Fran, a natural
21 disaster of some sort beyond the State's budget?

22 MR. STEIN: That -- this is absolute language.
23 There's nothing that allows the legislature any -- any
24 flexibility. We'll talk about the next amendment shortly
25 where it says which may include exceptions. There are no

1 exceptions here. So to the extent that the government needs
2 resources because of a recession or a hurricane, the
3 recourses available to the legislature are -- are borrowing
4 or raising the sales taxes or putting more taxes on local
5 governments in the form of property taxes and sales taxes.

6 SECRETARY MARSHALL: So -- or cut services.

7 MR. STEIN: Or cut services.

8 SECRETARY MARSHALL: Yeah. Any further comment
9 about this one?

10 MR. STEIN: (Shakes head negatively.)

11 SECRETARY MARSHALL: Okay. Our final one is
12 affectionately known as Voter ID, popularly known as that.
13 This one will show up on the ballot to vote against
14 constitutional amendment -- for or against a constitutional
15 amendment to require voters to provide a photo
16 identification before voting in person.

17 In all of this bill, I do not see any reference as
18 to what type of photo identification would be approved or
19 not approved or how much, how many. And again, it certainly
20 is not fully interpretative of what this amendment really
21 means by what they're putting on the ballot.

22 MR. STEIN: Correct. It -- it says the General
23 Assembly shall enact general laws governing the requirement.
24 So we don't know what kind of IDs will be acceptable. One
25 thing is it only applies to in-person voting, whereas the

1 bulk -- hardly any in-person voter fraud occurs, but the
2 bulk of voter fraud occurs absentee.

3 SECRETARY MARSHALL: Absentee vote.

4 MR. STEIN: And -- and there's nothing to do with
5 ensuring that the person voting absentee is who they say
6 they are. But again, I think this one's pretty
7 straightforward in that we can explain to the voters what is
8 before them.

9 SECRETARY MARSHALL: But they put no implementing
10 language, no fiscal note.

11 MR. STEIN: No.

12 SECRETARY MARSHALL: Most statutes like this have
13 ways that folks can get some ID if they do not have
14 appropriate -- that the state helps them obtain, which is an
15 unknown quantity ---

16 MR. STEIN: And in fact where it ---

17 SECRETARY MARSHALL: --- of money. In fact, we
18 need it.

19 MR. STEIN: --- says which may include exceptions,
20 correct?

21 SECRETARY MARSHALL: Right.

22 MR. STEIN: There's nothing that guarantees that
23 the legislature will help poor people who don't drive and
24 don't have a permanent driver's license.

25 SECRETARY MARSHALL: Or help for a woman who has

1 changed names, moved locations, et cetera, et cetera, which,
2 in my opinion, disproportionately falls on women. So ---

3 Well, Mr. Attorney General, any other comments on
4 any of these others that we have gone through?

5 MR. STEIN: No. I think that this has been a -- a
6 good discussion. I've heard some new ideas from your input.
7 And what I -- I suggest is that we just put pen to paper
8 this week based on our conversation and then actually
9 consider language of explanation at our next gathering.

10 SECRETARY MARSHALL: The question is: When will
11 we meet again.

12 MR. STEIN: I -- I'm -- I'm available. Mr. Coble
13 did offer those days, the beginning of next week.

14 SECRETARY MARSHALL: Okay. You are available --
15 well, we do have the Council State Meeting on Tuesday
16 morning, the 7th. So we would have to meet after that.
17 Well, in the information that he provided to me, he was not
18 available on the 6th, but now his letter seems to infer
19 that. What place do we have reserved for the 6th?

20 MS. WALL: We have nothing reserved for the 6th.
21 We have Atlantic Avenue for the 7th.

22 SECRETARY MARSHALL: Can we get Atlantic Avenue
23 for the 6th?

24 MS. WALL: I'm sure we can.

25 SECRETARY MARSHALL: Because we didn't reserve a

1 building because of his nonavailability as stated earlier.

2 MS. WALL: Yeah.

3 SECRETARY MARSHALL: Folks, we working on finding
4 places. Campbell students come in day after tomorrow or
5 Thursday or Friday, at the end of this week. So therefore,
6 all the rooms here will be otherwise ---

7 MR. STEIN: Unavailable.

8 SECRETARY MARSHALL: --- occupied. So I would
9 propose that we adjourn -- recess until the 6th. It's not
10 official, so I guess we're not really recessing.

11 MR. STEIN: Yeah.

12 SECRETARY MARSHALL: When we meet again on the
13 6th, and we will secure a location for that. You're
14 available that day?

15 MR. STEIN: I am.

16 SECRETARY MARSHALL: Okay. And we will go forward
17 with that and work on our individual summaries, which we've
18 done. Up to this point, we were prepared to do wordsmithing
19 today. And, folks, you've never had so much fun as
20 wordsmithing -- me with my staff, and I'm sure you with your
21 staff ---

22 MR. STEIN: My staff loves me.

23 SECRETARY MARSHALL: --- chopping down sentences
24 to shorter sentences and taking out some words and putting
25 in more simple words to meet with our -- with our statutory

1 mandates. So with that, we thank everyone for being here
2 today, all interested parties. And we will stand in recess.

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(Proceedings concluded at 10:26 a.m. , to be
reconvened Monday, August 6, 2018, at 9:30
a.m.)

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STATE OF NORTH CAROLINA

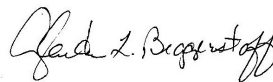
COUNTY OF SCOTLAND

C E R T I F I C A T E

I, Glenda L. Biggerstaff, Verbatim Reporter and Notary Public, do hereby certify that I was present at the foregoing open meeting of the Constitutional Amendments Publication Committee; that said proceedings were reported by me and transcribed by me personally; and that the foregoing pages 3 through 42, inclusive, constitute a true and accurate transcription of the open meeting.

I do further certify that I am not of counsel for or in the employment of any of the parties to this action, nor am I interested in the results of this action.

In witness whereof, I have hereunto subscribed my name this 3rd day of August, 2018.



Glenda L. Biggerstaff
Notary Commission #20002760244