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

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9:30 a.m.

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

SECRETARY MARSHALL: Good morning, ladies and gentlemen. I’m Elaine Marshall, Secretary of State. And we are here today to begin conversation, discussion under the duty of the -- the Constitutional Amendment Publication Committee. This is a committee composed of three individuals: The Secretary of State by virtue of the office, the Attorney General by virtue of office, and the Legislative Service Officer of the General Assembly by virtue of office.

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

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

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

Mr. Penry said that he would send someone from the
Board of Ethics and Elections here to let us know on the record exactly what deadlines they’re working with.

So I note the presence of Josh Lawson here. Josh, if you’ll give us your title and tell us what information this Commission needs to know regarding any deadlines on printing and publications.

MR. LAWSON: Thank you, Madam Secretary. My name is Josh Lawson. I’m the general counsel for the State Board of Elections -- thank you -- general counsel for the State Board of Elections and Ethics Enforcement. I was asked to come here today to answer any questions that you may have.

You’ve indicated that it would be helpful to know some of the printing deadlines for the ---

SECRETARY MARSHALL: Yes.

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

We don’t have a definite deadline for the printing. The RFP had indicated a deadline in July. The
deadlines that we do have by statute are the deadlines set out for actual distribution, and that is the distribution of the guide must be between September 20th and October 11th. We’re not allowed to go earlier than September 20th or later than October 11th. But we believe that we are able to accommodate, likely, whatever the Commission is able to get us up and to the point that we would otherwise be printing ballots, which is sometime during the week of August 6th.

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

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

SECRETARY MARSHALL: Okay.

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

SECRETARY MARSHALL: Please, Mr. Stein.

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

MR. LAWSON: There’s -- there’s no direct correlation. It just happens to be that in past practice when we have gotten our materials over to the printer for the voter guide by -- around that same week of the 6th, they have been able to hit their production mark and distribute
it out throughout the state. So it just happens to be that
the same general week of the 6th would likely be the same
production time.

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

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

MR. STEIN: That -- that -- that is a value that I
-- I share, and I -- I just want to make sure. Well, we
lost some time to the -- if Mr. Coble doesn’t show today,
we’re losing time. And what I don’t want to have happen is
if Mr. Coble doesn’t show till next week, then that does --
that would somehow inhibit the ability for the public to get
whatever explanations this Commission creates.
MR. LAWSON: Our commitment and our board has directed in its meeting on the 18th that we work as closely as possible with the Commission informing you informally of all the deadlines that arise. These are the ones we have as of today. That may change later this afternoon. And I’m happy to supply to your respective staffs whatever information we have.

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

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

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

MR. LAWSON: This is just a practical previous indication that we’ve had from the same printer, because the
volume of paper spent to print four million guides is substantial, and that contracts goes out of state in order to meet those production deadlines. The shipping is carried out from a vendor here in Raleigh, and they prioritize the western part of the state where it takes longer first, working east.

MR. STEIN: Okay.

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

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

SECRETARY MARSHALL: Any other questions?

MR. STEIN: No. Thank you.

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

MR. LAWSON: Thank you.

SECRETARY MARSHALL: You can go on. I note from
my handy-dandy digital apparatus here that it is now 9:40, ten minutes after the appointed hour. Let me bring everyone up to date as to what happened yesterday afternoon.

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

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

"Given that HB 3 makes any captions adopted by the Commission 'null and void' and prohibits them from appearing on the ballot used in the 2018 general election, I do not think that it is prudent for the Commission to meet until it knows the outcome of the Saturday session, and that it would be more prudent for us to meet once we know the scope of the work to be accomplished. I make this suggestion in order to avoid further politicizing the work of the Commission and to avoid additional controversy."
"Therefore, I will not attend any meetings of the Commission this week. However, I plan to meet on Monday the 6th and/or Tuesday the 7th as it is my understanding from previous communications with you that you are both available on the 6th and the 7th. I also understand that the meeting location -- the meeting location has been reserved for both days. Paul Y. Coble, Legislative Service Officer, North Carolina General Assembly."

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

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

"In fact, President Pro Tem Berger reiterated that the Commission will retain its duty to prepare summaries in the upcoming election..."
in his July 26th letter to me, and we attached a
copy of it. Now that I have learned of your
concerns, I believe the better way to proceed is
for you to attend the meeting tomorrow as planned.
At that time, we can make" ---

(Alarm goes off.)

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

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

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

SECRETARY MARSHALL: Been handed out. Okay.

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

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

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

I want to thank also their management staff, their technology staff, and their security staff. They have been absolutely incredibly helpful with this activity. We also want to thank the State Capitol Police, R. E. Hawley, Chief Deputy, for being here today.
And I’m also grateful to the patience and effort of commissioners’ staffs who have worked to cooperate to make this happen. My own Secretary of State staff have been handling everything from building a website, which I urge you to visit at sosnc.gov, to getting coffee here — and by the way, it’s outside at this end. There’s also water out there, so please feel free to -- you can bring beverages in here; feel free to go ahead and do that. My great thanks also to Glenda Biggerstaff of WordServices, Incorporated, who is our court reporter here today.

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

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

MR. STEIN: It’s certainly true.

SECRETARY MARSHALL: Yeah. Thank you. The other items I want to note are in the nature of housekeeping. The restrooms are -- that are located nearest to us are down the hallway beyond the lobby to the right. Water and coffee
outside; and if you need your caffeine cold, there are vending machines located on the second floor. Go to the elevator in the main hall, second floor, and then left into the common area.

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

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

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

I -- I’m disappointed that our third commissioner, Mr. Coble, isn’t here today. The only issue that’s outstanding on the veto override is whether a few-word caption is included with the description, which will be one to three or four paragraphs, depending on the amendment, of what we do to explain what the amendment does. And so the
fact that that override session has not yet occurred is irrelevant to the work -- the bulk of the work that we do, which is to draft these explanations. And he was the one who first suggested this date, and so that -- that makes it all the more perplexing and unfortunate.

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

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

But when the voters go in to vote, they don't vote on the explanation. They vote on the description that's on the ballot. And there's not even in the voting booth an
asterisk on it where they can go and refer and read the fine
print. So on the one -- they're seeing this, you've won a
$1 million, but there's not even an asterisk to say, but,
no, you didn't.

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

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

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

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

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

SECRETARY MARSHALL: Okay.

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

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

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

This does give a new right to people, hunting and fishing. And it strikes me that there’s nothing in here
that really discusses what are the traditional means to
hunt, fish, and harvest wildlife. I have a lot of friends
in the mountains, and they tell me that setting a fire to
get animals out was what many of our occupants of western
North Carolina Native Americans did. Is there any
prohibition against that in the amendment language here?

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

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

But then there are -- are two limitations on that
-- on that -- on the subject two clause to promote wildlife
conservation manage -- and management or to preserve the
future of hunting and fishing. Those are the only two
reasons why clearly the Wildlife Commission can put a
limitation on this. What's unclear is whether those limitations of promoting management, conservation, and preserving the future of hunting and fishing also apply to the General Assembly.

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

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

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

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

SECRETARY MARSHALL: Okay.

MR. STEIN: --- to.

SECRETARY MARSHALL: Any other thoughts on this one?

MR. STEIN: There is not.

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

For the benefit of the public, juvenile crime is handled in a specialized court. They’re generally not called defendants, and crimes as juvenile acts, and they’re juveniles in the court system. But we currently have this
amendment in the Constitution. It does provide by law, which means there are automatic, certain rights that -- that inure to the particular victims.

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

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

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

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

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

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

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

SECRETARY MARSHALL: And this has no implementation legislation with it per se. Although, it does have a structure that they could amend. We did ask the staff of the General Assembly for the publicly available
fiscal notes, and this was the only one that had a fiscal note. And the cost of this to the citizens would -- was estimated at $8 million.

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

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

MR. STEIN: Okay.

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

MR. STEIN: Okay.

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

MR. STEIN: Thank you.

SECRETARY MARSHALL: Are there any other comments on this one? Okay. The next one is 117, Session Law 2008-117 [sic] on boards and commissions. This is a very interesting amendment to me, potential amendment. The caption would make you think it was mostly about elections
and appointment of an elections board or ethics and
elections board. But when you delve into it, it affects
much more than that. And the caption, if you just read it,
you would think it had to do with one board, a very
important board, but one board.

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

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

The voters right now elect you. They elect the
governor. They elect me. The voters, only one -- 1/120th
elect the Speaker of the House. Only 1/50th elect the
President Pro Tem of the Senate. And so for most voters,
they would not be able to choose the person who executes the
There's nothing in this amendment that would limit them, the legislature, from creating a commission on the Secretary of State and have it entirely composed of their appointees and to dictate to you every single function that you do, and same thing with the Attorney General, same thing with the Commissioner of Labor, let alone the entire governor's administration.

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

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

This is a consolidation of power, not a separation of power. And when you read what the voters are going to be voting on, it says to clarify the appointment authority of the legislative and judicial branches. As I said, it's not
clarifying. It’s radically changing to take power away from voters, and it has zero to do with the judicial branch. This is, in fact, an error. It’s the legislative and executive branch. It’s not the legislative and the judicial branch.

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

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

MR. STEIN: The ---

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

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

And, you -- you know, a lot of this -- when you
look back at history and why our country came into being in the first place, it was because there was too much power in the king. And what our forefathers said was is we want to have a government which we rule. And -- and the way we’re going to do it, because we understand human nature, is we’re not going to put too much power in any one or two people.

SECRETARY MARSHALL: It’s called checks and balances.

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

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

So what this amendment will do is absolutely turn the foundational principles of our government on its head by
giving the legislature exclusive appointment over the members of the executive branch. And it's -- as I said, it’s gravely concerning not only as a matter of policy, but primarily because there is absolutely nothing in the language that the voters will vote on that would let them understand the import of what this amendment will mean.

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

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

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

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

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

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

MR. STEIN: So my -- my -- I believe that you and I and Mr. Coble, if he appears, will be able to explain what
the -- this amendment does and the dramatic impact it will have on people's power to choose and control their government. But we can do that and come up with the perfect and accurate description, but my grave concern is that's not what the people are voting on when they go in the ballot -- and they look on the ballot. And I don't know if there's any way to -- to fix that concern.

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

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

This would create what is called a merit commission. However, I can't find a single phraseology in here that says what standards would be used to determine the qualifications of folks that would be considered for position on a bench. I mean, we do have a requirement to hold a law license, but beyond that, there seems to be no definition of how any suggestions would go forward. I find that incredibly troubling for the public.
I also, in looking through these, have determined and -- and believe that parts of this would make -- would take away the governor’s veto power, in essence. There is an amendment that -- again, that’s not reflected in the caption at all about what the governor can veto. In fact, it’s very disingenuousness to call it a sunshine amendment because it sort of goes hand-in-hand with the last discussion we had about power to the legislature.

MR. STEIN: Yeah.

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

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

These two that they now want to add do not contain “and no other matter,” which to my reading means that a bill going forward with a judicial nomination in it could contain
other major legislation. It could contain the budget of the
State, and the governor would be denied the right to veto
it.

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

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

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

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

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

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

MR. STEIN: Precisely.

SECRETARY MARSHALL: --- by the legislature.
MR. STEIN: And political influence, the -- the --
the legislature -- there's nothing that fetters the
legislature's choice. It could be the biggest donor in the
world. It could be the most -- it could be his best friend.
It could be -- it could be anything.

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

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

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

SECRETARY MARSHALL: And there are also a number
of little other fish hooks in here where folks -- the Chief Justice could make some appointments if the governor didn’t do something in a short period of time. The fact that some folks could have an interim judicial position without having to face the voters for a very long period of time extended out a long ---

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

SECRETARY MARSHALL: Which they could do.

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

SECRETARY MARSHALL: To newly created ---

MR. STEIN: --- to newly created positions. That they could then appoint their preferred choice or give the governor -- effectively appoint him because the governor has to choose one of their two people, and then there will be four years till they would go before the voters. That’s
half the term of a Supreme Court justice. Again, a radical change in the way our government currently operates where the voters have control, and it’s taking it away from the voters and giving it to the legislature.

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

MR. STEIN: Correct.

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

MR. STEIN: Uh-huh.

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

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

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

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

SECRETARY MARSHALL: But that ---

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

SECRETARY MARSHALL: Currently ---

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

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

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

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

MR. STEIN: That -- this is absolute language. There's nothing that allows the legislature any -- any flexibility. We'll talk about the next amendment shortly where it says which may include exceptions. There are no
exceptions here. So to the extent that the government needs resources because of a recession or a hurricane, the recourses available to the legislature are -- are borrowing or raising the sales taxes or putting more taxes on local governments in the form of property taxes and sales taxes.

SECRETARY MARSHALL: So -- or cut services.

MR. STEIN: Or cut services.

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

MR. STEIN: (Shakes head negatively.)

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

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

MR. STEIN: Correct. It -- it says the General Assembly shall enact general laws governing the requirement. So we don’t know what kind of IDs will be acceptable. One thing is it only applies to in-person voting, whereas the
bulk -- hardly any in-person voter fraud occurs, but the bulk of voter fraud occurs absentee.

SECRETARY MARSHALL: Absentee vote.

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

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

MR. STEIN: No.

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

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

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

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

SECRETARY MARSHALL: Right.

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

SECRETARY MARSHALL: Or help for a woman who has
changed names, moved locations, et cetera, et cetera, which, in my opinion, disproportionately falls on women. So ---

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

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

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

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

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

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

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

MS. WALL: I'm sure we can.

SECRETARY MARSHALL: Because we didn't reserve a
building because of his nonavailability as stated earlier.

MS. WALL: Yeah.

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

MR. STEIN: Unavailable.

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

MR. STEIN: Yeah.

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

MR. STEIN: I am.

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

MR. STEIN: My staff loves me.

SECRETARY MARSHALL: --- chopping down sentences to shorter sentences and taking out some words and putting in more simple words to meet with our -- with our statutory
mandates. So with that, we thank everyone for being here today, all interested parties. And we will stand in recess.

(Proceedings concluded at 10:26 a.m., to be reconvened Monday, August 6, 2018, at 9:30 a.m.)
STATE OF NORTH CAROLINA
COUNTY OF SCOTLAND

CERTIFICATE

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