

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CONSTITUTION REVISION COMMISSION

A.M. SESSION

APRIL 16, 2018

Volume I

Pages 001 - 190

Transcribed by:

CLARA C. ROTRUCK

Court Reporter

1 T A P E D P R O C E E D I N G S

2 THE SECRETARY: A quorum is present,
3 Mr. Chair.

4 CHAIRMAN BERUFF: Good morning, everyone.
5 All Commissioners and guests in the gallery,
6 will you please silence all electronic devices
7 as we get started this morning.

8 Madam Secretary, do we have a quorum?

9 THE SECRETARY: A quorum is present,
10 Mr. Chair.

11 CHAIRMAN BERUFF: I like that.

12 The Commission is now in order.

13 Commissioners and guests, please rise for the
14 opening prayer to be given by Commissioner
15 Lester.

16 COMMISSIONER LESTER: Chairman Beruff, I
17 want to take just a moment just to thank you
18 for the privilege of being able to lead this
19 group in prayer. It has been a delight to pray
20 together with you throughout this process, and,
21 of course, the other great privilege is for the
22 rest of my life, I will be able to say that I
23 spent time to the right of Beruff, a heretofore
24 unknown territory.

25 Let us pray. This is the day the Lord has

1 made, and we rejoice and are glad in it for we
2 are together doing good work, surrounded by
3 good people. We have the opportunity to do
4 something of lasting significance. What a
5 blessing that is.

6 Father, we thank you for this good work
7 you have given us. We thank you for the
8 friendships, new friendships we have made, old
9 friendships that have been strengthened and
10 enjoyed. We thank you for the work of everyone
11 who has surrounded the efforts of this
12 Commission, the staff and the consultants and
13 the experts who have given their time to come
14 and work with us. So many people have
15 contributed to this, Father, and we are
16 grateful for each and every one of them.

17 Now help us to finish well, to be good
18 stewards of this opportunity that you might
19 look down upon our work, both individually and
20 collectively, and say well done, good and
21 faithful stewards.

22 We pray this in your name, oh, God, our
23 help in ages past, our hope for years to come.
24 Amen.

25 CHAIRMAN BERUFF: Amen.

1 Mr. Cerio, if you would lead us in the
2 Pledge of Allegiance. Thank you.

3 COMMISSIONER CERIO: I pledge allegiance
4 to the flag of the United States of America and
5 to the Republic for which it stands, one
6 nation, under God, indivisible, with liberty
7 and justice for all.

8 CHAIRMAN BERUFF: I would like to take a
9 second and acknowledge that my boss is here in
10 the room today. My wife, Janelle, joined me to
11 sort of wrap this thing up. So thank you,
12 darling.

13 Okay. So have we got any communications,
14 Madam Secretary?

15 THE SECRETARY: None on the desk,
16 Mr. Chair.

17 CHAIRMAN BERUFF: Introduction of
18 proposals?

19 THE SECRETARY: None on the desk,
20 Mr. Chair.

21 CHAIRMAN BERUFF: Reports of committee?

22 THE SECRETARY: On the desk, Mr. Chair.

23 CHAIRMAN BERUFF: Thank you.

24 We will now take up Revision 1, Proposal
25 6001 by Style and Drafting. Mr. --

1 Commissioner Heuchan, rights of crime victims.

2 COMMISSIONER HEUCHAN: Good morning, Mr.
3 Chairman. Thank you for having us -- having
4 me.

5 Before I go into Revision 1, I just wanted
6 to outline a few things that were included in a
7 memo that I had sent to the full Commission.
8 This was at the urging of Commissioner
9 Kruppenbacher and others. It was a memo just
10 to explain kind of what we did, how we got
11 there, and outlined some of the conclusions
12 that we had come to for those of you that were
13 not with us that week.

14 Style and Drafting focused, as you all
15 will remember, on four primary tasks. Those
16 were to adopt the revisions that we will
17 consider over the next few days. We addressed
18 the technical and substantive edits to the
19 language of each proposal. We took
20 extraordinary efforts to edit the substance of
21 the proposals consistent with the discretion
22 and direction provided by this Commission
23 during the special order deliberations. The
24 committee also reviewed each proposal for
25 necessary technical and clarifying edits.

1 The next two things that we did were we
2 grouped the proposals into revision form, which
3 you've seen, and drafted corresponding ballot
4 titles and summaries. The committee's grouping
5 exercise was done contemporaneously with the
6 drafting of ballot summaries, as these tasks
7 are inexplicably linked, one being a reflection
8 of the other.

9 With a 75-word ballot summary count limit,
10 proposal groupings would affect the word
11 counts, and this -- this contemporaneous
12 exercise was really kind of come to
13 organically. Commissioners Grady and others
14 thought that it would be smart. It ended up
15 being very smart to do these things
16 contemporaneously, and that is why we did
17 those -- those things together.

18 I then invited committee members to draft
19 summaries. I would like to thank Commissioners
20 Gamez, Timmann, Martinez and Stargel who were
21 kind of dubbed of drafting team for their work
22 drafting titles and summaries for proposals.

23 I also invited each of you who were the
24 sponsors of those proposals to submit the very
25 same homework, and we received all of that.

1 Using all of these ideas and the technical
2 advise that we received from our staff and from
3 our outside lawyers and other sources, we
4 drafted preliminary summary language for each
5 proposal, which included the word counts. We
6 also received proposed grouping submissions
7 from committee and com- -- and the Commission,
8 and from there we constructed the revisions we
9 will consider as a full Commission today.

10 We sought to keep from unnecessarily
11 editorializing, and we were -- we got that
12 advice from Commissioner Levesque, we got that
13 advice from our lawyers, and I can submit to
14 you today that in each and every revision
15 submitted by the committee, our legal team has
16 confirmed that the title and the summary
17 language is clear, states the revision's chief
18 purpose, and is not misleading.

19 As we consider alternatives to the work of
20 the committee today, we must keep those
21 standards in mind, and I know that we will
22 consider some of those changes today, or
23 suggested changes.

24 Next we had to get into the ordering. So
25 we considered the ordering for the revisions in

1 the ballot, and I am sure that you all know
2 that the Secretary of State has already
3 received and confirmed five Constitutional
4 Amendments for placement on the 2018 general
5 election ballot. Any amendments that we put
6 forth will start with number six.

7 The committee decided to order the
8 revisions by putting the group revisions at the
9 beginning, the repeal cleanup revisions near
10 the middle, and the stand-alone revisions at
11 the end. And that is just a summary of what --
12 what we did, and I will tell you, as my earlier
13 memo outlined, the work was a lot, there was a
14 lot that we did, and each member of that
15 committee did that work in kind of aligned with
16 their skill sets and their ability to help, and
17 I can just tell you that each and every person
18 on that committee played a significant role in
19 the work that was -- that was done.

20 Now, Mr. Chairman, Revision 1, that's a
21 long way to get to Revision 1, and I'm sorry,
22 but I felt the need to do that just so people
23 could understand how we got here today.

24 Revision No. 1, which is PCP 6001, is
25 combinations of Proposals 96, Proposal 6, and

1 Proposal 41. The title of this revision is
2 "Rights of Crime Victims, Judges." Each one of
3 the proposals in Revision 1 deal with the
4 functionality of the judicial branch.

5 Proposal 96, Marsy's Law, provides
6 specific enforceable rights for the victims of
7 crimes through their interaction with our
8 judicial system. The ballot summary states
9 that it, quote, "imposes requirements on courts
10 to facilitate victim's rights."

11 Proposal 6 is a requirement on Judges and
12 Hearing Officers to independently interpret
13 statutes and rules.

14 Proposal 41 deals with Judges' retirement.

15 In each case, if the Style and Drafting
16 Committee adopted any amendments from the time
17 that they left the floor to the time that we
18 are giving them back to you for consideration,
19 I am going to outline those.

20 In Revision No. 1, there was an amendment
21 that was adopted by the Style and Drafting
22 Committee. This deals with Proposal No. 6, and
23 it replaces the words "Administrative Law
24 Judge" with "Officer Hearing administrative
25 action pursuant to general law." And we did

1 this because the term "Administrative Law
2 Judge" does not appear in the Constitution.

3 And with that, Mr. Chairman, that is an
4 explanation of Revision No. 1.

5 CHAIRMAN BERUFF: Thank you. We will take
6 up amendment -- is there any questions on,
7 excuse me, Revision No. 1? Any questions?

8 Then we will go to Amendment 346204 by
9 Commissioner Coxe. If you would introduce your
10 amendment, please.

11 COMMISSIONER COXE: Thank you, Mr.
12 Chairman. I know you thought I rose to speak
13 about 346204, but actually what I'd like to do
14 is make a motion to waive the rules so we can
15 name my chair after Commissioner Stemberger
16 when we're done.

17 I want to make clear something with
18 respect to the amendments I proposed. I accept
19 the fact that this proposal, this revision, is
20 a train headed out of the station. I don't
21 quarrel with that. That's already been debated
22 on the merits.

23 These amendments that I have filed deal
24 with a recognition that that will happen, and
25 so they are intended to clean up issues that I

1 think will be major problems. And then we have
2 the traditional problem that we have a
3 Constitutional Amendment that needs to be
4 amended, and we can avoid that.

5 So what 346204 does is take the words
6 "expungement" in the two places it's in there
7 where in -- I believe it is at line 105, if
8 everybody has the actual proposal, it refers to
9 the right to be informed of clemency and
10 expungement procedures.

11 The reason I propose removing
12 "expungement" from this is multi-fold. Number
13 one, if a record is eligible to be expunged,
14 one must assume that there is an excellent
15 probability that the person was acquitted, and,
16 therefore, victim status is no longer in play
17 because by definition, if the person has been
18 acquitted or found not guilty or exonerated,
19 then by definition, arguably, there is no
20 victim in that particular case.

21 But more importantly, or more practically,
22 expungement procedures are in Section 943.058
23 of the Florida Statutes. They are
24 predominantly administrative procedures, and
25 the Florida Department of Law Enforcement has

1 the greatest role in that process. They are
2 currently backlogged by tens of thousands of
3 applications. And to inject the right of a
4 victim to be notified anywhere along that
5 process when administratively the person is, in
6 fact, eligible under the law, there is
7 supposedly no argument a victim could make that
8 the record shouldn't be expunged and
9 alternatively sealed as 943.058 provides.

10 So it's -- the removal of this serves two
11 purposes: It eliminates a nightmare
12 administratively for the State of Florida in
13 dealing with how to expunge and seal records,
14 and it also deals with the fact that, arguably,
15 there is no longer a victim in play. So that
16 is what -- my proposal.

17 CHAIRMAN BERUFF: Thank you.

18 Questions on 346204? Do we have questions
19 on 346204?

20 Commissioner Gaetz is recognized.

21 COMMISSIONER GAETZ: Thank you, Mr.
22 Chairman.

23 Commissioner Coxe, you mentioned the
24 administrative burden that would be created as
25 a consequence of leaving the provision as it is

1 and not passing your amendment. Could you help
2 me as a non-lawyer understand the nature of
3 that administrative burden and what effect it
4 has, not only on the judiciary locally, but
5 also on others who may be affected by it?

6 CHAIRMAN BERUFF: Commissioner Coxe, you
7 are recognized.

8 COMMISSIONER COXE: Thank you, Mr. Chair.

9 Actually, because of the Florida Statutes,
10 it should not only say "expungement" in here,
11 it should also say "sealing." They're almost
12 treated interchangeably or synonymously.

13 But in response to your question,
14 Commissioner Gaetz, if I am a person who has
15 not been convicted and I am eligible under the
16 statute -- and to be eligible means that I have
17 not previously had a record expunged, I have
18 not previously been convicted of any criminal
19 offense anywhere in the country, that this is
20 the first time, I have no conviction and I'm
21 seeking that record to be expunged or sealed,
22 what I do is submit a form to the Office of the
23 State Attorney, telling them that I intend to
24 seek getting this record sealed or expunged.

25 This Office of the State Attorney then

1 confirms back to me my eligibility. I then
2 have to take those records and a fingerprint
3 card and forward them with a \$75 fee to the
4 Florida Department of Law Enforcement where
5 they, once they do their investigation, issue
6 what is determined a Certificate of
7 Eligibility. That is what is now backlogged
8 six months in the State of Florida, longer.

9 They will tell you now it will be five,
10 six months before we can get that back to you.
11 So once I do get that back, I then take that, I
12 have a client sign the affidavit that the
13 client has not been convicted elsewhere in the
14 country, is eligible here, and I file a motion
15 to get a hearing before the court.

16 So with that long, drawn-out process to
17 notify a victim that I am seeking expungement
18 when the statute has never -- of all of the
19 criminal statutes, never acknowledged that a
20 victim has a role in that process, and my
21 earlier point is probably shouldn't because
22 there's no conviction, so that is the
23 procedural thing it takes.

24 It is still discretionary with the court
25 as to whether to grant it, as Commissioner

1 Sprowls I know knows that. But the law says
2 now that if certain criteria, minimum criteria,
3 are met, it would be an abuse of discretion not
4 to grant it. So I don't know if that answers
5 your question.

6 CHAIRMAN BERUFF: Commissioner Schifino is
7 recognized.

8 COMMISSIONER SCHIFINO: Thank you, Chair
9 Beruff.

10 I want to make sure I am clear. I think
11 what I heard you say was that the only
12 situation where a defendant can be -- can seek
13 expungement is if they have been acquitted or
14 found not guilty. Are there scenarios under
15 which someone who has been found guilty of a
16 crime could seek expungement?

17 CHAIRMAN BERUFF: Commissioner Coxe.

18 COMMISSIONER COXE: Thank you, Mr. Chair.

19 Yes, let me -- let me explain this. The
20 test for eligibility to have a record expunged
21 or sealed is whether or not the case resulted
22 in a conviction. The law says, for example,
23 that in Florida, under Florida Law, a court can
24 do what's called withhold adjudication of
25 guilt, even if a person pleads guilty, pleads

1 no contest, or is found guilty by a jury. The
2 court has that discretion. If that happens,
3 that person does not have a conviction.

4 So in the context of what we're talking
5 about, there are a great many of these cases
6 where that is the reason the person does not
7 have a conviction.

8 There are also those who the -- where the
9 charges have been dropped or dismissed by a
10 court, never filed in the first place by the
11 Office of the State Attorney, acquitted by a
12 jury. There are a laundry list of reasons why
13 that can happen.

14 The eligibility comes from not getting a
15 conviction. That's the sole criteria, and once
16 that happens, and assuming you're not
17 disqualified for the other reasons I mentioned,
18 yes.

19 COMMISSIONER SCHIFINO: Thank you.

20 CHAIRMAN BERUFF: Commissioner Cerio is
21 recognized.

22 COMMISSIONER CERIO: Commissioner Coxe, is
23 it your position that if there is a -- some
24 type of crime committed, the defendant does
25 receive some type of sanction, maybe has to pay

1 restitution, there is a victim, the -- but the
2 individual does have the right to ask the court
3 to have adjudication withheld, that even though
4 in that case there may be a victim, there may
5 have been penalties paid, that victim should
6 have no right to at least have notification to
7 be heard on the question of expungement, which
8 is not granted as a matter of right, it is
9 within the discretion of the court?

10 CHAIRMAN BERUFF: Commissioner Coxe.

11 COMMISSIONER COXE: Thank you, Mr. Chair.

12 I am not sure I quite understand the
13 question, but if it -- if it talks about the
14 process that took place up to the effort to
15 seal or expunge the record, certainly. This --
16 your proposal already has all those victim
17 rights built into it, notice, opportunity to be
18 heard, et cetera.

19 The sole issue that I am raising is
20 whether or not the person should be notified of
21 a court hearing that is going to be undertaken
22 as to whether there should be expungement or
23 sealing. I assume that's what your question
24 is.

25 COMMISSIONER CERIO: Correct.

1 COMMISSIONER COXE: And my proposal would
2 eliminate that completely, absolutely. And I
3 think in part, one has to recognize that would
4 be so incredibly cumbersome on the courts with
5 the thousands and thousands of these when the
6 case is already completely resolved. There's
7 nothing that can change the outcome of the case
8 at this stage.

9 CHAIRMAN BERUFF: Questions? Commissioner
10 Bondi.

11 COMMISSIONER BONDI: Commissioner Coxe,
12 would you agree that being a career prosecutor,
13 most first-time offenders receive a withhold,
14 unless they're going to prison or house arrest?

15 COMMISSIONER COXE: I think that turns
16 entirely the jurisdiction you're in. I've seen
17 -- I've been in several jurisdictions in
18 Florida. There are some where there are
19 policies that never withhold on a first-offense
20 burglary if it's of a home, even if it's not
21 occupied. There are others where they will
22 never withhold on certain drug possession
23 cases, and that is probably going to increase
24 now with this opioid issue.

25 So I don't think -- in answer to

1 Commissioner Bondi, I don't think there is a
2 way you can say yes or no now, not --

3 COMMISSIONER BONDI: And I can only -- I'm
4 sorry, Chairman.

5 CHAIRMAN BERUFF: Commissioner Bondi.

6 COMMISSIONER BONDI: And, Mr. Coxe, I can
7 only respond to practicing over 18 years in one
8 of the biggest counties, Hillsborough County,
9 where Ms. Joyner was one of the finest defense
10 attorneys there, and most of her clients on a
11 first offense received a withhold. That's how
12 Hillsborough County does it, as well as the
13 Public Defender's Office.

14 Meaning you can still very well have a
15 victim who believes this defendant, they did
16 enter a plea and they're owed restitution.
17 These are crimes that defendants entered pleas
18 to, in my opinion.

19 CHAIRMAN BERUFF: Commissioner Coxe.

20 COMMISSIONER COXE: Thank you.

21 And, Commissioner Bondi, I fully
22 understand your point. I think that the issue
23 here is whether or not -- and maybe
24 Commissioner Cerio feels differently when he
25 proposed this -- whether or not a victim would

1 require notice to be heard on an issue as to
2 whether or not a person legally qualifies and
3 whether or not the discretion of the Judge
4 should be influenced by someone who says, "I
5 don't want that person to have a clean record
6 when it was already determined he wouldn't have
7 a conviction in the first place." And you
8 would argue -- you'd go all the way to the end?
9 I don't know, because that's the only argument
10 I can think of against us.

11 CHAIRMAN BERUFF: Commissioner Cerio is
12 recognized.

13 COMMISSIONER CERIO: Mr. Chair, if I
14 could -- I mean, was that a question to me,
15 Commissioner Coxe? I'm happy to answer it or
16 we can save it for debate. We'll save it for
17 debate.

18 CHAIRMAN BERUFF: Further questions on
19 346204?

20 Commissioner Stargel is recognized.

21 COMMISSIONER STARGEL: Commissioner Coxe,
22 would you agree that there are times where
23 victims come to a sentencing hearing and are in
24 agreement with a withhold of an adjudication,
25 but may not be in agreement with an eventual

1 expungement?

2 COMMISSIONER COXE: Certainly. They would
3 be in agreement with lots of things and not
4 others, sure.

5 Mr. Chair.

6 CHAIRMAN BERUFF: Commissioner Stargel.

7 COMMISSIONER STARGEL: Would you agree
8 that, in fact, often the victim -- victims will
9 show up and speak before the court and agree
10 and ask the court for a withhold of
11 adjudication, but at a later date may still
12 want to be advised when someone is asking for
13 an expungement?

14 COMMISSIONER COXE: I've never heard of
15 that in my entire career.

16 CHAIRMAN BERUFF: Commissioner Stargel.

17 COMMISSIONER STARGEL: I'll save it for
18 debate.

19 CHAIRMAN BERUFF: Great. Any further
20 questions on 346204?

21 Seeing none, 346204 is open for debate.

22 The Chair recognizes Commissioner Cerio.

23 COMMISSIONER CERIO: Thank you, Mr. Chair.

24 I mean, with all due respect to
25 Commissioner Coxe, we have throughout this

1 process had a great discussion about Marsy's
2 Law, but we have had a fundamental disagreement
3 over what victims should be and shouldn't be
4 entitled to, and I do think some of the
5 questions have teased out the issue, and this
6 is not the case where it's the end of a
7 process.

8 There really shouldn't be, you know, this
9 defendant has been found not guilty and there
10 shouldn't be any reason for a victim to try and
11 influence the process at this point.

12 As the questions sort of, again, teased
13 out, there are many situations where a
14 first-time offender may have committed a crime.
15 There may be a victim and there may be a
16 sentence imposed where there are requirements
17 and perhaps restitution, and then not as matter
18 of right, but within the discretion of the
19 court after these things are completed, the
20 defendant may move to have his or her record
21 expunged.

22 And what this proposal will allow is it
23 will allow a victim, who is still a victim
24 despite the fact, they don't lose their status
25 as a victim despite the fact that an individual

1 may qualify to have their record expunged and
2 they did have adjudication withheld, they will
3 have an opportunity to tell the court. Maybe
4 they won't agree, maybe they will agree that an
5 expungement is fine and the person, you know,
6 maybe it was a young offender and they paid
7 their dues, but the victim should still have
8 that right.

9 That is what Marsy's Law is about is
10 making sure that these victims have an
11 opportunity to be engaged in the process. They
12 don't get to dictate the outcome. And this is
13 still within the discretion of the court.

14 But I will tell you in cases where
15 there's -- where there's not a traditional
16 victim, maybe it's what we call a victimless
17 crime, maybe it's a drug possession or
18 something like that or some other type of crime
19 where nobody was injured, the State is
20 considered in criminal law the victim, the
21 State is entitled to notification when there is
22 a request for an expungement, and the victim
23 should have no less rights. There are
24 definitely situations where there has been a
25 victim who has been harmed. Even if a

1 defendant qualifies for an adjudication
2 withheld, all we're saying is that they should
3 have an opportunity to be heard, no more, no
4 less.

5 Thank you, Mr. Chair.

6 CHAIRMAN BERUFF: Further debate? Is
7 there any further debate on 346204?

8 Commissioner Stargel is recognized.

9 COMMISSIONER STARGEL: Thank you, Mr.
10 Chairman.

11 I understand what Commissioner Coxe's
12 concern is, but the way this happens is we get
13 a file that comes to us after the State
14 Attorney has gone through their process.

15 Commissioner Coxe started today by saying
16 that the assumption is they're going to qualify
17 if. Well, that's a big "if." There are people
18 who sit in prison cells and in jail cells all
19 day long and will send letters and will make
20 motions that they don't qualify for. And the
21 great men and women in the State Attorney's
22 Office have to go out and look at this
23 information.

24 I do not see any harm in the victims who
25 may have stood there and said, "I will agree to

1 a withhold, they have a problem," or because of
2 the circumstances in a domestic violence or
3 something are in agreement with that, because
4 they know what will happen if there's not a
5 withhold. They know what rights are going to
6 be affected.

7 But that doesn't mean that when it's time
8 for them to have a say, that they should be
9 excluded, and I think that the State Attorneys,
10 while they always do a good job, there's
11 sometimes information they may not know that
12 the victim knows.

13 So I don't think there's a harm in the
14 victims that have given an address and it's
15 still on file when this request comes in, for
16 that victim to have an opportunity to have a
17 say as to what is going on in that person's
18 life so that the State Attorney can use that in
19 their recommendation and then the court can use
20 it in their decision.

21 CHAIRMAN BERUFF: Further debate?

22 Seeing none, we will move on to Amendment
23 346204. I'm sorry, Commissioner Coxe. A
24 little rusty. You can close.

25 COMMISSIONER COXE: You don't need to

1 apologize, Mr. Chair.

2 Let me just -- as I echo what I said at
3 the beginning, these are not efforts to deter
4 or waylay the substance of what this proposal
5 does. I am -- like I said earlier, I don't
6 have the benefit of ever having the experience
7 that Commissioner Stargel is talking about in
8 any circuit in this state.

9 It is a question of whether or not a
10 person is entitled to be restored to the -- the
11 statute says, "to the status they occupied
12 before they were arrested." There has never
13 been, to my knowledge, ever a State Attorney, a
14 court or anybody who suggested that victim
15 input should participate in whether that person
16 is entitled to have a fresh start in life.

17 That's not what our system is about, any
18 more so than people petitioning to have their
19 voting rights restored. That's all this is
20 dealing with.

21 And so I would respectfully suggest that
22 -- and I understand what Commissioner Stargel
23 is saying. This will put tens of thousands of
24 notice requirements every year on prosecutors
25 throughout the state to notify them that they

1 have a right to participate in or the right to
2 attend a proceeding that they should have
3 input -- that their input shouldn't make any
4 difference in the first place. So --

5 CHAIRMAN BERUFF: Thank you, Commissioner
6 Coxe. We will now vote on 346204. All those
7 in favor of 346204, signify by saying yea.

8 (Chorus of yea's.)

9 CHAIRMAN BERUFF: All those against,
10 signify by saying nay.

11 (Chorus of nay's.)

12 CHAIRMAN BERUFF: I believe the nay's have
13 it. The amendment fails. Thank you.

14 Commissioner Coxe -- Commissioner Coxe,
15 would you like to introduce 131026, please.

16 COMMISSIONER COXE: I would, Mr. Chair,
17 and with the Chair's indulgence, I may add the
18 next one after that because they involve
19 consecutive deletions.

20 CHAIRMAN BERUFF: Whatever you think is
21 most --

22 COMMISSIONER COXE: Effective?

23 CHAIRMAN BERUFF: I don't know about
24 effective. I was thinking of the word
25 "expedite."

1 COMMISSIONER COXE: Where's the clock?

2 Mr. Chair, 131026 provides for the
3 deletion --

4 CHAIRMAN BERUFF: Of -- go ahead.

5 COMMISSIONER COXE: Lines 125 to 123.
6 That is a provision currently in the proposal
7 that allows for the State Attorney to petition
8 for a, I'm going to call it a speedy trial.
9 The term is used as speedy trial in there, but
10 it is a demand for a trial within a certain
11 period of time.

12 And I am not going to say anything about
13 that other than that will precipitate total
14 chaos in the criminal justice system in the
15 State of Florida, total chaos. It has never
16 been an issue in the State of Florida. Victims
17 have the right to have input with the
18 prosecutors up and down the line, but to then
19 create this demand for a speedy trial in that
20 short a period of time that is provided for in
21 this proposal will create chaos. That's all.

22 And let me add, it doesn't defeat the
23 right to have a timely trial.

24 CHAIRMAN BERUFF: Would you like to
25 introduce your substitute amendment?

1 COMMISSIONER COXE: The substitute
2 amendment for -- under -- excuse me, Mr. Chair,
3 131026?

4 CHAIRMAN BERUFF: Yes.

5 COMMISSIONER COXE: That is just, I
6 believe, deletion.

7 CHAIRMAN BERUFF: Okay. So we are taking
8 that --

9 COMMISSIONER COXE: Yeah. So if I could
10 add, as I mentioned at the outset, Mr. Chair,
11 if I might, 547724 also provides for deletion
12 of time deadlines with respect to state and
13 non-capital and capital appeals.

14 It's an interesting issue. It has been
15 found unconstitutional previously to put a
16 deadline on appeals. If you notice in the
17 language of the current proposal, it puts, I
18 believe, a two-year and a five-year
19 limitation -- or requirement, excuse me, for
20 two years for non-capital and five years for
21 capital appeals, and the unconstitutionality in
22 the past comes from the fact that the courts
23 have to do what they have to do, and to say
24 they have to make a decision within a certain
25 period of time when other circumstances or

1 conditions precedent haven't been met creates a
2 significant problem.

3 I don't think it is necessary. I think it
4 is an invitation for -- I mean, I will go to
5 Commissioner Cerio's defense. I think this
6 kind of provision is an invitation for this to
7 be struck down. So I don't know why they want
8 that in there, to be honest. It shouldn't be,
9 but it is just a red flag to the appellate
10 courts to say how can you do this, we've
11 already struck it down before. So -- and it's
12 struck down on federal constitutional grounds
13 on that.

14 CHAIRMAN BERUFF: We will take questions
15 on 547724, the substitute amendment.

16 Commissioner Newsome is recognized.

17 COMMISSIONER NEWSOME: Commissioner Coxe,
18 this is a sincere question. I am trying to
19 understand this. I am for Marsy's Law, I voted
20 for it, I think it's good, but I want to just
21 understand, I am a little confused. I had
22 sincerely thought maybe, you know, Commissioner
23 Cerio can help me, too.

24 I thought that the speedy trial issue had
25 been taken out of this. So what I'd like to

1 understand is, as it is drafted now, how does
2 this speedy trial issue work under the proposed
3 Marsy's Law that we voted on? And then second,
4 Commissioner Coxe, how would this be different
5 under your amendment?

6 Because I -- again, I was under the
7 impression that the speedy trial law had been
8 taken out. My concern is also for the
9 constitutionality issues that you had
10 mentioned. I think there are some other
11 concerns as well as a former federal
12 prosecutor.

13 COMMISSIONER COXE: Well, Article I of the
14 Constitution and Declaration provides for the
15 defendant to have a right to a speedy trial.
16 It does not provide for the State to have a
17 right for a speedy trial -- to a speedy trial,
18 and that arises in large part from the United
19 States Constitution.

20 The United States Constitution does not
21 give the government a right to a speedy trial.
22 It does give the defendant a right to a speedy
23 trial.

24 And so everybody understands, what's the
25 history of speedy trial? Why does that exist

1 in the first place? Is it to keep cases moving
2 in the courts? No, that's not the history of
3 speedy trial.

4 The history of the speedy trial in the
5 United States Constitution was to keep so many
6 people from languishing in jail and not being
7 brought to justice, whether they were guilty or
8 innocent. And so our founding fathers said we
9 have to ensure that the King -- or they didn't
10 like what the King did in England, he kept
11 people locked up forever. So they put that
12 guarantee in the United States Constitution.

13 What this does in lines 125 through 132,
14 not only creates a right to a speedy trial for
15 the State of Florida, but it also puts time
16 periods in there such as within 15 days of the
17 filing of the demand, of the file in demand, to
18 schedule a trial to commence at a date at least
19 five days, but no more than 60 days after the
20 date of the calendar call, unless the Judge --
21 Trial Judge enters an order with specific
22 findings of fact justifying a trial date more
23 than 60 days.

24 Well, this doesn't delineate what those
25 facts would be or what standard the court would

1 have to meet to do that. What it does do in --
2 especially in your larger jurisdictions, with
3 the number of criminal cases and the
4 seriousness of those criminal cases, to
5 suddenly put the court and everyone else in the
6 position of having to have a trial within 60
7 days. And anybody who has worked in that
8 system knows that it is just not realistic.

9 And I guess I -- I go back and I say to
10 Commissioner Cerio and everyone else, I
11 recognize that this Bill in substance is a
12 train out of the station. There are just some
13 parts of it that I think we ought to look
14 really closely at. It doesn't defeat the
15 substance of what we're trying to accomplish.

16 This could create, as I said earlier,
17 havoc in the system. And it would create havoc
18 in the federal system if it did that, too.

19 CHAIRMAN BERUFF: Commissioner Newsome is
20 recognized.

21 COMMISSIONER NEWSOME: Yes. Because we
22 we're not on the motion, I cannot ask
23 Commissioner Cerio a question yet?

24 CHAIRMAN BERUFF: You can go through me.

25 COMMISSIONER CERIO: I think you guys can

1 do whatever you want.

2 COMMISSIONER NEWSOME: I'd like to ask
3 Commissioner Cerio, I mean, explain to me
4 again, Commissioner Cerio, from your
5 perspective, the way this -- this provision
6 works as it is drafted and the very real
7 concerns as a former prosecutor about the
8 potential chaos that Commissioner Coxe is
9 talking about. I mean, I've got red lights
10 going off for me personally now that I didn't
11 have before.

12 CHAIRMAN BERUFF: Commissioner Cerio is
13 recognized.

14 COMMISSIONER CERIO: If I may, I would
15 address -- let me talk about what the specific
16 language is and why, and maybe in debate I
17 can -- we can argue why I don't think this
18 concern is founded -- well-founded.

19 What the language does, all it says is
20 that a State Attorney may make a good faith
21 demand for speedy trial, and it has to be --
22 and we know as lawyers, good faith means good
23 faith. It can't be something that's done
24 arbitrarily, or you risk the wrath of the
25 court.

1 But they may ask -- and the victim does
2 not get to dictate this. It is a right that
3 the State may ask for, and then if the Judge
4 holds the hearing and determines that the case
5 is not ripe, all they have to simply do is
6 enter an order with specific findings as to why
7 it is not appropriate.

8 It is not a mandate for a speedy trial,
9 this Marsy's Law, we have spent a lot of time
10 on this language and the language on the
11 appeals section, we've heard from a lot of
12 stakeholders, trying to make some changes.
13 This is -- well, it is -- we all have rights to
14 file amendments when we file amendments.

15 But, anyway, we had a lot of input and
16 tried to make a lot changes to accommodate a
17 lot of viewpoints. This has been reviewed
18 legally, and I will tell you, as far as the
19 problems with the total chaos it will create in
20 the bigger jurisdictions, you know, State
21 Attorneys Miami, Ft. Lauderdale, Tampa, and
22 Commissioner Coxe's hometown of Jacksonville
23 have endorsed Marcy's Law in its current form.

24 So they apparently -- well, I don't want
25 to presume what they're thinking, but they knew

1 what it said, and there were no concerns in my
2 mind or any demands that we adjust it anymore
3 than we did.

4 And really probably anything else. I've
5 already gotten in debate, so I will leave it at
6 that.

7 CHAIRMAN BERUFF: Thank you, Commissioner
8 Cerio. Questions on 547724?

9 Commissioner Schifino is recognized.

10 COMMISSIONER SCHIFINO: Thank you, Chair
11 Beruff.

12 Commissioner Coxe, would you walk us
13 through, please, the discovery aspects of a
14 criminal proceeding. And what I mean, I'm a
15 civil practitioner, and cases generally take
16 anywhere from nine months to two years to get
17 ready. What is the process? Interrogatories?
18 Written discovery? Depositions? I would
19 appreciate a little bit of history and
20 information on that.

21 CHAIRMAN BERUFF: Commissioner Coxe.

22 COMMISSIONER COXE: Thank you, Mr. Chair.

23 Commissioner Schifino, just -- and for
24 everyone's benefit, in the Florida system of
25 criminal justice, when you have been arrested,

1 you have not been formally charged with a
2 crime. You are not formally charged with a
3 crime until -- unless and until the State
4 Attorney files formal charges or you have been
5 indicted by a Grand Jury.

6 Once that event takes place, then the
7 Rules of Criminal Procedure that govern
8 discovery come into play. Now -- and
9 Commissioner Bondi, Commissioner Sprowls may
10 want to correct me if I am wrong, but my
11 recollection is that upon notice by the
12 defendant to the State that cannot take place
13 until the formal charges are filed -- they may
14 not take place -- formal charges may not occur
15 for three, four, five, six weeks after the
16 arrest.

17 But once the formal charges are filed and
18 the notice is given to the State, the State
19 then has 15 days to respond under the
20 discovery. The defense then has, I believe,
21 ten days to provide any reciprocal discovery.
22 So that would tell you 25 days.

23 I have never been in a jurisdiction in the
24 State of Florida where any of that is done
25 completely, where both sides have traded any

1 earlier than three to four months. It's just
2 not realistic, and it's not realistic in part
3 because the State is burdened with so many
4 cases they have to do that in, there's no
5 exception for a minor case that they don't have
6 to give as much.

7 They've got to give the same level of
8 material as they do in the most serious of
9 cases. So it is a much more extended
10 timeframe.

11 The biggest fear, Commissioner Schifino,
12 that I have about this provision is that it
13 will pit victims against prosecutors, victims
14 who demand the prosecutor pursue a speedy
15 trial, and the prosecutor's position as a
16 lawyer and obligated to deal with that case
17 says, "I'm not ready, I'm just not ready, I
18 want you to do it," and that's what this does.

19 It creates a right that is going to be
20 very, very awkward for everybody involved, and
21 I think it is unnecessary. The courts can
22 manage the speed with which cases come to
23 trial.

24 I will also point out it is so rare in the
25 State of Florida and anywhere else that a

1 defendant ever asks for a speedy trial. Even
2 those who are in custody, they are not
3 interested any more. The State is interested
4 in not going to trial until they're prepared.
5 I'll be the first to say there are a lot of
6 defendants who just -- who never go to trial if
7 they could avoid it.

8 But the courts have that obligation, and
9 they do it and I think they do a good job of it
10 in the State of Florida in managing that.

11 CHAIRMAN BERUFF: Questions on 547724?

12 Seeing none, we will go to debate on
13 547724. Commissioner Cerio is recognized.
14 Commissioner Stargel is recognized. Give
15 Commissioner Cerio time to get around to the
16 front of his desk because I'm going to try to
17 expedite this. Come on, line them up.

18 COMMISSIONER STARGEL: Thank you, Mr.
19 Chairman, and I apologize to those of you that
20 have to hear me talk this morning. I wasn't
21 planning on this -- these issues, but I do feel
22 like this is an area where I bring something to
23 the table because I've dealt with these.

24 I've been in a felony division for seven
25 years, I've done three years of drug courts.

1 And I understand some of the people who may be
2 calling Commissioner Coxe with concerns, but
3 when you look at the language here, first of
4 all, he said there's no standard, and
5 Commissioner Cerio just hit on it. It's a good
6 faith demand.

7 There is a standard there that we, as
8 Judges, will have to follow. And there will be
9 rules that will be implemented that will also
10 assist as part of this process.

11 Now, the people who really should be
12 concerned, and I will probably hear about at
13 the Judge's conference this summer, are the
14 Judges, because that's-- those are the
15 individuals that are going to have the extra
16 burden. We are the ones that are going to have
17 to write orders with the specifics of why we're
18 not setting these trials.

19 But if you look at the wording, it's not
20 15 days, it's 15 days to set a calendar call
21 and then 60 days after that to set the trial.
22 That is a long time. And the State's only
23 going to ask if they feel like everything's
24 been done, but if they come in and the defense
25 says there's a lot more to be done, the State

1 doesn't want to go to trial until they know who
2 all the witnesses are either. So there's --
3 there are safeguards put in here.

4 I think what we are doing today is
5 deciding should the people have a decision
6 whether they want this process in place. I
7 don't think there's going to be the chaos that
8 Commissioner Coxe is describing. I do think
9 there will be additional burdens on the system,
10 and we have to weigh those out, and the
11 citizens of the state of Florida will have to
12 weigh out whether they want their Judges to
13 have this additional burden, whether they want
14 their prosecutors to potentially have the
15 burden that Commissioner Coxe talked about,
16 which is some conflict between the victims and
17 the State Attorneys, but I have confidence in
18 the State Attorney's Office that if they don't
19 think it is ready, they're not going to ask for
20 it, and if they do, then they'll come before me
21 and other Judges and we will weigh it out and
22 see if we think that there's somebody dragging
23 their feet unnecessarily.

24 And that does happen from time to time
25 when -- a lot of times there's plea offers out

1 there and they want to drag it out because they
2 know as soon as they take the plea, there's
3 going to be financial consequences or other
4 things. So I can see this being used sparingly
5 by the State Attorneys, but in those situations
6 where the Judges feel like they need to do it,
7 they're going to have to clear some time on
8 their docket to make sure that there's a trial,
9 or they're going to have to write an order
10 saying why that's not the case.

11 Thank you.

12 CHAIRMAN BERUFF: Commissioner Cerio is
13 recognized.

14 COMMISSIONER CERIO: Thank you, Mr. Chair.
15 I will keep it -- attempt to keep it brief.

16 I think that Judge Stargel really hit on
17 the high points. Again, Commissioner Coxe said
18 that what you're going to have is a, you know,
19 a requirement that these State Attorneys have
20 to file these motions. That's absolutely not
21 true. The State Attorney has the discretion.
22 You may have a very emotional victim who feels
23 very strongly, and maybe they're -- maybe
24 they're -- maybe at times a victim could be
25 unreasonable, maybe they're the most reasonable

1 person and measured, but the bottom line, it is
2 up to the State Attorney and his or her good
3 judgment and whether or not they can make a
4 motion and should file a motion in good faith
5 to demand the speedy trial. They don't have to
6 file it under any circumstances.

7 And Commissioner Coxe said that it is
8 important that the Judges, they know how to
9 manage these cases and they should do that.
10 That is exactly what they are still doing under
11 the language of Marsy's Law. They still make
12 the decision of whether or not to go to trial,
13 and if they decide that it's not appropriate
14 within the particular timeframes, they just
15 have to state why in an order. That is it, no
16 more, no less.

17 The same -- I would argue the same thing
18 about the appeals and collateral attacks
19 language in the second section. Again, it is
20 not a hard and fast mandated timeframe. All
21 that happens if a -- if a Judge feels like the
22 timeframe is not appropriate, he or she just
23 has to enter a written order saying why, no
24 more, no less.

25 Thank you.

1 CHAIRMAN BERUFF: Further debate?

2 Commissioner Sprowls is recognized.

3 COMMISSIONER SPROWLS: Thank you, Mr.

4 Chairman.

5 Commissioners, there is very little risk
6 here. The State Attorneys already by statute
7 have the ability to demand speedy trial. It is
8 something that is rarely done, and when it is
9 done, it is, as many of the criminal defense
10 lawyers, Commissioner Rouson and Senator Joyner
11 would tell you, they are rarely granted. So
12 it's rarely done, it is rarely granted.

13 It is used as a tool, if anything, to
14 indicate to the court that there has been
15 significant delay in the trial, usually after
16 many, many continuances over an extended period
17 of time.

18 There is very little risk of any kind of
19 chaos at all. You contrast out with the speedy
20 rights of the defendant, which, of course, no
21 one wants to touch for the good reason, number
22 one is the U.S. Constitution, but for the good
23 reason that Commissioner Coxe talked about.

24 But you want to talk about chaos, I'm sure
25 that those of you who have been prosecutors,

1 Commissioner Newsome and Bondi and others, you
2 know, those are situations where they talk
3 about speedy trial wars, right, Commissioner
4 Jordan, who were defense lawyers, public
5 defenders, saying we're going to demand a
6 speedy trial in every single case for the next
7 week and a half and try to push as many cases
8 to trial. And you know what? There's not
9 chaos.

10 The system works, the rights of the
11 defendants are respected, the rights of the
12 victims are respected. There is very little
13 risk in this particular section of it. It
14 already exists in the statute. We are merely
15 elevating the victim's right to the
16 Constitution to ensure them that the State
17 Attorney will use every tool at their disposal
18 to indicate to the court that we want as quick
19 justice as possible.

20 Thank you.

21 CHAIRMAN BERUFF: Further debate? Any
22 further debate on 547724?

23 Senator Carl- -- I'm sorry, yes. No
24 further debates?

25 Commissioner Coxe, would you like to close

1 on 57 -- 547724?

2 COMMISSIONER COXE: Thank you, Mr. Chair.

3 I will close on both. I think enough has
4 been said about the first one, and on the
5 second, I don't have it, I am looking for it,
6 and I know one was sent to Mr. -- or
7 Commissioner Cerio and to the Chair, the letter
8 from the Catholic Bishops of the State of
9 Florida urging that proposal -- or Amendment
10 547724 be adopted, and that has to do with
11 their concerns about the five-year capital
12 appeal issue.

13 I will just close by saying this: If --
14 we are dealing with the Florida Constitution,
15 and if the courts of this state, as
16 Commissioner Cerio says, and it was also said
17 by Commissioner Stargel, have management and
18 quality management of the course of this state,
19 why are we putting this in the Constitution?
20 This is a good example. What are we doing
21 here?

22 Thank you.

23 CHAIRMAN BERUFF: We will now vote on
24 547724. All those in support of the amendment
25 signify by saying yea.

1 (Chorus of yea's.)

2 CHAIRMAN BERUFF: All those against,
3 signify by saying nay.

4 (Chorus of nay's.)

5 CHAIRMAN BERUFF: I got to have 22 of you
6 folks, huh? It is close. I say we go to the
7 board to make sure.

8 Please announce the -- close the board.

9 THE SECRETARY: Eleven yea's, 25 nay's,
10 Mr. Chair.

11 CHAIRMAN BERUFF: Obviously my hearing is
12 not that good. Okay. Let's -- the amendment
13 fails.

14 Would you like to introduce --
15 Commissioner Coxe, introduce 592032, please.

16 COMMISSIONER COXE: Thank you, Mr. Chair.

17 I think substantively this is the most
18 important of the proposed amendments. If one
19 looks at the existing language of the --

20 CHAIRMAN BERUFF: Excuse me, Commissioner
21 Coxe.

22 COMMISSIONER COXE: Yes.

23 CHAIRMAN BERUFF: I thought that 547724
24 was a substitute amendment. So we're back on
25 the main amendment, 131026. How would you like

1 to handle that, Commissioner Coxe? Unless you
2 would --

3 COMMISSIONER COXE: I have no problems --
4 I have no problems in the interest of time --

5 CHAIRMAN BERUFF: Withdraw it?

6 COMMISSIONER COXE: A voice vote is fine.

7 CHAIRMAN BERUFF: Okay, which is -- let's
8 have a voice vote. All those in favor of
9 131026, signify by saying yea.

10 (Chorus of yea's.)

11 CHAIRMAN BERUFF: All those against,
12 signify by saying nay.

13 (Chorus of nay's.)

14 CHAIRMAN BERUFF: I don't have to worry
15 about the board on that one.

16 Okay. Then we will proceed to five. By
17 the way, 131026 fails.

18 592032, introduce, Commissioner Coxe,
19 please. Thank you.

20 COMMISSIONER COXE: Thank you.

21 If you look at Florida Constitution as it
22 currently exists, when this was drafted, it was
23 astutely drafted in Section 16(b), and I will
24 quote it, it is not long, it says, "Victims of
25 crimes or their lawful representatives,

1 including the next of kin of homicide victims,
2 are entitled to the right to be informed, to be
3 present, and to be heard when relevant at all
4 crucial stages of criminal proceedings to the
5 extent that these rights do not interfere with
6 the constitutional rights of the accused."

7 That is what's in there now. It is the
8 reason I never understood why we're doing this
9 Marsy's Law in the first place. But all that
10 aside, the current proposal, Marsy's Law,
11 eliminates the language to the extent that
12 these rights do not interfere with the
13 constitutional rights of the accused. And I
14 would respectfully suggest, and I won't belabor
15 it, that this nation, founded on the United
16 States Constitution, the Declaration of Rights,
17 et cetera, means that the rights of the accused
18 have always got to be paramount to anybody
19 else's rights.

20 That's what's separated this nation from
21 the rest of the world, and that language --
22 this proposal, or amendment puts that language
23 back in. Thank you.

24 CHAIRMAN BERUFF: Thank you.

25 Questions on 592032?

1 Commissioner Newsome is recognized.

2 COMMISSIONER NEWSOME: This is again for
3 Commissioner Cerio. I -- what is the logic
4 behind eliminating that language?

5 CHAIRMAN BERUFF: Commissioner Cerio is
6 recognized.

7 COMMISSIONER CERIO: Thank you, Mr. Chair.

8 I think, Commissioner Newsome, the bottom
9 line is that the whole thrust of Marsy's Law
10 was to provide balance to constitutionalize
11 these rights for victims, as well as the
12 defendants. It doesn't take -- there are no
13 rights taken away. Courts balance rights all
14 the time. So the thought process was, and,
15 again, we'll get into it in debate, defendants
16 have their rights.

17 They can't be denied these rights. Courts
18 balance rights all the time, and defendants may
19 have a right to free speech in a proceeding,
20 during a trial, but they're still, you know,
21 governed and limited in what can be said and at
22 what point in a trial and when.

23 So the bottom line is they have their
24 rights, victims have their rights, one doesn't
25 take away from the other, and courts just have

1 to balance it anyway. There was not some
2 intent to deprive defendants of their rights.

3 CHAIRMAN BERUFF: Commissioner Newsome has
4 a follow-up question.

5 COMMISSIONER NEWSOME: Commissioner, what
6 are the specific issues this is trying to
7 address? If you could get a little more
8 granular. I mean, clearly this is trying to
9 address something. So if you know, what is
10 that? Is there a particular right that we're
11 concerned with here, in other words?

12 CHAIRMAN BERUFF: Commissioner Cerio is
13 recognized.

14 COMMISSIONER CERIO: We're -- a particular
15 right, and we're trying to constitutionalize
16 rights for victims. We are not trying to --
17 and put them on equal footing with the rights
18 of defendants just as far as the opportunity to
19 be heard. We are not trying to deprive, nor do
20 I believe we do deprive the defendants of any
21 rights whatsoever.

22 CHAIRMAN BERUFF: Further questions on
23 592032?

24 Commissioner Gaetz, you are recognized.

25 COMMISSIONER GAETZ: Thank you very much,

1 Mr. Chairman.

2 Commissioner Coxe, I appreciate your
3 explanation as to the general impact of -- of
4 your amendment, but could you explain
5 specifically what your amendment does?

6 As I read your amendment, it seems to me
7 that you strike -- and unless I
8 misunderstand -- that you strike from the
9 underlying proposal notification for the next
10 of kin, for example, unless I am missing or I
11 am misunderstanding. So could you explain the
12 specific difference between the underlying
13 proposition and the Amendment 592032?

14 CHAIRMAN BERUFF: Commissioner Coxe.

15 COMMISSIONER COXE: Thank you.

16 So I understand your question,
17 Commissioner Gaetz, it is -- because I am
18 looking at -- and I'm using right now the
19 summary provided to all the Commissioners -- at
20 122812 -- excuse me, 592032. Is that what you
21 are looking at, Commissioner Gaetz?

22 CHAIRMAN BERUFF: Commissioner Gaetz.

23 COMMISSIONER GAETZ: Yes, sir, Mr.

24 Chairman. Yes, Commissioner Coxe.

25 COMMISSIONER COXE: Thank you.

1 And as to --

2 CHAIRMAN BERUFF: Commissioner Coxe.

3 Mr. Gaetz.

4 COMMISSIONER GAETZ: But I'm also looking
5 at the amendment in the loose-leaf binder that
6 was provided by professional staff. I'm
7 looking at 592032 as that amendment appears on
8 the yellow sheet. Maybe I am confused.

9 COMMISSIONER COXE: I think Commissioner
10 Gaetz the amendment deleting 172, which says
11 "political subdivisions," and inserting this
12 whole paragraph. So he is not deleting like
13 173 on. Is that --

14 CHAIRMAN BERUFF: Commissioner Gaetz.

15 COMMISSIONER GAETZ: Thank you. That
16 helps me, Mr. Chairman, but I would like to, if
17 I -- with the indulgence of the Chair, ask
18 Commissioner Coxe if he could specifically
19 indicate the difference between the underlying
20 proposition and Amendment 592032 were it to
21 pass. And --

22 CHAIRMAN BERUFF: Commissioner Coxe.

23 COMMISSIONER COXE: May I respond with a
24 question to Commissioner Gaetz, Mr. Chair, as
25 to what Commissioner Gaetz means by, quote, the

1 underlying proposition? I'm not certain what
2 you mean. Are you talking about the existing
3 language in the Florida Constitution?

4 COMMISSIONER GAETZ: The Bill before us.

5 COMMISSIONER COXE: Oh. I understand it.
6 What I am trying to accomplish is nothing more
7 than the reinsertion of the language that
8 currently exists in the Florida Constitution.
9 That's all I am trying to accomplish, which it
10 does. And so as Commissioner Cerio pointed
11 out, it gets rid of those first two words on --
12 I will come back to it.

13 CHAIRMAN BERUFF: Further questions on
14 592032?

15 Seeing no further questions, we will open
16 for debate on 592032. Debate. Commissioner
17 Cerio is recognized.

18 COMMISSIONER CERIO: Thank you, Mr. Chair.

19 I do oppose this amendment. I think the
20 whole -- the whole thrust of Marsy's Law,
21 Commissioners, is to try and give the
22 opportunity, constitutional -- at the
23 constitutional level in our state's most
24 important legal document, the ability for
25 defendants to have rights and to have a voice.

1 Their rights are -- that's why they are so
2 specifically enumerated. There are none of
3 these enumerated rights that take away from the
4 rights of a defendant.

5 I think that it is not unfair to say that
6 if you are a defense lawyer -- and this is not
7 a criticism. As lawyers, we have clients and
8 we have an ethical obligation to serve our
9 clients as best we can. But if you are a
10 defense lawyer, in many cases, you may not want
11 a Judge to hear from the victim because that
12 could hurt your client, okay.

13 That is why -- and that is why by
14 providing defendants or victims with specific
15 enumerated rights, we've tried to be specific.
16 If you look at the specific rights, there's
17 nothing that harms the defendant, nothing that
18 takes away. It may be uncomfortable for a
19 defendant to hear from -- for a Judge to hear
20 from the victim, but nothing that takes away
21 their rights.

22 I would argue that when you add the
23 language that says these rights do not
24 interfere with the constitutional rights of the
25 accused and it makes it sound as if they trump

1 the rights of the -- the accused rights can be
2 trumped by the rights of the defendant, first
3 of all, as Commissioner Coxe said, the right of
4 a defendant is sacrosanct, and Judges are going
5 to -- to -- to maintain their rights, to be
6 very careful, and they have to balance rights
7 anyway already in these criminal proceedings.

8 But I think this opens the door to
9 basically gutting Marsy's Law. I think this
10 opens the door to any -- any individual to try
11 and convince a Judge that on a broad scale --
12 forget what the -- how it is specifically
13 enumerated in the Constitution, under this
14 language, Judge, you should rule that, you
15 know, you should find that there is no
16 opportunity or that it is inappropriate for a
17 victim to be heard on this issue and by calling
18 into question the rights of the defendant. I
19 don't think that is appropriate.

20 I think this opens Marsy's Law up to basi-
21 -- significant weakening, and I think this only
22 harms victims, it doesn't help them, and it
23 provides no meaningful help to a defendant
24 because there is no harm to the defendant by
25 what is being proposed in Marsy's Law. Again,

1 it may be uncomfortable, but it is not
2 defined -- depriving a defendant of
3 constitutional rights.

4 CHAIRMAN BERUFF: Commissioner Martinez is
5 recognized.

6 COMMISSIONER MARTINEZ: Commissioners,
7 Chair, good morning.

8 I voted in favor of Marcy's law. As I've
9 noted before, it does have some difficulties,
10 but generally, I am in favor of it.

11 What this amendment does, frankly, I think
12 it makes explicit what is already implicit in
13 the Constitution, and I think it is actually
14 something that's in favor of Marcy's law,
15 because to the extent somebody could argue in a
16 court that Marcy's Law undermines the rights of
17 the defendant, what this does is it says no,
18 not at all.

19 Victims should have rights, but those
20 rights cannot undermine the rights of the
21 accused, because they have constitutional
22 rights.

23 So Mr. Cerio, Commissioner Cerio, I
24 respectfully disagree. I understand where
25 you're coming from, but, frankly, I think this

1 is actually something that helps Marsy's Law by
2 making clear that the victim's rights and the
3 rights of the accused are perfectly compatible
4 and both should be looked after.

5 Thank you.

6 CHAIRMAN BERUFF: Further debate?

7 Seeing no further debate, Mr. Coxe, would
8 you like to close on 592032?

9 COMMISSIONER COXE: Thank you, Mr. Chair,
10 fellow Commissioners.

11 Not to take up everyone's time with an
12 unnecessary history lesson, if you go back to
13 the Magna Carta and through the framing of our
14 Constitution, crimes were committed against the
15 state. Before our country, they were committed
16 against the sovereign. They were never
17 committed against individual people.

18 That is the difference between this nation
19 and other nations of the world, and that way
20 you avoided mob rule. That is what avoided mob
21 rule. Your crime is against the sovereign.

22 And in this particular case, the concern I
23 think that anybody would have if they were
24 looking at this on the ballot would be to take
25 this language out would be to elevate victims

1 to the status of the accused.

2 Now, the status of the accused is
3 enshrined in our Constitution. That's already
4 done. Our founding fathers determined that
5 they would enjoy certain protections against
6 the government.

7 I agree with Commissioner Martinez. All
8 we are doing is reinserting the language that
9 was there. So there's no misunderstanding,
10 victims can have right after right after right,
11 but in the final analysis, none of it should
12 interfere with the preservation of the rights
13 of the accused that we guarantee in the United
14 States Constitution, and that's all this
15 language does by reinserting it.

16 And why it wouldn't stay in there defies
17 logic, in my opinion. It just makes no sense,
18 because we all agree. And I will say that if I
19 couldn't persuade a court that my client's
20 rights are paramount because of the United
21 States Constitution, in addition to what we
22 have in the Article I of the Florida
23 Constitution, then I shouldn't be practicing
24 law in that area, I just shouldn't, because
25 that is how this country was built and that's

1 what we have depended upon all of these
2 centuries. So why can't we say so?

3 CHAIRMAN BERUFF: We will now vote on
4 592032. All those in favor, signify by saying
5 yea.

6 (Chorus of yea's.)

7 CHAIRMAN BERUFF: All those against,
8 signify by saying nay.

9 (Chorus of nay's.)

10 CHAIRMAN BERUFF: The nay's have it. The
11 motion fails. The amendment fails.

12 Commissioner Coxe -- Commissioner Coxe,
13 would you like to introduce 122812, please?

14 COMMISSIONER COXE: Thank you, Mr. Chair.

15 This is very simple, and it does nothing
16 more than substitute for a victim that in the
17 Constitution, it would be a natural person, and
18 what that does is eliminate what I believe --
19 despite what Commissioner Stargel may think,
20 I've seen it -- I don't think the State
21 Attorney's Office and the criminal justice
22 system needs corporations becoming victims
23 under this particular constitution. They get
24 heard. Corporations don't have an issue being
25 heard. People are what we're talking about and

1 dealing with here. And let me add --

2 CHAIRMAN BERUFF: Ques- --

3 COMMISSIONER COXE: I'm sorry, could I add
4 one point? Just one? There isn't any large
5 State Attorney's Office in Florida that doesn't
6 know about corporations and the hundreds of
7 thousands of worthless checks that are sent to
8 the State Attorney for prosecution and then
9 turn around and say, look at the notification
10 we're going to have to deal with here.

11 And this intent of this amendment to the
12 Constitution cannot be to burden the criminal
13 justice system unnecessarily.

14 Thank you, Mr. Chair.

15 CHAIRMAN BERUFF: Questions on 122812?

16 Questions? No questions on 122812?

17 Debate on 122812?

18 Commissioner Cerio is recognized.

19 COMMISSIONER CERIO: Thank you, Mr. Chair.

20 Commissioners, please keep something in
21 mind when you think about who a victim is
22 and -- and the idea of, oh, you know, some big
23 corporation, why do they need to be clogging up
24 the system. I'm going to tell a story. This
25 isn't why it was in there, and I haven't

1 spoken -- I'm going to tell a story about my
2 mother-in-law.

3 So I haven't cleared it in advance, I may
4 get in a little bit of trouble, but it's
5 perfectly appropriate and it may make the
6 holidays awkward, but I am going to tell it
7 anyways.

8 My mother-in-law and father-in-law owned a
9 pharmacy, they owned a small business, a small,
10 independent pharmacy in Sarasota for years and
11 years. And I believe in probably a ten-year
12 span, I think they were robbed six times, no
13 harm to them personally, but a breaking and
14 entering after hours. That is a victim.

15 That -- if they decide to incorporate as
16 a -- as a corporation or an LLC, and
17 Commissioner Coxe's amendment passes, they
18 would have no rights under Marsy's Law to be
19 informed, to weigh in on the process, because
20 there was no harm against them individually.

21 So please don't forget about the small
22 businesses. There are over two million small
23 businesses in Florida. It's not just about big
24 corporations. And so if a mom-and-pop shop is
25 robbed or if there's a case of arson and they

1 didn't incorporate as a sole proprietorship,
2 again, if this amendment passes, they would
3 have no rights.

4 So it is not inappropriate to apply
5 Marcy's Law to corporate entities, you know.
6 Corporations are -- and LLCs and fictitious
7 legal entities are deemed persons under our law
8 civilly and criminally for a reason.

9 CHAIRMAN BERUFF: Further debate on
10 122812?

11 Commissioner Newsome is recognized.

12 COMMISSIONER NEWSOME: So I want to first
13 say that, you know, I decided to vote for
14 Marsy's Law, thinking about what really was the
15 foundation for this movement: Children and --
16 and families and women and those -- those
17 incredibly horrible tragedies. You think of
18 your own families, like how could you not want
19 to have this, to have those rights.

20 But here is where I -- for me personally,
21 I draw the line. For me, I look at least
22 three -- just sitting here thinking about this,
23 I never dreamed that this would not apply to
24 real people, to those families, to those
25 children, or to victims of violent crimes, and

1 here are just three little quick examples.

2 I take the bounced check, a college kid.
3 This was me. When I was in law school, I was
4 paycheck to paycheck. I bounced a check to
5 Sears for my uncle's battery for 50 bucks.
6 I -- as soon as I got it back, I went and paid
7 them. I'm back in college at the University of
8 Florida Law School. I get a call from my
9 grandmother saying, "Hey, the police are
10 looking for you." What? I had to drive back
11 to Orlando where I had the clerkship. I had to
12 meet with the State Attorney.

13 They, of course, you know nolle prossed
14 it, but that's the context in which a
15 corporation would have to be notified, could
16 have decided they wanted to make an example of
17 me. Well, Marsy's Law, if this amendment
18 doesn't pass, could be stood on its head.
19 That's number one.

20 Number two, when I was a federal
21 prosecutor, we had a lot of discretion,
22 fortunately, but I had at least -- I am sure
23 Pam's got many more, the General has many more
24 than I do, but where a corporation would
25 sometimes want to use a criminal prosecution as

1 an economic tool against a competitor.

2 I can remember one specific example of a
3 company that had a patent on a seed and they
4 wanted to prosecute some farmer for using some
5 seeds that they argue was their property. And
6 so that's another context in which just sitting
7 here in two or three minutes thinking about the
8 horrors that could be created, perhaps
9 unintentionally, that Marsy's Law could give a
10 corporation to use this law as an economic
11 tool.

12 And the third -- and let's get back to the
13 real horror of what the existing constitutional
14 framework creates to protect against state
15 tyranny, right? That's why the United States
16 Constitution exists. That's why all these --
17 all these defendants' rights are here to
18 protect going back, you know, 250 years ago
19 when you had a king that could use the arm of
20 the state in unimaginable ways to throw people
21 in prison.

22 So let's just say this amendment doesn't
23 pass, and now all of a sudden, you've got a
24 corporation that is a political action
25 committee or a political party, and someone

1 wants to use this. None of it was intended to
2 protect the rights of families who've lost
3 loved ones and real people who have experienced
4 violent crimes, but now we want to use this as
5 a political weapon.

6 And I just think that there's a lot of
7 potential unintended consequences when we take
8 what was clearly a good intended thing to
9 protect real humans and real people, and we now
10 apply it to entities.

11 And so for all of these reasons, this, to
12 me, is very frightening because of the
13 potential for not just potential unintended
14 consequences, but I think for these at least
15 three examples that I can quickly think of and
16 potentially others when we start to give
17 entities and corporations and political action
18 committees the same rights as human beings. So
19 I am in favor of this. I hope everybody votes
20 for it, too.

21 CHAIRMAN BERUFF: Further debate on
22 122812?

23 Seeing none, Commissioner Coxe, would you
24 like to close on 122812, please.

25 COMMISSIONER COXE: I will waive the

1 close.

2 CHAIRMAN BERUFF: Waive the close.

3 All those in favor, signify by saying yea.

4 (Chorus of yea's.)

5 CHAIRMAN BERUFF: All those against,
6 signify by saying nay.

7 (Chorus of nay's.)

8 CHAIRMAN BERUFF: The nay's have it.

9 Motion fails. Amendment 122812 fails.

10 We will now take up -- we have debate.

11 Commissioner Martinez is recognized.

12 COMMISSIONER MARTINEZ: Chair, good
13 morning. Good morning, again, fellow members.

14 At this time, I am going to make a motion
15 to have Revision 1 committed back to Style and
16 Drafting so that it be unbundled. I've been
17 told by our excellent staff that in order for
18 me to actually accomplish that request, I have
19 to make a motion on the floor as to each one of
20 the groups.

21 So I am making a motion. My ask is that
22 the Commission, that the floor, commit back to
23 Style and Drafting Group 1 so that Group 1 be
24 unbundled.

25 May I have a few minutes to explain,

1 Mr. Chair?

2 CHAIRMAN BERUFF: Proceed, Commissioner
3 Martinez.

4 COMMISSIONER MARTINEZ: Let me make clear
5 orally what I've stated many times and I've
6 stated it in writing, that I have no criticism
7 of the work done by Style and Drafting, and
8 particularly its Chair, Brecht Heuchan. I
9 think Brecht has -- Commissioner Heuchan has
10 gone out of his way to be fair, to be fully in
11 compliance with the law, to hear everybody's
12 input. I attribute no mischief to him or to
13 the committee. I think they were trying to do
14 their job as best as possible.

15 My criticism is not about the work of the
16 committee *per se*. My criticism is that you
17 shouldn't -- we should not group separate
18 proposals.

19 Now, we have the advice of an excellent
20 staff, and the Chair also went out and hired a
21 hall of fame group of legal experts, and each
22 one of those experts passed on the legality of
23 the wording of each title and on the legality
24 of the wording of each ballot summary. And
25 there is legal guidance.

1 What we are required to do with regards to
2 both is to make sure that they fairly inform
3 the voters of the chief purpose of the
4 amendment and they not misled. And the ballot
5 summaries and the titles do accomplish that.
6 We may disagree here and there, but they do
7 accomplish to be legally sufficient. The legal
8 experts were not asked to pass on the legality
9 of the grouping, because there is no legal
10 standard for the grouping. So what the Style
11 and Drafting Committee did is they grouped
12 different proposals together.

13 Now, according to Rule 5.4(2) of this
14 Commission, of the CRC, the Style and Drafting
15 was supposed to group related proposals,
16 related proposals. You may recall a couple of
17 weeks ago we had a debate on germanity. And I
18 don't need to rehash that debate, but the
19 question can be fairly asked is, are these
20 different proposals, are they related.

21 They may be in the same general category
22 of government, but are they really related one
23 to the other? And I submit to you that they
24 are not.

25 Let's take Revision No. 1. Revision No. 1

1 has three proposals, and I supported all of
2 them. One I sponsored, one I co-sponsored, and
3 the other one, Marsy's Law, I voted for. Do
4 they all deal with the courts? They do. But
5 are they really related? They're not. One
6 deals with the retirement age, one deals with
7 judicial deference, and one deals with the
8 victims of crimes. They are not related. They
9 are separate proposals. By grouping these
10 separate proposals together, effectively what
11 we've done is we're log rolling.

12 Now, "log rolling" is a term that the
13 Supreme Court has -- has described as recently
14 as last year when they passed on the validity
15 of the amendment that will go on the ballot
16 dealing with the restoration of voting rights.
17 And this is what they said with regards to log
18 rolling, and this was in the context of a
19 citizens' initiative.

20 They said that log rolling refers to "a
21 practice whereby an amendment is proposed which
22 contains unrelated provisions, some of which
23 electorates might wish to support in order to
24 get an otherwise favorite provision passed."
25 And in the case of a citizens' initiative, what

1 the Supreme Court says, you can't log roll.
2 That's why there is a single subject rule.

3 Now, we're not subject to that, but the
4 citizens' initiative is, and let me read to you
5 why the Supreme Court says that it is subject
6 to the single subject requirement: "The single
7 subject requirement applies to the citizens'
8 initiative method of amending the Constitution
9 because the citizens' initiative process does
10 not afford the same opportunity for public
11 hearing and debate that accompanies other
12 constitutional proposals and drafting
13 processes."

14 We have had at the CRC a process with
15 regards to each individual proposed amendment.
16 It's gone through committees, it's gone through
17 debate, it's gone through public hearing.

18 Groupings not once went through any public
19 hearings, not a single time. We had public
20 hearings on individual proposals before the
21 committee meetings. We had public hearings on
22 the proposals after the committee meetings. At
23 no time have we had any public hearing on any
24 of the groupings. The public has not had an
25 opportunity to tell us whether or not they

1 understand the grouping. There has been no
2 process with regards to having a public hearing
3 on whether or not the grouping, in fact,
4 complies with the purpose of the -- what we
5 asked our legal experts to do, which is does
6 the grouping fairly inform the voters as to
7 what it is that they're voting for or does it
8 mislead.

9 And I submit to you that by grouping, what
10 we have done, by bundling different proposals
11 together, what we have done is we have
12 undermined the work that we have undertaken to
13 make sure that each one of the ballot summaries
14 is clear and fairly informs the voters. It's
15 undermined that work.

16 So what I have asked you to do, and I
17 submitted a letter on Friday. I think -- I
18 hope most of you have read it. We've handed it
19 out this morning as well. And what I did in
20 this letter is I attached two exhibits, and in
21 one exhibit, you have the proposals as they
22 have been sent back to us from Style and
23 Drafting grouped and some stand-alone, and then
24 you have another exhibit that has those groups
25 disaggregated, unbundled, except for one, the

1 one group that deals with repealed or obsolete
2 provisions. Of course, since we're talking
3 about the same ballot summary, it has the same
4 total number of words. They're the same in
5 terms of length of the words of the ballot
6 summaries.

7 Their only difference is in the fact that
8 because I have disaggregated the groups in
9 Exhibit B, I had to include other titles. So
10 the difference in word count between Exhibit A
11 and Exhibit B, the grouped and the ungrouped,
12 is a total of 23 words. And if you look at
13 what I've handed out to you, there isn't really
14 that much of a significant length in the ballot
15 real estate, to use that term, but what there
16 is -- what has been gained by unbundling is a
17 ten-fold -- a ten-fold increase in the clarity
18 of each proposal, of each question that the
19 voters are going to be asked to decide upon.

20 And I think, frankly, at the end of the
21 day, that is our paramount objective. We have
22 a responsibility to the voters as a public
23 servant in this capacity to safeguard the
24 public trust and to make sure that we give to
25 the voters a very clear choice, a very clear

1 question, so when they get to the booth, the
2 voting booth, they can determine what it is
3 exactly that they're voting for and they can
4 make an informed decision.

5 And, frankly, as we have done it -- and I
6 don't -- I don't -- I don't say anybody is
7 acting with bad intentions, that's not my
8 purpose. All I am saying is that in our effort
9 to try to make the ballot shorter, what we're
10 doing is that we're undermining the work that
11 we have spent months doing in making sure that
12 each proposal is clear and the voters have an
13 opportunity to clearly vote for what it is to
14 be informed, to be clear as to what it is they
15 are voting for.

16 So what I ask of you today is that we
17 commit back Revision 1 to the Style and
18 Drafting Committee with an instruction that
19 they be unbundled and be sent back to us, and
20 that is something that can be done over the
21 lunch break.

22 With that instruction, it can be done very
23 quickly. And I'm going to make the same
24 request as to each of the other groups, except
25 for Revision 6, which is the group that has the

1 repeal and the obsolete proposals.

2 Thank you, Mr. Chair.

3 CHAIRMAN BERUFF: Further debate on the
4 motion? I will entertain questions.

5 Commissioner Gaetz.

6 COMMISSIONER GAETZ: Thank you very much,
7 Mr. Chairman.

8 If Commissioner Martinez would -- would
9 give us some idea as to his purposes and the
10 limit of those purposes. The motion before us,
11 as I understand it, is to unbundle Group 1, but
12 by -- is it -- is it your intent to unbundle
13 every single group, or would you believe that
14 there are some groups that either are made or
15 could be made that have sufficient, not only
16 commonality, but -- but sufficient direct
17 relationship to each other that there could be
18 some groupings?

19 In other words, are you -- are you
20 allergic to all groupings of all kinds, or do
21 you -- are you -- are there particular
22 groupings that trouble you more than others?
23 Because depending upon your answer to that
24 question may -- that certainly may affect my
25 vote on your motion.

1 I am sympathetic to your purposes, but I
2 believe -- and I may be the only one -- that
3 there are some groupings of some kind in this
4 process that are natural and do fit and that
5 do -- and that ought to go on the ballot
6 together. So I'd like to just ask as to your
7 intent and whether your intent could
8 accommodate any kind of flexibility.

9 CHAIRMAN BERUFF: Commissioner Martinez.

10 COMMISSIONER MARTINEZ: Thank you, and
11 thank you for the question, Commissioner Gaetz.

12 To be consistent as a matter of principle,
13 I am asking that all the groups be unbundled.
14 And I start off with the one group in which I
15 support the most, and the one that has one of
16 the proposals that I sponsor and one that I
17 co-sponsor.

18 However, if you want to know which one I
19 think are the most egregious, I would say those
20 are Group 3 and Group 5, Revision 3 and
21 Revision 5.

22 And I know that this Commission has
23 already passed judgment as to whether or not
24 they wanted to go to the voters, the items in
25 those two groups, but I do think that Group 3,

1 for example, Revision 3, which has three
2 proposals, one that deals with School Board
3 term limits, and then two other ones which
4 are -- have -- they share the same title,
5 public schools, but they deal with totally
6 different -- totally different topics.

7 One deals with promoting civic literacy,
8 that's your proposal, which I supported, and
9 the other one deals with a major restructuring
10 as to how charter schools are supervised.

11 Those are two different proposals. Promoting
12 civic literacy and supporting a reorganization
13 of the public school system with regards to how
14 charter schools are supervised, which is going
15 to be a major restructuring of our government,
16 those are two different proposals.

17 They're not related, nor are those two
18 related to term limit. Each one may stand or
19 fall on their own merits, and they should, but
20 they certainly aren't related, and I do think
21 that that one is an egregious example as an
22 example of proposals that are unrelated.

23 The other one is Revision 5. Revision 5
24 has four proposals. It has a proposal that
25 requires the Legislature to retrain the

1 Department of Veterans' Affairs. It has a
2 proposal that requires that local government
3 essentially give up their rights, those
4 governments that are charter counties give up
5 their rights to determine for themselves
6 whether or not they want to elect or not
7 constitutional officers. That is a major
8 restructuring of government, a major
9 restructuring of government at the local level.

10 There's another proposal that has -- in
11 that same group, Revision 5, that states -- it
12 requires that the changes in the legislative
13 session commence in a date in even-numbered
14 years from March to January, and removes the
15 Legislature's authorization to fix another
16 date.

17 CHAIRMAN BERUFF: Commissioner Martinez, I
18 think we're getting off of Revision 1, which is
19 what this is about, and going into other
20 matters that will come -- you will have an
21 opportunity to go into those later, if it's
22 okay with you. I would like to go and continue
23 debate on the subject, if you don't mind.
24 Well, no, I entertained questions, it's
25 actually debate and I said I would take

1 questions.

2 Commissioner Heuchan, please proceed with
3 a question or debate.

4 COMMISSIONER HEUCHAN: Thank you,
5 Mr. Chairman. I have questions. Before we get
6 into questions and then debate, I want to do
7 both of those, but I will ask the questions
8 first.

9 Commissioner Martinez, on the propo- -- or
10 Revision No. 6, could you walk me through your
11 logic on having this kind of pure concept I
12 think was the words that you -- or to be more
13 consistent perhaps were the words that you
14 chose, but you've -- you set aside one of them
15 to be grouped.

16 Could you walk me through the consistency
17 between what you intend to do with this
18 revision and with the following revisions up to
19 No. 6?

20 CHAIRMAN BERUFF: Go ahead, Commissioner
21 Martinez. Thank you.

22 COMMISSIONER MARTINEZ: I'm -- I'm not
23 sure. Would you like for me to go as to each
24 revision?

25 COMMISSIONER HEUCHAN: Okay. I'll tell

1 you what, when we get to 6 --

2 CHAIRMAN BERUFF: We have a question.

3 COMMISSIONER HEUCHAN: Yes, sir. When we
4 get to 6, I will get to 6. You can ask a
5 question about No. 6.

6 CHAIRMAN BERUFF: Yes, let's stay on 1.

7 COMMISSIONER HEUCHAN: Okay.

8 CHAIRMAN BERUFF: So do we have a question
9 or debate on Revision 1? The answer is?

10 COMMISSIONER HEUCHAN: I have -- yes, sir.
11 Yes, sir, Mr. Chairman. I have just general
12 questions about Revision 1 or Revision 2 or
13 however many motions these are going to happen.

14 Commissioner Martinez, in 1998, did they
15 group proposals --

16 CHAIRMAN BERUFF: Commissioner Martinez.

17 COMMISSIONER HEUCHAN: -- the CRC?

18 COMMISSIONER MARTINEZ: In 1998 and in
19 1978, they grouped proposals, but just because
20 you group a proposal doesn't mean you just
21 follow what has been done before. That
22 shouldn't be what determines how we do our job
23 today. What determines how we do our job today
24 is --

25 CHAIRMAN BERUFF: I think -- I'm going to

1 try to expedite this. I think it's a yes or no
2 question.

3 COMMISSIONER HEUCHAN: And in 1968, when
4 our Constitution was established?

5 COMMISSIONER MARTINEZ: I'm not familiar
6 with the way what was done in '68. I know in
7 1978, there was a CRC process and those were
8 grouped.

9 CHAIRMAN BERUFF: Thank you.

10 Further questions, Mr. Heuchan?

11 COMMISSIONER HEUCHAN: No. I want to go
12 when we get to debate.

13 CHAIRMAN BERUFF: I think -- Commissioner
14 Solari, did I see your -- oh, let's go with
15 more questions, or is there debate? Questions?
16 Commissioner Cerio, please.

17 COMMISSIONER CERIO: Thank you.

18 Commissioner Martinez, in -- you were a
19 member of Style and Drafting. In Style and
20 Drafting, did you vote in favor of the grouping
21 for Group 1?

22 CHAIRMAN BERUFF: Commissioner Martinez.

23 COMMISSIONER MARTINEZ: Before the vote
24 was held, I made it very clear, and you can
25 look at the tape, Commissioner Cerio, I said,

1 "Is the vote on sending these groups over, is
2 that a vote on the content of the proposal, and
3 are we saying that we agree with the grouping?"

4 And it was clear and we were told that it
5 wasn't passing judgment on either the grouping
6 or the content of the proposal. So before I
7 voted, I asked that question because I wanted
8 to make sure that if we got to this stage and
9 somebody were to ask that question of me, that
10 I could give the answer that I just gave.

11 CHAIRMAN BERUFF: Commissioner Cerio.

12 COMMISSIONER CERIO: Brief follow-up. So
13 I'm clear, I understand about the content. So
14 your affirmative vote wasn't an endorsement of
15 the content, but your affirmative vote on the
16 grouping was also not an endorsement of the
17 grouping?

18 COMMISSIONER MARTINEZ: That's exactly
19 right. In fact, I said that on the record
20 before the vote. Commissioner Cerio, I invite
21 you to look at the tape.

22 COMMISSIONER CERIO: I remember.

23 COMMISSIONER MARTINEZ: It's not that
24 long. I made it very clear. I asked the
25 Chair, I said, "If I vote to send this over to

1 get this thing going, I want to make sure, I
2 want to make it clear that I am not passing my
3 consent with regards to the grouping or the
4 content of an individual proposal."

5 CHAIRMAN BERUFF: Commissioner Cerio.

6 COMMISSIONER CERIO: If that's the case,
7 since we're -- our job was to group or not
8 group proposals, why didn't you just vote no on
9 the grouping if you didn't like the grouping?

10 COMMISSIONER MARTINEZ: Because it was
11 already clear by the way that the Chair
12 answered my question that all we were doing was
13 just sending it over.

14 I'm not here to be a clog in the wheel
15 just to slow down this process. I just want to
16 make sure that we have an opportunity to get to
17 this level so that all of us, and not just a
18 little group, the Style and Drafting Committee,
19 can determine for the rest of the group how
20 proposals should be voted upon.

21 I just wanted to get it back to the floor.
22 It was apparent to me in Style and Drafting
23 that I wasn't going to carry the day. Why
24 waste everybody's time? I wanted to put it
25 here before the whole floor so that the floor

1 could debate it.

2 CHAIRMAN BERUFF: Commissioner Carlton is
3 recognized.

4 COMMISSIONER CARLTON: For a question, Mr.
5 Chairman.

6 Commissioner Martinez, I was not on -- I
7 did not -- I was not on Style and Drafting, but
8 I was there for every meeting every day and
9 watched the process. And I am wondering if you
10 recall there was public testimony in Style and
11 Drafting with regard to the grouping.

12 In fact, there was public testimony on one
13 or two different proposals that was in
14 opposition to some of the grouping that was
15 done. And so you made a statement earlier that
16 there was -- there was not an opportunity for
17 the public to be heard on the grouping issue.

18 And so I sort of beg to differ with that a
19 little bit when the Style and Drafting did hear
20 public testimony directly relating to the
21 grouping issue, and I am wondering if you
22 recall that.

23 CHAIRMAN BERUFF: Commissioner Martinez.

24 COMMISSIONER MARTINEZ: There were maybe
25 four or so people who spoke to us, and they

1 were -- in my recollection, they were
2 lobbyists. So to -- nothing wrong with
3 lobbyists, some of my best friends are
4 lobbyists, and that's what they are supposed to
5 do, they're supposed to lobby us, petition the
6 government.

7 But this was the -- the public hearing
8 that we had a Style and Drafting where we had a
9 handful of lobbyists address us, it was hardly
10 akin to the public hearing that the Chair has
11 gone out of his way to make sure that we have
12 throughout the state where we've gone through
13 every corner of this state to allow the public
14 to give their views with regards to the
15 proposals before they went to the committee and
16 with regards to the proposal after they came
17 out of the committee. We haven't had that kind
18 of process.

19 CHAIRMAN BERUFF: Commissioner Carlton.

20 COMMISSIONER CARLTON: But regardless of
21 what you just said, it was a noticed public
22 hearing where anyone who had anything to say
23 about the grouping process could have and, in
24 fact, did show up to comment on whether they
25 were favorable or unfavorable with regard to --

1 with regard to the grouping. It was a publicly
2 noticed hearing, correct?

3 CHAIRMAN BERUFF: Commissioner Martinez.

4 COMMISSIONER MARTINEZ: It was a -- to my
5 understanding, I believe our staff would have
6 complied with the requirements. So I assume it
7 was publicly noticed and it was a hearing
8 scheduled here in Tallahassee.

9 I don't know about you all, but last night
10 my flight got canceled and I had to fly to
11 Jacksonville to then rent a car this morning to
12 get here. This is a wonderful city with great
13 people.

14 Getting to Tallahassee is not exactly the
15 easiest thing that one does in the state of
16 Florida. But, yes, there was a public hearing
17 that was presumably publicly noticed and about
18 four or five lobbyists that addressed us.

19 CHAIRMAN BERUFF: Commissioner Carlton.

20 COMMISSIONER CARLTON: Commissioner
21 Martinez, the meetings in Style and Drafting
22 went on for three days. So if someone failed
23 to show up on day one, they had -- would have
24 had two or three days to show up if they were
25 not able to get there on day one, is that

1 correct?

2 CHAIRMAN BERUFF: Commissioner Martinez.

3 COMMISSIONER MARTINEZ: I don't know how
4 people do their own schedules and calendars,
5 but, theoretically, yes, it was noticed,
6 presumably, and, yes, we had several days of
7 hearings here in Tallahassee. But I don't
8 think, you know, if we had done the same thing
9 throughout the process, the Chair had said
10 we're going to have all our public hearings in
11 Tallahassee, is that really giving an
12 opportunity to the residents of the state of
13 Florida to actually have a real public hearing?

14 CHAIRMAN BERUFF: Commissioner Carlton.

15 COMMISSIONER CARLTON: Commissioner
16 Martinez, if you have a public hearing and --
17 as you're saying, although there were people
18 there that objected to some of the groupings
19 and the Style and Drafting Committee heard --
20 heard those objections and you were sitting
21 there.

22 So if somebody in the public vehemently
23 objected to these public hearings and you're
24 sitting on Style and Drafting and you're not
25 hearing that, you could assume that there's no

1 opposition to the groupings because no one has
2 shown up and opposed it, is that correct?

3 CHAIRMAN BERUFF: Commissioner Martinez.

4 COMMISSIONER MARTINEZ: I would not draw
5 that conclusion. I think that is -- you are
6 assuming an assumption upon another assumption
7 and another assumption, and that's just not the
8 way it works in real life, Commissioner
9 Carlton.

10 If, in fact, it would have been
11 sufficient, like I said before, if it would
12 have been sufficient to have a public hearing
13 in Tallahassee and that would have sufficed,
14 publicly noticed, we would have had all our
15 public hearings in Tallahassee.

16 But to have a public hearing in
17 Tallahassee where four or five lobbyists talk
18 to us and to somehow say that that's the
19 equivalent of a public hearing as we had
20 throughout the past year where residents from
21 the state of Florida came to address us from
22 all walks of life, you're not -- it's not fair
23 to equate one with the other. It's just not
24 the same. In theory, on a piece of paper, but
25 in practice, they're totally different.

1 CHAIRMAN BERUFF: Commissioner Carlton.

2 COMMISSIONER CARLTON: So let me -- let me
3 move to another topic then. So your objection
4 is with the fact that basically any groupings
5 were done, you don't like any of the groupings
6 except for, coincidentally, the one that your
7 proposal is in, that one is okay.

8 So with regard to the groupings, the issue
9 of groupings, I'm wondering if you are
10 objecting to the fact that we are grouping,
11 then did you file a proposal to change the
12 Constitution or to change our rules that would
13 have prevented us from grouping?

14 In other words, that could have been done
15 by filing a proposal that would have changed
16 the Constitution, which would have subjected
17 the CRC to the single-subject initiative that
18 the citizens' initiatives have to be subject
19 to.

20 So did you file a proposal with regard to
21 that? I don't remember seeing it in the 100
22 proposals that were filed, but maybe I missed
23 something.

24 CHAIRMAN BERUFF: Commissioner Martinez.

25 COMMISSIONER MARTINEZ: I didn't think it

1 was necessary, Commissioner Carlton, because as
2 you may recall, there is a rule right on point,
3 Rule 5.4(2), which says that the Style and
4 Drafting may group related proposals.

5 So why should I do something that is
6 totally unnecessary? That was a rule that you
7 voted for. That was a rule that I voted for.
8 So I would have thought that this Commission
9 would follow its own rules, Style and Drafting
10 would follow its own rules, and would only put
11 together germane proposals, those proposals
12 that are related to each other. So why should
13 I do something that I thought was completely
14 unnecessary?

15 CHAIRMAN BERUFF: Thank you.

16 Is there -- I think we are going to -- is
17 it a question? Because I am ready to close
18 questions on this and go to debate. Is it a
19 question? Commissioner Timmann, please, is
20 recognized. Thank you.

21 COMMISSIONER TIMMANN: Thank you,
22 Mr. Chairman. It is just a quick question.

23 Commissioner Martinez, didn't you provide
24 actually the first list of groupings for Style
25 and Drafting Committee, including -- you had 14

1 total items, eight of those were groups and one
2 of them was called due process and that
3 included Proposals 96 and 6?

4 CHAIRMAN BERUFF: Commissioner Martinez.

5 COMMISSIONER TIMMANN: I was confused.

6 COMMISSIONER MARTINEZ: I'm glad you asked
7 that question because I want you to know what I
8 did, because I don't arrive at this topic
9 impulsively or by having prejudged it.

10 So what I did is at that first meeting
11 when Commissioner Heuchan was trying to
12 organize us, I -- and he wanted us to group, I
13 thought we'll give it a good faith effort and I
14 attempted to group. And the way I grouped them
15 was I grouped proposals together that were in
16 the same general category of government, and I
17 tried hard to see whether by working with those
18 groups, they actually made sense, whether they
19 were related to each other. And what I soon
20 realized is that they weren't, they're not
21 related.

22 For example, Commissioner Carlton says
23 that I only want to keep together the groups
24 that I support. Actually, Revision 1,
25 Commissioner Carlton -- Revision 1,

1 Commissioner Carlton, has a proposal that I was
2 the principal sponsor and it has a proposal
3 that I co-sponsored and it has another proposal
4 that I've strongly supported, and yet I am
5 saying as a matter of principle, with regards
6 to Revision 1, let's unbundle that.

7 I want to subject -- the test that I am
8 asking everybody to follow, I want to subject
9 my own group to that same test. If it's good
10 for everybody, it should be good for me.

11 So, yes, to answer your question, I
12 started in good faith trying to see can this be
13 done, and I concluded that, no, you know what,
14 no matter how many people of good will, how
15 many smart people here try to do a grouping
16 that is actually related to each other with
17 different proposals, it just cannot be done.

18 And what should be guiding us is not what
19 feels good for us. What should be guiding us
20 is are we fairly informing the public as to
21 what it is that they're voting for.

22 COMMISSIONER TIMMANN: Thank you.

23 CHAIRMAN BERUFF: Any further questions on
24 Revision 1?

25 Debate on Revision 1? Excuse me, motion,

1 on the motion to move Revision 1 and uncouple
2 it, is there any further debate on the motion?

3 Commissioner Solari.

4 COMMISSIONER SOLARI: Thank you very much,
5 Mr. Chairman.

6 Outside of Tallahassee is the rest of the
7 state of Florida, and I think the rest of the
8 state of Florida captured a lot of what we're
9 talking about very well in an e-mail that was
10 sent to us and in here citizen rights: "Please
11 vote against bundling the CRC proposals for the
12 following reasons: There was no outside review
13 of bundling, bundling undermines public policy
14 by putting unrelated issues together, bundling
15 confuses voters."

16 And another citizen who wrote, who was
17 not quite as kind, simply said that bundling
18 was hypocritical and corrupt.

19 Last week I spoke before two groups, and
20 these are in our community sophisticated
21 groups. One was the Taxpayer's Association and
22 one was the Republican Executive Committee.
23 These are people that know more or less what's
24 going on as well as anybody, and they didn't
25 like bundling. And one of the things I did was

1 I read Revision 1, and it was clear that nobody
2 in the room could have possibly picked out the
3 Chevron deference issue, which would make me
4 happy because they're going to vote for the
5 first proposal and the last they could
6 understand, Judge's ages.

7 But the question is, is that all we're
8 supposed to do? Are we supposed to set up a
9 system where we bundle things that we know the
10 citizens aren't going to understand
11 substantially and then have them vote on it?
12 And I believe that that's not what we're
13 supposed to do.

14 I believe that we ought to put something
15 together that the citizens can actually
16 understand. And I think what will happen is a
17 lot of citizens won't vote for a lot of
18 proposals, but they'll vote for the proposals
19 they actually believe in.

20 So I am supporting Commissioner Martinez'
21 motion because on this issue, I believe we
22 ought to err on the side of the citizens and
23 give the citizens an opportunity to do what
24 they really believe in.

25 Thank you, Mr. Chairman.

1 CHAIRMAN BERUFF: Commissioner Heuchan is
2 recognized on debate.

3 COMMISSIONER HEUCHAN: Thank you,
4 Mr. Chairman. Thank you, Commissioner
5 Martinez.

6 I rise to oppose this motion and I just
7 want to work through a couple of things with
8 you, with all of you, actually.

9 I got to say I think this idea that voters
10 are going to get confused, it's literally
11 absurd. That's absurd. Voters have routinely
12 taken in information, whether they be ballot
13 amendments. We saw one just last year, it was
14 a solar amendment. The voters are very
15 discerning when they go through their ballots.

16 They show up, they -- they do their job,
17 and they regularly come to conclusions which
18 are accepted by all. So I just got to say I
19 reject the notion that somehow these people are
20 not capable of understanding basic related
21 proposals. And I want to get to the term
22 "related" in a minute, too.

23 To buy this notion that, you know, by
24 grouping, and by the way, I don't have an
25 objection if someone wants to say, oh, look, I

1 don't like this grouping for this particular
2 reason, for this particular reason. It's along
3 the line of what President Gaetz said.

4 But that's not what we're -- what we're
5 entertaining here. The whole process is being
6 attacked. It is being attacked. Commissioner
7 Martinez used the word "undermine." The
8 process is being undermined. Well, was the
9 process undermined in 1968 when virtually the
10 entire Constitution, save for three articles,
11 went on the ballot in one revision? 22,000
12 words -- 23,000 words of our Constitution went
13 to the voters in 1968, and guess what? They
14 passed it. They understood it. It is the
15 Constitution that we are operating under today.

16 So this idea that, oh, my gosh, this is
17 all new and novel and we are going to prop
18 these things up and I'm going to get to the
19 non-propping up piece in a second, but,
20 Commissioner Martinez, look, I am -- I'm going
21 to -- the more I talk, the more amped up I get,
22 and I don't mean to do that and I appreciate
23 really what, you know, the sentiment of you and
24 the conversations that we've had and the candor
25 and really affection for one another. I have a

1 lot of love for Commissioner Martinez for a
2 number of reasons. I just happen to oppose
3 this because I just oppose this idea that the
4 process is being undermined.

5 In 1978, all of the revisions were
6 grouped. In 1998, all but one were grouped.
7 And I just -- if you go back and you look --
8 and you're right, Commissioner Martinez, just
9 because something was done in the past doesn't
10 mean we have to replicate those things, but,
11 boy, you know, I've been on this floor, I've
12 been in rules hearings, I've been in committee
13 meetings, and, you know, universally, 1998 was
14 looked at as this -- this crown jewel.

15 Revision No. 7 -- if you look at the 1998
16 proposals, revisions, three or four or five of
17 them look -- look a lot like the ones we have
18 here before us today. Local option for
19 selection of Judges and funding of state
20 courts. I'll tell you what this one did, and
21 you can tell me if it is related or not
22 related. The revision dealt with the
23 judiciary. It created an option for local
24 electorates to end the election of Judges and
25 change to a merit retention system where the

1 Governor would appoint Judges and then the
2 locals would vote to retain at the end of the
3 term.

4 It also increased County Judge terms from
5 four to six years, just like another proposal
6 that we have. It made technical changes to the
7 JQCs. It added a provision requiring State
8 Attorneys, Public Defenders, and court
9 appointed counsel be appropriated by general
10 law, and it created a new funding mechanism for
11 clerks. Does that sound familiar?

12 So I just -- I just -- I'm sorry, I just
13 don't -- I don't like this notion that we're
14 talking about undermining a process that we are
15 allowed to do. I -- one of the questions I
16 had, I will just ask it rhetorically, was why
17 is it do we think that in every other case for
18 our Constitution to be amended, it has to be
19 single subject, except for us? Why is that?

20 I will tell you that that committee, with
21 the help of Commissioner Martinez and others,
22 came to what I consider to be a pretty balanced
23 approach.

24 I got Commissioner Coxe's letter. I read
25 it 20 times probably since I received it. And

1 Commissioner Coxe ought to know that I read
2 that with the most amount of sincerity.

3 We have now six proposals that are grouped
4 and six that are not. We took special care and
5 consideration to not put things that were --
6 received less than a preliminary vote of 22
7 together.

8 We di- -- Commissioner Coxe, you were
9 right about that, but -- I will stop in a
10 second, but I -- I -- I would be more
11 considerate of motions to -- to disaggregate
12 one group or another if it was based on the
13 merit of that particular piece, and that's not
14 what we're being asked today.

15 We are being asked to throw overboard and
16 abandon every precedent that has ever been set
17 in the State of Florida. That's what we're
18 being asked to do, and so I -- I oppose this.

19 CHAIRMAN BERUFF: Commissioner Smith is
20 recognized.

21 COMMISSIONER SMITH: Thank you, Mr. Chair,
22 and I will just follow up on that.

23 Yes, we are asking that you abandon it
24 because sometimes you can do things
25 differently. In the last couple of CRCs, they

1 bundled, and that's what they chose to do.

2 That don't mean we have to do it this way.

3 Voting has changed. We don't vote the
4 same way we voted 20 years ago. We don't vote
5 the same way we voted 40 years ago. We just
6 had an election in Ft. Lauderdale, I, mentioned
7 before where most of the ballots were absentee
8 ballots. People are sitting home, they're
9 looking at the ballots, they're taking their
10 time.

11 So maybe bundling made sense when we had
12 people waiting in line and you had a long
13 ballot, you didn't want a big, long ballot, let
14 them get in and get out. But you know what?
15 We're voting differently now from 20 years ago,
16 from 40 years ago, so you don't have to bundle.

17 People are sitting at their kitchen table
18 going -- person going issue by issue, and they
19 can look at issue by issue and decide.

20 I appreciate what the committee did and I
21 appreciate the argument earlier, but it was a
22 little concerning that it was arguing over how
23 many people came to debate against bundling or
24 whatever. I mean, that was a committee in
25 Tallahassee.

1 I can tell you, I spoke to groups like
2 Commissioner Solari, and that was one of the
3 main things that came up, why are you bundling
4 this stuff, why are you bundling this stuff,
5 let us vote on each one of them separately. I
6 would, you know, I don't want to see a ballot
7 with 20 amendments on it, with 30 amendments on
8 it.

9 So maybe we just need to vote some of them
10 down if they don't want it that long. But you
11 don't -- you shouldn't -- but I don't think --
12 and I am not so bound by the precedent that we
13 did it this way 20 years, that we did it this
14 way 40 years ago, because we're not voting the
15 same way we did 20 years ago, 40 years ago.
16 There are different ways to do this, and
17 bundling may have made sense then and it may
18 make sense now.

19 If you feel it makes sense now, I mean,
20 you did a great job with the committee, but I
21 just think -- I've been talking to groups,
22 talking to citizens, and every place I go and
23 talk to people, they say, hey, why do we have
24 to bundle them? If I want to support this one,
25 but don't support this one, I may support this

1 issue, but it's grouped with two others, they
2 are in the same category and they're the same
3 genre, but for some reason, I may not support
4 this one over this one and I am forced to
5 bundle, why do we have to bundle.

6 And I guess that is the fundamental
7 question. Whoever is going to come up and
8 speak against this, let me know why do we have
9 to bundle? What is the possible reason that we
10 have to bundle these things? If we have
11 proposals out there and people want to vote on
12 them separately, let people vote on them
13 separately. I'm still not convinced that we
14 have to bundle at this point.

15 CHAIRMAN BERUFF: Further debate on the
16 motion?

17 Commissioner Coxe is recognized.

18 COMMISSIONER COXE: Thank you, Mr. Chair.

19 Briefly, I support Commissioner Martinez'
20 motion. On the very last day we sat in this
21 room before the break and before Style and
22 Drafting began, I was asked if I would vote in
23 favor of a particular proposal, knowing I would
24 never support that proposal when it came back
25 on the floor from Style and Drafting. And I

1 did. And I did that because I was led to
2 believe that the purpose of the vote was to get
3 a majority for a proposal to get it to Style
4 and Drafting.

5 But what happened in spite of the letter I
6 sent to Commissioner Heuchan, whom I've talked
7 to repeatedly about this, all of a sudden, 22
8 is a magic number in Style and Drafting. I was
9 never told that 22 would make a difference in
10 Style and Drafting. It was a majority to get
11 it to Style and Drafting for them to review it
12 and to send it back to this Commission.

13 Now we have the free-standing ones that
14 didn't get the 22 coming out of Style and
15 Drafting, and I respectfully suggest that is
16 not what we were -- I was led to believe was
17 going on when we voted in the first place.

18 So now if you got 22 and it went to Style
19 and Drafting, you are in a group, but if you
20 didn't get 22, you are a stand-alone proposal,
21 which to me is not the way the process was
22 intended to work.

23 I don't know anything about log rolling
24 because I don't know what the polling shows on
25 any of these. So I don't have any way to

1 measure whether somebody's calculatedly
2 log-rolling or not. Who knows? Maybe some
3 people in the room know that.

4 Maybe some people have the benefit of
5 polling saying I'll put this with that one, or
6 I won't put this with that one. I don't care
7 about that.

8 What I do care about is whether a citizen,
9 not whether somebody on this Commission who's
10 dealt with these issues for so long, but a
11 citizen can read on the ballot what that
12 particular proposal is and do they like it or
13 do they not like it. Not do they like this
14 one, but I sort of don't really like the other
15 one, so what do I do?

16 I want to decide what goes in the
17 Constitution of the State of Florida when I
18 walk into that ballot. I want 6, I want 9, I
19 want 22, I want 25, but I want this group? I
20 don't like half the group. I don't know why
21 other people thought this should be in a group.

22 So in short, I support Commissioner
23 Martinez' proposal. I think we owe it to the
24 citizens of the state of Florida for them to
25 make an intelligent decision, not the decision

1 we made for them.

2 CHAIRMAN BERUFF: Senator Joyner is
3 recognized --

4 COMMISSIONER JOYNER: Thank you,
5 Mr. President.

6 CHAIRMAN BERUFF: -- for the first time
7 today.

8 COMMISSIONER JOYNER: Elated. Sinus,
9 Tallahassee has me beat up, but Commissioner
10 Martinez, I want to thank you. You've not
11 undermined the process and you haven't been a
12 clog in the wheel of this process because we
13 were all selected to come and do this and then
14 take sufficient time to do it, not a day, not
15 two days.

16 It's not over until May 10th, and if it
17 takes the time to do it that we've all
18 obligated ourselves by accepting the
19 responsibility, then let's -- then let's do it.

20 I -- I concur with your action. In fact,
21 when I left here after that last meeting and I
22 spoke to the Chair and I said, "I really think
23 that under the rules, we need to do each one
24 separately," and I brought up something else,
25 and he said, "Well, you didn't express that,"

1 and I didn't.

2 I didn't express it on the floor because I
3 thought that my vote that day was to determine
4 what was the cut-off part for what would go
5 further, and that we would come back and vote
6 on each separately because I might have changed
7 my mind as a member of the Commission on
8 something I voted for or against, you know.

9 And so, consequently, I said, well -- I
10 told all the people at home we're going to go
11 back and vote on each one after we made that
12 first cut. I considered that last meeting the
13 first cut. And I've been getting some
14 feedback, and it is similar to what
15 Commissioner Smith and that e-mail that
16 Commissioner Solari received, what is it that
17 you all are trying to do, because if you put
18 the good with the bad, in my mind, this is what
19 the people said, I am going to vote them all
20 down, because you can't convince me that I want
21 to -- if I want term limits for School Board
22 members, but I don't want whatever one of the
23 other proposals are, then I'm just going to
24 vote it down.

25 I think that we have a responsibility to

1 the people of the state of Florida and the
2 voters to decide each one and then give them
3 that opportunity also, because I'm afraid that
4 what was good 20, 40 years ago is not
5 necessarily good for today.

6 This is 2018, and social media and all the
7 changes that have occurred, it is -- it is
8 completely different, and we need to respect
9 and understand that.

10 We don't want the perception that we came
11 up here and rushed through these last two days
12 and bundled stuff together and said let's go
13 home, take it or leave it. Give the voters the
14 right to decide individually on these
15 proposals, because if they sincerely believe in
16 something and you put them together, people are
17 going to go negative and vote it down, and then
18 the good goes down with the bad in that
19 person's mind.

20 I -- I thought about this a lot, and there
21 was actually something where I said I will give
22 it another look and maybe I will change my vote
23 this time, and now that opportunity has been
24 taken away from me as a member of the
25 Commission because of the grouping. I'm -- I'm

1 conflicted. Here's one I like and one I don't
2 like. Consequently, what do I do? So heaven
3 only knows what the voters will do. Probably
4 like me and say no.

5 We shouldn't sidestep our responsibility
6 and our obligation to the voters of the state
7 of Florida. Now -- and in no way do my
8 comments lend any suggestion that the
9 committee, Style and Drafting, did anything
10 wrong. You guys worked assiduously and
11 diligently, and I watched some and I said they
12 are doing it, but I disagree.

13 But I even texted up here and said, hey, I
14 can't hear Commissioner Carlton down on the
15 end, please ask her and Commissioner Martinez
16 to speak into the mike because if I can't hear
17 them, I know the citizens can't hear them. But
18 don't take it as an affront to what you've
19 done. We are here for this purpose, and as
20 we've said often, we shouldn't fear the debate,
21 and this has been good debate about what has
22 transpired, and the camaraderie that exists
23 will continue to exist because folks do have
24 different opinions and we have the right -- we
25 should respect their opinions, irrespective of

1 what it is, without anyone assuming something
2 negative about their position.

3 So thank you again, Commissioner Martinez,
4 and I support you wholeheartedly.

5 CHAIRMAN BERUFF: Commissioner Carlton is
6 recognized.

7 COMMISSIONER CARLTON: We're in debate,
8 right, Mr. Chairman?

9 CHAIRMAN BERUFF: We are in debate.

10 COMMISSIONER CARLTON: Okay. Well, well,
11 well. So today is the first day that we have
12 heard all of this commotion about groupings.
13 We did years -- we did rules a year ago. I
14 certainly didn't see any amendments from
15 anybody on the -- standing up on the floor
16 complaining about rule whatever it is, five
17 point whatever. Nobody complained about it.
18 Nobody filed an amendment to change it. Nobody
19 filed an amendment to delete it or to take it
20 out.

21 So fast -- and that was a year and a half
22 ago, and since then, we have had a very
23 strategic process of public hearings across the
24 state times two, we've had hearings in
25 Tallahassee, we've had hearings out in all

1 parts of the state of Florida. And so now we
2 get to the -- the final day here, and all of a
3 sudden, we are going to stand up and say, oh,
4 by the way, that rule, we don't really like it,
5 we really don't want groupings.

6 Well, where were you a year and a half
7 ago? We could have -- we could have deleted
8 that rule if you didn't like it and we could
9 have said, you know, so 20 years ago, they had
10 groupings, and then 40 years ago, they had
11 groupings, but you know what, in 2018, we're
12 just not going to do groupings. Okay. We
13 would have a vote on it and decided if that
14 should have been part of our rules.

15 But there is a process, and to -- and --
16 you know, there is a respect for the process,
17 and if -- I was at the Style and Drafting
18 Committee meetings, and they went on and on and
19 on. I mean, there was a lot of testimony,
20 there was a lot of -- a lot of conversation
21 back and forth amongst the members on that
22 committee about how to group things. And just
23 because I stand up here on the floor today and
24 say, "Well, you know, I'm going to disparage
25 the process, but I don't really mean to

1 disparage the process because -- because it was
2 really a good process," it is kind of like me
3 saying, "Well, this morning when I woke up, I
4 didn't really want to wear this blue dress, but
5 I wore it."

6 Well, that's what you are doing when you
7 stand up and you try to pretend like you're not
8 disparaging the process, but you really are
9 with your words disparaging the process. And
10 as somebody who has spent a lot of time over
11 the last year and a half respecting this
12 process that we have built and this Commission
13 that we have built and the respect for the
14 public that has come before us, that is just
15 wrong and it's not appropriate to do. It's
16 just wrong.

17 Your -- your -- your complaint was a year
18 and a half ago when we were doing rules, not
19 today. So don't stand up here at the last
20 minute, you stand up at the last minute, not us
21 standing up at the last minute that's been in
22 this process. Where have you been for the last
23 year and a half? Because it sounds to me like
24 your idea of what's gone on here is completely
25 different than mine.

1 conflicted because there's ones I think do
2 belong and ones I think don't belong together.

3 So -- but, ultimately, even though I
4 appreciate the spirit and some of what you are
5 saying, I think that ultimately I am just
6 having to look at a balancing test now. I
7 mean, I have to look at that or just disqualify
8 every single one that doesn't belong in there,
9 one of the two, and I think I'm doing both of
10 those.

11 Mr. Chairman, I don't know if we have a
12 historian or not, but there's one thing I think
13 we could do in future years that would make the
14 process a little bit better, and that is to
15 have a robust debate on what should be in the
16 Constitution and what shouldn't.

17 That great debate we had initiated by
18 Commissioner Diaz on day one of us as a full
19 body, and this debate here on day one, before
20 we do anything else, that one day when we came
21 and we didn't know what we were doing and we
22 heard from the Speaker and the Senate
23 President, I think it would behoove us to have
24 that debate on the front end in the future if
25 there's a historian listening, because now we

1 are having the debate now.

2 And I agree with Commissioner Carlton, we
3 have a process. This is an institution. We
4 need to respect the process, we need to respect
5 the collective wisdom of this body, its rules,
6 and the Style and Drafting Committee. And so
7 for that reason, I will vote against
8 Commissioner Martinez' motion.

9 CHAIRMAN BERUFF: Commissioner Solari is
10 recognized.

11 COMMISSIONER SOLARI: I want to respond to
12 a couple of things that Commissioner Carlton
13 put up. If you had served in the Florida
14 Senate or the Florida House, you may have
15 understood the process a year and a half ago.
16 I didn't, and I certainly would not have been
17 able to formulate any of the questions that
18 I've asked -- would have been asked to
19 formulate a year ago at that time.

20 I didn't understand the process then. I
21 certainly don't understand the Senate process
22 of going through rules and amendments and
23 amendments and amendments today. I will admit
24 that fact.

25 And my concern at the end of the day is

1 not with the process. My concern today is what
2 goes before the voters of the state of Florida.
3 And I'm sorry if I -- if I should have done
4 something years ago or months ago or whatever,
5 but at the end of the day, my concern is what
6 the voters are going to look at and see when
7 they go in and vote their conscience, and I
8 believe that the unbundling is better for that,
9 and for those reasons, again, I support
10 Commissioner Martinez.

11 But don't -- let's not fool ourselves.
12 Let's not think that there are all these things
13 we could have, should have, and would have done
14 because we didn't know. Thank you.

15 CHAIRMAN BERUFF: Further debate on the
16 motion?

17 The Chair does not recognize any further
18 debate. I'm sorry? Would you like to speak,
19 Commissioner Lee? You are recognized.

20 COMMISSIONER LEE: Thank you, Mr. Chair.

21 And first, I realize that people rise in
22 support, Mr. Chair, of and opposition to this
23 for -- some have political motivations, they
24 don't like things that are bundled together, or
25 they have principles where they don't like

1 things that are bundled together, and I don't
2 really want to speak to that. I don't know how
3 to resolve that.

4 I would say that from a standpoint of
5 correcting the record, we had a meeting in
6 Orlando in June of last year, and there could
7 have been no less than thirty some odd
8 amendments left for consideration when this
9 Commission abruptly adjourned without any
10 parliamentary authority in either Robert's
11 Rules or Mason's Manual to do so.

12 And had we stayed in what would have
13 probably been a very long meeting that wouldn't
14 have turned out any different than it did
15 because clearly, there was motivations on and a
16 consensus among the Commission to go with a set
17 of rules, we would have heard a slew of
18 amendments that changed the germanity and
19 single-subject limit -- and provide
20 single-subject limitations on this Commission.
21 But we were denied that ability that day.

22 And it -- like I say, it wouldn't have
23 mattered anyway, I don't think. The votes were
24 there to pass the set of rules that we had. So
25 it was probably more efficient that we did what

1 we did, but it -- but to say that there weren't
2 a lot of members with a lot of questions about
3 the germanity and the potential log-rolling
4 that could result from this is a bit
5 revisionist.

6 And I -- I realize that Style and Drafting
7 had a tough job and I told the Chairman, I
8 said, you know, "You could have seen this
9 coming." Heck, when you really look at it,
10 isn't it remarkable that it appears a lot of
11 these special interest groups really didn't
12 even begin to take what we were doing seriously
13 until it got to Style and Drafting?

14 Look at your proposal, President Gaetz.
15 They came, it was like, you know, you flipped
16 on the lights and the cockroaches were
17 everywhere. I mean, it's, you know, but it was
18 all going fine until then, wasn't it? Or for
19 the most part.

20 And these people do come late and attack
21 these proposals. It's more serious now. This
22 is about to happen. And as a result of that,
23 Style and Drafting was always going to have a
24 heavy load. Now we have proposals that have
25 come out of Style and Drafting that it will

1 never have been voted on as an individual
2 proposal as amended. They'll never have been
3 considered by this Commission as amended on an
4 up or down vote individually because it's now
5 part of a bundle. I don't know how many of
6 those proposals there are.

7 President Gaetz' proposal is one of them,
8 I know that. And so we'll never have a chance
9 to vote up or down with 22 votes on each
10 individual proposal. Some of them are bundled
11 together now.

12 And I raise this -- and because we talk
13 about the '97-'98 rules, and that seems to be
14 kind of a safe harbor with a lot of us. And
15 it's great -- it's great, and I think always
16 wise to try to follow a precedent where you
17 can, but '97-'98 was a bipartisan commission.
18 It was chaired by one of the most celebrated
19 Democrats in Florida history, Dexter Douglass.
20 And yet you had a Republican Legislature,
21 appointing 18 members. There's nothing --
22 there's very little bipartisan about this
23 Commission.

24 And so when we talk about the bundles that
25 took place then, they took place in a working

1 group that was bipartisan. And I don't know
2 the extent to which some of those bundles might
3 have had embedded in them some controversial
4 issues that -- but I do know that some people
5 feel some of these issues are controversial.
6 And so it is -- it is difficult to just throw
7 yourself back on '97-'98 or '77-'78.

8 But this is an important conversation for
9 a couple of reasons. First, those of us who
10 have been around this for a long time, which is
11 most of us, have seen a lot of good policy die
12 over flawed process. Our process will be
13 reviewed and re-reviewed time and time again as
14 people editorialize, comment on the work this
15 Commission did. And it is very important that
16 our process be as unassailable as possible.

17 And I would also state the obvious, that
18 we're operating under a very different
19 obligation today or burden today than any other
20 commission has ever operated under. You now
21 have to get 60 percent of the voters to support
22 what we're doing. It's no longer 50 percent
23 plus one. The threshold is higher. And I
24 think we need to be more cautious about how we
25 use the power of Style and Drafting.

1 I don't know from my reading of the rules
2 how we don't end up with a germanity problem
3 under bundling related proposals when some of
4 these are not related at all. And we've
5 already established a germanity standard here
6 on the floor that denied Commissioner Martinez
7 the ability to put some gun control in a
8 proposal that if it would have been done by
9 Style and Drafting, it would have been
10 considered entirely appropriate.

11 So what I really would prefer here -- and
12 I -- we have a motion on the floor and it will
13 be voted on -- is what Commissioner Heuchan has
14 suggested. And, you know, rather -- because I
15 don't think there's anything nefarious or
16 wholesale inappropriate about bundling some of
17 these amendments. But where there is
18 controversy and where there is clearly no
19 connective tissue between these bundled
20 proposals, I think it is entirely appropriate
21 for us to consider on a bundle-by-bundle basis
22 whether or not one or more of these amendments
23 don't belong in that particular bundle and
24 should be severed and should ride separately.
25 And I won't pick on any of them in particular,

1 but I just -- as you -- I don't want to embrace
2 some of the rhetoric here, Mr. Chairman, but as
3 a matter of process, as a matter of how we will
4 be viewed by the public and our credibility and
5 the standards under which our proposals are
6 going to be considered in 2018, I do think
7 there are some -- some of these bundles that
8 have come together, and perhaps as we move
9 forward with this, if nothing else, maybe we
10 can have an explanation about how the committee
11 saw these as being -- let's just not, you know,
12 germane without using that term in a formal
13 sense -- because I think there is some room for
14 us to maybe not come out with 24 proposals, but
15 maybe come out with a couple more than we have
16 right now and alleviate some of the heartburn
17 that exists here on the floor.

18 And this is a tough issue to -- I'm not
19 sure how to vote on Commissioner Martinez'
20 motion because I don't think it actually solves
21 the problem that -- I think it may over-solve
22 the problem, but in the spirit of what he's
23 trying to achieve, he makes a very, very valid
24 point for all the reasons I've just stated.

25 CHAIRMAN BERUFF: Further debate on the

1 motion?

2 Commissioner Schifino is recognized.

3 COMMISSIONER SCHIFINO: Thank you, Chair
4 Beruff. So much to say, so little time, and
5 there have been a lot of good comments, and so
6 I will be brief.

7 Commissioner Martinez, thank you for
8 bringing this to our attention. I think this
9 is a discussion we all knew we needed to have
10 this morning. We can't hide behind it. We've
11 heard from many around the state that have
12 implored us to have this discussion, and we are
13 having it and it is winding down. Good
14 comments on both sides of the table.

15 I am going to echo what Commissioner Lee
16 just said. I, too, don't have a -- I am okay
17 with bundling in the right situation is the
18 best way to put it. I don't believe that we
19 need a blanket rule that says there will be no
20 bundling. I think we need to meet these
21 proposals one by one and go through this
22 exercise, talk about them. Are they related to
23 one another? Is -- are the citizens of the
24 state going to be confused by that particular
25 approach?

1 So I've talked to Commissioner Heuchan and
2 I applaud the work. You know how I feel about
3 it, I think you all did a great job. But I
4 think if we handle these one at a time, we're
5 going to get what we need to go.

6 I will finish by saying we're not in a
7 hurry, we know that. We are here in the end
8 and at the -- what, the last meeting, and we
9 owe it to these citizens to go through this,
10 take the time necessary to analyze each
11 proposal, each revision and each proposal
12 within a particular revision to the extent we
13 need to.

14 Thank you very much, Chair.

15 CHAIRMAN BERUFF: Thank you. There was
16 another Commissioner who wanted to speak.
17 Commissioner Coxe, thank you.

18 COMMISSIONER COXE: Thank you, Mr. Chair.

19 I just want to respond to Commissioner
20 Carlton and the substance of the issue. I know
21 Commissioner Carlton is a great student of the
22 rules, and 5.4(2) says, "Rules and drafting" --
23 drafting -- I mean drafting, whatever they're
24 called -- "Style and Drafting may bundle." It
25 says that. We all knew that going to the

1 outset. That wasn't a shock to us. That is
2 why the letter that Commissioner Heuchan
3 referenced that he read several times that I
4 sent and copied every Commissioner,
5 acknowledged that you may bundle.

6 What the letter did was discourage the
7 grouping or the bundling. That's what the
8 letter did. Didn't say can't do it. It said
9 we -- I discourage that from happening.

10 And so I just respond to Commissioner
11 Carlton, everybody got a copy of the letter,
12 everybody knew the issue was out there as to
13 whether it should or shouldn't be bundled. So
14 I don't think it is something that suddenly is
15 coming up at the very last second. I think
16 everybody was conscious of the issue. And so
17 the committee chose to bundle, they got the
18 letter, everybody knew it. It was not -- it
19 was an issue on the floor. So it's not a shock
20 now.

21 CHAIRMAN BERUFF: Further debate on the
22 motion?

23 Commissioner Stargel.

24 COMMISSIONER STARGEL: I will be brief.
25 Just want to, first of all, thank you to

1 everyone who has accepted me as the newcomer to
2 this process. I have been following it, as
3 most of you know, but when I was asked to sit
4 on the Style and Drafting Committee just days
5 after I was here, I thank you Chair Beruff for
6 having that confidence in me.

7 It was a lot of work. It was a lot of
8 work. And Chair Heuchan did a marvelous job of
9 trying to keep all of the different factions
10 and ideas together, making sure that everyone
11 was heard, including Commissioner Martinez and
12 others he brought in, Commissioner Levesque,
13 right from the beginning, because she had that
14 responsibility before when she was the Chair of
15 Style and Drafting for the Tax and Budget
16 Reform Commission.

17 I just want to say that, first of all, we
18 are solidly in line with what has happened in
19 the past commissions, both Tax and Budget
20 Reform Commissions, the Constitutional Revision
21 Commissions. The work that we did -- I brought
22 this. If anybody wants to come -- if you
23 watched it, you saw. I spent hours and hours
24 trying to group these things to make sure that
25 it met our rules, to make sure that we were

1 doing it in a way, and if anyone has a problem
2 with that, they can and should make a rule
3 challenge because that's what our rules allow.

4 But I just wanted to say one thing.

5 Someone has suggested that there were
6 amendments that were made that no one has had a
7 chance to debate, and that is not true. We
8 were very careful, and one of the reasons that
9 Commissioner Gaetz' proposal was on its own is
10 because we knew there were substantive
11 amendments and they were going to come to this
12 body. And even our Chair filed an amendment
13 because he had a difference of opinion,
14 possibly with something our committee did.

15 But to Commissioner Gaetz, and I've
16 already talked to him today, that ended in a
17 good place that I am going to support, but it's
18 on its own because we wanted the full body to
19 have an opportunity to have input on that. And
20 if there were any provisions that had major
21 changes to them, we did that.

22 Maybe one exception that somebody may say
23 no, that's not true with Commissioner Gainey's,
24 but from the very beginning, the very first day
25 of Style and Drafting, Commissioner Gainey

1 showed up with his change that was requested
2 from this body. Everyone said we like it, we
3 are voting for it, but we want it narrowed down
4 and let the Legislature put in all of the
5 details, which he did.

6 And we felt like that met the desires and
7 the instructions given by this body to
8 Commissioner Gainey. Other than that, if there
9 was anything that approached substantive
10 issues, we kept it separate so that you all
11 could decide.

12 Thank you.

13 CHAIRMAN BERUFF: Further debate on the
14 motion? I'm glad there's no further debate on
15 this motion.

16 All those that are going to support this
17 motion -- excuse me. Close on the motion, we
18 hope.

19 COMMISSIONER MARTINEZ: True to form.
20 Mr. Chair, thank you very much, and thank you,
21 colleagues, for everybody contributing. And,
22 Chairman Beruff, I want to say again that Chair
23 Heuchan did a great job as the Chair of Style
24 and Drafting, and I think he tried to do the
25 best he could and hear everybody's concerns,

1 and he did that, and he did that.

2 I want to answer something Commissioner
3 Carlton said, that we should have spoken up
4 earlier about the need for a rule. We didn't
5 need to. It was already in our rule. And,
6 again, I want to make it clear, it's already in
7 Rule 5.4(2), and that is that the Style and
8 Drafting Committee can put together proposals
9 if they are related.

10 Now, "related" is a term that I heard a
11 couple weeks ago when a germanity objection was
12 made as to one of my proposals. And if you
13 look at Mason's Manual, Section 402, you will
14 see that "related" and "germanity" are very
15 similar, and the way that the manual describes
16 it at 402-3 is that there be -- excuse me,
17 402-2 -- is that there be a natural and logical
18 sequence to the two.

19 For example, is there a natural and
20 logical sequence to the proposal dealing with a
21 statewide chartering authority or charter
22 school and civic literacy? There isn't.

23 We will get to that when we get to
24 Revision 3, but with regards to Revision 1,
25 which is what's before us at this point in

1 time, that is a group that has proposals that I
2 strongly support. And I have to apply the test
3 to my group. I have to apply the test to me as
4 a matter of principle. So as a matter of
5 principle, I'd say to you we should unbundle
6 that group.

7 However, getting to the point that
8 President Gaetz made, and also President Lee,
9 and that is that, yes, some groups are more
10 offensive than others, to use that term. There
11 are some groups that contain terms that clearly
12 are not germane, proposals that are not
13 germane.

14 So even though I hope you will vote in
15 favor of this motion as to Revision 1, but
16 should you vote against it, I'm going to make
17 it again as to Revisions 2, 3, 4, and 5,
18 because those are different, and I think --
19 Commissioner Gaetz, I think you're right, we
20 should take them up individually, and we will
21 do that.

22 So I am hoping that you support me as to
23 this motion at this time, but if you don't,
24 keep an open mind when I make it again as to
25 the other revisions.

1 Thank you, Mr. Chair.

2 CHAIRMAN BERUFF: Close. Those that are
3 going to vote in favor will send this back to
4 Style and Drafting and separate it. Those
5 against will be nay and it -- we'll go on to
6 Revision 2.

7 So all those in favor of the motion,
8 signify by saying yea.

9 (Chorus of yea's.)

10 CHAIRMAN BERUFF: All those against,
11 signify by saying nay.

12 (Chorus of nay's.)

13 CHAIRMAN BERUFF: The nay's have it. The
14 motion fails.

15 Now we are going to take up -- I don't
16 know where we are on Revision 1. That was two
17 hours ago. We are in debate. We are in debate
18 now on Revision 1. All the amendments have
19 failed, the motion failed, back to square one.
20 So the Chair will recognize debate on Revision
21 1. I think it's been heavily debated.

22 Commissioner Heuchan, who -- who should
23 speak to close on Revision 1? Would that be --

24 COMMISSIONER HEUCHAN: Thank you, Mr.
25 Chairman. Yeah.

1 CHAIRMAN BERUFF: Okay. Would you please
2 close.

3 COMMISSIONER HEUCHAN: What's the matter,
4 Coxe? You want to close?

5 CHAIRMAN BERUFF: I don't care as long as
6 it's brief.

7 COMMISSIONER HEUCHAN: No, I'll just --
8 look, this is -- this -- this grouping, this
9 revision has been debated, not just by Style
10 and Drafting, but by this Commission. I
11 believe that these issues are related, and I --
12 I will just end with that.

13 Thank you, Mr. Chair.

14 CHAIRMAN BERUFF: Open up the board.
15 Commissioners, please vote. Thank you.

16 Everyone vote? We're going to close the
17 board. Please vote.

18 I think everybody is accounted for. Close
19 the board and announce the tally, please.

20 THE SECRETARY: Thirty-four yea's, three
21 nay's, Mr. Chair.

22 CHAIRMAN BERUFF: The revision is adopted
23 and shall be submitted to the Secretary of
24 State to be placed on the ballot at the
25 November 6th, 2018, general election.

1 Yes, Commissioner Carlton is recognized.

2 COMMISSIONER CARLTON: For purposes of a
3 motion, that the board be opened so that those
4 that wish to co-sponsor the measure would be
5 allowed to, because many of us co-sponsored the
6 underlying proposals, but that co-sponsorship
7 kind of went away now that we have passed this.

8 So if you would, with your indulgence, if
9 you would open up the board and allow us all
10 to -- the ones that want, to co-sponsor.

11 CHAIRMAN BERUFF: If you want to join the
12 endorsement and co-sponsor, please signify by
13 pressing the right button. Open the board.

14 Okay. What we're doing, Commissioner
15 Carlton, if I may -- if I may explain.
16 Co-endorsers, right?

17 Commissioner Carlton is recognized.

18 COMMISSIONER CARLTON: Basically the
19 motion is to allow the President to -- or the
20 Chairman to open up the board so that those
21 that wish to be a co-sponsor of this particular
22 revision can. Many of you individually
23 co-sponsored one or all three of the proposals,
24 but that kind of goes away. So this is a
25 brand-new day here with this Revision 6-0 --

1 what is it, 6-0-0 --

2 CHAIRMAN BERUFF: 1.

3 COMMISSIONER CARLTON: -- 1. So if you
4 would like to co-sponsor 6001, that is what
5 this motion is, for you to be able to be
6 registered as a co-sponsor of this -- this
7 6001.

8 CHAIRMAN BERUFF: Are we having fun yet?
9 Commissioner Cerio is recognized.

10 COMMISSIONER CERIO: Just a question for
11 the sponsor. So there's no way this can be
12 considered a re-vote, right? Like we're good,
13 we passed. Okay, I am good with it then.

14 CHAIRMAN BERUFF: Commissioner Coxe.

15 COMMISSIONER COXE: Is -- is that in the
16 rules, what you just proposed?

17 COMMISSIONER CARLTON: I don't know.

18 COMMISSIONER COXE: Just curious.

19 CHAIRMAN BERUFF: Anybody can co-sign on
20 to re-endorse it.

21 So is everybody clear on what we're asking
22 them to do? Okay.

23 UNIDENTIFIED SPEAKER: Do you have to?

24 CHAIRMAN BERUFF: No, you don't have to.

25 We -- those that want to co-sponsor this

1 particular revision can do so by voting now,
2 and we are going to close the board in one
3 second.

4 The board is closed, and everybody knows
5 what happened.

6 Okay. We are going to go on to Revision
7 2. Commissioner Heuchan, would you like to
8 introduce this one?

9 COMMISSIONER HEUCHAN: Yes, sir. Thank
10 you, Mr. Chairman.

11 This is Revision No. 2. It is a group of
12 Proposal No. 49, 44, and 83. The title of this
13 revision is "First Responder and Military
14 Members Survivor Benefits, Public Colleges and
15 Universities."

16 Each one of these proposals in Revision 2
17 has a higher education component to it. This
18 grouping was also included in submissions from
19 Commission members. Revision 2 increases the
20 voting thresholds for adding or increasing
21 university fees, and enshrines the state
22 college system in the Constitution just like
23 the university system.

24 The committee also discussed how the
25 higher education benefit was a key part of

1 Commissioner Gainey's Proposal No. 49. While
2 there was some suggestion of splitting
3 Commissioner Gainey's proposal into a separate
4 higher ed benefit and death benefit, based on
5 the advice of our lawyers, we determined that
6 that was not to be necessary so long as we
7 ensured that the summary is clear and the
8 ballot title is accurate, and I feel that the
9 committee did do that.

10 There was one amendment. As I promised
11 earlier, to the extent that Style and Drafting
12 substantively changed anything, I'm just going
13 to represent that to you. There was one
14 amendment -- I'm sorry, there were two
15 amendments.

16 The first one was to the individual
17 Proposal No. 44. Proposal 44 was amended to
18 clarify that the proposal is intended only to
19 raise the vote threshold to a super majority
20 for fees that are required to be approved by a
21 university board of trustees or board of
22 governors as determined by law.

23 The second amendment was to Proposal 49,
24 Commissioner Gainey's proposal. This was
25 amended at the request of the sponsor to

1 streamline the proposal. We also heard from
2 many of you all when we dealt with this on the
3 special order calendar. Commissioner Gainey
4 worked with other members to -- to get to a
5 place where he was comfortable and they were
6 comfortable.

7 So it gives the Legislature more
8 discretion to determine the higher education
9 and death benefits that will be paid to the
10 qualifying survivors of first responders and
11 military members killed in the line of duty.

12 With that, Mr. Chairman, that is an
13 explanation of Revision 2, PCP 6002, and I am
14 glad to answer any questions, and I know
15 Commissioner Timmann, Commissioner Washington,
16 and Commissioner Gainey could help me with any
17 questions.

18 CHAIRMAN BERUFF: We will open up -- let's
19 go to -- would Commissioner Gainey like to
20 introduce his amendment?

21 COMMISSIONER GAINNEY: Yes, thank you,
22 Mr. Chair, fellow Commissioners.

23 As was stated earlier, at the request and
24 suggestion of fellow Commissioners, I presented
25 an amendment to streamline 49 and leaving the

1 implementing the language to the purview of the
2 Legislature, which is most proper and most
3 appropriate.

4 However, in doing so, after reviewing the
5 filing of this, I realized that we may have
6 inadvertently left the eligible membership
7 class far broader than intended. Particularly
8 when you look at the language without this --
9 without the amendment, it simply states
10 "eligible members of the United States Armed
11 Forces." I believe that would leave it much
12 broader than the state of Florida, and the
13 intent was always just the state of Florida.

14 So what we added back in is language that
15 was in the original amendment, and that's --
16 the original proposal, and that's the amendment
17 today, simply to make sure the eligible
18 membership class, those first responders who
19 are working for the State of Florida or any of
20 its political subdivisions and/or military
21 members whose duty posts are in the state of
22 Florida or they are residents of the state of
23 Florida. That's what the amendment does to
24 limit and clearly limit that those eligible
25 memberships to the class hadn't related to the

1 State of Florida.

2 I believe what it also does, it still
3 leaves it broad enough for a member of the
4 Legislature for this to pass to go in and
5 define the specifics of what those eligibility
6 requirements are.

7 Mr. Chair, that's it.

8 CHAIRMAN BERUFF: Thank you very much. I
9 think we are going to entertain questions on
10 the amendment, if there are any.

11 The Chair sees no questions on the
12 amendment.

13 Debate on the amendment, Amendment No.
14 398192.

15 Close debate on the amendment.

16 We will then go to questions on Revision
17 2. Oh, we got off.

18 Would you like to close, Commissioner
19 Gainey?

20 COMMISSIONER GAINNEY: Just to be sure,
21 Mr. Chair, no close.

22 CHAIRMAN BERUFF: We are going to try to
23 start speeding this thing up.

24 Okay. So we're going to by a voice vote,
25 vote yea or nay on Amendment 398192.

1 All those in favor of the amendment,
2 signify by saying yea.

3 (Chorus of yea's.)

4 CHAIRMAN BERUFF: All those against, by
5 nay.

6 That carries unanimously pretty much. So
7 amendment is -- Revision 2 is amended. And now
8 we are going to open up questions on Revision
9 2 -- 2. Chair will recognize questions on
10 Revision 2. No questions?

11 Debate on Revision 2? The Chair
12 recognizes Commissioner Martinez. Would you
13 like to make a motion?

14 COMMISSIONER MARTINEZ: Yes, Mr. Chair, I
15 do, the same one as before as a matter of
16 principle, but I'm going to waive argument on
17 it.

18 CHAIRMAN BERUFF: Commissioner Heuchan,
19 would you like to close on revision -- excuse
20 me. You made your motion, but I thought he
21 deferred to something.

22 COMMISSIONER MARTINEZ: No, no, I just
23 said I'm waiving my argument on it because my
24 argument has already been made.

25 CHAIRMAN BERUFF: Okay. So is there

1 debate on the motion, which is similar to the
2 motion that was made on Revision 1? Debate on
3 Commissioner Martinez' motion?

4 Seeing no debate, we will vote on the
5 motion.

6 All those in support of the motion,
7 signify by saying yea.

8 (Chorus of yea's.)

9 CHAIRMAN BERUFF: All those against,
10 signify by saying nay.

11 (Chorus of nay's.)

12 CHAIRMAN BERUFF: The nay's carry. Thank
13 you. The motion fails.

14 Commissioner Heuchan, would you like to
15 close on Revision 2?

16 COMMISSIONER HEUCHAN: I will waive the
17 close, Mr. Chairman.

18 CHAIRMAN BERUFF: Waive the close.

19 Please open up the board. We're about to
20 vote. All those in favor, and there we go.

21 Announce the tally -- close the board.
22 Oh, Mr. Smith is voting, hold it, don't close
23 the board. Commissioner Joyner, there we go.

24 UNIDENTIFIED SPEAKER: Wait, wait, wait.

25 CHAIRMAN BERUFF: Open the board. Reopen

1 the board. We can redo this. It's a button.
2 Somebody's got a button somewhere. We got to
3 close it and reopen it. Sorry, guys, a little
4 too fast. I apologize, that's my fault. Okay.
5 Marva, Marva, where is Marva?

6 Okay. Let's see, I am looking -- I am not
7 going to do this twice. I think everybody is
8 covered. Close the board and announce the
9 tally, please.

10 THE SECRETARY: Thirty yea's, seven nay's,
11 Mr. Chair.

12 CHAIRMAN BERUFF: Thank you.

13 Commissioner Carlton, would -- those that
14 would like to be co-endorsers on revision --
15 sponsors, excuse me -- sponsors on Revision 2,
16 please signify by your vote.

17 Okay. We've got the board. Anybody else?
18 Going once, going twice. We're done. Thank
19 you.

20 I think it would be prudent at this moment
21 to take a real fast break so everybody can have
22 something to eat, a little coffee. We will
23 reconvene in 20 minutes. We've got a lot to
24 do.

25 (Brief recess taken.)

1 CHAIRMAN BERUFF: On reconvene, and
2 Commissioner Heuchan, you are recognized to
3 present Revision 3. Thank you.

4 COMMISSIONER HEUCHAN: Thank you,
5 Mr. Chairman.

6 This is Revision No. 3 as prepared by
7 Style and Drafting, PCP 6003. It includes
8 Proposals 43, 71, and 10. The title is "School
9 Board Term Limits and Duties; Public Schools."

10 Each one of the proposals in Revision 3
11 deals with public education. This was another
12 instance where the grouping was also included
13 in submissions from Commission members. All
14 the submissions tended to have all the
15 proposals with public school issues together.

16 The three proposals in Revision 3 are
17 included together based on the word counts of
18 the ballot summaries, which is kind of an
19 outgrowth of the process that I described
20 earlier.

21 Proposal 93, innovation school districts
22 by Commissioner Martinez, was initially
23 discussed as a part of the K-12 education
24 package, this package or this revision,
25 proposals, along with Proposals 10, 43, and 71.

1 However, this group was disaggregated due to
2 the length of the ballot summary draft. Any
3 one of those proposals could have been
4 separated out to comply with the word count
5 limit that we were dealing with.

6 The committee, along with the proposal
7 sponsor, supported P-93 standing alone, which
8 solved both of the issues that we had.

9 There were two amendments to the
10 underlying proposals, one to Proposal 10, which
11 is Senator Gaetz' civic literacy, and one was
12 to -- excuse me -- Proposal 71, which is
13 Commissioner Donalds' proposal.

14 Proposal 10 was amended by replacing,
15 quote, "citizens of a constitutional democracy"
16 with, quote, "citizens of a constitutional
17 republic," end quote. This amendment came
18 straight from the deliberations of the
19 Commission during the special order discussion
20 and week.

21 Proposal 71 was amended to clarify that
22 school districts, which are areas of land, do
23 not establish schools. School boards, which
24 are bodies that govern the districts, establish
25 the schools.

1 And with that, Mr. Chairman, that is the
2 explanation of Revision 3. If there's any
3 questions about the changes that were made or
4 the grouping in general, I will be happy to
5 answer those. And Commissioner Timmann helped
6 me, helped the committee, I should say, and
7 helped President Gaetz with the Proposal 10
8 amendment, and then Proposal 71, the amendment
9 on that was offered by Commissioner Stargel,
10 and he can help answer any questions on that.

11 CHAIRMAN BERUFF: Thank you, Commissioner
12 Heuchan.

13 Commissioner Smith, you are recognized on
14 questions.

15 COMMISSIONER SMITH: Yes, sir.

16 Commissioner Heuchan, for the public and
17 for myself, can you walk us through a little
18 bit more about the questions that I've been
19 getting with this one is you're talking about
20 term limits for School Board members, which are
21 handling certain public schools. They were
22 grouping it with an outcrop of charter schools,
23 which are public schools also.

24 But you are saying charter schools, really
25 the foundation of them won't be handled by the

1 School Board, you have it in the same grouping
2 we were talking about how long someone can
3 serve on the School Board. So if you can just
4 walk us through a little better why those two
5 were put together, because I think this is one
6 where a lot of people have contacted me who
7 have asked about it.

8 COMMISSIONER HEUCHAN: Yes, sir.

9 CHAIRMAN BERUFF: Commissioner Heuchan.

10 COMMISSIONER HEUCHAN: Thank you, Leader
11 Smith. I appreciate the question, and I will
12 try to give you as much detail as I can on the
13 -- which essentially the process by which that
14 led to this.

15 As I mentioned in my introduction, these
16 three, along with Proposal No. 93, the
17 commi- -- different Commissioners through the
18 invitation to participate in the grouping
19 process, whether they be on the committee or
20 not on the committee, we got submissions from
21 Commissioner Donalds, submissions from
22 Commissioner Carlton in particular, there were
23 different variations and those proposals were
24 essentially kind of interchanged, 10, 71, 40,
25 43, and 93.

1 With regard to 71 and 43, right -- is that
2 your question, Senator Smith? Yes, sir. It
3 wasn't any kind of like grand plan to put those
4 together in particular, like, oh, well, we have
5 to have those together. As I mentioned, it
6 could have been -- it was really kind of a
7 default position. When Commissioner
8 Martinez -- he didn't want his with these.

9 And to be fair, I think the other people
10 that are in this group didn't want his with
11 theirs. So it was -- it was kind of an easy --
12 I mean, you could call it kind of a, you know,
13 it was -- it ended up being a default position.
14 There wasn't any -- I don't recall, and any --
15 Commissioner Gamez, there were lots of people,
16 obviously, that were there when we discussed
17 these things. I don't remember there being any
18 kind of context or, you know, discussion about
19 keeping those two in particular together.

20 I know I am probably not -- not answering
21 exactly the way you want me to, Commissioner
22 Smith, but in our view and the committee's view
23 and, frankly, in my own view, from my own
24 voice, those all deal with -- with the K-12
25 system, but you're right. I mean, you know,

1 any number of these could have been put with
2 other things. That just wasn't the consensus
3 of the committee.

4 CHAIRMAN BERUFF: Thank you. Further
5 questions on Revision 3?

6 No further questions on Revision 3. Then,
7 Commissioner Martinez, would you like to
8 introduce Amendment 327072, please? Thank you.

9 COMMISSIONER MARTINEZ: Thank you,
10 Mr. Chair.

11 This is an amendment to the title. It's
12 just to the title. Revision 3, the current
13 title of it is "School Board Term Limits and
14 Duties; Public Schools." It has two titles,
15 but there are three proposals. And presumably
16 the public schools title, I assume, is supposed
17 to be the title for the proposal that deals
18 both with civic literacy and the state
19 chartering authority.

20 And I believe that, although I voted
21 against P-71, which is a state chartering
22 authority, although I am for choice and I would
23 have voted to overturn *Bush versus Holmes*, I
24 just think it needs to be clear to the voters
25 what it is that they are voting for, and the

1 title, it doesn't sufficiently describe it.
2 It's a big deal. It's a game-changer. It's --
3 that P-71 is -- is designed to create an
4 alternative statewide agency, if that's what
5 the Legislature wants to do, to supervise
6 public charter schools. That's a big deal.
7 That's a game-changer. That's why the
8 proponents of the proposal want it, because
9 they want to do a game-changer to the system.

10 So I think it is important that the public
11 be informed that -- with the title, that what
12 they are voting for is something that is
13 significant and it isn't just about public
14 schools, it's something much more than that.
15 Thank you.

16 CHAIRMAN BERUFF: Thank you. Do we have
17 questions on Amendment 327072? Questions on
18 the amendment?

19 Commissioner Donalds is recognized and
20 then Commissioner Johnson.

21 COMMISSIONER DONALDS: Commissioner
22 Martinez, I appreciate your efforts to make
23 sure that the title is clear on this ballot
24 proposal. Did you consult with any of the
25 attorneys on the constitutional sufficiency of

1 the original title that was proposed?

2 CHAIRMAN BERUFF: Commissioner Martinez.

3 COMMISSIONER MARTINEZ: The original title
4 was approved by the outside legal experts. All
5 of these titles that have been presented by
6 Style and Drafting have been approved by the
7 outside legal expert.

8 With regards to the amendment that I am
9 proposing, that also was run by the outside
10 legal experts. In fact, I spoke with that
11 legal expert, Barry Richard, several times, and
12 I think one of the conversations involved, I
13 believe, Jeff Woodburn or Will Spicola, I
14 forgot which one of the two handsome gentlemen.
15 So -- and they also signed off on it.

16 So it is just a matter, if you're
17 comparing one with the other, which one is more
18 descriptive to what the ballot summary is
19 intended to do. Is it public schools or is it
20 the one that I have suggested, which is an
21 alternative state supervision of certain public
22 schools? And I think mine is.

23 CHAIRMAN BERUFF: Commissioner Donalds.

24 COMMISSIONER DONALDS: So you would agree
25 that the title proposed by the Style and

1 Drafting Committee is constitutionally
2 sufficient, according to the experts?

3 COMMISSIONER MARTINEZ: I have to -- yes,
4 in that I think that Barry Richard and Jason
5 Gonzalez are excellent lawyers. So, yes, I
6 think they advised us to -- with regards to
7 titles that they felt were legally sufficient.

8 However, just because a title is legally
9 sufficient doesn't mean that it is sufficiently
10 descriptive of the impact of the proposed
11 amendment. And I think we can see for
12 ourselves which one describes it better. I
13 think it is pretty self-evident.

14 CHAIRMAN BERUFF: Commissioner Johnson is
15 recognized.

16 COMMISSIONER JOHNSON: Thank you, Chair.

17 My question is really to understand better
18 the process and the intent here. So,
19 Commissioner Martinez, are you asking in this
20 amendment to change the title regardless of
21 whether the actual proposal is disaggregated or
22 whether it's kept together? I am trying to
23 understand procedurally what your order of
24 process is.

25 CHAIRMAN BERUFF: Commissioner Martinez.

1 COMMISSIONER MARTINEZ: So I think the way
2 that I've been told to do this, I am not an
3 expert on Mason's, is I have to make an
4 amendment to the title. So it would amend the
5 title of the bundle, of the group, of Revision
6 3. Were it to be disaggregated, then the Style
7 and Drafting would have to consider how to
8 disaggregate it and send it back to us.

9 And I assume that if my amendment passes,
10 that should it be disaggregated, it would come
11 back with a new title if the Commission here
12 were to agree that it should be amended.

13 Does that answer the question?

14 COMMISSIONER JOHNSON: It does. Thank
15 you.

16 CHAIRMAN BERUFF: Further questions on the
17 amendment?

18 Commissioner Rouson is recognized.

19 COMMISSIONER ROUSON: Thank you very much,
20 Mr. Chair.

21 Because the title has been determined to
22 be legally sufficient by outside counsel, did
23 they also say anything to you about it being
24 exclusive?

25 CHAIRMAN BERUFF: Commissioner Martinez.

1 COMMISSIONER MARTINEZ: It is not
2 exclusive, but, obviously -- good question. By
3 them -- by the outside expert -- and the one I
4 consulted with was Barry Richard. I don't know
5 if staff also consulted with others. But by
6 saying back to us your proposed amendment is
7 also in compliance with the Constitution and
8 the law, then, obviously, the original title,
9 it's not exclusive.

10 There are different ways of describing it
11 to satisfy the requirements of the law. It is
12 just a matter of which one informs the voter
13 better.

14 CHAIRMAN BERUFF: Questions on 327072?

15 Seeing none, we will open 327072 to
16 debate. Debate?

17 Commissioner Donalds is recognized.

18 COMMISSIONER DONALDS: I -- thank you. I
19 appreciate the discussion about the title on
20 this. Obviously, this refers to Proposal 71 as
21 a part of this piece, 6003.

22 I do have a concern with the amendment and
23 I cannot support the amendment today. We were
24 advised that the title is read in conjunction
25 with the ballot summary. And I think that

1 there was a great effort and I appreciate the
2 work of the Style and Drafting Committee and
3 Commissioner Stargel, Commissioner Timmann, for
4 putting together a ballot summary that truly
5 does reflect exactly what the amendment does.

6 And read in conjunction with the title
7 that was proposed, it is very clear what the
8 proposed amendment does when read together.

9 The other advice was that the title is to
10 be general and not specific, because when you
11 get specific, you're excluding other specifics.
12 For example, in this particular amendment, it
13 says, "alternative state supervision of certain
14 public schools." However, the amendment allows
15 for operation, control, and supervision of
16 public schools by an alternative overseen by
17 the state.

18 So those details are left out of this
19 title, and, therefore, are being excluded,
20 which I think goes against what we were told as
21 far as being more general. I think when you
22 know that the title is read in conjunction with
23 the ballot summary and you read the ballot
24 summary that is very detailed, in fact, one of
25 the longer ones that was brought forth, that it

1 is very clear exactly what the amendment does.

2 And to that point, and we will get into
3 this as we talk about Proposal 3, we have to be
4 careful about saying what the amendment does
5 when you're talking about what the Legislature
6 could do. And that also gets into what this
7 proposal or this -- this title is saying.

8 It is assuming what the Legislature will
9 do if this proposal passes as opposed to what
10 the proposal actually does if it passes. So I
11 would ask for you to vote down on this
12 amendment. Thank you.

13 CHAIRMAN BERUFF: Further debate on
14 Revision 3 -- excuse me, Amendment 327072? Not
15 seeing -- Commissioner Martinez, would you like
16 to close on your amendment?

17 COMMISSIONER MARTINEZ: Yes, Mr. Chair.
18 Thank you.

19 I think Commissioner Donalds would agree
20 that the reason for P-71, for the proposed
21 amendment, it's not just that it deal with
22 public schools. It is to be a game-changer.
23 It is to radically transform the way in which
24 public charter schools are supervised by a
25 statewide agency. It will allow the

1 Legislature to create a new government
2 bureaucracy, not located at the local level,
3 somewhere up here in Tallahassee. It will be
4 staffed by people who the locals won't know who
5 they are, and it is to allow for charter
6 schools to be chartered by the agency and then
7 could be supervised by the agency to take them
8 outside of the control of the local school
9 boards.

10 That was clear throughout all the
11 different hearings that were held on this
12 particular issue, it is to be a game-changer.

13 And to have a title that innocuously
14 describes it as public schools, although it may
15 be legally sufficient, it is not the best
16 title. And I think we can all see that for
17 ourselves. All one has to do is read the
18 title, "public school," and see what it says.
19 You also read the title "public schools" and
20 you see "civic literacy" and you say these are
21 two different things.

22 So all I am suggesting is that let's give
23 the voters because -- the voters a better
24 title, a better tag, so when they get to that
25 question, they can understand what is it

1 exactly that we're being asked to vote on. And
2 I think that's what my title does. Thank you.

3 CHAIRMAN BERUFF: We will now by voice
4 vote, vote on 327072.

5 All those in favor, signify by saying yea.

6 (Chorus of yea's.)

7 CHAIRMAN BERUFF: All those against, by
8 nay.

9 (Chorus of nay's.)

10 CHAIRMAN BERUFF: Tough call. I think we
11 are going to -- Commissioner Martinez?

12 COMMISSIONER MARTINEZ: Go to the board.
13 Probably should go to the board.

14 CHAIRMAN BERUFF: The yea's have it. I
15 would like to go to the board. There's three
16 vote -- there are three hands.

17 On the amendment, we are voting on the
18 amendment, only the amendment.

19 Everybody voted? Close the board. It was
20 too close to call by voice vote, I can tell you
21 that.

22 THE SECRETARY: That's 16 yea's, 21 nay's,
23 Mr. Chair.

24 CHAIRMAN BERUFF: Okay. The amendment
25 fails.

1 We are now on to debate Revision 3.

2 Commissioner Martinez is recognized.

3 COMMISSIONER MARTINEZ: Mr. Chair, at this
4 point in time, I would like to make the same
5 motion I made as to Revision 1 and 2, but I'd
6 like to speak a little bit further about it, or
7 I can -- I can defer to Commissioner Smith.

8 CHAIRMAN BERUFF: You can both speak to
9 it.

10 COMMISSIONER MARTINEZ: Okay. I would
11 like to let him go first, if I may.

12 CHAIRMAN BERUFF: You want to defer to
13 Commissioner Smith?

14 COMMISSIONER MARTINEZ: Yes.

15 CHAIRMAN BERUFF: Commissioner Smith, you
16 are recognized.

17 COMMISSIONER SMITH: Thank you, Mr. Chair.

18 When we discussed this earlier, it may not
19 have been the right amendment. This was the
20 amendment that I was truly talking about when
21 we talk about the bundling, and that is why I
22 asked the question earlier.

23 These are three separate issues that
24 people have strong issues on. There is a
25 debate on term limits and, actually, the

1 philosophy of term limits and should we have
2 them, should we not have them. There's a
3 debate on charter schools and local control or
4 state control or how charter schools could go
5 forward. And, I mean, there's not much debate
6 on civic literacy, and Gaetz just likes that.

7 These are -- these are three separate
8 issues, and I think you will have -- this won't
9 be one where someone could merge all three of
10 those and say, okay, I have three yeses, I'm
11 going to vote for this, or I have three no's,
12 you know, for this issue, I am going to vote --
13 I am going to vote against this.

14 This one will be a little hard for voters
15 to truly make their decision. It is hard for
16 me to make a decision on how I'm -- I don't
17 even realize how I'm going to vote on this yet
18 because I am strong on some of it, I'm against
19 some of it. The only thing that may prod me
20 forward is that the voters are going to decide.
21 But this is one where there is a little concern
22 about these three being grouped together
23 because there are concerns and there is support
24 for each one of them individually, and I think
25 this is one where we need to really consider

1 pulling apart from being grouped together.

2 And, again, no -- mean no disrespect to the
3 committee, but I think this is one where we
4 really should consider that.

5 CHAIRMAN BERUFF: Commissioner Schifino is
6 recognized.

7 COMMISSIONER SCHIFINO: Thank you, Chair
8 Beruff.

9 When I gave my comments to the initial
10 proposal, this also was one of the two that I
11 am going to speak on that should be unbundled.

12 Let me start by saying I voted yes on each
13 of these proposals separately, but that's
14 different than when you analyze looking at
15 these three together, because they are not
16 related sufficiently to stay bundled, in my
17 opinion.

18 First, term limits. I think it is a very
19 easy decision to analyze -- or easy question to
20 analyze. Do you support term limits for your
21 School Board members, yes or no?

22 Civic literacy, I don't know how that is
23 related to the other two at all.

24 But when you talk about 71, that's
25 something to think about. And people are going

1 to have very divergent opinions on what we
2 should do with our charter schools and which
3 agencies -- which governing body should be
4 supervising them. I just think it is -- it is
5 a completely different matrix you are going to
6 walk through in analyzing Proposal 3.

7 And, therefore, I think on this particular
8 proposal, I stand in support of Commissioner
9 Martinez. I think that we owe it to the
10 citizens of the state to allow them the
11 opportunity to analyze 71 separate from the
12 others.

13 Thank you, Chair Beruff.

14 (Whereupon, proceedings continue in Volume
15 II.)

16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, CLARA C. ROTRUCK, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 001 through 160, is a true and correct record of my stenographic notes.

Dated this 17th day of May, 2018, at Tallahassee, Leon County, Florida.

CLARA C. ROTRUCK

Court Reporter

Commission No.: FF 174037

Expiration date: November 13, 2018