OPEN MEETING

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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(Proceedings commenced at 9:32 a.m.)

SECRETARY MARSHALL: It’s a few minutes after
9:30, so good morning. Before we begin, let me say welcome
to everyone here. This is August the 6th. It’s a little
bit after 9:30 in the morning. And this is the North
Carolina Constitution Amendments Publication Commission.
I’m Elaine Marshall, Secretary of State and Chair of this
Commission by statute.

Before we began, let me give our ethics reminder
as set out in §G.S. 138A-159. It’s my duty as Chair to
remind the Commissioners that it is the duty of every
Commission member to avoid both conflicts of interest and
appearances of conflict. Does any Commissioner have either
a conflict of interest or an appearance of a conflict of
interest with respect to any -- any matter coming before
this Commission today?

MR. COBLE: No.

SECRETARY MARSHALL: If so, please identify the
conflict or appearance of conflict that you should remain --
refrain from any deliberation on that particular matter.

MR. STEIN: (Shakes head negatively.)

MR. COBLE: (Shakes head negatively.)

SECRETARY MARSHALL: And I’ve got two shakes of
head no.

MR. STEIN: No.
SECRETARY MARSHALL: Okay.

MR. STEIN: Yeah.

SECRETARY MARSHALL: Hearing none, let’s get going. I want to thank everyone here for the interest you’re showing in the North Carolina State Constitution. That interest is well-deserved. The three of us on this Commission also greatly value and appreciate your interest as well.

I don’t think we have any legislators in the audience. Do we? We ended up with one the last time. It’s difficult to see the audience from here, but if somebody does come in, if somebody would let me know so that we can acknowledge their presence.

Our state Constitution is the cornerstone legal document of our society. Our laws, governance, and the rules by which we live together across all 100 counties of this great state rely upon the Constitution as the guiding document and the ultimate legal reference of how we make, support, administer, and enforce laws. The Constitution is powerful, indeed.

However, it relies upon the people of North Carolina to change or to preserve it over the years, to keep its status as our guiding legal touchstone. That’s a major point to remember. The North Carolina Constitution is not a sterile document that you put in a museum case in this
building. It defines the relationship between cities and their government.

We the people of North Carolina agree to be governed by the law made in accordance with this Constitution. Because it is so powerful, our leaders should always suggest amendments with care and with the desire to improve what already exists whenever we consider changing the Constitution's language. Now, we are at one of those moments of possible change.

Six amendments have been approved by the General Assembly to offer for consideration to the voters of this state in the November election. The action by the General Assembly has begun the process that brings us to this room today.

The Constitutional Amendments Publication Commission plays a major role in that process as our task is to write the official summary explanations of those six proposed amendments in concise, simple, and commonly used language. As we have since the early 1980s, our summaries will, by law, go out to the North Carolina news media and over the 100 county Boards of Election. These descriptions will give voters clear summaries of the proposed amendments to help them as they weigh their merits of the suggested changes to the Constitution.

This Commission takes its duty seriously. That is
why we have Senior Deputy Attorney General for Litigation Amar Majmundar specifically assigned to represent this Commission in case we need additional expert legal interpretation. I thank him for agreeing to serve in that role.

As to how we do our work today, let me stress that we are not advocates for or against the proposed amendments. Our process is the same as it has been for a generation, to write summaries in simple and commonly used language, and as it says in our mission “to produce accurate and factual products for the voters and the news media to read and consider.” The history of the Commission’s fidelity to this role as an unbiased information source is well established.

This Commission has met many times over the decades and fulfilled this mission. One sterling example was the summary this body wrote for the 2012 proposed marriage amendment, which was the center of a raging national controversy at that time. The Commission summary explanation received praise from both sides. The bottom line is that we as a Commission cannot guarantee everyone will be happy with the final product, but we’re striving to make everyone happy with this process being done in an open, public manner.

Speaking of which, let me remind the audience that this is a public meeting, 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. This Commission cannot approve or disapprove of these amendments, nor can it change their wording. That work concluded with the General Assembly sending them to us. We are not here to debate those things, so we will not take questions about them or listen to further arguments for or against them.

You should think of this meeting as being similar to a courtroom proceeding. You're welcome to be 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 silence or airplane your devices now.

My thanks to the staff of the North Carolina Museum of History for allowing us to use this wonderful Daniels Auditorium. The Commission appreciates the can-do spirit here at the museum that assisted us in getting ready for today. I also thank the State Capitol Police for providing security for this Commission session. Chief Deputy R. F. Hawley and everyone with the Capitol Police have been very patient with us for the past week or so. We appreciate that.

I'm also extremely grateful for the patient and effort by the staffs of the Commissioners who have worked
and cooperated to make today happen. My own Secretary of
State staff has been handling everything from building a
website, which I urge you to visit at sosnc.gov, to getting
this second session organized on short notice. Mr. Coble's
legislative staff and Attorney General Stein's staff have
provided assistance. Also, my thanks to Glenda -- Glenda
Biggerstaff of WordServices, Incorporated, who is again our
court reporter.

Finally, I want to say one more time that I'm very
appreciative of everyone who sent us draft comments
regarding the six proposed amendments. I want to let
everyone know that we did read them, and I expect if you're
one of those people who took time to write us you will
likely hear parts of what you wrote being said today as we
craft these summaries.

It's an honor for me, as well, to be serving on
this Commission with the two gentlemen here at the table.
Mr. Paul Coble is the North Carolina General Assembly
Legislative Service Officer, and by statute, the person
holding that position is also a member of the Commission.
Mr. Coble has an impressive public service resume having
served for many years as an elected official himself at both
the municipal and county levels of government. Also, he has
been a true civic and community leader in a large number of
organizations.
Attorney General Josh Stein is the state's lawyer. As head of the Department of Justice, he leads the legal team that represents state agencies, including mine, in many important legal matters. His duties that are most visible to the public include overseeing criminal appeals for the state courts and protecting consumers. In the context of this meeting of major importance is his work as the top attorney in state government in dealing with all things related to the North Carolina Constitution. That is why the Attorney General, by statute, is a member of the Commission.

As Secretary of State, I am by statute the chair of the Commission. The Secretary of State's office is known for both its work to support North Carolina's economy and its historic -- historic ties to supporting group government in this state going all the way back to before we actually were a state. I'm honored to be trusted once again to oversee this effort, and I will point out I have chaired the Commission through seven previous proposed constitutional amendments before the six we're discussing today.

I will also point out that while Mr. Coble represents the current General Assembly perspective, both Attorney General Stein and myself are former legislators. So you've got three very seasoned public service veterans up here today.

Now, for a little bit of housekeeping. The
restrooms located nearest to us are on your right as you exit the auditorium. For those of you who might need some wake-up refreshments, beverages and snacks are located across in the museum gift shop, and please don't make the wonderful folks here at the museum sorry they welcomed us, so be neat and take your trash with you.

Today's procedures and following are simple. This is a three-member Commission, so it takes all three of us to have a quorum. I note the presence of all three members, and therefore, declare a quorum. To make a successful motion, it takes one member to make it and another to second it. To pass a motion, it also takes two votes. Although, we will happily accept three votes at all times.

My intention as chair is to refer to the proposed amendments in the most basic way I know how to approach them, by their session number, which you can see on our agenda, and consider them in chronological order of their passage. Finally, as I said when I started, this is a public meeting, not a public hearing. That sums up the basic scope of our procedure.

Mr. Coble, would you like to make some opening remarks?

MR. COBLE: I think you've pretty much covered everything, and I appreciate it. Thank you for the kind comments.
SECRETARY MARSHALL: Thank you, Mr. Attorney General, would you like to make opening comment?

MR. STEIN: Thank you, Secretary Marshall. In terms of a proposal of how to proceed, I want to thank both you and Mr. Coble for submitting language. And what I took the liberty of doing, so we could work off of a single document, was essentially merging the language that you each provided and then including whatever filler or transition was necessary; or if there was a point that you all didn’t make that I thought was relevant, I included it. And so what I would ask, Madam Secretary, is if we work off of these drafts, and I have three. And I’d -- I’d might -- Blake, you might want to give me a couple more.

The other -- the other comment I have is that the two that I -- I’ve distributed, and what I would like to do is just go through each one of them line by line until we agree with the language that’s on here.

The other four, as I’m sure you all know, is now subject to litigation. And I am concerned that for the independence -- independent review of the courts, I think it’s better if we hold off working on those four for now, but these two are not subject to any litigation, and I think to use our time wisely and to advance the ball, I -- I suggest we do Session Laws 2018-96 and 2018-110, more popularly referred to as the right to hunt and fish and the
changing to the victims' rights amendments. And we can do them sequentially, if -- if that's agreeable.

SECRETARY MARSHALL: Are -- I take that as a motion to set aside the four that are now currently subject to litigation and do the two that are not.

MR. STEIN: That -- that is the motion.

MR. COBLE: I have a real question about that. I think we have a duty to come write the summaries. If they're challenged in court, they may be challenged in court and not used. But what if they are not overturned and not successful, we have not written anything to be used?

MR. STEIN: No. I -- I absolutely agree that we will need to write summaries for any constitutional amendment that is considered. We have plenty of time remaining in the statutory window to do this work. So I'm not suggesting we don't do them, but let's give a little breathing room to the court without our interjection. I mean, it's essentially the same point that you made, Mr. Coble, last week in terms of you wanted to wait to see what the legislature did with them before you came to the meeting.

So in any event, I -- I've got these two. So actually my motion is that we consider the right to hunt and fish at -- at the moment and then proceed through it, and then when we're done with that, we can make a motion to
adopt the hunt and fish.

SECRETARY MARSHALL: Okay. Well, we already got a motion.

MR. STEIN: Okay. Very good. So then ---

SECRETARY MARSHALL: I'll go ahead and second it ---

MR. STEIN: Okay.

SECRETARY MARSHALL: --- so we can ---

MR. STEIN: Move on.

SECRETARY MARSHALL: --- dispatch with that ---

MR. STEIN: Thank you.

SECRETARY MARSHALL: --- now.

MR. STEIN: Yeah.

SECRETARY MARSHALL: Other further discussion about doing just the two motions and setting aside the other four to a later date since we do have time?

MR. STEIN: Yeah.

SECRETARY MARSHALL: All those in favor of that motion, say aye.

MR. STEIN: Aye.

SECRETARY MARSHALL: Aye. Opposed?

MR. COBLE: No.

SECRETARY MARSHALL: One no recorded.

Okay. Moving forward, I would call up the hunt and fish, which is Session Law 677, which is --- well, Senate
677, Session Law 2018-96. Mr. Attorney General, would you like to present the language?

MR. STEIN: Please. And -- and just for ease of explanation, any of the orange language came from the legislative summary that Mr. Coble submitted, and any of the green language came from the Secretary of State's submission.

And the intent behind all of this is to do an explanation that is clear, accurate, easy to read in as few words as possible. And so our goal was to keep it short and to keep it easy to understand. And obviously, you-all take a few minutes to read it.

SECRETARY MARSHALL: I am concerned about the -- the fact that -- I mean, it -- it says nothing -- modifies the laws of eminent domain, trespass, or private property.

MR. STEIN: Uh-huh.

SECRETARY MARSHALL: But there seems to be no thought contained in here regarding laws for public safety, laws that have been passed by local governments, whether they are a town government or a county government.

MR. STEIN: And -- okay.

MR. COBLE: And wouldn't this sentence in the last -- the last sentence of the proposal summary from the central staff not address that if that were added? I don't see that. The amendment should not be construed to
modifying any provision of law relating to trespass property
rights or eminent domain.

MR. STEIN: And we have that, Mr. Coble. It's the
first sentence of the second paragraph. It's in green.

I ---

MR. COBLE: Okay.

MR. STEIN: But I think what Secretary Marshall's
talking about is to her language about it leaves unsaid what
happens about local government ordinances, which is true.
And it was just a judgment call to keep it short, but I'm
not adverse to adding in the language, Secretary Marshall,
that was in your explanation.

SECRETARY MARSHALL: Let's see the language from
my ---

MR. STEIN: Would be the last full paragraph.

SECRETARY MARSHALL: The proposed amendment does
not address commercial fishing. You're reading from my ---

MR. STEIN: I'm looking at your ---

SECRETARY MARSHALL: Does -- does not address
commercial hunting, fishing, and wildlife harvesting, so
it's not clear how -- clear if those activities would be
affected if the amendment passes. The proposed amendment
does not address about local government hunting, fishing,
and wildlife harvesting ordinances. So it's not clear how
those ordinances will be affected by the amendment. That's
kind of a long-winded sentence, but ---

    MR. STEIN: It's a -- yeah. And it's a -- there's
some big words in there, and our goal is to keep it as short
as possible. But I -- I don't have a -- if you want to
include those ideas, I don't have a problem including them,
because it is left unsaid and unclear.

    SECRETARY MARSHALL: Well, we could just simply
say the amendment does not mention local -- it is unclear
how this amendment affects local or county ordinances
regarding hunting and fishing.

    MR. COBLE: Doesn't that -- isn't that included in
any laws?

    MR. STEIN: Well, the -- the amendment actually
says laws passed by the General Assembly.

    MR. COBLE: I'm talking about if it passes, the
amendment will not affect any laws. It doesn't say by the
General Assembly, state law. It says any laws. I'm reading
that to be any laws.

    MR. STEIN: I know. But in the actual amendment
itself, it says -- it says subject only to laws enacted by
the General Assembly and rules adopted pursuant to authority
granted by the General Assembly to promote wildlife
conservation, management, and preserve the future of hunting
and fishing. So the language in the amendment itself limits
the laws to ---
SECRETARY MARSHALL: Right.

MR. STEIN: --- General Assembly laws.

MR. COBLE: Well, why don't we say that?

SECRETARY MARSHALL: Because that creates an ambiguity. Most people may not know where local laws come from.

MR. STEIN: Yeah.

SECRETARY MARSHALL: We're trying to get more specific as opposed to vaguer language.

MR. STEIN: I almost think ---

SECRETARY MARSHALL: It is not clear how this amendment affects local laws ---

MR. STEIN: Local laws concerning ---

SECRETARY MARSHALL: --- concerning public safety.

MR. STEIN: --- public safety. In which case, this is an awkward edited document. And I would suggest moving the first sentence of the second paragraph to the end of that paragraph.

SECRETARY MARSHALL: And then putting this on the end?

MR. STEIN: And then putting this one at the very end.

SECRETARY MARSHALL: Ann, have you got that?

MS. WALL: No. Sorry.

SECRETARY MARSHALL: Taking the first sentence of
the second paragraph ---

MR. STEIN: If it passes.

SECRETARY MARSHALL: --- if it passes, putting it
down at the end of that paragraph.

MS. WALL: I'm sorry. I'm having trouble. This
is not working.

MR. STEIN: There.

SECRETARY MARSHALL: The green part.

MS. WALL: This one?

MR. STEIN: Yeah.

SECRETARY MARSHALL: We've got one here.

MS. WALL: Remove it?

MR. STEIN: After fishing at the ---

SECRETARY MARSHALL: Move it after ---

MR. STEIN: --- end of that same paragraph ---

SECRETARY MARSHALL: --- after the beige part.

MR. STEIN: --- from which you took it. Yeah.

And then the new language you added in red below would
follow that. So it is not -- yeah.

SECRETARY MARSHALL: It all -- all part in the
same place.

MR. STEIN: Right there. After that -- after
domain. And it's not clear how this amendment affects local
laws concerning public safety.

MR. COBLE: How about if you simply change what I
think is now your second sentence in the second paragraph?

"This right will be subject to other laws, including laws passed by the legislature affecting local or state law and rules, to promote wildlife conservation and management and preserve the future of hunting and fishing."

SECRETARY MARSHALL: Say that again, please.

MR. COBLE: If -- is that in fact the second sentence now?

SECRETARY MARSHALL: This right ---


"This right will be subject to other laws, including laws passed by the legislature affecting local or state law and -- and -- and rules to promote wildlife conservation, management, and to preserve the future of hunting and fishing."

MR. STEIN: I think it -- that doesn't address the local government issue.

MS. WALL: Would you say it again?

MR. COBLE: Well, sure it does. Affecting local or state law.

MS. WALL: So, Mr. Coble, would you say ---

SECRETARY MARSHALL: But local law is silent in the amendment language itself.

MS. WALL: Mr. Coble, is that what you said?
MR. COBLE: Correct.

MR. STEIN: There we go.

SECRETARY MARSHALL: I -- I think that makes it more confusing because we do talk about the state law, property rights, eminent domain specifically. I think it creates a disconnect between that sentence and the sentence following. Because you're saying it could affect those laws, and then it says if it passes it will not affect those laws. I think that's a conundrum.

MR. STEIN: We also would have "law" three times in ten words, which I think is confusing too.

MR. COBLE: All right. Here's a suggestion. The same -- same sentence, this right would be subject to -- strike other laws -- other -- the same sentence. Perhaps that's the sum of the conflict there. This right will be subject to laws passed by the General Assembly affecting local or -- local or state law would be the --

MR. STEIN: I don't think we need -- I'm -- I'm fine with that edit except for the affecting, because there's no limitation. I -- I just -- and I also -- I think people know what the legislature is more than they know what the General Assembly is. And we've -- I -- I think we should use "legislature" instead of "General Assembly."

SECRETARY MARSHALL: Yeah.

MR. COBLE: I don't have a problem with that.
That saves words.

SECRETARY MARSHALL: Does that then preclude local ordinances?

MR. STEIN: I don't know what "affecting local or state laws" does, so I would not include that. I would -- I'm fine with changing -- getting the "including laws passed by the legislature." I would just say "would be subject to laws passed by the legislature and rules to promote wildlife conservation, management, and to preserve the future of hunting and fishing."

Now, one lack of -- one thing that the amendment does that is absolutely unclear from its face is whether the limitations, one and two, promoting wildlife conservation, management, and preserving the future of hunting and fishing, does -- do those clauses apply only to the rules by the Wildlife Commission, or do they also apply to the legislature? And it was not drafted in a way that is clear. But I don't think -- I -- I don't think that we're going to fix that here. I think the courts will fix that.

SECRETARY MARSHALL: Well, the courts -- courts are going to have to fix traditional means or public hunting ---

MR. STEIN: Yes.

SECRETARY MARSHALL: --- phrases that ---

MR. STEIN: Phrases that don't have clear meaning.
SECRETARY MARSHALL: --- that don’t have meaning...

MR. STEIN: Yeah.

SECRETARY MARSHALL: --- in North Carolina law.

And does public hunting and fishing, whatever that means, is only permissible if it’s to manage and control wildlife?

MR. STEIN: Did you want, Secretary Marshall, to include this issue about impacts on commercial hunting and fishing?

SECRETARY MARSHALL: Well, I -- I think --

MR. STEIN: It’s in --

SECRETARY MARSHALL: --- it’s significant. But it doesn’t talk about commercial enterprises at all.

MR. STEIN: I -- I’m fine either leaving it in or out. I mean, there’s -- part of what our goal is is to keep it in as few words as possible so people have a sense of what it is.

SECRETARY MARSHALL: Well, all the recommendations are traditionally somewhere around the 250, 300, and I don’t think we’re close to that ---

MR. STEIN: No, we’re not.

SECRETARY MARSHALL: --- yet. So ---

MR. STEIN: We’re not. So would you want a sentence after “It is not clear how this amendment affects local laws concerning public safety” to add another sentence
after that about "It is also not clear how it affects commercial hunting, fishing" ---

SECRETARY MARSHALL: Commercial hunting and fishing ---

MR. STEIN: --- "and wildlife harvesting" or just say "commercial hunting and fishing"?

SECRETARY MARSHALL: I think so. Yeah.

MR. STEIN: "It is also not clear how it affects commercial hunting and fishing," period. I'm -- I'm fine with that. It's that you and Mr. Coble may -- except for, I -- I don't like the "affecting local or state law." I think it's unnecessarily confusing.

MR. COBLE: I suggest you take out the comma after "state law."

MR. STEIN: Uh-huh. Yes. Now, it's -- it's not needed, correct.

SECRETARY MARSHALL: Got a hyphen now.

MR. STEIN: No. That's a -- that's a strikethrough.


MR. STEIN: Yes.

MS. WALL: Would you like to see it without the strikethrough?

MR. STEIN: Sure.
SECRETARY MARSHALL: Let's do that ---
MR. STEIN: I'm happy to see that ---
SECRETARY MARSHALL: --- please.
MR. STEIN: --- clean. Yeah.
SECRETARY MARSHALL: I think it looks ---
MR. STEIN: I would just ---
SECRETARY MARSHALL: --- pretty good.
MR. STEIN: I -- I will go back and ask that we strike "affecting local or state law," because I think it's very unclear at that point.
SECRETARY MARSHALL: Yeah.
MR. STEIN: "The right will be subject to laws passed by the legislature affecting local or state law and rules"; people are going to read that is -- is it -- is it laws passed by the legislature affecting rules? I -- I -- I just think it adds unnecessary confusion.
SECRETARY MARSHALL: So we would read, "The right will be subject to laws passed by the legislature...and rules to promote wildlife conservation and to preserve the future of hunting and fishing."
MR. STEIN: That's what I would prefer.
SECRETARY MARSHALL: Do we need the "and" after conservation and management?
MR. STEIN: What? And to preserve future and hunting?
SECRETARY MARSHALL: To promote ---

MR. STEIN: I mean, we could ---

SECRETARY MARSHALL: I guess we did ---

MR. STEIN: Do you want to put in the -- the one and the sub-two? I mean, maybe it's easier to read when you put in -- like -- I mean, in the amendment itself, it says one, (i), to promote wildlife conservation. And then a little "I" -- what do you call those things?

MR. COBLE: I ---

MR. STEIN: One "I", two "I"?

MR. COBLE: Yeah.

MR. STEIN: Drafters, when you have an "I" and a -- two ---

SECRETARY MARSHALL: Anyway, sub-little one. It's a sub-little two.

MR. STEIN: Sub-little two. Do we want to add those? I think it would add some clarity to -- to readers.

SECRETARY MARSHALL: I -- I think it would make -- make it more readable.

MR. STEIN: After rules, put in a sub-I ---

SECRETARY MARSHALL: Colon. We don't ---

MR. STEIN: --- because that's what it actually has in the amendment. And then in front of "preserve," do a little two. No. I'm sorry. After "to preserve" -- my ---

SECRETARY MARSHALL: Yeah.
MR. STEIN: --- my mistake.

SECRETARY MARSHALL: On the other side between “and” and “(ii).”


SECRETARY MARSHALL: There we go.

MR. STEIN: I think we are now as vague as the amendment is in terms of ---

MR. COBLE: Well ---

MR. STEIN: --- whether those two points apply to laws or rules.

MR. COBLE: Let me make a suggestion about the same paragraph, your last two sentences, which seem inherently negative. "The amendment does not indicate the effect on local laws concerning public safety or on commercial -- commercial hunting and fishing."

Let me say that again. "The amendment does not indicate the effect on local laws concerning public safety or on commercial hunting and fishing." You get it all in one sentence. It comes off a little bit less negative.

MR. STEIN: Uh-huh. And -- and my -- I don’t have a problem merging those two sentences. My only recommendation was instead -- "it does not indicate the effect," that’s kind of a complex phraseology.

SECRETARY MARSHALL: Phraseology.
MR. STEIN: I would just say it's not clear ---

SECRETARY MARSHALL: Not clear to the effect on local laws.

MR. STEIN: But I -- I don't have a problem between those two, about its effect. So then we would strike through the language -- yeah. Correct.

SECRETARY MARSHALL: I like the little I and the two little I's.

MR. COBLE: In that last sentence, how about "the amendment does not address the effect on local laws concerning public safety and hunting and fishing?" Let's move it around again. I don't know about you all, but I have a hard time keeping track of the changing scoreboard.

MR. STEIN: Two S's in addressed. How -- how about "its affect" instead of "the effect"? That's fine with me, Secretary, if that's fine with you.

SECRETARY MARSHALL: That's fine. Yeah. And I think Ann is doing a marvelous job.

MR. COBLE: She's just ---

MS. WALL: It's not my computer.

MR. COBLE: --- faster than the rest of us.

MR. STEIN: You have a period after "wildlife." You must've lost a period somewhere along the way.

SECRETARY MARSHALL: Okay. Are we at a consensus point?
MR. COBLE: Let me ask you one question. Defining "traditional methods," we don't define anything else in there. Hunt, fish, harvest, why are we -- why are we setting that aside -- or -- or setting that out?

SECRETARY MARSHALL: Because people deserve to know what the amendments mean.

MS. COBLE: But that doesn't say what it means.

It just says --

SECRETARY MARSHALL: We don't know what it means.

MR. COBLE: It's not -- well, and I'm saying so much of what's in here is not -- the words we will use in all these summaries will not be defined. I'm not sure why we're setting that out.

MR. STEIN: Well, I think when it's a major -- when it has a lot of meaning and it's undefined, I think it's appropriate to not define it. And the fact, I mean, if you agree, I would be interested in saying it doesn't explain what a "preferred means" means in the last sentence, if we want to be clear about what's unclear in the amendment.

But I -- I surely think we need to make it clear that people don't know what it -- that it's not defining what traditional methods are. I mean, do you have any idea what that means?

MR. COBLE: Traditional hunting? I can make a
colloquial decision when I step into the booth that I know what traditional methods are.

MR. STEIN: Does it include fire -- lighting fires?

SECRETARY MARSHALL: To drive animals.

MR. COBLE: No. It would not. It would -- traditional hunting would be the use of guns, other methods, bow and arrow, traps, nets. I think those are pretty obvious to the general public going into a voting booth.

MR. STEIN: But fires were used traditionally too. So ...

MR. COBLE: Were used traditionally, but not -- not typically.

MR. STEIN: I mean, I think -- what would you --

MR. COBLE: I'm suggesting a question.

MR. STEIN: Yeah.

MR. COBLE: I mean, we're -- we're -- we're -- we're putting words in, but we're pulling out certain words in being -- we're putting a negative connotation on it.

MR. STEIN: How is being clear that it doesn't define it a negative connotation?

MR. COBLE: Well, you're not defining it. That would make it clear. By saying it does not define raises into question, okay, what's going on here.

MR. STEIN: What is going on here?
MR. COBLE: What is -- what is hunt?

SECRETARY MARSHALL: Well, the author of the amendment in the paper over the weekend talked about preserving the historical ways of doing things so we don't lose the legacy. So that gets us back to fire. It gets us back to lots of things that people did historically.

Traditional methods, is that you count up how many licenses you have for this type, that type? And if you don't have a whole lot of licenses for certain things, that's not the traditional method, because more people are doing a different one now. It's just unclear. I'm content with this.

MR. STEIN: And I'll -- I'll -- I'll actually strike the language I just added about "the amendment does not define preferred methods." I mean, I think that is clear what a preferred method is, but what's unclear is what its import is, and so I don't think we need to have -- have that sentence.

SECRETARY MARSHALL: The problem is what is public hunting, what is public fishing.

MR. STEIN: I -- I am -- I am content with that explanation. Any other --

SECRETARY MARSHALL: I'm -- I'm content.

MR. COBLE: Have we got everything that was struck out taken out? Okay.
SECRETARY MARSHALL: I would move that this would be the Publication Commission's explanation in plain and commonly used language, simple and commonly used language to the best we could do it, for the distribution as prescribed by statute.

All those in favor, say aye.

MR. STEIN: Aye.

MR. COBLE: Aye.

SECRETARY MARSHALL: Aye.

Show it's unanimous.

Okay. The next one would be 110, Session Law 110, commonly known as victims' rights.

MR. STEIN: And you'll see this -- this is almost entirely from the legislative summary and from your submissions, Secretary Marshall. And why don't you-all take a couple of minutes to familiarize yourself with this.

SECRETARY MARSHALL: Okay. Everybody have a chance to look over them?

MR. STEIN: Uh-huh.

SECRETARY MARSHALL: I know I use the word "activate." It's -- it's not a good word to be using in here.

MR. STEIN: Yeah. That was one we got from you. I'm happy to ---

SECRETARY MARSHALL: I know.
MR. STEIN: --- change it.

SECRETARY MARSHALL: I know.

MR. STEIN: The trigger. Although -- yeah.

SECRETARY MARSHALL: Trigger. I ---

MR. STEIN: Trigger.

SECRETARY MARSHALL: Yeah. And it's used a second time. We just say "These rights would also apply in these cases if committed by juveniles."

MR. STEIN: Do you want to keep it "be triggered" or "would apply"? Why don't we say "would also apply"?

SECRETARY MARSHALL: Well, it's -- it's a different class of crime. I think "apply" is the better word.

MR. COBLE: I think "apply" makes sense.

SECRETARY MARSHALL: Yeah.

MR. STEIN: I think it's good generally to use synonyms in case somebody didn't know what "trigger" meant in that context.

SECRETARY MARSHALL: Yeah. But the only substantive concern that I have is that we say that they've got to assert their rights.

MR. STEIN: Uh-huh.

SECRETARY MARSHALL: And -- and that is -- that is correct. But these rights are currently -- by operation of law, these rights are currently automatic. But the change
will be that these rights will be available by request to the victims now.

MR. STEIN: They’re automatic under statute?

SECRETARY MARSHALL: Uh-huh.

MR. STEIN: But under statute, don’t they have to request it? I’m looking to -- may I -- may I check with our counsel, Secretary Marshall?

SECRETARY MARSHALL: Sure.

MR. STEIN: Amar.

(Mr. Majmundar steps on stage.)

MR. STEIN: The question is -- a number of these rights, as laid out in the new amendment, make it clear that it's on -- upon request, whereas similar rights exist as prescribed by law. And the question is: Is -- by statute, does the victim currently have to request it, or are they automatic, or does it depend on the right? Do you know?

SECRETARY MARSHALL: May I step up here? This is the statute. The amendment is here. It says the right as preside [sic] by law --

MR. STEIN: Right.

SECRETARY MARSHALL: --- as prescribed by law --- right as prescribed by law. So that’s an operation of law.

MR. STEIN: Right.

SECRETARY MARSHALL: Now they're going to have to be upon request.
MR. STEIN: Well, but I -- I think the difference is -- and I'm happy to ask legis staff too -- is that what it does by taking away the "as prescribed by law" -- when it says "as prescribed by law," the legislature doesn't have to do anything. Whereas, now, it's saying it -- if you request it, you have this constitutional right. Whereas, if the --

SECRETARY MARSHALL: This is in the Constitution.

MR. STEIN: Clear. As prescribed by law, which punts it to the General Assembly, and so there's an -- there is law in the general statutes in addition to this constitutional amendment, which lays out what rights the victims have under statute, which the rights --

SECRETARY MARSHALL: They automatically have them.

MR. STEIN: Not necessarily.

SECRETARY MARSHALL: When the legislature passes it and says they have it --

MR. STEIN: But the legislature can --

SECRETARY MARSHALL: -- they have this.

MR. STEIN: -- unpass it at any day.

MR. COBLE: Is there not also some question here is you have it, but you have to go to court to assert the fact that you have it? Otherwise, the proceedings is going to go on. They -- they wouldn't stop the proceedings waiting for somebody to show up to assert their rights.
SECRETARY MARSHALL: I understand. But when someone's being released from prison, put on probation and people are entitled to that notice, they don't know exactly when the person is going to be released, when they -- you know, do they say "I'm going to assert my rights ten years in the future for when they come out"? I think that's a hollow right and a hollow promise to be giving to victims.

MR. STEIN: Well, right. And now, upon request -- conviction, adjudication -- well, here is a general proposition. This is what I believe. That these current rights are as prescribed by law, which the legislature doesn't have to pass any law effectuating those. By change -- deleting "as prescribed by law" and putting it into "upon request," the legislature has no discretion. You have that right. If you make that request to the district attorney, you are given that right.

SECRETARY MARSHALL: I understand. But the procedure and victims believe they have these rights right now --

MR. STEIN: Yeah.

SECRETARY MARSHALL: --- that exist.

MR. STEIN: Yeah.

SECRETARY MARSHALL: And this now puts a burden to request on them.

MR. STEIN: So do you want to insert language in
here that says it's upon request? Well, it does say.

SECRETARY MARSHALL: It does say. I was trying to make that a little more simpler.

MR. STEIN: Uh-huh.

SECRETARY MARSHALL: And I just suggested that these rights will be available by request to victims.

MR. STEIN: Okay.

SECRETARY MARSHALL: And I would put it at the -- as the second sentence in the paragraph that starts out "The amendment directs," be third from the bottom.

MR. STEIN: I think if you want -- Madam Secretary, if you want to put in the bit about "upon request," I would put it in above where it's -- the topic sentence up above the second set of bullets. If this amendment is adopted, the Constitution would also guarantee victims the following rights; some, like many, of which are upon request, because the request has to do with the rights. This paragraph where you inserted that has to do with the section having to do with enforcement of those rights.

SECRETARY MARSHALL: Okay. Tell me you where you are again. Above the second group of bullets?

MR. STEIN: Yeah. Where -- it says: If this amendment is adopted, the Constitution would also guarantee victims ---

SECRETARY MARSHALL: The following rights ---
MR. STEIN: --- the following rights ---

SECRETARY MARSHALL: --- upon request.

MR. STEIN: --- many of which are upon request. I don't know if they're all upon request or if they ---

If they're all upon request, then I -- I would just put in "upon request" right there. I think the "to be treated with dignity" is not upon request. I think that is -- yeah. Shall be treated with dignity ---

SECRETARY MARSHALL: Right. Okay. Upon request -- so if you take out to be treated with reasonable dignity, the ones following below that are the ones that are upon request. No?

MR. STEIN: Yeah. And where's the restitution one?

SECRETARY MARSHALL: By request reasonable and accurate timely notice of court proceedings, attend court hearings, receive information about final decision and sentencing, receive notice of escape, release, parole, pardon, or a reduced sentence. So that affects ---

MR. STEIN: When ordered by the ---

SECRETARY MARSHALL: --- a lot of the existing ones. The list: Reasonably accurate and timely notice ---

MR. STEIN: I don't know that you have to request restitution. It doesn't say it. That's subsection (1a)(c), the right to receive restitution in a reasonably timely
manner when ordered by the court. I can’t imagine the court would order it if you didn’t ask it, but I -- it doesn’t say you have to request it. So ---

SECRETARY MARSHALL: Which sub-one is that one?

Sub ---

MR. STEIN: (c).

SECRETARY MARSHALL: (c).

MR. STEIN: And to reasonably confer and to be -- to be reasonably heard, they don’t say upon request. But it -- certainly, you can’t do it if you don’t ---

SECRETARY MARSHALL: Not there. Yeah.

MR. STEIN: Yeah.

SECRETARY MARSHALL: Just as a side bar, I think (c) is going to cause a lot of heartache at the courthouses. Because restitution frequently gets ordered, and then never happens. And so now it’s a constitutional right.

MR. STEIN: Uh-huh.

SECRETARY MARSHALL: Which I’ve represented people who never got their restitution. That isn’t a bad idea, but a lot of anguish is going to happen.

MR. STEIN: I think, Secretary Marshall, that since some of these bullets are upon request and others are not, it’s better to keep the upon request in the bullets as -- as the leg staff had originally drafted it rather than put it in the topic sentence above.
SECRETARY MARSHALL: Okay.

MR. STEIN: So I -- I would just ---

SECRETARY MARSHALL: So then we're going to go back to ---

MR. STEIN: Keep it the way it is.

SECRETARY MARSHALL: So where does "upon request" come in?

MR. STEIN: I -- I think -- I mean, it's on there if you look at the second bullet, the third bullet, and the fifth bullet.

SECRETARY MARSHALL: Second, third ---

MR. STEIN: Sixth. I'm sorry. Second and third and sixth bullet say upon request.

SECRETARY MARSHALL: Okay. Okay. I can go with that. So, Ann, can you give us a ---

MS. WALL: This is without markup?

SECRETARY MARSHALL: Yes.

MR. STEIN: Scroll, if you could.

SECRETARY MARSHALL: Why is "final result" underlined?

MR. STEIN: It's -- I think it's because it's not -- we changed -- it's, like, adjudication or something ---

SECRETARY MARSHALL: Okay.

MR. STEIN: --- and so we changed it to results ---
SECRETARY MARSHALL: Okay.

MR. STEIN: ... so that people would understand it better.

SECRETARY MARSHALL: But if it's a right, and they're -- they have requested it and they're not there, what happens in court?

MR. COBLE: If they're not there, they're not activating their rights.

SECRETARY MARSHALL: No. They've asked for them.

MR. COBLE: Well, if they ask for them and they don't show up, then the court is going to have to decide how they're going to deal with that. I would assume the district attorney would make sure that they were there and explain to them if they were not they were not going to -- they were, in fact, not asserting their rights.

I have one -- I'm fine with all that. That very last sentence, I -- I think we ought to just strike that with the sort of subjective this is what this is going to cost. We don't see any -- putting it anywhere else. It's not in the -- that's just a fiscal note. I don't think that belongs in there.

MR. STEIN: Well --

SECRETARY MARSHALL: Well, it's the only one with a fiscal note, strangely.
MR. COBLE: Well, I just don’t think it belongs in there. It doesn’t make really any difference in this unless you’re going to tell the taxpayers, like a bond, if you do this it’s going to raise the tax rate a specific amount. Otherwise, this is just -- it’s subjective.

MR. STEIN: Well, it’s -- this was actually something we discussed at the last meeting. And Secretary Marshall made the point, which I thought was good, that to explain it -- part of explaining it is there’s a cost to it and chose, otherwise, you’re not giving them the full explanation. If they think it’s free, it’s different than if it costs $3 billion. And 11 million is what the public staff -- I know what the -- your legislative staff said it costs.

MR. COBLE: Well, truth be told, every amendment we deal with is going to have some effect and the cost of that which it is -- is governing. So I -- I just think it’s unnecessary.

MR. STEIN: I thought the Secretary made a good point ---

SECRETARY MARSHALL: I ---

MR. STEIN: --- last week.

SECRETARY MARSHALL: I disagree.

MR. STEIN: Yeah.

SECRETARY MARSHALL: So ---
MR. STEIN: If anything, I would actually delete "unless agreement provides funding," because it costs 11 million whether it comes from grants or taxpayers. And keep that. Yeah.

SECRETARY MARSHALL: Yeah.

MR. STEIN: Yeah. The source is irrelevant. We don't say it's to the taxpayer. It could all come from a foundation.

SECRETARY MARSHALL: I'm comfortable with that change.

MR. STEIN: I think all the edits that have been made are sound. I move adoption unless anybody has any further comments.

SECRETARY MARSHALL: Second. Any other discussion?

All those in favor say aye.

MR. STEIN: Aye.

SECRETARY MARSHALL: Aye. Opposed?

MR. COBLE: No.

SECRETARY MARSHALL: One opposed, two ayes. Amendment -- or the explanation carries.

MR. STEIN: Thank you.

SECRETARY MARSHALL: The next one --

MR. STEIN: Well, we had moved earlier,
SECRETARY MARSHALL: That's correct. The remaining four will be held in abeyance until ---

MR. COBLE: We have a little clarity from the courts.

SECRETARY MARSHALL: --- we have clarity from the courts. So, Mr. Coble, would you like to make some closing remarks before we recess?

MR. COBLE: No. We just have more work to do, and we will get to it whenever we have further clarity and actions that are going to be taken today.

SECRETARY MARSHALL: Mr. Stein?

MR. STEIN: I just appreciate both of you-all's work.

SECRETARY MARSHALL: And we appreciate your office's work also.

Ladies and gentlemen, this meeting of the Publication Amendments -- Constitutional Amendments Publication Committee [sic] will stand in recess until further notice.

(Proceedings concluded at 10:33 a.m., to be reconvened upon agreement of the Commissioners.)
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 Commission; that said proceedings were reported by me and transcribed by me personally; and that the foregoing pages 46 through 86, 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 9th day of August, 2018.

Glenda L. Biggerstaff
Notary Commission #20002760244