OPEN MEETING

EMERGENCY SESSION

OF THE

CONSTITUTIONAL AMENDMENTS PUBLICATION COMMISSION

COMMISSIONERS:

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

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SECRETARY MARSHALL: Ladies and gentlemen, good afternoon, everyone. Before we begin this emergency session of the Constitutional Amendments Publication Commission, let me begin by giving our ethics reminder as required in G.S. 163A-159(e).

It is my duty as Chair to remind the Commissioners that it's both the duty of every Commission member to avoid both conflicts of interest and appearances of conflict.

Does any Commissioner either have a conflict of interest or an appearance of conflict of interest with respect to any matter coming before us, this Commission, today?

MR. STEIN: No. I do not.

MR. COBLE: (Shaking head negatively.)

SECRETARY MARSHALL: I see negative shakes. So, if so, please identify. And if there happens to be one that arises, please let us know at that time, and you should therefore refrain from deliberation or vote in that particular matter.

Hearing none, let's get going.

This is our fourth, and I hope final, Constitutional Amendments Publication Commission meeting this year. This is what, in open meetings terminology, is called an emergency session. The sole reason for that is
because we've called this meeting with less than 48 hours' notice. We need to do that because there are extremely critical deadlines for publishing voter guides and materials connected to the upcoming November election that we want to be sure to meet.

Obviously, since this is our fourth meeting, we have all, as have many of you in the audience, been studying issues related to these proposed amendments for some time. So while the meeting notice was short, I feel our expertise on the topics is extensive.

If you're keeping score, I will remind you that this Commission has completed writing its summary explanations for four of the proposed constitutional amendments so far. Those were -- and I'll just give you the last part of the session laws: 96, hunting and fishing; 110, crime victims' protections; 119, state income tax rate; and 128, voter ID.

Our goal this afternoon is to complete the work on the final two proposed amendments, which are fully Session Law 2018-132, selection of judges, and Session Law 2018-133, state election board appointments.

I will not give every -- I will not give everyone another talk explaining how incredibly important this Constitution is to us as North Carolinians. You've all heard that at previous sessions of this Commission.
Instead, I will just say that the votes cast in the up and coming election, either for or against these proposed amendments, are as important, probably more important, than any other votes our citizens will cast. Long after most of the individual people running for office this year have either failed or succeeded as elected officials, any of these amendments, if approved, will still be guiding how our laws are made and enforced. You cannot really overstate their importance to the life of North Carolina.

Now, I'll keep the rest of this short. Once we complete our work today, all of these summaries, by law, will go out to North Carolina's news media and the 100 county Boards of Election. I will again remind the audience that this is a public meeting and not a public hearing. There's not a place on the agenda for the public to speak, ask questions, or to advocate for or against these proposed amendments.

Think of this meeting like being in court. You are welcome here, but you cannot interrupt the proceedings. If you must make a phone call or talk to another person here, you need to take that discussion outside of this room. So please either silence or put your phones on airplane mode, and do it now, please.

My continued thanks to the staff of the North
Carolina Museum of History for allowing us to use this wonderful Daniels Auditorium. I fully realize that we are trying their continued hospitality, and I cannot thank them enough.

I also thank the State Capitol Police for again providing security for this session. We have Deputy Davis with us today. Thank you. And everyone at the Capitol Police have been very patient with us. We appreciate it.

I'm extremely grateful for the continued support by the staff of the Commissioners who've worked and cooperated together for many weeks now. My own Secretary of State's staff has continued maintaining the website, which I urge everyone to visit at sosnc.gov, and organized now this fourth session on short notice.

To Mr. Coble's legislative staff and Attorney General Stein's staff, they've continued to provide great assistance. Also my thanks to Wanda Constantino of WorldServices [phonetic], Incorporated, our court reporter today. Legal counsel representing this Commission today is back in his duty slot, Amar Majmundar, from the Attorney General's office.

So, again, it's an honor for me to continue serving on this Commission with these two gentlemen here at this table, Mr. Paul Coble, the North Carolina General Assembly Legislative Service Officer; Mr. Attorney General
Josh Stein, known as the State's attorney; and I am Secretary of State Elaine Marshall, by statute, Chair of the Commission.

Once again, housekeeping items. The restrooms located near us are to your right as you exit the auditorium. For those of you who might need some refreshments, we do have a little bit of water out there, but there are beverages and snacks across the way at the museum shop.

So make sure that we clean up when we go 'cause this museum staff has been tested and retested and continue to be just gracious hosts, so we thank them again. So let's be neat as we depart.

The procedures are simple. This is a three-member Commission and it takes all three of us by statute to have a quorum. I count everyone present here and declare a quorum. To make a successful motion, it takes one member to make it and another to second it. It also takes two votes to pass a motion.

My intention as Chair is to refer to the proposed amendments in the most basic way I know to approach them, and that is by their session law number, which you can see on our agenda.

Finally, as I said when I started, this is a public meeting and not a public hearing. So that sums up
the basic scope of our procedures. So let us begin the session -- this session of the Constitutional Amendments Publications Commission.

So, by the agenda, Mr. Attorney General --

MR. STEIN: Yes.

SECRETARY MARSHALL: -- I believe, from communication between my staff and your staff, that you will use the same process color-coded as the last time, if you'd like to refresh the audience as to what the color coding is.

MR. STEIN: Yes, please. I will hand hard copies to you-all, if I may. And there are enough for the lawyers behind you.

The color coding is -- where it's yellow or tan, that was recommended language from the legislative staff and Mr. Coble. And where there's green language, it was from Secretary Marshall and her staff.

And it's a little bit confusing because we had two different amendment summaries because the amendments changed slightly from their original version to this version, so we tried, wherever possible, to draw off of the newest summary.

But there were some phrases from the initial descriptions that you each provided that we thought captured it well, and so if you'd like to take a moment to read it. These are longer because these are more complicated than the other amendments we've considered to date.
(Pause in proceedings.)

SECRETARY MARSHALL: Have you had a chance to look at it, Mr. Coble?

MR. COBLE: (No audible response.)

(Pause in proceedings.)

SECRETARY MARSHALL: Ready to proceed?

MR. COBLE: Go ahead.

SECRETARY MARSHALL: Okay. I would like to -- oh, let's get a motion on the floor. Mr. Attorney General, you move?

MR. STEIN: For approval of this language to the extent it's unamended, and we're as amended.

SECRETARY MARSHALL: I'll second that emotion. I will second that motion, not emotion. That's a song, isn't it.

I would like to begin the discussion by adding one small item to the qualifications for a judge, which the sentence begins on the bottom of the first page and then goes over to the backside. There is an additional requirement in the Constitution for a judge, and that would be "has not yet reached mandatory retirement age."

MR. STEIN: Okay. The language we've got was from the legislative staff, so I'm happy to amend that. So it would add a third -- a third clause.

SECRETARY MARSHALL: Right.
MR. STEIN: "That the person is an attorney who is licensed to practice law in North Carolina, is registered to vote, and has not yet" --

SECRETARY MARSHALL: "Has not yet reached mandatory retirement age."

MR. STEIN: Okay.

SECRETARY MARSHALL: In my draft I forgot "registered to vote."

(Pause in proceedings.)

SECRETARY MARSHALL: This is very readable. Between 10th and 11th grade. That's very good.

MR. STEIN: It was a challenge to do.

SECRETARY MARSHALL: Yes.

MS. WALL: Is the punctuation okay?

MR. STEIN: Yes.

SECRETARY MARSHALL: "Practice law in North Carolina" --

MR. STEIN: I would --

SECRETARY MARSHALL: -- "registered to vote" --

MR. STEIN: -- I would put an "is" before "registered to vote."

SECRETARY MARSHALL: Yeah.

MR. STEIN: Yes. I think that's correct.

MS. WALL: Do I need to size up the print size on the screen in front of you?
MR. STEIN: I can see it.

SECRETARY MARSHALL: I can see it. I'd like to put on the table the discussion what would be -- one, two, three -- the third textual paragraph from the bottom --

MR. STEIN: Uh-huh.

SECRETARY MARSHALL: -- to make it clear to the voters. Instead of saying -- Ann, are you listening? Yeah. Instead of saying "appointed judges would serve an extra two years before voters could elect to replace them," "would serve up to four years before voters could elect or replace them."

MR. STEIN: Yeah. I think technically they could actually serve for four years and three months if they were appointed within 60 days of an election, and it's two elections thereafter.

SECRETARY MARSHALL: Right.

MR. STEIN: But -- I mean, four years -- I think "up to four years" is essentially correct, and this is an explanation. I think that that is essentially correct, so I'm -- I'm fine with that change.

MR. COBLE: Same paragraph. That would change "the proposed amendment lengthens how long an appointed judge will serve before an election is held," removing the "weakens voters' constitutional right to elect judges by."

MS. WALL: See if this is -- if I got it
SECRETARY MARSHALL: Well, I would -- have you got that in there, Ann?

I would speak strongly against that because the Constitution -- the right of voters to elect judges is a constitutional right, and heretofore there's only been two years or less basically when an appointed judge could serve. And this is kind of an end-run or prolongs the time that an appointed judge could be on the bench before the judge -- before the voters have a right to decide if they want them there.

MR. STEIN: A District Court judge serves four years', is that correct, term? So essentially, this, as it relates to a District Court judge --

SECRETARY MARSHALL: Is the equivalency --

MR. STEIN: It's giving them an entire term before the voters have even had their voice heard. It was -- language that you-all suggested, I think, is important to communicate to the voters, so I -- I agree with Secretary Marshall in terms of keeping the original language.

MR. COBLE: Both y'all decided on that, which I think is unfortunate, I would also remove the last paragraph completely. I think it's speculative and -- and simply unnecessary.

MR. STEIN: Well, the reason -- well, you can
speak to it first, if you'd like, Secretary Marshall, since it was in y'all's suggestion, but the party leader of the Republican Party two weeks ago wrote that the Legislature will come back -- may come back and add two additional judges. So this is an exceptionally real -- it's not speculative. This is characterizing exactly what the party leader wrote. So I think it's very important for voters to understand the consequences of adopting this amendment.

SECRETARY MARSHALL: And additionally, the thought has been teed up in this current session previously to do just that very thing.

MR. STEIN: If it were something that we had dreamed up or the Secretary had dreamed up, I would agree with you, Mr. Coble. But it came from the party leader of the Republican Party.

SECRETARY MARSHALL: Do we have any other changes, corrections, thoughts on this explanation?

I'm looking at the place where we just took "an extra two years" up to "four years." "If this amendment passes, appointed judges could serve." Isn't that the appropriate word rather than "would serve"?

No, Ann, I was above that.

Because the Legislature does it -- well --

MR. STEIN: Right. They wouldn't necessarily serve up to four years. They don't determine it.
SECRETARY MARSHALL: Right.

MR. STEIN: It's determined by the calendar.

SECRETARY MARSHALL: Right.

MR. STEIN: So "could" is better than "would."

SECRETARY MARSHALL: Yeah. And it would be two places, then.

MR. STEIN: Two paragraphs up, last sentence, yeah.

SECRETARY MARSHALL: Two paragraphs up. You're at the right place.

MR. STEIN: Actually, let's -- in the -- two paragraphs down where it says "up to four years," change that "four" to the number 4. We tried to make those changes. And, actually, above that, "two" --

SECRETARY MARSHALL: "Two."

MR. STEIN: -- and the "two." We -- we tried to be consistent by using the digits because I think that's just easier for people to grasp.

SECRETARY MARSHALL: Are we consistent the rest of the way through, Ann?

(Pause in proceedings.)

SECRETARY MARSHALL: Got it?

Are there anymore thoughts, changes, grammatical corrections, style corrections? Do we have the right capitals in the right places, uppercase letters?
Okay. We have a motion to approve this. I assume it is now as amended?

MR. STEIN: Amended, correct.

SECRETARY MARSHALL: As amended. All those in favor, signify by saying "aye."

MR. STEIN: Aye.

SECRETARY MARSHALL: Aye. Those opposed?

MR. COBLE: No.

SECRETARY MARSHALL: The motion carries; two in favor, one against.

The next one is 2018-133 on the Board of Elections.

MR. STEIN: And I move --

SECRETARY MARSHALL: -- ethics and elections.

MR. STEIN: Madam Secretary, I move adoption of this description subject to any amendments we make to it.

(Pause in proceedings.)

SECRETARY MARSHALL: Mr. Attorney General, my staff has conferred with your staff. I was honing in on the -- one, two, three, four -- fifth paragraph, "removing the ninth board member may result in a 4-4 partisan deadline vote." I agree with that. "Under current law, a tie on this board could drastically restrict early voting opportunities."

Or is that -- are there not other restrictions
that would come about or --

MR. STEIN: It could be. I read the early voting law, and I -- or counsel has, as well, and I'd be interested in the legislative staff's perspective on this. But as I read the early voting locations, for there to be an early voting plan, it needs to be unanimous by the county board. And if it's not unanimous, then it can go to the State Board. But it says the State Board has to approve it and a 4-4 deadlock would not be an approval of the plan. And so, conceivably, there would be no early voting plan adopted.

SECRETARY MARSHALL: That would be the way that would go, I would think.

MR. STEIN: Yeah. I've seen it.

MR. COBLE: If we could add -- come on up, Kara. I'll let Kara McCraw just add a clarifying statement.

MR. STEIN: Thank you.

MS. MCCRAW: I'm Kara McCraw with the Legislative Analysis Division.

So the early voting statute doesn't always require early voting at the election office regardless, but these -- for satellite sites, it is true that the board has to approve where those satellite locations are. If there's a tie, it does go up to the State Board to make that determination.

MR. STEIN: Okay. So --
SECRETARY MARSHALL: So the principle would be correct. It's --
MR. STEIN: Yeah.
SECRETARY MARSHALL: -- only that there would just be if the (inaudible) location would be satellite.
MR. STEIN: Correct.
MS. McCRAW: So --
MR. STEIN: Is the -- just a question because I'm a poor statute reader. Is that provision -- is that baseline requirement that it has to be at the county seat, at a minimum, in another part of the law, or is it in that provision on one-stop sites?
MS. McCRAW: It's in the first subsection of that, and then the section of the satellite locations is -- well, I'm sorry. We recently reorganized it; I think, actually in a separate statute.
MR. STEIN: Okay.
MS. McCRAW: Yeah.
MR. STEIN: Well, it certainly doesn't change the consequence of the --
SECRETARY MARSHALL: Correct.
MR. STEIN: -- language.
SECRETARY MARSHALL: Yeah.
MR. STEIN: Because I wasn't sure. We had -- kind of did waffle-y language so that it said it would -- could
drastically restrict. And in a big county, you could go from 13 sites to one site, which would be a dramatic --

SECRETARY MARSHALL: Drastic reduction.

MR. STEIN: -- reduction. The other consequences I didn't know -- again, maybe for the legislative staff -- are there other statutory defaults where there is not approval by the State Board? Are there other things that the State Board decides that if it's a deadlock or there's non-approval, it's answered by statute somewhere else? Do you understand my question?

MR. COBLE: Yeah, sure. I'm getting my exercise moving the microphone around.

MS. McCRAW: The primary thing I can think of where the -- the statute does specifically require the board to take action on a local board decision is the early voting satellite locations.

There are a number of different requirements where the State Board does have to make determinations for the next election, and there's not really a statutory default for it to -- the board does have to make decisions. But in terms of having to have a certain percentage of the board, the primary one I can think of is the early satellite voting. It does have to be by a majority of the State Board.

MR. STEIN: If you can elaborate, Kara, what are
some examples of action that the State Board would have to take where were it to be deadlock, there would be some consequence to the administration of elections? Obviously, an enforcement action, right? If somebody was brought before them for violating campaign finance laws?

MS. McCRAW: There are -- there are a number of things that do have to do with certifying elections, the canvassing that occurs afterwards. And when there are appeals of an election, there are actions that the State Board has to take as a appellate board, if you will, for determinations by local boards. So those are things that don't really have a default statute. They're making a decision based off of those things.

MR. STEIN: We could say "under current law, a tie on this board could drastically restrict early voting opportunities and create a number of other headaches."

MR. COBLE: Like the zombie apocalypse?

MR. STEIN: Yes --

SECRETARY MARSHALL: Yes.

MR. STEIN: -- exactly.

MR. COBLE: I mean, we're -- if we're gonna speculate, let's -- (no further response).

SECRETARY MARSHALL: One of the questions that I would have for staff, and I think I put in one of my versions -- we've done so many versions on here.
In a prior version to this, legislative members were prohibited from serving on the State Election Board. That has been taken out, so I believe, then, that that would lead us to understand that members of the General Assembly could serve on this Board of Elections and Ethics?

MR. STEIN: We can consult with Amar, but I believe there's a --

SECRETARY MARSHALL: Amar?

MR. STEIN: -- Supreme Court decision on that.

MR. AMAR MAJMUNDAR: The Supreme Court prohibits service of legislators. I don't have the citations with me, but there is a decision that prohibits --

MR. STEIN: Here, just speak into the microphone.

MR. MAJMUNDAR: I apologize. I don't have any citations with me, but there is an opinion that prohibits the service of legislators in this capacity.

SECRETARY MARSHALL: I mean, there's the dual office-holding provision, but the General Assembly has enacted, I understand, certain statutes that say that if someone is appointed to this, it would not violate the dual office-holding requirement. Would that not also be a potential that the General Assembly could do in this case?

MR. MAJMUNDAR: We would have to look a little bit more deeply. I think the potential may exist but, again, without further examination, I don't want to say
definitively at this point. I think the potential for a conflict does exist in that instance.

MR. STEIN: Perhaps hear legislative staff's opinion, too?

MR. COBLE: Yeah, I think they're happy --

SECRETARY MARSHALL: Yeah. I mean --

MR. STEIN: Thanks, Amar.

SECRETARY MARSHALL: -- it was in there and now it's not, the prohibition.

MR. GARRETT DIAMOND: Garrett Diamond with the General Assembly. Wallace v. Bone would prohibit that. It was a Supreme Court case that held it was a separation of powers violation for legislators to serve on executive power boards that would in fact enforce the law or perhaps have some sort of enforcement capabilities.

So the way the provision is written in this amendment, I don't think that would be a -- I don't think that would be a concern or -- or an issue. On the contrary, it could also bring up the separation of powers. But I think that is settled by the Supreme Court.

SECRETARY MARSHALL: Doesn't this overrule the finding in Wallace v. Bone with regard to this board?

MR. DIAMOND: I could not speculate on that, but I don't believe it does.

MR. STEIN: Secretary, I think it would if it
explicitly permitted legislators to serve on it. But since it's silent to it, I don't think it changes the holding in that case. So I think that a legislator would be prohibited under Supreme Court precedent from serving on this board.

MS. KAREN COCHRANE-BROWN: I would add that --

MR. STEIN: Yes, Karen.

MS. COCHRANE-BROWN: Karen Cochrane-Brown with the Legislative Analysis Division. The only other board that is constitutionally provided for is the State Board of Education, and legislators cannot serve on that board. Similarly, I think this board would not be permitted for legislators to serve --

SECRETARY MARSHALL: But if some --

MS. COCHRANE-BROWN: -- without violating --

SECRETARY MARSHALL: -- we're only looking --

MS. COCHRANE-BROWN: Wallace v. Bone's --

SECRETARY MARSHALL: -- at intent. That intent was in the prior version, but it is not demonstrated in this one.

MS. COCHRANE-BROWN: Well, the intent was not to allow members to serve. In the prior version, it's explicitly excluded members.

SECRETARY MARSHALL: So it's --

MS. COCHRANE-BROWN: But there was never any suggestion that there was an intent to allow members to
serve on it.

MR. STEIN: I have a question for the legislative staff on my own language. The paragraph that's shown, "If the amendment passes," and it says, "the Governor would then have to choose eight members from the finalists the Legislature selected."

Am I right that it's just the caucus party leaders who would put forward the names and it's never subject to a vote of the full body?

(Legislative staff members nodded affirmatively.)

MR. STEIN: Then, Secretary, I would suggest changing "the Legislature selected" to "legislative leaders selected."

SECRETARY MARSHALL: Okay.

MR. COBLE: In that same paragraph that starts, "If the amendment passes": To clarify that some, instead of "political party leaders," you could put "majority and minority party leaders in the Legislature would nominate political -- or potential members for the board."

SECRETARY MARSHALL: I think "political party leaders" is clearer to the public than "majority and minority."

MR. STEIN: I agree with that.

SECRETARY MARSHALL: You can say "majority political party and minority political party."
MR. STEIN: That's a lot of words.

SECRETARY MARSHALL: Yeah.

MR. STEIN: Our counsel had an interesting comment on the actual language in the amendment. This is to your point, Secretary, that you raised earlier. It says in the amendment that --

Who has the -- do you have an extra copy of the amendment? I couldn't find it. Thanks, Amar.

The amendment says, section -- subsection 1, so --

Section 11, subsection 1, lines 10 through 12 -- 9 through 12:

"The bipartisan State Board of Ethics and Elections Enforcement shall be located within the executive branch for administrative purposes only and shall exercise all of its powers independently of the executive branch.

And if it's independent of the executive branch, potentially it comes outside of the holding of branch -- the branch decision. So I'm actually now going back to the point you raised early, that it opens a question as to whether the legislators could serve on this from the way it is drafted.

I would be comfortable with a "could" type sentence --

SECRETARY MARSHALL: Okay.
MR. STEIN: -- since it's not a certainty.

SECRETARY MARSHALL: I'm looking for a place.

MR. STEIN: Uh-huh.

SECRETARY MARSHALL: I guess it's in the fourth paragraph.

MR. STEIN: I think it's the second sentence of the fourth paragraph.

SECRETARY MARSHALL: I think it's about --

MR. STEIN: Would -- "would nominate potential members of the board." It -- "these members could include members of the Legislature itself." Or we could say, "The nominated members could include" would be better.

SECRETARY MARSHALL: That'd be more accurate.

MR. STEIN: "The nominated members could include members of the Legislature itself."

(Pause in proceedings.)

MR. STEIN: In the first paragraph, I saw a spelled-out "two" instead of the number 2, if we could make that switch.

(Pause in proceedings.)

MR. COBLE: Just take out "legislative" and just put "members." At least it's truthful.

SECRETARY MARSHALL: I'd like to amend my amendment. In the beginning of that sentence where we added "majority political party" to change it to say "...the
amendment passes, majority and minority political party leaders." Taking out a little redundancy there.

MR. STEIN: That's fine.

SECRETARY MARSHALL: It's a little less wordy.

I think another important aspect, and I guess I'm lobbying for something that was left out that we had thought about, was a concluding thought that:

"If this amendment passes, it would mark only the second time in our state's history that a board has been authorized in our Constitution. The first being the State Board of Education in 1868."

This elevates a board, a commission, to the constitutional status, which I think is an important piece of information for the voters.

MR. STEIN: I'm fine with that.

MS. WALL: And, Secretary, would you give me that language and where it goes?

SECRETARY MARSHALL: The very last paragraph. It was the last paragraph of my tendered explanation.

MR. STEIN: So a new -- a new last -- a new last paragraph.

(Pause in proceedings.)

SECRETARY MARSHALL: My staff has reminded me that I have not -- we have not had a second on working on this proposal from the Attorney General. Is there a second?
I second it. Continue with our discussion.

Thank you.

MR. COBLE: In the same paragraph, the second sentence, if I am seeing it correctly, "So, the board would oversee the legislative leaders who picked them." I suggest you take out "legislative" unless you want to include "legislative and -- and the Governor." I think, "So, the board would oversee leaders who" -- (no further response).

SECRETARY MARSHALL: I think the Governor has a limited choice.

MR. COBLE: He still picks them.

SECRETARY MARSHALL: He only picks from a very limited group that the Legislature provides.

MR. COBLE: He's -- that's --

SECRETARY MARSHALL: He still --

MR. COBLE: He still has those types of restrictions now, so --

MR. STEIN: Actually, "legislative leaders and the Governor who picked them." I'm fine with that.

SECRETARY MARSHALL: Okay.

MR. STEIN: I want to amend the language I had put in about the potential representation by legislators. Even though it says "could," "could include," maybe we can say, "There is an argument that nominated" -- no, I'm sorry. In the --
SECRETARY MARSHALL: One sentence?

MR. STEIN: Yeah, one sentence.

SECRETARY MARSHALL: Above. Yeah.

MR. STEIN: So it reads, "There is an argument that nominated members could include," because I don't think it's definitive. Like, I just don't think we know, but it certainly opens a question given the way it's --

SECRETARY MARSHALL: Right.

MR. STEIN: -- written.

MR. COBLE: How about, "There is a speculative argument...that nominated members could include" --

MR. STEIN: Huh-uh.

SECRETARY MARSHALL: I don't think we'd agree to that, thank you.

MR. COBLE: Well, you might call it out for what it is. I'm just trying to be accurate.

SECRETARY MARSHALL: There have been repeated times in the history of this Commission where we've had to say "We don't know, and the courts will have to decide." That's exactly what this is all about.

MR. STEIN: Yeah.

SECRETARY MARSHALL: Okay. Ann, I guess if you go to the top and maybe scroll down kind of slowly so that we can see the version that we have.

(Pause in proceedings.)
MR. STEIN: I would propose creating a separate paragraph beginning with "If this amendment passes," the new language on the second line, just so that they're shorter. Yeah.

SECRETARY MARSHALL: Visibility.

MR. COBLE: And since you're doing that, you might as well correct it. It -- "It would mark the 4th time in our state's history that a board has been authorized in our Constitution."

MR. STEIN: What are the other --

SECRETARY MARSHALL: What are the other two?

MR. STEIN: Yeah, the other two.

MR. COBLE: The Board of Charities and the Literary Board. Yeah, in the 1868 Constitution.

MR. STEIN: So tell me this: Are they still in the Constitution?

MS. COCHRANE-BROWN: Not now, but they have been since --

MR. STEIN: Okay. Then why don't we -- "If this amendment passes, it would mark the 2nd" -- "it would be the only -- it would be only the 2nd" --

MS. COCHRANE-BROWN: Since the 1971 Constitution.

If you wanted to change it to the 1971 Constitution.

MR. STEIN: No, I think we just -- I'm thinking out loud --
SECRETARY MARSHALL: Go ahead.

MR. STEIN: -- Commissioners. "If this amendment passes, it would" --

SECRETARY MARSHALL: "Be only the 2nd" --

MR. STEIN: -- "board" --

SECRETARY MARSHALL: -- "board" --

MR. STEIN: -- "authorized in our Constitution."

MR. COBLE: Yeah, it's still not true.

MR. STEIN: Yes. Our --

SECRETARY MARSHALL: You could say "the 2nd board currently" --

MR. STEIN: Constitution means the current Constitution. It doesn't mean throughout history.

MR. COBLE: Yet you just --

MR. STEIN: I mean, I think we might --

MR. COBLE: -- put the history --

MR. STEIN: -- need to change --

MR. COBLE: -- into it. So --

MR. STEIN: What -- we could say, "The other is the State Board of Education." And I don't think -- I think we can get rid of "in 1868." I don't -- I think that then creates confusion. How does that work?

SECRETARY MARSHALL: That's accurate.

MR. STEIN: What were those two other boards, Mr. Coble?
SECRETARY MARSHALL: Literary and Charities.

MR. COBLE: Charities and Literary.

MR. STEIN: Livery or Literary?

MR. COBLE: Literary.

MR. STEIN: I was like, does it have to do with horses?

SECRETARY MARSHALL: No. Literary Society.

MR. STEIN: Ah.

SECRETARY MARSHALL: Reading, learning, history.

I raised this with Kayla [phonetic], and I'm still not quite comfortable. At one point we talk about not a member of a political party. At one point we say unaffiliated. At another point down in the -- one, two, three -- fourth paragraph "there would be no nonpartisan member."

We keep changing the restrictive language to get at the same thing, haven't we?

MR. STEIN: I'm usually a fan of synonyms because sometimes you will know one but not the other, and I think they can tell that it's -- that it's the same concept in context. But unaffiliated or not -- I think people understand "nonpartisan" more than "unaffiliated" is just my guess, but the legal word is "unaffiliated."

SECRETARY MARSHALL: Yeah.

MR. STEIN: You register as unaffiliated.
SECRETARY MARSHALL: Right. And people say, "I'm Independent," which --

MR. STEIN: Right.

SECRETARY MARSHALL: -- we don't have in North Carolina, and it is a recognized party in some places.

MR. STEIN: It's a capital I --

SECRETARY MARSHALL: Yeah.

MR. STEIN: -- in some places as opposed to a little I. So -- so if you are unaffiliated, by definition you're nonpartisan and you are not with a party.

SECRETARY MARSHALL: I guess I can live with it and get all the synonyms in there.

(Pause in proceedings.)

SECRETARY MARSHALL: Are there any more possible corrections or suggestions that need to be made?

MR. STEIN: I'd like to look at the last sentence, 'cause the current Constitution -- does that mean it would be the second board authorized in our --

Current Constitution. We -- it's a weird concept because if it's adopted, it's no longer our current Constitution. I think it's -- "It would be the second board...in our Constitution." I would delete the word "current."

SECRETARY MARSHALL: Agreeable. Are we through discussing? Do I need to call the question on this now
amended version of this summary?

MR. STEIN: I am.

MS. WALL: Secretary, would you like me to accept all the changes so you can see it -- you all can see it without?

SECRETARY MARSHALL: Yeah, please.

MR. COBLE: That would be great.

(Pause in proceedings.)

SECRETARY MARSHALL: Everybody satisfied looking at it?

MR. STEIN: (Nods head affirmatively.)

SECRETARY MARSHALL: I see people still looking at it, so we'll take the time we need.

(Pause in proceedings.)

SECRETARY MARSHALL: If you're ready to vote, we will proceed and call the question.

All those in favor of the amendment that's on -- the interpretation -- the summary of the amendment that's on the screen to be distributed to voters of this state, please signify by saying "aye."

MR. STEIN: Aye.

SECRETARY MARSHALL: Aye. Those opposed?

MR. COBLE: No.

SECRETARY MARSHALL: It is a two to one, and the motion carries.
That basically concludes our business. I absolutely want to thank Ann and Jennell, in particular, yeomen over here on the technology with doing the amendments. I certainly express my deep gratitude to Mr. Coble and staff from the Legislature; Mr. Stein and staff from the Attorney General's office; my staff. And, again, grateful appreciation to the museum. As you can see, they have wonderful facilities for both the participants and for the press. So we are very grateful for everyone's assistance in this matter.

If we are concluded, I will therefore adjourn the meeting. Thank you very much. Meeting adjourned, without objection.

MR. STEIN: Thank you, Secretary.
SECRETARY MARSHALL: Thank you.
MR. STEIN: Thank you.
MR. COBLE: Thank you.
(Proceedings adjourned at 2:25 p.m.)

(END OF TRANSCRIPT.)
STATE OF NORTH CAROLINA
COUNTY OF CHATHAM

CERTIFICATE

I, Wanda B. Constantino, CVR-CM-M and Notary Public, do hereby certify that I was present at the foregoing open meeting of the Constitutional Amendments Publication Commission; that said proceedings were reported by me and transcribed by me personally; and that the foregoing pages 123 through 154, 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 7th day of September, 2018.

Wanda Constantino

Wanda B. Constantino, CVR-CM-M
Notary No. 19971130022