

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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919.548.4914  
[wanda@mywordservices.com](mailto:wanda@mywordservices.com)

TAKEN BY: Wanda B. Constantino, CVR-CM-M  
North Carolina Notary Public

A P P E A R A N C E S

Elaine F. Marshall  
North Carolina Secretary of State  
2 South Salisbury Street  
Raleigh, North Carolina 27601-2903

Josh Stein  
North Carolina Attorney General  
North Carolina Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602

Paul Coble  
Legislative Services Officer  
Room 2129, Legislative Building  
16 West Jones Street  
Raleigh, North Carolina 27601

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1 (Proceedings commenced at 1:32 p.m.)

2 SECRETARY MARSHALL: Ladies and gentlemen, good  
3 afternoon, everyone. Before we begin this emergency session  
4 of the Constitutional Amendments Publication Commission, let  
5 me begin by giving our ethics reminder as required in G.S.  
6 163A-159(e).

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

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

14 MR. STEIN: No. I do not.

15 MR. COBLE: (Shaking head negatively.)

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

21 Hearing none, let's get going.

22 This is our fourth, and I hope final,  
23 Constitutional Amendments Publication Commission meeting  
24 this year. This is what, in open meetings terminology, is  
25 called an emergency session. The sole reason for that is

1 because we've called this meeting with less than 48 hours'  
2 notice. We need to do that because there are extremely  
3 critical deadlines for publishing voter guides and materials  
4 connected to the upcoming November election that we want to  
5 be sure to meet.

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

11 If you're keeping score, I will remind you that  
12 this Commission has completed writing its summary  
13 explanations for four of the proposed constitutional  
14 amendments so far. Those were -- and I'll just give you the  
15 last part of the session laws: 96, hunting and fishing;  
16 110, crime victims' protections; 119, state income tax rate;  
17 and 128, voter ID.

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

22 I will not give every -- I will not give everyone  
23 another talk explaining how incredibly important this  
24 Constitution is to us as North Carolinians. You've all  
25 heard that at previous sessions of this Commission.

1 Instead, I will just say that the votes cast in  
2 the up and coming election, either for or against these  
3 proposed amendments, are as important, probably more  
4 important, than any other votes our citizens will cast.  
5 Long after most of the individual people running for office  
6 this year have either failed or succeeded as elected  
7 officials, any of these amendments, if approved, will still  
8 be guiding how our laws are made and enforced. You cannot  
9 really overstate their importance to the life of North  
10 Carolina.

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

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

25 My continued thanks to the staff of the North

1 Carolina Museum of History for allowing us to use this  
2 wonderful Daniels Auditorium. I fully realize that we are  
3 trying their continued hospitality, and I cannot thank them  
4 enough.

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

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

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

22 So, again, it's an honor for me to continue  
23 serving on this Commission with these two gentlemen here at  
24 this table, Mr. Paul Coble, the North Carolina General  
25 Assembly Legislative Service Officer; Mr. Attorney General

1 Josh Stein, known as the State's attorney; and I am  
2 Secretary of State Elaine Marshall, by statute, Chair of the  
3 Commission.

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

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

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

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

24 Finally, as I said when I started, this is a  
25 public meeting and not a public hearing. So that sums up

1 the basic scope of our procedures. So let us begin the  
2 session -- this session of the Constitutional Amendments  
3 Publications Commission.

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

5 MR. STEIN: Yes.

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

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

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

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

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

1 (Pause in proceedings.)

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

4 MR. COBLE: (No audible response.)

5 (Pause in proceedings.)

6 SECRETARY MARSHALL: Ready to proceed?

7 MR. COBLE: Go ahead.

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

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

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

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

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

25 SECRETARY MARSHALL: Right.

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

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

6 MR. STEIN: Okay.

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

9 (Pause in proceedings.)

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

12 MR. STEIN: It was a challenge to do.

13 SECRETARY MARSHALL: Yes.

14 MS. WALL: Is the punctuation okay?

15 MR. STEIN: Yes.

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

18 MR. STEIN: I would --

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

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

22 SECRETARY MARSHALL: Yeah.

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

24 MS. WALL: Do I need to size up the print size on  
25 the screen in front of you?

1 MR. STEIN: I can see it.

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

5 MR. STEIN: Uh-huh.

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

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

16 SECRETARY MARSHALL: Right.

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

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

25 MS. WALL: See if this is -- if I got it

1 correctly.

2 SECRETARY MARSHALL: Well, I would -- have you got  
3 that in there, Ann?

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

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

15 SECRETARY MARSHALL: Is the equivalence --

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

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

25 MR. STEIN: Well, the reason -- well, you can

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

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

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

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

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

22 No, Ann, I was above that.

23 Because the Legislature does it -- well --

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

1 SECRETARY MARSHALL: Right.

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

3 SECRETARY MARSHALL: Right.

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

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

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

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

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

15 SECRETARY MARSHALL: "Two."

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

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

21 (Pause in proceedings.)

22 SECRETARY MARSHALL: Got it?

23 Are there anymore thoughts, changes, grammatical  
24 corrections, style corrections? Do we have the right  
25 capitals in the right places, uppercase letters?

1               Okay. We have a motion to approve this. I assume  
2 it is now as amended?

3               MR. STEIN: Amended, correct.

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

6               MR. STEIN: Aye.

7               SECRETARY MARSHALL: Aye. Those opposed?

8               MR. COBLE: No.

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

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

13              MR. STEIN: And I move --

14              SECRETARY MARSHALL: -- ethics and elections.

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

17              (Pause in proceedings.)

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

25              Or is that -- are there not other restrictions

1 that would come about or --

2 MR. STEIN: It could be. I read the early voting  
3 law, and I -- or counsel has, as well, and I'd be interested  
4 in the legislative staff's perspective on this. But as I  
5 read the early voting locations, for there to be an early  
6 voting plan, it needs to be unanimous by the county board.  
7 And if it's not unanimous, then it can go to the State  
8 Board. But it says the State Board has to approve it and a  
9 4-4 deadlock would not be an approval of the plan. And so,  
10 conceivably, there would be no early voting plan adopted.

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

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

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

16 MR. STEIN: Thank you.

17 MS. McCRAW: I'm Kara McCraw with the Legislative  
18 Analysis Division.

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

25 MR. STEIN: Okay. So --

1                   SECRETARY MARSHALL: So the principle would be  
2 correct. It's --

3                   MR. STEIN: Yeah.

4                   SECRETARY MARSHALL: -- only that there would just  
5 be if the (inaudible) location would be satellite.

6                   MR. STEIN: Correct.

7                   MS. McCRAW: So --

8                   MR. STEIN: Is the -- just a question because I'm  
9 a poor statute reader. Is that provision -- is that  
10 baseline requirement that it has to be at the county seat,  
11 at a minimum, in another part of the law, or is it in that  
12 provision on one-stop sites?

13                  MS. McCRAW: It's in the first subsection of that,  
14 and then the section of the satellite locations is -- well,  
15 I'm sorry. We recently reorganized it; I think, actually in  
16 a separate statute.

17                  MR. STEIN: Okay.

18                  MS. McCRAW: Yeah.

19                  MR. STEIN: Well, it certainly doesn't change the  
20 consequence of the --

21                  SECRETARY MARSHALL: Correct.

22                  MR. STEIN: -- language.

23                  SECRETARY MARSHALL: Yeah.

24                  MR. STEIN: Because I wasn't sure. We had -- kind  
25 of did waffle-y language so that it said it would -- could

1 drastically restrict. And in a big county, you could go  
2 from 13 sites to one site, which would be a dramatic --

3 SECRETARY MARSHALL: Drastic reduction.

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

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

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

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

25 MR. STEIN: If you can elaborate, Kara, what are

1 some examples of action that the State Board would have to  
2 take where were it to be deadlock, there would be some  
3 consequence to the administration of elections? Obviously,  
4 an enforcement action, right? If somebody was brought  
5 before them for violating campaign finance laws?

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

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

17 MR. COBLE: Like the zombie apocalypse?

18 MR. STEIN: Yes --

19 SECRETARY MARSHALL: Yes.

20 MR. STEIN: -- exactly.

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

23 SECRETARY MARSHALL: One of the questions that I  
24 would have for staff, and I think I put in one of my  
25 versions -- we've done so many versions on here.

1           In -- in a prior version to this, legislative  
2 members were prohibited from serving on the State Election  
3 Board. That has been taken out, so I believe, then, that  
4 that would lead us to understand that members of the General  
5 Assembly could serve on this Board of Elections and Ethics?

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

8           SECRETARY MARSHALL: Amar?

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

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

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

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

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

23          MR. MAJMUNDAR: We would have to look a little bit  
24 more deeply. I think the potential may exist but, again,  
25 without further examination, I don't want to say

1 definitely at this point. I think the potential for a  
2 conflict does exist in that instance.

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

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

6 SECRETARY MARSHALL: Yeah. I mean --

7 MR. STEIN: Thanks, Amar.

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

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

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

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

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

25 MR. STEIN: Secretary, I think it would if it

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

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

6 MR. STEIN: Yes, Karen.

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

13 SECRETARY MARSHALL: But if some --

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

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

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

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

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

23 SECRETARY MARSHALL: So it's --

24 MS. COCHRANE-BROWN: But there was never any  
25 suggestion that there was an intent to allow members to

1 serve on it.

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

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

10 (Legislative staff members nodded affirmatively.)

11 MR. STEIN: Then, Secretary, I would suggest  
12 changing "the Legislature selected" to "Legislative Leaders  
13 selected."

14 SECRETARY MARSHALL: Okay.

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

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

23 MR. STEIN: I agree with that.

24 SECRETARY MARSHALL: You can say "majority  
25 political party and minority political party."

1 MR. STEIN: That's a lot of words.

2 SECRETARY MARSHALL: Yeah.

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

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

9 The amendment says, section -- subsection 1, so --  
10 Section 11, subsection 1, lines 10 through 12 -- 9 through  
11 12:

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

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

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

25 SECRETARY MARSHALL: Okay.

1 MR. STEIN: -- since it's not a certainty.

2 SECRETARY MARSHALL: I'm looking for a place.

3 MR. STEIN: Uh-huh.

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

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

8 SECRETARY MARSHALL: I think it's about --

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

13 SECRETARY MARSHALL: That'd be more accurate.

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

16 (Pause in proceedings.)

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

20 (Pause in proceedings.)

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

23 SECRETARY MARSHALL: I'd like to amend my  
24 amendment. In the beginning of that sentence where we added  
25 "majority political party" to change it to say "... the

1 amendment passes, majority and minority political party  
2 leaders." Taking out a little redundancy there.

3 MR. STEIN: That's fine.

4 SECRETARY MARSHALL: It's a little less wordy.

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

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

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

15 MR. STEIN: I'm fine with that.

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

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

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

22 (Pause in proceedings.)

23 SECRETARY MARSHALL: My staff has reminded me that  
24 I have not -- we have not had a second on working on this  
25 proposal from the Attorney General. Is there a second?

1           I second it. Continue with our discussion.

2           Thank you.

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

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

11           MR. COBLE: He still picks them.

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

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

15           SECRETARY MARSHALL: He still --

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

18           MR. STEIN: Actually, "Legislative Leaders and the  
19 Governor who picked them." I'm fine with that.

20           SECRETARY MARSHALL: Okay.

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

1 SECRETARY MARSHALL: One sentence?

2 MR. STEIN: Yeah, one sentence.

3 SECRETARY MARSHALL: Above. Yeah.

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

8 SECRETARY MARSHALL: Right.

9 MR. STEIN: -- written.

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

12 MR. STEIN: Huh-uh.

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

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

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

21 MR. STEIN: Yeah.

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

25 (Pause in proceedings.)

1                   MR. STEIN: I would propose creating a separate  
2 paragraph beginning with "If this amendment passes," the new  
3 language on the second line, just so that they're shorter.  
4 Yeah.

5                   SECRETARY MARSHALL: Visibility.

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

10                  MR. STEIN: What are the other --

11                  SECRETARY MARSHALL: What are the other two?

12                  MR. STEIN: Yeah, the other two.

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

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

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

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

22                  MS. COCHRANE-BROWN: Since the 1971 Constitution.  
23 If you wanted to change it to the 1971 Constitution.

24                  MR. STEIN: No, I think we just -- I'm thinking  
25 out loud --

1 SECRETARY MARSHALL: Go ahead.

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

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

5 MR. STEIN: -- "board" --

6 SECRETARY MARSHALL: -- "board" --

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

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

9 MR. STEIN: Yes. Our --

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

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

14 MR. COBLE: Yet you just --

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

16 MR. COBLE: -- put the history --

17 MR. STEIN: -- need to change --

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

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

23 SECRETARY MARSHALL: That's accurate.

24 MR. STEIN: What were those two other boards,  
25 Mr. Coble?

1 SECRETARY MARSHALL: Literary and Charities.

2 MR. COBLE: Charities and Literary.

3 MR. STEIN: Literary or Literary?

4 MR. COBLE: Literary.

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

7 SECRETARY MARSHALL: No. Literary Society.

8 MR. STEIN: Ah.

9 SECRETARY MARSHALL: Reading, Learning, history.

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

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

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

24 SECRETARY MARSHALL: Yeah.

25 MR. STEIN: You register as unaffiliated.

1                   SECRETARY MARSHALL: Right. And people say, "I'm  
2 independent," which --

3                   MR. STEIN: Right.

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

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

7                   SECRETARY MARSHALL: Yeah.

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

11                  SECRETARY MARSHALL: I guess I can live without  
12 and get all the synonyms in there.

13                  (Pause in proceedings.)

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

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

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

24                  SECRETARY MARSHALL: Agreeable. Are we through  
25 discussing? Do I need to call the question on this now

1 amended version of this summary?

2 MR. STEIN: I am.

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

6 SECRETARY MARSHALL: Yeah, please.

7 MR. COBLE: That would be great.

8 (Pause in proceedings.)

9 SECRETARY MARSHALL: Everybody satisfied looking  
10 at it?

11 MR. STEIN: (Nods head affirmatively.)

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

14 (Pause in proceedings.)

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

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

21 MR. STEIN: Aye.

22 SECRETARY MARSHALL: Aye. Those opposed?

23 MR. COBLE: No.

24 SECRETARY MARSHALL: It is a two to one, and the  
25 motion carries.

1           That basically concludes our business. I  
2 absolutely want to thank Ann and Janelle, in particular,  
3 yeomen over here on the technology with doing the  
4 amendments. I certainly express my deep gratitude to  
5 Mr. Coble and staff from the Legislature; Mr. Stein and  
6 staff from the Attorney General's office; my staff.

7           And, again, grateful appreciation to the museum.  
8 As you can see, they have wonderful facilities for both the  
9 participants and for the press. So we are very grateful for  
10 everyone's assistance in this matter.

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

14           MR. STEIN: Thank you, Secretary.

15           SECRETARY MARSHALL: Thank you.

16           MR. STEIN: Thank you.

17           MR. COBLE: Thank you.

18           (Proceedings adjourned at 2:25 p.m.)

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20           (END OF TRANSCRIPT.)

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STATE OF NORTH CAROLINA

COUNTY OF CHATHAM

C E R T I F I C A T E

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