

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

Volume II

Pages 44 - 87

Daniels Auditorium
North Carolina Museum of History
5 East Edenton Street
Raleigh, North Carolina 27601

August 6, 2018
9:32 a.m.

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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.

1 SECRETARY MARSHALL: Okay.

2 MR. STEIN: Yeah.

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

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

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

21 However, it relies upon the people of North
22 Carolina to change or to preserve it over the years, to keep
23 its status as our guiding legal touchstone. That's a major
24 point to remember. The North Carolina Constitution is not a
25 sterile document that you put in a museum case in this

1 building. It defines the relationship between cities and
2 their government.

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

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

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

25 This Commission takes its duty seriously. That is

1 why we have Senior Deputy Attorney General for Litigation
2 Amar Majmundar specifically assigned to represent this
3 Commission in case we need additional expert legal
4 interpretation. I thank him for agreeing to serve in that
5 role.

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

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

24 Speaking of which, let me remind the audience that
25 this is a public meeting, not a public hearing. There's not

1 a place on the agenda for the public to speak, ask
2 questions, or to advocate for or against these proposed
3 amendments. This Commission cannot approve or disapprove of
4 these amendments, nor can it change their wording. That
5 work concluded with the General Assembly sending them to us.
6 We are not here to debate those things, so we will not take
7 questions about them or listen to further arguments for or
8 against them.

9 You should think of this meeting as being similar
10 to a courtroom proceeding. You're welcome to be here, but
11 you cannot interrupt the proceedings. If you must make a
12 phone call or talk to another person here, you need to take
13 that discussion outside of this room. So please silence or
14 airplane your devices now.

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

24 I'm also extremely grateful for the patient and
25 effort by the staffs of the Commissioners who have worked

1 and cooperated to make today happen. My own Secretary of
2 State staff has been handling everything from building a
3 website, which I urge you to visit at sosnc.gov, to getting
4 this second session organized on short notice. Mr. Coble's
5 legislative staff and Attorney General Stein's staff have
6 provided assistance. Also, my thanks to Glenda -- Glenda
7 Biggerstaff of WordServices, Incorporated, who is again our
8 court reporter.

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

16 It's an honor for me, as well, to be serving on
17 this Commission with the two gentlemen here at the table.
18 Mr. Paul Coble is the North Carolina General Assembly
19 Legislative Service Officer, and by statute, the person
20 holding that position is also a member of the Commission.
21 Mr. Coble has an impressive public service resume having
22 served for many years as an elected official himself at both
23 the municipal and county levels of government. Also, he has
24 been a true civic and community leader in a large number of
25 organizations.

1 Attorney General Josh Stein is the state's lawyer.
2 As head of the Department of Justice, he leads the legal
3 team that represents state agencies, including mine, in many
4 important legal matters. His duties that are most visible
5 to the public include overseeing criminal appeals for the
6 state courts and protecting consumers. In the context of
7 this meeting of major importance is his work as the top
8 attorney in state government in dealing with all things
9 related to the North Carolina Constitution. That is why the
10 Attorney General, by statute, is a member of the Commission.

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

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

25 Now, for a little bit of housekeeping. The

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

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

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

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

23 MR. COBLE: I think you've pretty much covered
24 everything, and I appreciate it. Thank you for the kind
25 comments.

1 SECRETARY MARSHALL: Thank you. Mr. Attorney
2 General, would you like to make opening comment?

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

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

18 The other four, as I'm sure you all know, is now
19 subject to litigation. And I am concerned that for the
20 independence -- independent review of the courts, I think
21 it's better if we hold off working on those four for now,
22 but these two are not subject to any litigation, and I think
23 to use our time wisely and to advance the ball, I -- I
24 suggest we do Session Laws 2018-96 and 2018-110, more
25 popularly referred to as the right to hunt and fish and the

1 changing to the victims' rights amendments. And we can do
2 them sequentially, if -- if that's agreeable.

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

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

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

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

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

1 adopt the hunt and fish.

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

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

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

7 MR. STEIN: Okay.

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

9 MR. STEIN: Move on.

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

11 MR. STEIN: Thank you.

12 SECRETARY MARSHALL: --- now.

13 MR. STEIN: Yeah.

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

17 MR. STEIN: Yeah.

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

20 MR. STEIN: Aye.

21 SECRETARY MARSHALL: Aye. Opposed?

22 MR. COBLE: No.

23 SECRETARY MARSHALL: One no recorded.

24 Okay. Moving forward, I would call up the hunt
25 and fish, which is Session Law 677, which is -- well, Senate

1 677, Session Law 2018-96. Mr. Attorney General, would you
2 like to present the language?

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

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

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

16 MR. STEIN: Uh-huh.

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

21 MR. STEIN: And -- okay.

22 MR. COBLE: And wouldn't this sentence in the last
23 -- the last sentence of the proposal summary from the
24 central staff not address that if that were added? I don't
25 see that. The amendment should not be construed to

1 modifying any provision of law relating to trespass property
2 rights or eminent domain.

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

5 I ---

6 MR. COBLE: Okay.

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

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

15 MR. STEIN: Would be the last full paragraph.

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

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

19 SECRETARY MARSHALL: Does -- does not address
20 commercial hunting, fishing, and wildlife harvesting, so
21 it's not clear how -- clear if those activities would be
22 affected if the amendment passes. The proposed amendment
23 does not address about local government hunting, fishing,
24 and wildlife harvesting ordinances. So it's not clear how
25 those ordinances will be affected by the amendment. That's

1 kind of a long-winded sentence, but ---

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

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

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

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

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

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

1 SECRETARY MARSHALL: Right.

2 MR. STEIN: --- General Assembly laws.

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

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

7 MR. STEIN: Yeah.

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

10 MR. STEIN: I almost think ---

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

13 MR. STEIN: Local laws concerning ---

14 SECRETARY MARSHALL: --- concerning public safety.

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

19 SECRETARY MARSHALL: And then putting this on the
20 end?

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

23 SECRETARY MARSHALL: Ann, have you got that?

24 MS. WALL: No. Sorry.

25 SECRETARY MARSHALL: Taking the first sentence of

1 the second paragraph ---

2 MR. STEIN: If it passes.

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

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

7 MR. STEIN: There.

8 SECRETARY MARSHALL: The green part.

9 MS. WALL: This one?

10 MR. STEIN: Yeah.

11 SECRETARY MARSHALL: We've got one here.

12 MS. WALL: Remove it?

13 MR. STEIN: After fishing at the ---

14 SECRETARY MARSHALL: Move it after ---

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

16 SECRETARY MARSHALL: --- after the beige part.

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

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

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

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

25 MR. COBLE: How about if you simply change what I

1 think is now your second sentence in the second paragraph?
2 "This right will be subject to other laws, including laws
3 passed by the legislature affecting local or state law and
4 rules, to promote wildlife conservation and management and
5 preserve the future of hunting and fishing."

6 SECRETARY MARSHALL: Say that again, please.

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

9 SECRETARY MARSHALL: This right ---

10 MR. COBLE: Yeah. Right here. Come down just a
11 little bit. Thank you. So add now the first sentence.

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

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

19 MS. WALL: Would you say it again?

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

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

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

25 MS. WALL: Mr. Coble, is that what you said?

1 MR. COBLE: Correct.

2 MR. STEIN: There we go.

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

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

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

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

24 SECRETARY MARSHALL: Yeah.

25 MR. COBLE: I don't have a problem with that.

1 That saves words.

2 SECRETARY MARSHALL: Does that then preclude local
3 ordinances?

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

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

20 SECRETARY MARSHALL: Well, the courts -- courts
21 are going to have to fix traditional means or public hunt-
22 ing ---

23 MR. STEIN: Yes.

24 SECRETARY MARSHALL: --- phrases that ---

25 MR. STEIN: Phrases that don't have clear meaning.

1 SECRETARY MARSHALL: --- that don't have mean-
2 ing ---

3 MR. STEIN: Yeah.

4 SECRETARY MARSHALL: --- in North Carolina law.
5 And does public hunting and fishing, whatever that means, is
6 only permissible if it's to manage and control wildlife?

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

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

11 MR. STEIN: It's in ---

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

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

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

21 MR. STEIN: No, we're not.

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

23 MR. STEIN: We're not. So would you want a
24 sentence after "It is not clear how this amendment affects
25 local laws concerning public safety" to add another sentence

1 after that about "It is also not clear how it affects
2 commercial hunting, fishing" ---

3 SECRETARY MARSHALL: Commercial hunting and
4 fishing ---

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

7 SECRETARY MARSHALL: I think so. Yeah.

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

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

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

17 SECRETARY MARSHALL: Got a hyphen now.

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

20 SECRETARY MARSHALL: Strikethrough. Okay.
21 Strange-looking.

22 MR. STEIN: Yes.

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

25 MR. STEIN: Sure.

1 SECRETARY MARSHALL: Let's do that ---

2 MR. STEIN: I'm happy to see that ---

3 SECRETARY MARSHALL: --- please.

4 MR. STEIN: --- clean. Yeah.

5 SECRETARY MARSHALL: I think it looks ---

6 MR. STEIN: I would just ---

7 SECRETARY MARSHALL: --- pretty good.

8 MR. STEIN: I -- I will go back and ask that we
9 strike "affecting local or state law," because I think it's
10 very unclear at that point.

11 SECRETARY MARSHALL: Yeah.

12 MR. STEIN: "The right will be subject to laws
13 passed by the legislature affecting local or state law and
14 rules"; people are going to read that is -- is it -- is it
15 laws passed by the legislature affecting rules? I -- I -- I
16 just think it adds unnecessary confusion.

17 SECRETARY MARSHALL: So we would read, "The right
18 will be subject to laws passed by the legislature...and
19 rules to promote wildlife conservation and to preserve the
20 future of hunting and fishing."

21 MR. STEIN: That's what I would prefer.

22 SECRETARY MARSHALL: Do we need the "and" after
23 conservation and management?

24 MR. STEIN: What? And to preserve future and
25 hunting?

1 SECRETARY MARSHALL: To promote ---

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

3 SECRETARY MARSHALL: I guess we did ---

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

9 MR. COBLE: I ---

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

11 MR. COBLE: Yeah.

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

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

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

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

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

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

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

25 SECRETARY MARSHALL: Yeah.

1 MR. STEIN: --- my mistake.

2 SECRETARY MARSHALL: On the other side between
3 "and" and "(ii)."

4 MR. STEIN: Other way. Nope. I'm sorry. In
5 front of -- yeah. There.

6 SECRETARY MARSHALL: There we go.

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

9 MR. COBLE: Well ---

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

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

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

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

25 SECRETARY MARSHALL: Phraseology.

1 MR. STEIN: I would just say it's not clear ---

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

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

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

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

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

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

19 MR. COBLE: She's just ---

20 MS. WALL: It's not my computer.

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

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

24 SECRETARY MARSHALL: Okay. Are we at a consensus
25 point?

1 MR. COBLE: Let me ask you one question. Defining
2 "traditional methods," we don't define anything else in
3 there. Hunt, fish, harvest, why are we -- why are we
4 setting that aside -- or -- or setting that out?

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

7 MS. COBLE: But that doesn't say what it means.
8 It just says ---

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

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

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

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

25 MR. COBLE: Traditional hunting? I can make a

1 colloquial decision when I step into the booth that I know
2 what traditional methods are.

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

5 SECRETARY MARSHALL: To drive animals.

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

10 MR. STEIN: But fires were used traditionally too.
11 So ---

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

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

15 MR. COBLE: I'm suggesting a question.

16 MR. STEIN: Yeah.

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

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

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

25 MR. STEIN: What is going on here?

1 MR. COBLE: What is -- what is hunt?

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

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

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

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

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

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

24 MR. COBLE: Have we got everything that was struck
25 out taken out? Okay.

1 SECRETARY MARSHALL: I would move that this would
2 be the Publication Commission's explanation in plain and
3 commonly used language, simple and commonly used language to
4 the best we could do it, for the distribution as prescribed
5 by statute.

6 All those in favor, say aye.

7 MR. STEIN: Aye.

8 MR. COBLE: Aye.

9 SECRETARY MARSHALL: Aye.

10 Show it's unanimous.

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

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

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

19 MR. STEIN: Uh-huh.

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

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

25 SECRETARY MARSHALL: I know.

1 MR. STEIN: --- change it.

2 SECRETARY MARSHALL: I know.

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

4 SECRETARY MARSHALL: Trigger. I ---

5 MR. STEIN: Trigger.

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

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

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

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

15 SECRETARY MARSHALL: Yeah.

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

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

22 MR. STEIN: Uh-huh.

23 SECRETARY MARSHALL: And -- and that is -- that is
24 correct. But these rights are currently -- by operation of
25 law, these rights are currently automatic. But the change

1 will be that these rights will be available by request to
2 the victims now.

3 MR. STEIN: They're automatic under statute?

4 SECRETARY MARSHALL: Uh-huh.

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

8 SECRETARY MARSHALL: Sure.

9 MR. STEIN: Amar.

10 (Mr. Majmudar steps on stage.)

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

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

20 MR. STEIN: Right.

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

23 MR. STEIN: Right.

24 SECRETARY MARSHALL: Now they're going to have to
25 be upon request.

1 MR. STEIN: Well, but I -- I think the difference
2 is -- and I'm happy to ask legis staff too -- is that what
3 it does by taking away the "as prescribed by law" -- when it
4 says "as prescribed by law," the legislature doesn't have to
5 do anything. Whereas, now, it's saying it -- if you request
6 it, you have this constitutional right. Whereas, if the --
7 if the General Assembly passed a statute ---

8 SECRETARY MARSHALL: This is in the Constitution.

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

14 SECRETARY MARSHALL: They automatically have them.

15 MR. STEIN: Not necessarily.

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

18 MR. STEIN: But the legislature can ---

19 SECRETARY MARSHALL: --- they have this.

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

21 MR. COBLE: Is there not also some question here
22 is you have it, but you have to go to court to assert the
23 fact that you have it? Otherwise, the proceedings is going
24 to go on. They -- they wouldn't stop the proceedings
25 waiting for somebody to show up to assert their rights.

1 SECRETARY MARSHALL: I understand. But when
2 somebody's being released from prison, put on probation and
3 people are entitled to that notice, they don't know exactly
4 when the person is going to be released, when they -- you
5 know, do they say "I'm going to assert my rights ten years
6 in the future for when they come out"? I think that's a
7 hollow right and a hollow promise to be giving to victims.

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

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

20 MR. STEIN: Yeah.

21 SECRETARY MARSHALL: --- that exist.

22 MR. STEIN: Yeah.

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

25 MR. STEIN: So do you want to insert language in

1 here that says it's upon request? Well, it does say.

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

4 MR. STEIN: Uh-huh.

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

7 MR. STEIN: Okay.

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

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

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

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

25 SECRETARY MARSHALL: The following rights ---

1 MR. STEIN: --- the following rights ---

2 SECRETARY MARSHALL: --- upon request.

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

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

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

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

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

20 MR. STEIN: When ordered by the ---

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

23 MR. STEIN: I don't know that you have to request
24 restitution. It doesn't say it. That's subsection (1a)(c),
25 the right to receive restitution in a reasonably timely

1 manner when ordered by the court. I can't imagine the court
2 would order it if you didn't ask it, but I -- it doesn't say
3 you have to request it. So ---

4 SECRETARY MARSHALL: Which sub-one is that one?
5 Sub ---

6 MR. STEIN: (c).

7 SECRETARY MARSHALL: (c).

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

11 SECRETARY MARSHALL: Not there. Yeah.

12 MR. STEIN: Yeah.

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

17 MR. STEIN: Uh-huh.

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

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

1 SECRETARY MARSHALL: Okay.

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

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

5 MR. STEIN: Keep it the way it is.

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

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

11 SECRETARY MARSHALL: Second, third ---

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

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

16 MS. WALL: This is without markup?

17 SECRETARY MARSHALL: Yes.

18 MR. STEIN: Scroll, if you could.

19 SECRETARY MARSHALL: Why is "final result"
20 underlined?

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

23 SECRETARY MARSHALL: Okay.

24 MR. STEIN: --- and so we changed it to
25 results ---

1 SECRETARY MARSHALL: Okay.

2 MR. STEIN: --- so that people would understand it
3 better.

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

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

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

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

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

23 MR. STEIN: Well ---

24 SECRETARY MARSHALL: Well, it's the only one with
25 a fiscal note, strangely.

1 MR. COBLE: Well, I just don't think it belongs in
2 there. It doesn't make really any difference in this unless
3 you're going to tell the taxpayers, like a bond, if you do
4 this it's going to raise the tax rate a specific amount.
5 Otherwise, this is just -- it's subjective.

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

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

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

21 SECRETARY MARSHALL: I ---

22 MR. STEIN: --- last week.

23 SECRETARY MARSHALL: I disagree.

24 MR. STEIN: Yeah.

25 SECRETARY MARSHALL: So ---

1 MR. STEIN: If anything, I would actually delete
2 "unless agreement provides funding," because it costs 11
3 million whether it comes from grants or taxpayers. And keep
4 that. Yeah.

5 SECRETARY MARSHALL: Yeah.

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

9 SECRETARY MARSHALL: I'm comfortable with that
10 change.

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

14 SECRETARY MARSHALL: Second. Any other
15 discussion?

16 All those in favor say aye.

17 MR. STEIN: Aye.

18 SECRETARY MARSHALL: Aye. Opposed?

19 MR. COBLE: No.

20 SECRETARY MARSHALL: One opposed, two ayes.

21 Amendment -- or the explanation carries.

22 MR. STEIN: Thank you.

23 SECRETARY MARSHALL: The next one ---

24 MR. STEIN: Well, we had moved earlier,
25 Secretary ---

1 SECRETARY MARSHALL: That's correct. The
2 remaining four will be held in abeyance until ---

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

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

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

11 SECRETARY MARSHALL: Mr. Stein?

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

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

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

20

21 (Proceedings concluded at 10:33 a.m., to be
22 reconvened upon agreement of the
23 Commissioners.)

24

25

STATE OF NORTH CAROLINA

COUNTY OF SCOTLAND

C E R T I F I C A T E

I, Glenda L. Biggerstaff, Verbatim Reporter and Notary Public, do hereby certify that I was present at the foregoing open meeting of the Constitutional Amendments Publication 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