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CONSTITUTION REVISION COMMISSION

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

2 CHAIRMAN BERUFF: We are settled in.

3 Commissioner Smith is recognized.

4 COMMISSIONER SMITH: Thank you, Mr. Chair.

5 Under Rule 4.5, I move that Proposal 61 be
6 removed from Committee and placed on special
7 order calendar. I understand from the rules
8 that it will be placed on tomorrow. And if I
9 can give a brief overview of it to explain.

10 CHAIRMAN BERUFF: Please proceed.

11 COMMISSIONER SMITH: Thank you. Proposal
12 61 passed Local Government Committee and then
13 Proposal 61 then died in the Legislative
14 Committee on a two-two vote.

15 The Legislative Committee with seven
16 persons on that committee, three were not
17 present on the day of the vote, and there was
18 two for and two against. The proposal we just
19 passed did two things:

20 It limited local government and it
21 required local government, if they are going to
22 do something, to do it in a separate Bill so
23 that people understand what they are doing.

24 Proposal 61 only does one of those things.
25 It says if the Legislature is going to preempt

1 local government it should be in a separate
2 Bill. Based on the -- the sentiment of this
3 body on the last vote, I think that we should
4 at least bring Proposal 61 to discuss its
5 merits and see if it should be included in one
6 of our proposals. Thank you.

7 CHAIRMAN BERUFF: If Commissioner Smith
8 would allow, I would like Commissioner Cerio to
9 explain what a -- the process for, what is it
10 again, a four --

11 COMMISSIONER CERIO: Thank you, Mr. Chair.
12 Under Rule 4.5 of our rules, you all may recall
13 this was a subject of some discussion and it
14 was affectionately referred to as the Schifino
15 Provision, maybe the Schifino Resurrection
16 Provision, which does sound a bit blasphemous,
17 but that is what we called it.

18 Rule -- Rule 4.5 referenced a proposal to
19 Committee, removal from Committee reference
20 reads as follows:

21 "After the Commission Chair has referenced
22 a proposal any Commissioner may move to remove
23 a proposal, move to remove a proposal from
24 Committee. This motion may be adopted by a
25 majority vote. Any proposal removed from

1 Committee shall be placed on the special order
2 calendar at the next full meeting."

3 So that is the rule, Mr. Chair.

4 CHAIRMAN BERUFF: So the process is we
5 have to call this for a vote now to see if it
6 gets on the special calendar tomorrow, or we
7 vote tomorrow?

8 COMMISSIONER CERIO: Mr. Chair. It would
9 be to vote today to pull it from Committee and
10 bring it back to the floor; and it says it --
11 excuse me, let me see if we have a may or a
12 shall, "remove from Committee shall be placed
13 on the special order calendar at the next full
14 Commission meeting."

15 If you recall from the special order
16 calendar that was proposed by the Rule
17 Committee, we sort of tried to allow for this
18 contingency and we placed it at the end of the
19 calendar. But -- and if we end tomorrow that
20 works out, but the rule does seem to suggest
21 that, or does suggest that it is to be heard at
22 the next full Commission meeting, which would
23 be tomorrow.

24 CHAIRMAN BERUFF: So this is open for
25 debate now then?

1 COMMISSIONER CERIO: Yes, Mr. Chair.

2 CHAIRMAN BERUFF: So the motion is open
3 for debate. The Chair recognizes Commissioner
4 Rouson.

5 COMMISSIONER ROUSON: Thank you very much,
6 Mr. Chair. I won't be long. To thine own self
7 be true, and it must follow as the day the
8 night, and thou canst be false to any man.

9 We have just passed a proposal earlier
10 that limits local government, that talks about,
11 mentions preemption, and the highlight of that
12 was that we honored and elevated that you must
13 have a stand-alone Bill if you are going to do
14 that.

15 This Proposal 61 does exactly that, and we
16 must honor that. I -- that is the whole
17 argument. And so I urge you to vote, to bring
18 61 to the full Commission.

19 Thank you.

20 CHAIRMAN BERUFF: Anyone else?
21 Commissioner Solari is recognized.

22 COMMISSION SOLARI: Thank you, Mr. Chair.
23 During the break we heard that a wise man in
24 this chamber said, I guess time and time again,
25 "don't fear the debate." So whether you are

1 for this or against this, I believe that we
2 ought to have a full discussion of this before
3 the CRC.

4 And we all know how the press is. The
5 press gets things wrong all the time.
6 Regardless though, we have seen a lot of press
7 about the Florida Legislature having a war
8 on -- on local governments over the last
9 sessions. So again, I invite all of the
10 members of the Florida Legislature to join in
11 the support of this program to show that the
12 press got it wrong once again. And if there is
13 a war, well, then let this be the start of the
14 healing process.

15 I ask you all to vote in support of this
16 motion. Thank you.

17 CHAIRMAN BERUFF: Further debate?

18 Commissioner Lee is recognized.

19 COMMISSIONER LEE: Thank you, Mr. Chair.
20 At the appropriate time I actually have a
21 parliamentary question of either the Chair or
22 the Rules Chair, at your discretion, sir.

23 CHAIRMAN BERUFF: Please proceed.

24 COMMISSIONER LEE: Thank you, sir. So
25 procedurally as this proposal comes back we

1 are, we are going to vote, get voted up and
2 come back onto the calendar. We are now
3 procedurally in a place where it would require
4 two-thirds vote to further amend, and I think
5 it is important for the body to know as we vote
6 on this, because the full amendatory process
7 wouldn't be available to us, how we are going
8 to deal with the rule that requires a
9 two-thirds vote for a late-filed amendment,
10 given that we passed the hearing deadline on
11 Friday, and we had no idea and couldn't have
12 amended this proposal because we never knew it
13 was coming back.

14 CHAIRMAN BERUFF: Commissioner Cerio, on
15 the question.

16 COMMISSIONER CERIO: Thank you, Mr.
17 Chairman. Commissioner Lee, that is an
18 excellent point. I think that there is a lot
19 of merit to trying to figure out a procedure,
20 maybe by a two-thirds vote, we waive the rules
21 to allow for time for some amendments to be
22 considered without requiring a further
23 two-thirds. We could certainly talk about it.

24 We are in some unchartered territory here
25 and I think we are going to have to fashion the

1 appropriate approach.

2 CHAIRMAN BERUFF: Thank you. Commissioner
3 Carlton is recognized.

4 COMMISSIONER CARLTON: This is to the
5 point, and I want to make sure that the
6 Commissioners understand what the point is
7 here. We are not talking about the substance
8 of this proposal.

9 We are talking about a motion to pull the
10 Bill out of committee; all right, we are not
11 talking about what the proposal is. We are
12 talking about a motion to pull the Bill out of
13 committee, so that is what we are debating on.

14 And these rules are here for a reason, and
15 right here, right now is why we have these
16 rules. You never have to get to the substance
17 of this issue. The question from Commissioner
18 Lee on how do you amend it, how does that rule
19 apply? There is a reason why proposals went
20 through committees, filtered through a
21 committee process. There were amendments in
22 the committee process, and wow, some of them
23 didn't make it out of committee.

24 If we start pulling Bills out of committee
25 and putting them on the agenda we will never

1 get to the original 36 proposals that we have
2 all spent so much time on. So where are the
3 strict constructionists in here, because we
4 have heard you talk a lot about being a strict
5 constructionist.

6 Here is your opportunity to be a strict
7 constructionist. We either have rules or we
8 don't have rules. Yes, there is a rule that
9 allows a Bill to be pulled out of committee,
10 but I would say that would be a rule that we
11 would want to extremely sparingly apply, and
12 this is definitely not that instance.

13 We have a lot of proposals on our agenda
14 that are, you know, well thought out, are
15 deserving of debate and all of that, and this
16 is -- this is a time for us to just abide by
17 our rules and honor the committee process that
18 was set up and vote against a proposal --
19 against the motion to pull the Bill out of
20 committee.

21 CHAIRMAN BERUFF: Further debate on the
22 motion?

23 Commissioner Stargel is recognized.

24 COMMISSIONER STARGEL: I wanted to also
25 point out as we are talking about the rules

1 here, Commissioner Smith just pointed out that
2 it was a two-two tie. Under the rules that
3 this Commission adopted under 6.5, the very
4 next meeting he could have brought that up
5 through anyone on the prevailing side. Since
6 it was a two-two vote, any of the ones that
7 were there would have been considered under
8 Masons to have been on the prevailing side. So
9 they did have an opportunity to have this
10 reconsidered with more people at the next
11 committee meeting.

12 That was not done, so I rise in opposition
13 to this motion.

14 CHAIRMAN BERUFF: Commissioner Gaetz is
15 recognized.

16 COMMISSIONER GAETZ: Thank you. For
17 parliamentary inquiry, Mr. Chairman, Mr. Rules
18 Chair, could you -- could you help flesh out a
19 little bit the answer that you gave to Senator
20 Lee? If this matter is brought back and put on
21 special order, under what circumstances would
22 it require a two-thirds in order to pass?

23 Would it be because this is in the form of
24 a late-filed amendment? Is that the form in
25 which it would require a two-thirds, or was it

1 your intention that there be a two-thirds
2 waiver of the rules to then allow other items
3 that happened, that might be pulled from
4 committee and brought before the floor to be
5 voted on without a two-thirds?

6 Could you flesh that out for me, please?

7 CHAIRMAN BERUFF: Commissioner Cerio is
8 recognized.

9 COMMISSIONER CERIO: Thank you, Mr. Chair.
10 Thank you, Commissioner Gaetz, that is an
11 excellent question. The latter is what I was
12 trying to do. What I had sort of thrown out
13 there, because we do have some latitude here,
14 was it perhaps by a two-thirds vote we would
15 waive our rules, because this is not really
16 contemplated in the rules to allow, you know,
17 if Commissioner Smith's proposal is taken up,
18 to allow amendments, to allow these things to
19 be considered by a majority vote.

20 So we could treat it as if it was on the
21 floor in the natural course of business. That
22 was my intention.

23 CHAIRMAN BERUFF: Commissioner Gaetz.

24 COMMISSIONER GAETZ: Thank you,
25 Mr. Chairman. Then to -- to Commissioner

1 Carlton's point, if we did what you had
2 suggested, Mr. Rules Chair, and that is have a
3 blanket waiver of the rules to allow items that
4 were drawn out from committee to be voted on
5 solely by a majority vote, we then fail -- we
6 then eliminate our ability to draw a
7 distinction between those items which we think
8 have risen to some kind of level of serious and
9 significance importance that we would take them
10 from committee and vote for them on the floor
11 and add them to our list of proposals to be
12 sent to Style and Drafting.

13 I am troubled by that, and I would be very
14 interested in Senator Carlton's view on this
15 matter as well as a rules maven. And that is
16 do we want to lower the standard of subsequent
17 enactment to a majority vote, if we do a waiver
18 of the rules to allow these items to be voted
19 on by a majority vote?

20 Doesn't that, in effect, lower the
21 standard and open the gate wider, and maybe
22 that is our intention as a body, to open the
23 gate wider and bring back a number of proposals
24 that died in committee. If so, I have two or
25 three in mind of my own.

1 CHAIRMAN BERUFF: Commissioner Cerio.

2 COMMISSIONER CERIO: Commissioner Gaetz, I
3 don't know if you were directing that to
4 Commissioner Carlton. Let me take a stab at
5 that.

6 When you said as far as whatever the will
7 of the body is, that is sort of where I am
8 trying to go. What I -- what I believe I heard
9 Senator Lee say, and this is not an
10 endorsement, it is an idea, but the thought is
11 if we are going to bring something back, then
12 are we going to -- every -- every amendment
13 will be a late-filed amendment, so every
14 amendment would require a two-thirds.

15 If that is how we decide to go that is,
16 that is fine, but as an alternative, if we
17 bring these proposals back by a majority, if we
18 want to treat them as proposals that are in the
19 ordinary course, and since we haven't had time
20 to study them, at least if they died in
21 committee, to make sure we are fully informed,
22 then there is a mechanism by which we could
23 address that and treat that, you know, treat
24 amendments as only requiring a majority vote.
25 And that would be by doing a two-thirds waiver

1 of the rules, specifically fleshing all of this
2 out. I should have been very careful.

3 I am not endorsing that approach. I am
4 saying that is an approach that we could take.
5 Yes, sir.

6 CHAIRMAN BERUFF: Okay. Any more debate
7 on the motion? Then I am going to call the
8 question.

9 Commissioner Smith is recognized.

10 COMMISSIONER SMITH: Thank you, Mr. Chair,
11 and there is just a point mentioned that I have
12 to discuss. Commissioner Stargel brought up a
13 great point, that we do have in the rules that
14 the next meeting, it could have been brought up
15 again, but guess what, there was no next
16 meeting. This was the last meeting of that
17 committee.

18 Seven person-committee and only four
19 people showed up for that committee. So I
20 would have loved to have another meeting with
21 those seven and try to bring it up again.
22 There was no other meeting, so to Commissioner
23 Stargel's point, I wish that was a point.

24 And to the other point, we have rules and
25 we should be governed by rules and if we didn't

1 want to use the rules we shouldn't have put 4.5
2 in there.

3 If we contemplated you never wanted to
4 bring anything up, we shouldn't have put 4.5 in
5 there. It was contemplated because sometimes
6 things happen. Sometimes you look at
7 situations and you say, you know what, let's go
8 ahead and discuss that. There is a lot of
9 merits to this proposal and I would hope that
10 we would bring it forward, a proposal that
11 passed one committee, that in the second
12 committee of seven persons, only four showed up
13 for the meeting and it was a two-two vote, no
14 other meetings for me to try it again.

15 This is an issue that we just discussed,
16 the essence of this issue we just discussed,
17 and a majority clearly saw some merit in that.
18 And all I am asking is for a vote so tomorrow
19 we can discuss the issue, have the debate, vote
20 it up or down, so I ask for your support.

21 CHAIRMAN BERUFF: Commissioner Heuchan is
22 recognized.

23 COMMISSIONER HEUCHAN: Yes, I am sorry,
24 did you close? Okay. Thank you.

25 CHAIRMAN BERUFF: Okay, hold on a second.

1 We are -- he just closed, so we are done, okay.
2 We are going to call a vote, a voice vote on
3 whether or not Commissioner Smith's motion to
4 resurrect Proposal 61 goes back to this body in
5 a special order calendar tomorrow. Is
6 everybody clear on that?

7 All those in favor signify by saying yea.

8 (Chorus of yea's.)

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

11 (Chorus of nay's.)

12 CHAIRMAN BERUFF: The nay's have it.

13 Thank you very much. Before we go on to the
14 next matter we would like to take a moment,
15 some of you have learned there was an incident
16 today in Maryland at a high school. There was
17 a shooting. I would like to acknowledge that.

18 My understanding is that fortunately it
19 appears that the students have survived, the
20 two students, though one is in critical care,
21 and the perpetrator did not survive. So this
22 moment for everyone while we move on. Thank
23 you.

24 Now we will take up Proposal 66. Mr. Lee,
25 Commissioner Lee, would you like to introduce

1 your proposal?

2 COMMISSIONER LEE: Thank you, Mr. Chair.
3 This is actually a very simple proposal,
4 Commissioners, dealing with the
5 responsibilities and duties of the Lieutenant
6 Governor.

7 As we said in committee, the State, as you
8 all know, has a Lieutenant Governor. That
9 Lieutenant Governor is an extremely weak
10 position as compared to the other 50 states in
11 the United States, and over the course of 22
12 years of working with four Governors and at
13 least as many Lieutenant Governors, it has
14 dawned on me that we might be able to do a
15 better job in finding some responsibilities for
16 the Lieutenant Governor.

17 We originally started out with a proposal
18 I think was too narrow for the -- for the
19 committees the proposal was taken through, but
20 it has subsequently been amended, and as it
21 sits before you today the proposal would merely
22 require that the Lieutenant Governor be
23 appointed by the Governor to one of the ten
24 department heads that the Governor currently
25 has authority to appoint, in addition to

1 serving in his role as Lieutenant Governor.

2 We spend about a million dollars a year on
3 support services and salary for the Lieutenant
4 Governor, and it was just an idea to get not
5 only a bigger bang for our buck, but at the
6 same time also create some added value and some
7 self-actualization for the individual that is
8 serving as Lieutenant Governor in the Executive
9 Branch, and that is the proposal. I do have
10 one amendment.

11 CHAIRMAN BERUFF: We will open for
12 questions on Proposal 66. We will go to
13 questions first. Any questions?

14 Commissioner Coxe has a question.

15 COMMISSIONER COXE: Commissioner Lee, can
16 the Governor do this on his own authority now
17 without the Constitution's help?

18 CHAIRMAN BERUFF: Commissioner Lee.

19 COMMISSIONER LEE: Yes, sir, he may.

20 CHAIRMAN BERUFF: Any other questions on
21 Proposal 66 before we go to the amendment?
22 Seeing none, would you like to explain your
23 amendment, Commissioner Lee?

24 COMMISSIONER LEE: Yes, Mr. Chair. As it
25 relates to the concept of the Bill, this

1 amendment is purely technical in nature in that
2 it is -- makes it clear that the Governor will,
3 in fact, appoint the Lieutenant Governor to
4 serve as one of the heads, to head up one of
5 the ten departments that he currently has the
6 authority to appoint to.

7 CHAIRMAN BERUFF: Is there questions on
8 the amendment 456448? Commissioner Joyner, is
9 that your sign that you would like to speak?

10 Commissioner Joyner, you are recognized.

11 COMMISSIONER JOYNER: Thank you. I
12 believe this question was posed to you in
13 committee, and with respect to the Governor
14 having the right to appoint someone
15 irrespective of the qualifications that are
16 required of others who would be appointed.

17 And I think the example was the Secretary
18 of Health is normally a medical doctor and the
19 Lieutenant Governor may not be. What is there
20 -- how do you feel about not binding the
21 Governor to the qualifications if there are any
22 for that particular secretary or position?

23 CHAIRMAN BERUFF: Commissioner Lee.

24 COMMISSIONER LEE: Thank you. You have
25 picked out the one where I think there are

1 specific qualifications. We do not impose a
2 limitation or restriction on the Governor.

3 If the Governor believes in his wisdom or
4 her wisdom that the Lieutenant Governor can
5 serve adequately as the head of the Department
6 of Health, he or she needn't be a doctor, that
7 is the one case where I think that point is
8 well taken.

9 The reason why we amended this proposal to
10 broaden it, Commissioner Joyner, was because
11 originally we had set out to make the
12 Lieutenant Governor Secretary of State. That
13 is controversial in and of itself, but it is
14 also in fairness to the comments and criticisms
15 about it, it does presume that the Lieutenant
16 Governor would have the qualifications, skills
17 and experience to serve as Secretary of State.

18 So what we did was we just backed up and
19 said, well, rather than just picking on the
20 Secretary of State, the Governor currently has
21 sole authority subject to Senate confirmation,
22 has sole authority to appoint the head of the
23 DBPR, the Department of Children and Families,
24 the Department of Corrections, the Department
25 of Economic Opportunities, the Department of

1 Elderly Affairs, Department of Health,
2 Department of Juvenile Justice, Department of
3 Lottery, Department of Management Services and
4 the Secretary of State.

5 And so we just said, well, certainly
6 Lieutenant Governor is going to have sufficient
7 skills that they would be able to serve in one
8 of those capacities and leave it to the wisdom
9 of the Governor to determine which particular
10 department head that the Governor believes that
11 the Lieutenant Governor could best serve the
12 people of the State of Florida, and exempt that
13 appointment from Senate confirmation because
14 the Lieutenant Governor is, in fact, an elected
15 official already.

16 CHAIRMAN BERUFF: Commissioner Joyner.

17 COMMISSIONER JOYNER: And because of that
18 reason you took out the Senate confirmation?

19 CHAIRMAN BERUFF: Commissioner Lee.

20 COMMISSIONER LEE: Yes, Senator Joyner, it
21 just seemed, again, and you know how this
22 works. We confer with one another in committee
23 and otherwise, and it just seemed to me to be
24 redundant to subject the Lieutenant Governor to
25 Senate confirmation when the Lieutenant

1 Governor has already been elected along with
2 the Governor to statewide elected office. And
3 so I did not include Senate confirmation in
4 that -- in this particular proposal.

5 CHAIRMAN BERUFF: Commissioner Joyner.

6 COMMISSIONER JOYNER: I understand your
7 rationale. I just think that the confirmation
8 process, it has served a useful purpose in some
9 instances in the future, I mean, in the past,
10 and I got a little uneasy feeling about that
11 portion of this proposal. I -- but it is what
12 it is, and I will manifest my intention by my
13 vote.

14 CHAIRMAN BERUFF: Further questions on the
15 456448 amendment? Commissioner Gainey is
16 recognized.

17 COMMISSIONER GAINNEY: Commissioner Lee,
18 occasionally as you are aware, the Governor is
19 not satisfied with the work of the Secretary
20 and that person is removed from that position.
21 If you anticipated if you have a unique
22 situation where the Governor is not satisfied
23 with the Lieutenant Governor as Secretary and
24 the other Secretary slots are filled at that
25 moment, how do we address that issue?

1 CHAIRMAN BERUFF: Commissioner Lee.

2 COMMISSIONER LEE: Well, as a practical
3 matter, I think the Lieutenant Governor
4 would -- would have to wait until an opening
5 occurred in the administration. It says he
6 must appoint, it doesn't say that he has to
7 immediately appoint him. So I don't see where
8 there would be an obligation for the Lieutenant
9 Governor to fire another Secretary in order to
10 make an opening.

11 CHAIRMAN BERUFF: Commissioner Bondi is
12 recognized.

13 COMMISSIONER BONDI: In dealing with many
14 of these agencies over the past seven years I
15 know Department of Corrections is highly
16 qualified in law enforcement. The Department
17 of Children and Families, obviously, aspects
18 with children.

19 I think -- I think the only one you
20 mentioned is Lottery, which I don't know that
21 much about, which, you know, perhaps would fit,
22 but I think that is another problem that many
23 of these require very specialized skills.

24 CHAIRMAN BERUFF: Commissioner -- is there
25 a question on the amendment, any further

1 questions?

2 Seeing none, with a voice vote, all those
3 in favor of the amendment signify by saying
4 yea.

5 (Chorus of yea's.)

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

8 (Chorus of nay's.)

9 CHAIRMAN BERUFF: I think the nay's have
10 it. Okay. Now, back to debate on Proposal 66,
11 right? So is anybody on debate on Proposal 66?

12 Commissioner Gaetz?

13 COMMISSIONER GAETZ: Thank you,
14 Mr. Chairman. Very quickly, I support Senator
15 Lee's proposal. I supported it in committee.
16 I think we have had some great Lieutenant
17 Governors who actually had jobs. Then we have
18 some Lieutenant Governors who sort of wandered
19 the halls with their hands in their pockets, a
20 waste of human resources. And it just sort of
21 been the way it was.

22 So I support Senator Lee's proposal, but I
23 would simply ask him in his close to tell us
24 what -- what form and impact the proposal now
25 has with the amendment having been defeated?

1 CHAIRMAN BERUFF: Commissioner Lee.

2 COMMISSIONER LEE: Is that -- Mr. Chair,
3 is that a response to a question?

4 CHAIRMAN BERUFF: Debate, he is looking to
5 you for an answer.

6 COMMISSIONER LEE: Well, if you are
7 closing debate, then I would close. If I am
8 responding to a question, then I am happy to do
9 that, sir.

10 CHAIRMAN BERUFF: No, I am not closing
11 debate, but thank you. So any further debate
12 on 66? Any further debate on 66?

13 I think we can now close debate and
14 Commissioner Lee, if you would close debate on
15 66, I would appreciate it.

16 COMMISSIONER LEE: Thank you. Thank you,
17 Mr. Chair. President Gaetz, I think that there
18 is an ambiguity now in the proposal. The
19 amendment that we did not adopt was purely
20 technical in the sense that it fulfilled the
21 spirit of the amendment. It did not do any --
22 didn't substantively change it, so I am a
23 little baffled by that.

24 But I -- but we are where we are. So what
25 I would say to you is, assuming that that is

1 not a foreshadowing of things to come and this
2 were to move on to the Style and Drafting
3 Committee, then I think it would be
4 inappropriate for them to take a look at this
5 purely technical provision. But I don't think
6 it is quite ready for prime time honestly,
7 because it has this slight ambiguity in it now
8 as to whether or not the Governor will actually
9 have to appoint. The way it was worded was
10 just slightly ambiguous.

11 So what I was really trying to do here is
12 tighten it up to conform to the talking points
13 and the conversations and the votes that we
14 obtained in committee to get to this point.

15 As it relates to the comments here, I
16 don't think if you review the appointments over
17 the last 20 years to some of the departments,
18 you would necessarily be all that impressed
19 with the qualifications that some of the
20 Secretaries have had.

21 That ebbs and flows, as many of you know
22 that sometimes these are political appointees
23 with much less substantive experience than
24 necessarily loyalty and subject matter
25 knowledge. However, I think it is important

1 that the individuals that serve in these
2 capacities do have the subject matter
3 knowledge, and I would just like to believe
4 that whether it is the -- given the complete
5 breadth of state agencies, that we would not be
6 in a posture where we would have a Lieutenant
7 Governor that wouldn't have sufficient
8 qualifications to serve in one of these
9 capacities as Secretary of a department of the
10 state where the Governor already has the
11 authority.

12 And I would just point out to you that
13 look at where we are today. We have a
14 situation where most of our Lieutenant
15 Governors have not been properly utilized.
16 They have not been able to serve this state.
17 The last three are all too classy to comment on
18 it themselves, but there is -- there is an
19 opportunity for the State to be more efficient
20 here, to take the money that is being spent on
21 our Lieutenant Governor and apply that and --
22 and get some bang for the buck out of that
23 money and to have them serve in a capacity as a
24 member of one of these ten departments where
25 the Governor already has authority.

1 I think it is good government. I think it
2 is government efficiency. I think it belongs
3 in the Constitution because it directly relates
4 to the role of the Lieutenant Governor, and I
5 think we are better off with this in the
6 Constitution than we are under the present
7 situation where the Lieutenant Governor is
8 among the one -- three of the weakest
9 Lieutenant Governors in the United States of
10 America, and actually serves no formal function
11 whatsoever other than to help elect a Governor
12 at election time.

13 CHAIRMAN BERUFF: The secretary will open
14 the board for a vote. Commissioners, please
15 vote. Commissioners, please vote. I see one
16 Commissioner quickly approaching his desk.

17 Please close the board. Announce the
18 tally.

19 THE SECRETARY: Twelve yea's, 20 nay's,
20 Mr. Chairman.

21 CHAIRMAN BERUFF: It fails. We will now
22 continue with the order of business. We are
23 going to bring a proposal -- we are bringing 96
24 forward.

25 Previously temporarily postponed,

1 Commissioner Cerio, if you would like to speak
2 on.

3 COMMISSIONER CERIO: Thank you, thank you,
4 Mr. Chair. Thank you, everyone. I am here to
5 talk to you today, and I am very proud to speak
6 to you about Proposal 96, Marsy's Law. For
7 most of you I have been in your ear about this,
8 talked to you, cajoled you, begged you, stalked
9 you and just basically I want to thank all of
10 you for making the time.

11 Most of you, all of you frankly who I have
12 spoken to about this proposal, had a lot of
13 great questions and you have listened and it is
14 clear that you care about victims' rights.

15 I would like to first thank my fellow CRC
16 Commission, Commissioner co-sponsors Brecht
17 Heuchan, Commissioner Darlene Jordan,
18 Commissioner, Patricia Levesque, Commissioner
19 Jeanette Nunez, Commissioner Darryl Rouson,
20 Commissioner Fred Karlinsky, Commissioner
21 Jacqui Thurlow-Lippisch. I want to thank you
22 all.

23 Our Constitution we talked about this on
24 the first day. It really is a statement of the
25 values of our society, and we have an

1 opportunity today to advance the notion that if
2 you should become a victim of crime here in
3 Florida you are protected with rights and you
4 are on equal footing of the accused because you
5 are also protected with rights that appear in
6 our Constitution.

7 You all have heard me make this statement
8 before. The United States Constitution has 20
9 enumerated rights for the accused and none for
10 victims. Now, maybe it is because back in late
11 18th century, the accused really were victims
12 and the bad guy was the government, but times
13 have changed, times have evolved, and it is
14 clear, and to those of you who heard testimony
15 during our tour around the state, heard
16 testimony from victims as to why things have
17 changed and how they have changed. So when we
18 talk about meaningful rights for victims, what
19 does that mean?

20 Let me take a moment to quickly run
21 through in summary fashion what Marsy's Law is
22 intended to do.

23 So under this proposal, victims would have
24 rights, including timely notification of
25 proceedings in the criminal case, including

1 notice of hearings, trial and sentencing, the
2 right to be present at all proceedings,
3 including trial. Defendants are permitted to
4 sit through these proceedings. The victims
5 should frankly have the same rights.

6 To be heard at proceedings at particular
7 times, and this doesn't mean that they have,
8 that a victim has veto or control. The right
9 to be heard is still controlled by the Judge
10 and it happens at the appropriate time. But
11 they do get to have a voice and this includes,
12 you know, at bail or sentencing hearings -- to
13 confer with the prosecuting attorney at
14 appropriate times.

15 Again, this does not give the victim a
16 right to tell the prosecutor how to do their
17 job, but they should be permitted to speak with
18 the prosecutor and to discuss a plea agreement
19 or sentencing, at least to have an opportunity
20 to be heard.

21 You are going to hear me coming back to
22 that. The opportunity to be heard for victims
23 is so critical, not -- not just because it is
24 the right thing to do, because it is, but also
25 for a sense of closure and a sense of healing,

1 and to help the victim move on.

2 The right to be present or to present
3 information to be considered in sentencing,
4 such as a victim impact statement; to know, the
5 right to know about a conviction and sentencing
6 or the release and escape of a prisoner; the
7 right to restitution; and the right to
8 proceedings free from unreasonable delay.

9 The accused have a right to, they have
10 speedy trial rights and a right to a fair
11 trial, but frivolous delay shouldn't be
12 permitted. And our language does allow the
13 prosecutor, it says they may, they don't have
14 to, but they may request a speedy trial and if
15 that cannot happen, the onus is then on the
16 Judge to simply articulate why the delay is
17 necessary.

18 Again, the victim does not get to use or
19 control of the trial. And finally, the victim
20 has the right to be informed of their rights.
21 When a crime happens, there is a provision in
22 Marsy's Law that allows the victim to be
23 presented with a concise statement of these are
24 your rights, these are rights that you
25 automatically have, and I will get to it in

1 more detail, but these are also rights that you
2 can opt in, so to speak.

3 So when we talk about these enforceable
4 rights, what does that mean? This amendment
5 contains language that gives the victim
6 standing to appear before a Judge if they feel
7 any of their rights are violated and if the
8 Judge finds that that is the case, to provide a
9 remedy. That does not exist currently. It
10 doesn't provide a private cause of action.
11 There is, you know, in a strike-all that I will
12 talk about, that is made clear, but it does
13 allow them to seek relief from the Court,
14 either through -- with the help of a
15 prosecuting attorney or they can go during --
16 the victim can go directly to the Judge.

17 And it is just important to clarify that
18 these procedural rights are narrow. They are
19 not broad. That is why there is so much detail
20 in Marsy's Law, because we want to provide
21 narrow, specific rights to avoid confusion, to
22 hopefully also avoid the need for a whole lot
23 of judicial interpretation, but to make it
24 clear and concise.

25 Proposal 96, Marsy's Law, is about

1 ensuring the victims' of crime who are frankly
2 thrust into the criminal justice process, you
3 know, through no fault of their own and
4 certainly having no desire on their own, are
5 treated with respect and with dignity and
6 equity.

7 So let me just briefly talk for a moment
8 about who is supporting Marsy's Law. Victims
9 of crime and crime advocates are supporting
10 this proposal, including, to name a few, the
11 Florida Coalition Against Sexual Violence,
12 Senator Lauren Book and her foundation,
13 Lauren's Kids, Mothers Against Drunk Driving,
14 the Victim Service Center of Central Florida,
15 the Justice Coalition in Jacksonville, and the
16 Peyton Tuthill Foundation.

17 Victims, themselves, whose experiences
18 would have been different if they were afforded
19 the protections of Florida law and have given
20 their permission for me to name them. Michael
21 Liles you all have heard from Mr. Liles a
22 couple of times. His wife was brutally
23 murdered in their home about a year ago, and he
24 testified just last week that he still is not
25 receiving notices of court dates regarding the

1 case.

2 Rachel Steins, who was sexually assaulted
3 at gunpoint in her home. Her attacker
4 represented himself, so he had access to
5 personal information about her and other
6 witnesses which apparently allowed him the
7 opportunity to continue to harass her.

8 She wasn't notified or present to speak
9 when her rapist's sentence was dramatically
10 reduced and he became eligible for parole.

11 Judy Kitchen whose husband was killed by a
12 drunk driver, she couldn't even find out the
13 driver, whether or not the driver completed the
14 community service he was ordered to. And
15 Carrie Warren who was stalked, strangled and
16 nearly killed by an abusive partner. She
17 wasn't given a voice during her plea agreement.

18 Law enforcement professionals, including,
19 with my great gratitude, the Florida Sheriffs
20 Association and the Florida Police Chiefs
21 Association are supporting Marsy's Law, and I
22 have spent a lot of time with these very
23 thoughtful, very diligent law enforcement
24 professionals, and again, I am humbled that
25 they have decided to support Marsy's Law.

1 And I am equally humbled that we have the
2 support of many individuals, State Attorneys
3 from some of our biggest jurisdictions,
4 including Brad King from Ocala; Andrew Warren
5 from Tampa; Katherine Fernandez-Rundle from
6 Miami; R. J. Larizza, Daytona Beach. And
7 Mr. Larizza, as many of you know, is the
8 President of the Florida Prosecuting Attorneys
9 Association; Melissa Nelson from Jacksonville;
10 and Dave Aronberg from West Palm Beach.

11 So it is especially meaningful to me that
12 so many of these officials we look to who
13 played key roles in our criminal justice system
14 have frankly reviewed and have had direct input
15 into the crafting and maybe a little
16 re-crafting of Marsy's Law as I will talk about
17 and have come out in support.

18 Last week at a press conference, my fellow
19 Commissioners Keiser and Rouson, joined me to
20 stand with Governor Scott when he endorsed
21 Marsy's Law. And just this past weekend former
22 Governor Jeb Bush penned an editorial in the
23 Miami Herald with his strong support of Marsy's
24 Law. So I am proud -- I am proud of the
25 support.

1 I am proud that it is broad-based. I am
2 very proud that, well, not most proud, but
3 extremely proud, I will say that, it is
4 bi-partisan, as well. I do want to mention
5 that there was some controversy surrounding a
6 right contained in the first draft of this
7 proposal and we can talk about it.

8 There is an amendment, and it is one that
9 would have given the victim the right to refuse
10 a request from the defense for a pretrial
11 interview, a deposition or discovery. We heard
12 testimony from victims, some very tough
13 testimony that they actually suffered some
14 abuse and mistreatment during these types of
15 proceedings.

16 Maybe they were isolated, maybe not, but
17 it was happening, and Florida is one of a
18 handful of states that does allow victim
19 depositions. Most states don't, the Federal
20 Government doesn't. And it was an important
21 issue and while I and many other -- many others
22 believe that this position has merits, the
23 bottom line and in the interest of bringing the
24 broadest coalition together, what I hope will
25 help ensure passage of this important proposal,

1 we have decided, I decided to file an amendment
2 to take this provision out.

3 I know that the -- the folks on the other
4 side of the argument believe passionately in
5 their position that Florida is unique and it is
6 critical to maintaining this piece.

7 Reasonable minds may differ, but I think
8 everybody at the end is coming together to try
9 and support and enhance the rights of victims
10 in Florida. So in closing I would like to ask
11 my fellow Commissioners this question, and it
12 is not an unfair one, I don't think.

13 CHAIRMAN BERUFF: Commissioner Cerio.

14 COMMISSIONER CERIO: Yes, Mr. Chair.

15 Sorry.

16 CHAIRMAN BERUFF: I wanted to make eye
17 contact with you.

18 COMMISSIONER CERIO: Yes, sir.

19 CHAIRMAN BERUFF: It is hard to do. If
20 you could wrap it up.

21 COMMISSIONER CERIO: In closing, in
22 closing, we can all name rights of the accused,
23 rights to remain silent, right to legal
24 counsel, right to confront your accuser, but to
25 name the rights of victims, people often draw a

1 blank, and I would like to change this.

2 I plea, I would ask you to please advance
3 Marsy's Law to the Style and Drafting
4 Committee. I thank you for your time. Thank
5 you for indulging me, Mr. Chair.

6 Please support victims' rights in Florida.
7 Thank you.

8 CHAIRMAN BERUFF: The floor is open for
9 questions on Proposal 96.

10 Commissioner Plymale is recognized.

11 COMMISSIONER PLYMALE: Thank you,
12 Chairman. Could you, Commissioner Cerio, could
13 you delineate for me the difference, what is in
14 this proposal that is not already in statute?

15 CHAIRMAN BERUFF: Commissioner Cerio.

16 COMMISSIONER CERIO: There is a lot of
17 overlap, Commissioner Plymale. There are
18 things that we enhance, like the speedy trial
19 provisions do require -- do require a Judge to
20 make findings if a speedy trial motion is not
21 granted, but there is a lot of overlap, and
22 that is the whole problem.

23 This is something that has come up in,
24 and, not an unfair question that has been asked
25 is, well, you know, we really, why are we doing

1 this because some of these rights, the right to
2 notification, et cetera, exists in statute.
3 Here is why and we have heard testimony again
4 and again and again.

5 It is not being followed. We have heard
6 that from victims who have not received a penny
7 in restitution even though it was ordered.
8 They have not received notices of hearings and
9 proceedings even though it is ordered.

10 That is in statute and it is not
11 happening. That is not a criticism of the
12 criminal justice system in particular. We have
13 very hard-working Judges and prosecutors and
14 public defenders and private defense lawyers,
15 but the bottom line is that it is a cumbersome
16 congested system and unfortunately as we are
17 ensuring process for, to get matters to trial
18 and to take care of and make sure that
19 defendants are properly frankly prosecuted and
20 defended, the victims are being forgotten.

21 That is why this is going into the
22 Constitution. I hope it will go into the
23 Constitution. Our current provision in the
24 Constitution is very noble sounding, but it is
25 very nonspecific and it has no teeth, and

1 hopefully by putting Marsy's Law into the
2 Constitution we can remedy that.

3 CHAIRMAN BERUFF: Commissioner Martinez is
4 recognized.

5 COMMISSIONER MARTINEZ: Thank you,
6 Mr. Chair. Commissioner Cerio, I am going to
7 support this proposal, but I have a question
8 for you, and I am asking you this question
9 because I think it is important that the record
10 reflect your answer, your honest answer to this
11 question.

12 COMMISSIONER CERIO: My honest answer,
13 okay.

14 COMMISSIONER MARTINEZ: Which I know it is
15 going to.

16 COMMISSIONER CERIO: Thank you for
17 clarifying.

18 COMMISSIONER MARTINEZ: Because I know you
19 are going to give it. In order for this to
20 work in practice, apart from the fact that
21 people have to be held accountable to make sure
22 it is implemented --

23 COMMISSIONER CERIO: Correct.

24 COMMISSIONER MARTINEZ: -- it is going to
25 require some funding. This is going to put a

1 burden on the Clerk's Office. It is going to
2 put a burden on the judiciary. It is going to
3 put a burden on law enforcement, and all of
4 those burdens are justified.

5 Do you agree that in order for this
6 amendment to actually work in practice to give
7 victims rights, that there is going to have to
8 be appropriate funding allocated at some level
9 to make sure that those rights are actually
10 effectuated?

11 COMMISSIONER CERIO: This --

12 CHAIRMAN BERUFF: Commissioner Cerio.

13 COMMISSIONER CERIO: Thank you, Mr. Chair,
14 I apologize. Clearly there has to be funding.
15 I do not know at what level. I can tell you
16 that in the analysis of the funding was
17 indeterminate and it may differ, Commissioner
18 Martinez, in all fairness, circuit to circuit.
19 I spoke to State Attorneys who really feel like
20 they are doing, under existing Florida law, a
21 pretty good job under the statutes of providing
22 the requisite notice.

23 Others have admitted, you know, we are
24 probably not doing a great job. For those who
25 are providing the notice, the impact of Marsy's

1 Law may not be significant. I would imagine,
2 and again this, I am answering a hypothetical,
3 yes, if there is a large jurisdiction where
4 they haven't been doing what they are supposed
5 to do under Florida law, and now there is a
6 constitutional requirement that they do, they
7 may very well have to figure out what is the
8 appropriate level of funding to provide this
9 notice.

10 I know that one State Attorney who I was
11 communicating with had suggested that, you
12 know, that the State Attorney's Office may want
13 to work with the Legislature to try and
14 establish a statewide network that will help
15 sort of a system that can be put in place to
16 provide victims with notification at the right
17 time, at the right stages of proceedings,
18 whether or not -- I mean, Commissioner Timmann
19 can probably answer that question better than I
20 of what is involved, but as you have told me so
21 many times, the devil is in the details.

22 But I believe it is a fight worth having.
23 I just don't know the impact. Again, I think
24 it would depend on how -- how the circuits are
25 doing now and how much they are going to have

1 to do differently.

2 CHAIRMAN BERUFF: Commissioner Schifino is
3 recognized.

4 COMMISSIONER SCHIFINO: Thank you, Chair
5 Beruff. How does the speedy trial provision in
6 the amendment differ from existing law?

7 CHAIRMAN BERUFF: Commissioner Cerio.

8 COMMISSIONER SCHIFINO: If it does.

9 COMMISSIONER CERIO: Mr. Chairman Beruff,
10 we are going to get to and I want to answer
11 your question, Commissioner Schifino, I don't
12 know at the right time. We do have the
13 amendment that is going to address speedy trial
14 because it is different now.

15 CHAIRMAN BERUFF: Commissioner Cerio.

16 COMMISSIONER CERIO: I am sorry,
17 Mr. Chair.

18 CHAIRMAN BERUFF: I think we -- if the
19 question is appropriate that might be answered
20 in the amendment, I would ask, politely ask
21 Commissioner Schifino to wait until we address
22 the amendment.

23 COMMISSIONER SCHIFINO: Certainly.

24 COMMISSIONER CERIO: And I can do that if
25 it is with the Chairman's permission, I can

1 talk about the amendment now.

2 CHAIRMAN BERUFF: Well, no, because there
3 met be some more questions still on Proposal 96
4 unamended. Any other questions on 96?

5 Now that I am learning what I am doing I
6 am trying to keep it in order. Okay, so
7 Commissioner Joyner, you have a question on 96
8 unamended.

9 COMMISSIONER JOYNER: I have read both, so
10 sometimes you -- I don't know whether it is on
11 96 or on the amendment, we will see, because I
12 had the same question about the speedy trial.
13 Has the expungement issue changed? Is it still
14 the same, the expungement that gives victims
15 the right to participate in those proceedings?

16 COMMISSIONER CERIO: Commissioner Joyner,
17 I --

18 CHAIRMAN BERUFF: Commissioner Cerio.

19 COMMISSIONER JOYNER: The last line, 46 to
20 51.

21 COMMISSIONER CERIO: I am going to look
22 while we are speaking -- sorry, Mr. Chair. I
23 am going to look while we are speaking. I
24 believe that has not changed, the expungement
25 provision.

1 CHAIRMAN BERUFF: Commissioner Joyner.

2 COMMISSIONER JOYNER: He --

3 CHAIRMAN BERUFF: He believes it has not
4 changed, but he is looking.

5 Commissioner Cerio.

6 COMMISSIONER CERIO: Yes, Mr. Chair.

7 CHAIRMAN BERUFF: Commissioner Joyner,
8 would you mind if we go ahead? Is there
9 another question to move the proceedings along?

10 COMMISSIONER JOYNER: Yes.

11 COMMISSIONER CERIO: I will multitask,
12 Commissioner Joyner, and keep looking while you
13 are asking.

14 CHAIRMAN BERUFF: Commissioner Joyner,
15 please.

16 COMMISSIONER JOYNER: Commissioner Plymale
17 asked you about the differences of what is in
18 statute and you said there was an overlap.
19 Could you be more specific and tell, tell us
20 what that you put into 96 of victims' rights
21 that is different from what is already
22 contained in the law, in the Constitution and
23 in statute?

24 COMMISSIONER CERIO: Sure.

25 CHAIRMAN BERUFF: Commissioner Cerio.

1 COMMISSIONER CERIO: Sorry, Mr. Chair,
2 thank you. The process for -- first of all,
3 right now in the Constitution a lot of these
4 notice provisions that I talked about,
5 Commissioner Joyner, are on the books, they are
6 not followed, but they are also automatic,
7 okay.

8 With Marsy's Law -- in other words, there
9 is no opt-in or out. They are supposed to be
10 provided with notice right now under the
11 Florida Constitution and the statutes that
12 implement.

13 The provisions of Marsy's Law that require
14 very specific notifications at very specific
15 times in the process have become -- they are
16 more specific but they are now opt in. So that
17 is the -- that could also be a partial response
18 to Commissioner Martinez's question about a
19 financial impact.

20 Certainly in a very, a very big case, a
21 very tragic circumstances and outcomes the
22 victims are going to want to opt in most
23 likely. If it is not -- but there are times
24 they don't have to, or if it is a smaller case
25 they don't have to. So I imagine in a

1 situation on the fiscal question, that could be
2 another reason why it is sort of hard to
3 determine the financial impact.

4 Again, if they are already doing the job
5 it should be de minimus. To your point, your
6 question, Senator Joyner, if the -- the opt in
7 piece is different, and these very specific
8 rights are now opt in. They are not automatic,
9 but timely notification of proceedings, the
10 right to be present, the right to be heard, to
11 confer with prosecuting attorneys, these are
12 amplifications of what is in statute in some
13 cases, in other cases, and more specific, in
14 other cases they are just simply reiterating
15 what is in the statute. Like the right to
16 notification, but we try and be a little bit
17 more specific in Marsy's law.

18 CHAIRMAN BERUFF: Commissioner Joyner.

19 COMMISSIONER JOYNER: So the victim then
20 has to opt in to --

21 COMMISSIONER CERIO: Yes.

22 COMMISSIONER JOYNER: -- to get some
23 specific notices as enumerated by --

24 COMMISSIONER CERIO: Yes, under Section, I
25 am sorry, Mr. Chair.

1 CHAIRMAN BERUFF: Commissioner Cerio.

2 COMMISSIONER CERIO: Under Section 7, "A
3 victim shall have the following specific rights
4 upon request: The right to reasonable,
5 accurate and timely notice of public
6 proceedings; the right to be heard in
7 proceedings, including, involving pretrial or
8 other release from forms of legal constraints;
9 sentencing; adjudication; parole; in any
10 proceedings where the right of the victim is
11 implicated, the right to confer with the
12 prosecuting attorney in plea agreements, plea
13 agreements, pretrial diversion, release,
14 restitution or sentencing."

15 I am summarizing here: The right to
16 provide information regarding the impact of the
17 offender's conduct; the right to receive a copy
18 of the presentence report; the right to be
19 informed of conviction, sentence, adjudication,
20 place and time of incarceration or other
21 disposition, or the release of the offender;
22 the right to be informed of all post conviction
23 processes; and the right to be informed of
24 clemency, this was your question before, the
25 right to be informed of clemency and

1 expungement procedures. To provide information
2 to the Governor, the courts and any Clemency
3 Board and other authority in these procedures;
4 and to have information considered before a
5 clemency or expungement decision is made. That
6 is opt in.

7 CHAIRMAN BERUFF: Commissioner Joyner.

8 COMMISSIONER JOYNER: Thank you,
9 Mr. Chair. As it relates to expungement, what
10 role could a victim possibly play other than to
11 oppose an expungement?

12 COMMISSIONER CERIO: There are so many
13 rights in here, Senator Joyner, it is nice to
14 be asked. It is nice to have an opinion.
15 Maybe they do oppose, maybe they don't, but at
16 least they are not disenfranchised and feel
17 forgotten about it when these issues come up.

18 CHAIRMAN BERUFF: Commissioner Joyner.

19 COMMISSIONER JOYNER: Under the existing
20 law I believe expungement is already limited to
21 cases in which the charges have been dismissed
22 or dropped. So the number is already
23 decreased. You got to -- they are not going to
24 grant an expungement on cases most -- the few
25 that I have done and I haven't done any

1 recently, but they had to be dismissed or
2 dropped. So why then would -- we wouldn't need
3 a victim there if the charges have been dropped
4 or dismissed.

5 COMMISSIONER CERIO: Mr. Chair.

6 Commissioner, while expungement, remember,
7 expungement is included along with clemency and
8 these other issues. But, and I don't want to
9 beg to differ because I am not certain.

10 I thought there were instances where you
11 would have expungements of a record where a
12 sentence was completed, just under certain
13 statutes, the defendant has a matter of right
14 under certain circumstances may have a right to
15 have a record expunged. Maybe it is because of
16 age or some other reason.

17 It is not necessarily because the charges
18 were dropped or they were adjudicated innocent
19 and you are sealing an arrest record, but I am
20 not positive about that full disclosure. I
21 would have to get back to you.

22 COMMISSIONER JOYNER: While --

23 CHAIRMAN BERUFF: Commissioner Joyner.

24 COMMISSIONER JOYNER: I acknowledge that,
25 I haven't done any of this in so long so

1 somebody here knows, maybe Hank or --

2 COMMISSIONER CERIO: Hank knows
3 everything. I am sorry, Mr. Chair, if I am out
4 of order.

5 COMMISSIONER JOYNER: Commissioner Coxe.
6 You know, there are a lot of nuts and bolts
7 things that I want to ask you about, but I will
8 -- I will -- that only a lawyer probably would
9 think about, like in post conviction
10 proceedings, you know, this gives victims the
11 right to participate.

12 Well, usually at those proceedings the
13 Judge is the deciding pure law. So what role
14 -- how could a victim assist with that
15 function, you know? I think we are adding
16 things where they can bring meaningful
17 discussion to it because of the limitation
18 placed on what role the Judge plays and what he
19 is deciding, he or she is deciding at that
20 point in a case.

21 CHAIRMAN BERUFF: Commissioner Cerio.

22 COMMISSIONER CERIO: Commissioner Joyner,
23 I do -- I want to say that I don't necessarily
24 disagree with you, but that is one of the
25 important points. The Judge is still in

1 control.

2 As appropriate, the Judge will allow and
3 will take into consideration information, will
4 take into consideration the victim and the
5 victim's opinion, but they are still in control
6 and they are still -- they are still the
7 gatekeeper.

8 CHAIRMAN BERUFF: Commissioner Joyner.

9 COMMISSIONER JOYNER: Another question
10 that I think has some relevance or importance.
11 There is a longstanding rule of sequestration
12 for witnesses at criminal trials. Does this
13 proposal allow the victim to be there to hear
14 everything, and, if so, to hear all of the
15 other witnesses testifying? If so, wouldn't
16 that affect the fairness of the trial?

17 COMMISSIONER CERIO: The victim is -- I am
18 sorry, Mr. Chair.

19 CHAIRMAN BERUFF: Go ahead.

20 COMMISSIONER CERIO: The victim is
21 absolutely allowed to be present in these
22 proceedings. And that is, that is not --
23 sorry, that -- that is definitely a right and
24 that is a right that other states have adopted
25 as well. I can't tell you how many, but it is

1 not unknown.

2 CHAIRMAN BERUFF: Commissioner Joyner.

3 COMMISSIONER JOYNER: When -- when you
4 added the -- put in the provision with respect
5 to the two-year limit on appeals on non-capital
6 cases and five years on capital cases, did you
7 consult with -- that is line 74 to 79, did you
8 consult with lawyers who handle this on a daily
9 basis with respect to these caps that you have
10 come up with?

11 COMMISSIONER CERIO: Definitely had --

12 CHAIRMAN BERUFF: Commissioner Cerio.

13 COMMISSIONER CERIO: I am sorry,
14 Mr. Chair. I apologize, I am violating the
15 rules and I am the Rules Chair.

16 CHAIRMAN BERUFF: The back of your --

17 COMMISSIONER CERIO: I apologize. Senator
18 Joyner, I will tell you I have had input, that
19 is part of the reason for the amendment that
20 has been filed on speedy trial. So, folks on
21 both sides of the argument I would say, not
22 that everyone doesn't want or care about
23 victims' rights but there are folks that are
24 very focused on the rights of victims' and
25 folks that are more focused on the rights of

1 defendants, especially if those defendants
2 happen to be, from time to time, clients and we
3 are trying to reach a very reasonable
4 compromise in the speedy trial provision. In
5 the amendment that I am going to talk about,
6 very much mirrors Florida, current Florida
7 Statute.

8 CHAIRMAN BERUFF: Commissioner Joyner.

9 COMMISSIONER JOYNER: So I was -- I
10 mentioned the two-year limit on appeals and
11 non-capital and five years in capital cases,
12 and if you were in consultation with those who
13 handle those matters at the State Attorney and
14 the Public Defender on a daily basis, to give
15 you some idea as to whether or not this is a
16 reasonable time, considering that the Supreme
17 Court overturned the Death Penalty Reform Act
18 in 2000, and as a result of that those hard and
19 fast limits were rejected.

20 CHAIRMAN BERUFF: Commissioner Cerio.

21 Sorry.

22 COMMISSIONER JOYNER: And so I would like
23 to know if you considered that when you came up
24 with these caps, that that particular issue
25 about the hard and fast limits on the two and

1 five years?

2 CHAIRMAN BERUFF: Commissioner Cerio.

3 COMMISSIONER CERIO: Thank you, Mr. Chair.
4 Commissioner Joyner, the individuals who I have
5 been talking to who are on the defense side did
6 not raise that specific issue you just did. I
7 have been communicating with them. I am not
8 going to say that I specifically spoke with
9 death penalty experts. Maybe I did. I don't
10 know.

11 They didn't represent themselves as
12 dealing solely in death penalty cases or things
13 of that nature, but we definitely had input
14 from the defense bar.

15 CHAIRMAN BERUFF: Commissioner Joyner.

16 COMMISSIONER JOYNER: I would suspect that
17 a criminal defense lawyer notwithstanding
18 whether they had done, whether they do death
19 penalty cases would know that those hard and
20 fast caps were rejected at that point. So
21 maybe there is something that we can, you can
22 consider.

23 COMMISSIONER CERIO: Mr. Chair.

24 CHAIRMAN BERUFF: Commissioner Cerio.

25 COMMISSIONER CERIO: Commissioner Joyner,

1 let me address that. Please remember though,
2 that on the appeals and collateral attacks
3 where it says that they must be completed
4 within a particular time, if they are not
5 completed, they do -- let me rephrase that.

6 If they -- it is not that they must be
7 completed no matter what. If they are not
8 completed in that time frame the Chief Judge
9 needs to report why it wasn't done. It does
10 allow for -- it doesn't require a rigid
11 adherence to these timeframes.

12 That is the goal and if they can't
13 accomplish that goal there needs to be -- the
14 idea is to provide some accountability, and the
15 Court needs to document why these timeframes
16 were not adhered to.

17 CHAIRMAN BERUFF: Commissioner Joyner.

18 COMMISSIONER JOYNER: In the interest of
19 time I will yield on further questions because
20 I want to hear the amended version so that you
21 can get back to Commissioner Schifino's
22 question about speedy trial, because that was
23 my next line of questioning.

24 CHAIRMAN BERUFF: Any further questions on
25 Proposal 96 unamended? Commissioner Karlinsky

1 is recognized.

2 COMMISSIONER KARLINSKY: Thank you,
3 Commissioner Cerio. I don't know if this is on
4 the proposal or the proposal as amended, but
5 does the victim have to request to participate
6 in this process, and how is that noticed?

7 COMMISSIONER CERIO: The -- sorry, Mr.
8 Chairman.

9 CHAIRMAN BERUFF: Commissioner Cerio.

10 COMMISSIONER CERIO: For the rights that I
11 went through where there is a -- they are
12 entitled to certain things that is upon
13 request. That is upon a request to opt in, the
14 notification of participation, the opportunity
15 to be heard, yes, that is an opt in.

16 COMMISSIONER KARLINSKY: Thanks.

17 CHAIRMAN BERUFF: Commissioner Martinez is
18 recognized.

19 COMMISSIONER MARTINEZ: Commissioner
20 Cerio, is there any provision in here that
21 would establish a State Attorney Office, an
22 ombudsman, or ombudsman person, somebody who
23 would actually be responsible to make sure that
24 the victims' rights are, in fact, being
25 respected and enforced?

1 CHAIRMAN BERUFF: Commissioner Cerio.

2 COMMISSIONER CERIO: No, Commissioner
3 Martinez, but that would certainly sound to be
4 the best practice, and there is certainly
5 nothing that prohibits the State Attorney's
6 Offices from doing that or within their own
7 management hierarchy, from creating that type
8 of ombudsman position.

9 CHAIRMAN BERUFF: Commissioner Martinez.

10 COMMISSIONER MARTINEZ: So currently under
11 this proposal, how would the rights be
12 enforced? They would have to be enforced by
13 the victim, herself?

14 COMMISSIONER CERIO: Well --

15 CHAIRMAN BERUFF: Commissioner Cerio.

16 COMMISSIONER CERIO: I am sorry,
17 Mr. Chair.

18 CHAIRMAN BERUFF: No --

19 COMMISSIONER CERIO: No, Commissioner
20 Martinez, the idea is, first of all, on the --
21 when it comes to providing the opportunity for
22 the victim to opt in, that is usually the first
23 law enforcement officer on the scene, whether
24 it is a Sheriff or the police, they are the
25 ones that have that sort of Marsy's Law card we

1 have been talking about.

2 One of my amendments allows for the
3 information to be transmitted electronically,
4 but to inform them of their rights. Then if
5 there is an opt in, it would be up to each of
6 the State Attorney's Offices as to how they
7 want to handle it.

8 As I mentioned before, some offices feel
9 that they are doing it the right way right now
10 and they have got the infrastructure in place.
11 Others maybe think they are doing it well and
12 they are not, and others have confessed that
13 they need to do a lot better. But again, that
14 is a very important point that they need to
15 consider within their own management hierarchy,
16 I would think, as to how specifically to
17 execute those.

18 But it is essentially in the lap of the
19 State Attorney to make sure that these notice
20 -- these notices happen at a particular time in
21 a particular way.

22 CHAIRMAN BERUFF: Commissioner Jordan is
23 recognized.

24 COMMISSIONER JORDAN: Thank you. As a
25 follow up to Commissioner Martinez. So are you

1 saying that in different States Attorney's
2 Offices there is not currently a victim
3 advocate assigned to each office? As a former
4 prosecutor, I would be surprised at that.

5 CHAIRMAN BERUFF: Commissioner Cerio.

6 COMMISSIONER CERIO: Commissioner Jordan,
7 I am not saying that. I don't know. I would
8 imagine most of them do have that, and I don't
9 want to suggest that because there were
10 problems they are not doing their job. I am
11 just suggesting that current law is not serving
12 victims well.

13 CHAIRMAN BERUFF: Commissioner Jordan.

14 COMMISSIONER JORDAN: So if this person
15 already exists or this department already
16 exists, they would be the person or department
17 to shepherd these rights, I would assume.

18 So going toward a budgetary question that
19 was asked earlier, and your statement that you
20 thought it would be a low impact in some
21 organizations already, should we make that
22 connection that this position already exists
23 and that it would just be enhanced and might
24 not necessarily have to bring on more personnel
25 in order to effect this?

1 CHAIRMAN BERUFF: Commissioner Cerio.

2 COMMISSIONER CERIO: I think that is a
3 very fair assumption. I think that from what I
4 understand in the management hierarchy of the
5 State Attorney's Offices, that position does
6 normally exist. So that is part of why I said
7 in many cases the infrastructure to implement
8 Marsy's Law is already there, but there are --
9 every circuit does seem to do it differently.

10 COMMISSIONER JORDAN: Correct, so this
11 proposal --

12 CHAIRMAN BERUFF: Commissioner Jordan.

13 COMMISSIONER JORDAN: Thank you,
14 Mr. Chair. So this proposal would bring
15 uniformity to the state, is what you are
16 saying, because some States Attorneys already
17 are going through this type of practice and
18 others might not necessarily be following it.
19 So this will ensure that across the state of
20 Florida all victims of crimes are treated
21 equally and fairly by enacting this proposal?

22 CHAIRMAN BERUFF: Commissioner Cerio.

23 COMMISSIONER CERIO: Absolutely,
24 Commissioner Jordan. Uniformity in obligation
25 and duty to the victim, how they execute --

1 there are some very smart people out there who
2 suggested to me that, as I said, maybe a
3 uniform communication system would be in order,
4 but definitely uniformity in the obligation to
5 the victims.

6 COMMISSIONER JORDAN: Thank you. And I
7 have one other question. Have you done any
8 sort of kind of flyover to see how many states
9 have enacted the provisions that you are
10 enumerating here in Proposal 96 in terms of
11 victims' rights? I would assume that this is
12 not a novel idea.

13 COMMISSIONER CERIO: It is not.

14 CHAIRMAN BERUFF: Commissioner Cerio.

15 COMMISSIONER CERIO: I will tell you --
16 sorry, Mr. Chair.

17 CHAIRMAN BERUFF: You are good.

18 COMMISSIONER CERIO: It is not,
19 Commissioner Jordan. I will tell you that
20 Arizona is sort of the role model, and Arizona
21 predates Marsy's Law. It has very stringent
22 notification and provisions and specific
23 requirements where victims have an opportunity
24 to participate.

25 States that have passed Marsy's Law are

1 California, Montana, North Dakota, South
2 Dakota, Illinois and Ohio. So it is not a new
3 concept. It is sort of a -- frankly, it is
4 kind of a movement, a victims' rights movement
5 that is growing, whether by called Marsy's Law
6 or some other name.

7 There is more of an awareness of victims
8 recently, unfortunately, well, because of a lot
9 of things going on, victims are more in the
10 forefront right now in victims' rights.

11 CHAIRMAN BERUFF: Commissioner Jordan.

12 COMMISSIONER JORDAN: Thank you. So in
13 other states you just said some states might
14 not actually call it Marsy's Law. I don't
15 think we should make the assumption that just
16 because it doesn't have Marsy's Law doesn't
17 have victims' rights enumerated, so --

18 CHAIRMAN BERUFF: Commissioner Cerio.

19 COMMISSIONER CERIO: And just so I am
20 clear, the states that I specifically
21 mentioned, it is Marsy's law. California,
22 Montana, North Dakota, South Dakota, Illinois
23 and Ohio.

24 COMMISSIONER JORDAN: Correct, okay.

25 Thank you.

1 COMMISSIONER CERIO: Arizona not --
2 Arizona predates Marsy's Law.

3 CHAIRMAN BERUFF: Commissioner Schifino is
4 recognized, or Commissioner Gainey is
5 recognized in spot of Commissioner Schifino.

6 COMMISSIONER GAINNEY: Thank you, Chair.

7 CHAIRMAN BERUFF: Commissioner Gainey.

8 COMMISSIONER GAINNEY: Between Commissioner
9 Cerio and Commissioner Jordan, yes, I think we
10 can answer some of those questions. Currently
11 our office, my office deals with victims of
12 crime. We fund quite a bit of victim advocates
13 for our State Attorneys.

14 They all have them. Most law enforcement
15 agencies, all of your law enforcement agencies
16 have them, as well as my office, and they all
17 do victim notifications. They do it in
18 conjunction with each other, including the
19 criminal appeal and criminal appellate process.

20 There is currently a system that the
21 Florida Department of Corrections and both
22 Sheriff's offices use for notification,
23 electronic system called VINE, Victim
24 Information and Notification Every -- Everyday
25 is what VINE stands for.

1 So those systems currently exist. Perhaps
2 in your proposal they could be modified to fit
3 the additional things that you cited, but in
4 each instances there are a significant amount
5 of victim advocates. We can always use more,
6 but they do exist in your law enforcement
7 agencies, State Attorneys, Office of the
8 Attorney General, and they work collectively
9 every day.

10 But quite frankly, they are available in
11 quite a number of other agencies as well, and
12 they are mostly -- at least a growing majority
13 of them are funded through Federal Fines and
14 Fees on Federal Prisoners, and then they have
15 to supplement that fund to 80 percent, they
16 supplement it by the other 20 percent, and that
17 is currently in place.

18 CHAIRMAN BERUFF: Commissioner Schifino is
19 recognized.

20 COMMISSIONER SCHIFINO: Hopefully very
21 briefly. I am reading the first sentence, it
22 says, "In all criminal prosecutions the accused
23 shall -- "and it says, "shall, upon demand be
24 informed of the nature." Why have you included
25 the language, "upon demand"?

1 My understanding is the law generally
2 today as it exists on the books is a shall, and
3 I was curious as to why, and I think I
4 understand the laws on the books today,
5 requires those notice provisions. I thought
6 that is what you said earlier, and why has that
7 been changed to the proposal, as you referred
8 to it I think a few times, an opt in, and --

9 COMMISSIONER CERIO: I --

10 CHAIRMAN BERUFF: Commission Cerio.

11 COMMISSIONER CERIO: Sorry, Chair. Are
12 you talking about the rights of the accused?

13 COMMISSIONER SCHIFINO: No, no, the
14 Declaration of Rights, rights of accused and of
15 victims, all criminal prosecutions use the
16 rights of the accused --

17 COMMISSIONER CERIO: That is old language,
18 Commissioner Schifino. That exists already.

19 COMMISSIONER SCHIFINO: That is on the
20 books, the upon demand?

21 COMMISSIONER CERIO: Correct.

22 COMMISSIONER SCHIFINO: Okay, thank you.

23 CHAIRMAN BERUFF: Commissioner Keiser is
24 recognized.

25 COMMISSIONER KEISER: Thank you,

1 Mr. Chair. Thank you, Commissioner Cerio. It
2 was an honor to stand with you to support
3 Marsy's Law at the press conference. And my
4 understanding, and please share with all of us
5 if this is correct, that roughly 35 other
6 states have codified in their Constitution some
7 provisions which would protect victims?

8 CHAIRMAN BERUFF: Commissioner Cerio.

9 COMMISSIONER KEISER: Of the victims' Bill
10 of Rights, so to speak. Excuse me, Mr. Chair,
11 I apologize.

12 CHAIRMAN BERUFF: Commissioner Cerio.

13 COMMISSIONER CERIO: That is correct,
14 Commissioner Keiser. We are an outlier, we
15 have a provision in the Constitution, but it is
16 as I mentioned, it is somewhat vague and I
17 would like to say that 35 states have
18 meaningful victims' rights protections and
19 hopefully Marsy's Law will add us to that
20 number.

21 COMMISSIONER KEISER: Thank you very much.

22 COMMISSIONER CERIO: Thank you.

23 CHAIRMAN BERUFF: Further questions on the
24 proposal unamended so we can move on to the
25 amendment? Seeing none, Mr. Cerio, would you

1 please explain Amendment 350914?

2 COMMISSIONER CERIO: Thank you, Mr. Chair.

3 The amendment is a strike-all, Commissioners.

4 This was made in an attempt to work with

5 stakeholders in the criminal justice system who

6 had concerns about various topics, some of whom

7 are in this room and who are very diligent

8 professionals and bring a perspective that

9 was -- and this isn't a platitude, this is

10 really valued, because they are on the street

11 and they see how these things happen and how

12 they unfold and how we can help victims and

13 what the realities are in the system.

14 So in this strike-all, these are the

15 changes from the original.

16 In Section 3 we add the term, "within the

17 judicial process" in the second sentence

18 regarding especially; we indicate that there is

19 no special relationship between the crime

20 victim and law enforcement.

21 We made this change after hearing and

22 working with law enforcement, the police and

23 the Police Chiefs and the Sheriffs. They were

24 somewhat concerned that the original language

25 might be construed as putting them in a

1 position to provide, you know, around-the-clock
2 protection when maybe it is not warranted for
3 victims.

4 It just -- it was -- it was a -- there was
5 a gray area of how much protection would be
6 required. We are trying to make clear that it
7 is basically within the courthouse, and also it
8 protects the concern that there is some special
9 legal duty that is created beyond what already
10 exists in the law, which that is not our
11 intent.

12 Section 7 just changes the phrase, "State
13 Attorney" to "Prosecuting Attorney." Our
14 elected State Attorneys wanted to make sure
15 that victims have the right to confer with the
16 actual attorney prosecuting the case.

17 Section 10, this is a restitution piece
18 that I think many agencies and programs did not
19 unfairly raise the concern that it could impact
20 their bottom line because so much -- there are
21 many court costs and fees imposed that go to
22 fund these programs, and it is just the way our
23 state does its budgeting.

24 But the intention behind this provision
25 was to be certain that victims who have

1 suffered an economic loss are made whole, but
2 we didn't want to -- to basically jeopardize
3 funding to the extent we do that. So we still
4 make the commitment that these victims are
5 entitled to their restitution, but we have
6 eliminated the provision that says that every
7 dollar has to be collected before the State
8 can -- can fund its activities for the
9 collection of these other types of
10 court-imposed fees.

11 In the speedy trial provision,
12 Commissioner Schifino, we did change the 15
13 days to 60 days. This was brought forth by one
14 of our elected State Attorneys as a change. It
15 does, I think more accurately reflect the
16 intent and again it does follow Florida
17 Statutes. I think that made a lot of people
18 breathe a little bit easier.

19 Section 11(b), we want to clarify that the
20 intent is to require the Court to list specific
21 reasons why appeals are not completed within
22 two years or five years for capital cases.
23 Again, I don't think there is anything wrong
24 with accountability.

25 The Judiciary, just like the Executive

1 Branch, just like the Legislative Branch
2 sometimes, you know, doesn't get it right or
3 doesn't stick to the standard and maybe they
4 should be able or be required to explain why,
5 and maybe if they need to make a case for more
6 resources or whatever, but it is simply an
7 accountability provision.

8 In Section 12, the change -- Section 12
9 was brought to us by law enforcement. It
10 basically, the idea of a victim receiving a
11 card that gives them notice of their rights.
12 We have the words, I know, or they can be
13 provided with notification by other means, not
14 just the Marsy's Law card, because some in law
15 enforcement felt like with the advances in
16 technology, you know, they are communicating
17 with these folks, they ought to be able to
18 provide this and confirm receipt via electronic
19 means.

20 So that is the -- that is the strike-all,
21 Mr. Chairman. All the rest of the proposal
22 remains the same.

23 CHAIRMAN BERUFF: We are now going to open
24 up the questions on the amendment.

25 Commissioner Schifino.

1 COMMISSIONER SCHIFINO: Thank you, Chair
2 Beruff. If you look at line five of the
3 amendment, and this is what I was getting to.
4 I was looking at the wrong section before,
5 Commissioner Cerio, and I apologize.

6 It says, "The victim shall have the
7 following specific rights upon request." Why
8 do we have that caveat "upon request"? Is that
9 any different than the laws that exists on the
10 books today?

11 COMMISSIONER CERIO: I think I know -- I
12 am sorry, I think I know what you are talking
13 about, Commissioner Schifino, but I am not --
14 you are saying line five?

15 COMMISSIONER SCHIFINO: Of the strike-all,
16 yes. I am looking at -- it is your amendment.

17 COMMISSIONER CERIO: Yes.

18 COMMISSIONER SCHIFINO: Delete lines 49 to
19 135, and it starts at line 5/6, your amendment.

20 COMMISSIONER CERIO: Oh, you are on a
21 different amendment, Commissioner Schifino.

22 COMMISSIONER SCHIFINO: All right, well,
23 okay, maybe it is the wrong one. My apologies.

24 COMMISSIONER CERIO: Sorry. I can still
25 address it. Thank you.

1 The point is, Commissioner Schifino, that
2 what we are trying to do, and I apologize for
3 the confusion. What we are trying to do is
4 provide certain opt ins for victims. We are
5 asking the State to do more, but we are saying
6 that if you are going to do more, and we thank
7 you for doing more, we are asking the victims
8 to opt in. That is why. The rights are, the
9 notification rights are opt in rights.

10 COMMISSIONER SCHIFINO: But why? I mean,
11 well, okay, what -- if these are sound, good
12 rights and they are on the books today, how
13 would that work? Would a victim come in and,
14 you know, they are explained, okay, these are
15 your rights, do you want to opt in?

16 Why wouldn't we want to make this, if we
17 are going to adopt the Constitutional Amendment
18 or, you know, put it on the ballot, why
19 wouldn't we want it to be a shall versus an opt
20 in/opt out process? I am just little confused
21 as to why we are in this opt in process.

22 COMMISSIONER CERIO: Thank you.

23 CHAIRMAN BERUFF: Commissioner Cerio.

24 COMMISSIONER CERIO: Again, Commissioner
25 Schifino, I mean, I think that the victims, we

1 want to give them the opportunity. Some, I
2 think there are occasions, I have heard of some
3 occasions where the victim wants nothing to do,
4 right, they don't -- they -- they want nothing
5 to do -- they don't want to be notified, they
6 want to move on, and it is an opt in, and I am
7 assuming, not to get in uncharted territory, I
8 am assuming if they want to revoke their opt in
9 they are free to do that.

10 CHAIRMAN BERUFF: Commissioner Schifino.

11 COMMISSIONER SCHIFINO: Yes, thank you.

12 That clears it up. I was looking for that
13 reason why was a victim, and that explains it,
14 some victims' may not want to hear this ever
15 again. Thank you.

16 CHAIRMAN BERUFF: Commissioner Gaetz.

17 COMMISSIONER GAETZ: Thank you very much,
18 Mr. Chairman. Let me follow up on Commissioner
19 Schifino's question. In my experience,
20 whenever one states a qualifier like upon
21 request you create an obligation for
22 documentation. So now do we have not only an
23 opportunity, but an obligation for
24 documentation, and do we have here the
25 potential, we hope it never happens, but the

1 potential for a -- an agency to say, well, we
2 just don't have documentation that they -- that
3 they opted into their rights, so we didn't give
4 them to them.

5 I guess my question would be,
6 Commissioner, what would be the harm in simply
7 striking "upon request?" I mean, one's rights
8 do not have to be requested, one's rights are
9 granted by the Constitution and, you know, by
10 Almighty God. We don't have to request them.

11 CHAIRMAN BERUFF: Commissioner Cerio.

12 COMMISSIONER CERIO: Commissioner Gaetz, I
13 think that is -- that is not an unfair
14 observation. But again I think because of --
15 it is a right that we are providing upon
16 request. There are other rights, and that is a
17 good point.

18 There are other rights in Marsy's Law that
19 are more general in nature that we talk about
20 as occur, as we are putting into the
21 Constitution directly. Those are the rights,
22 these are enumerated in Section (b)(1) through
23 (6), the Right to Due Process; the Right to be
24 Free from Intimidation; et cetera, et cetera.

25 But the rights where there is an

1 obligation on the State and we are asking the
2 State to obligate itself to keep the victim
3 informed, we are giving the victim the ability
4 to opt in again.

5 Same may not want to opt in, and yes,
6 there are requirements and the victims'
7 advocate offices may handle this, there are
8 requirements for the State to keep up with that
9 should they choose to opt in, and we don't
10 think that is an unfair thing to ask.

11 CHAIRMAN BERUFF: Commissioner Gaetz.

12 COMMISSIONER GAETZ: I don't mean to -- to
13 parse this to death, but we all have the right
14 to vote.

15 COMMISSIONER CERIO: Uh-huh.

16 COMMISSIONER GAETZ: We don't have to
17 request the right. We have the right to vote.
18 We register and then we can vote, but we don't
19 -- no one obliges us to vote.

20 COMMISSIONER CERIO: Uh-huh.

21 COMMISSIONER GATES: But we have that
22 right. Why, under what circumstances would we
23 not want to -- would we, under what
24 circumstances would we want to require a victim
25 to request the right to reasonable, accurate

1 and timely notice? The right to be heard in
2 any public proceeding, the right to confer with
3 the prosecuting attorney.

4 Why should they have to request that
5 right? They don't have to -- they don't have
6 to avail themselves of that right if they don't
7 want to, but why, why should there have to be
8 paperwork documentation of a request for that
9 right? Documentation that may be, you know,
10 now it is, it becomes a trail of evidence, it
11 has to be dug up in case somebody is saying
12 that they didn't get their rights.

13 It just seems to me to be an unnecessary
14 complication, and I -- I shan't vote against it
15 because of this matter. I am going to vote for
16 the Bill, but it just seems to me that we are
17 now creating more paperwork for law enforcement
18 and for the courts and we are -- we are saying
19 to a victim, you have got to ask for what
20 patently ought to be available if one avails
21 themself of it.

22 CHAIRMAN BERUFF: Commissioner Cerio.

23 COMMISSIONER CERIO: Senator Gaetz, it is
24 hard to argue with your logic. I guess the
25 best answer I can give you is a couple of

1 things.

2 First of all, on these notice rights, they
3 are not in the Constitution but they are
4 already in statute and they are not happening.

5 Secondly, as I said to Commissioner
6 Schifino, on these particular notice and
7 participation rights, the idea is to give the
8 victim a choice, and frankly there are a lot of
9 folks who wanted to support Marsy's Law that
10 would do so if they knew the burden would only
11 be on the State to perform these things if the
12 victim opted in, and let me -- let me mention
13 something else.

14 The victim, the rights that are enumerated
15 under Marsy's Law that are not opt in that they
16 have automatically the right to -- let's see,
17 let me back up here: The Right to Privacy
18 which includes the right, well, the right,
19 sorry -- the Right to Prevent Disclosure of
20 Information; the Right to Prompt Return of
21 Property; the Right to be Free from
22 Intimidation.

23 These rights that you want to instill in a
24 victim just in the ordinary course, those are
25 in -- those are in Marsy's Law, but the rights

1 where you were saying if you want to, if you
2 want to participate and we are going to keep
3 you informed, it is an opt in.

4 There is a good argument to be made, well,
5 we should give it to them no matter what, but I
6 think that, again, some don't want to
7 participate. It is too painful, they will do
8 what they need to do for the prosecution and
9 then move on with their lives; and frankly in
10 other instances it was important to some folks
11 who were sponsoring this it be an opt in
12 situation for the State.

13 CHAIRMAN BERUFF: Commissioner Nocco, you
14 are recognized.

15 COMMISSIONER NOCCO: Thank you, Chair. I
16 am going to try and phrase it in the form of a
17 question. So wouldn't it be correct,
18 Commissioner, that as an opt in, it is
19 beneficial to assure that the process moves
20 through very quickly. For the instance of 20
21 cars get broken into on a street, people are
22 lifting door handles, cars are broken into,
23 there is 20 victims.

24 Out of those 20 victims three want to
25 participate, 17 don't. They just -- they are

1 happy the person got arrested. They don't care
2 what happens in the process. But if it was an
3 opt out and they didn't know about opting out,
4 then the process would be delayed because those
5 17 people that don't want to be involved would
6 have to be at every hearing, which would cause
7 a backlog in the State Attorney's Office and
8 the whole criminal justice system.

9 CHAIRMAN BERUFF: Commissioner Cerio.

10 COMMISSIONER CERIO: Commissioner Nocco, I
11 think that is correct, that is absolutely
12 correct, and again, that is, that is why you
13 can certainly foresee in certain circumstances
14 a victim would not want to opt in. Obviously,
15 there are heinous cases, there are also cases
16 that we may think are, you know, not to
17 minimize the crime, but, you know, theft in
18 some -- some -- some larceny, things of that
19 nature that don't rise to the level of what we
20 normally think of some of the most horrific
21 crimes where people just don't want to be
22 bothered and they want to opt out.

23 And we are trying to, and I am not -- the
24 whole point of Marsy's Law is to hold the State
25 to a higher standard to enshrine these rights,

1 but I have to admit, there is a recognition
2 that we are asking our public servants to do
3 more, and certain rights as I mentioned are
4 guaranteed. Other rights are presented as an
5 opt in, and that is the exchange and the
6 trade-off.

7 CHAIRMAN BERUFF: Commissioner Timmann is
8 recognized.

9 COMMISSIONER TIMMANN: Thank you, Mr.
10 Chairman. Isn't it also possible or actually
11 happen quite often that victims may change
12 their address for instance, and if they are
13 notified that they have these rights in the
14 forefront they would also perhaps be notified
15 that they need to keep that address up to date
16 so they can receive all of that information if
17 they so choose to?

18 CHAIRMAN BERUFF: Commissioner Cerio.

19 COMMISSIONER CERIO: I would absolutely
20 hope that is the case, Commissioner Timmann,
21 because it is going to happen, absolutely.

22 CHAIRMAN BERUFF: Further questions on
23 Amendment 350914? Seeing none, there is a
24 question. Commissioner Plymale, a small
25 question.

1 COMMISSIONER PLYMALE: Thank you,
2 Commissioner Beruff. It is a small question.
3 I am not sure what the answer is though. Do
4 you see the entire text going into the
5 Constitution or do you think the King of Style
6 and Drafting can summarize this somehow, who
7 has left the room by the way.

8 CHAIRMAN BERUFF: I think it is just going
9 to be Marsy's Law on the ballot. Short.

10 COMMISSIONER PLYMALE: You don't really
11 think that, do you?

12 CHAIRMAN BERUFF: Commissioner Cerio.

13 COMMISSIONER CERIO: Commissioner Plymale,
14 I -- I think that the King of Style and
15 Drafting has ducked and run for cover on that
16 question. But, no, I mean, I do see this in
17 there. I think that -- I will tell you, I have
18 worked very hard to try and narrow it down, but
19 when you are -- when you are trying to
20 enumerate specific rights and you are trying to
21 make it tailored enough where there is
22 assurance from victims but the State has clear,
23 a clear understanding of what its obligations
24 are, more detail is required.

25 You know, the Clean Indoor Air Act is

1 longer than Marsy's Law. The Net Ban is longer
2 than Marsy's Law. The Medical Marijuana
3 Provision is twice as long as Marcy's Law.

4 I do think, and I do think in this case it
5 is important and, you know, I am not concerned
6 by the length of the language.

7 COMMISSIONER PLYMALE: Okay. Can I ask
8 one more?

9 CHAIRMAN BERUFF: Commissioner Plymale,
10 yes, please.

11 COMMISSIONER PLYMALE: Tell me why,
12 because I am not a lawyer, tell me why if we
13 have a law and nobody follows it which is what
14 precipitated the need for this --

15 COMMISSIONER CERIO: Uh-huh.

16 COMMISSIONER PLYMALE: -- what is going to
17 make them follow it in the Constitution if the
18 voters pass it?

19 CHAIRMAN BERUFF: Commissioner Cerio.

20 COMMISSIONER CERIO: I think for the very
21 reason it is in the Constitution, it is
22 enumerated as a right and Marsy's Law does
23 provide a remedy and an opportunity for victims
24 to go to court when these rights are not
25 followed. The current sort of vague reference

1 to victims' rights in the Constitution and the
2 implementing statutes, they should be followed
3 but they are not. And there is no teeth there,
4 there is no -- there is no, no force of law
5 behind it.

6 CHAIRMAN BERUFF: Further questions on
7 350914?

8 Commissioner Joyner.

9 COMMISSIONER JOYNER: Thank you,
10 Mr. President. I am elevating you. Mr. Chair.
11 What is the remedy? Because as I, you know, we
12 asked the question about State Attorneys and
13 Public Defenders, and I have been informed that
14 every office does have someone that handles
15 this, and they are complying with the law, you
16 know.

17 So I would like to know what happens if
18 the victim can show that I wasn't notified,
19 what can be done that can't be done right now
20 if -- without the Constitution on there?

21 CHAIRMAN BERUFF: Commissioner Cerio.

22 COMMISSIONER CERIO: Commissioner Joyner,
23 so if you turn to Section -- sorry, Section C,
24 "The victim, the retained attorney of the
25 victim, a lawful representative of the victim

1 or the Office of the State Attorney upon
2 request of the victim may assert and seek
3 enforcement of the rights enumerated in this
4 section, and any other right afforded to a
5 victim by law in any trial or appellate court
6 or before any other authority with jurisdiction
7 over the case as matter of right."

8 "The Court or other authority with
9 jurisdiction shall act promptly on such a
10 request affording a remedy by due course of law
11 for the violation of any right."

12 "The reasons for the decision regarding
13 the disposition of the victim's rights shall be
14 clearly stated on the record," and
15 Commissioners, the idea of affording a remedy
16 under due course of law allows the courts, if
17 they want to, to fashion a remedy, to fashion
18 what that, you know, the specific procedures
19 could be. But Marsy's Law does afford a remedy
20 and that doesn't exist currently under statute.

21 CHAIRMAN BERUFF: Commissioner Joyner.

22 COMMISSIONER JOYNER: Commissioner, do you
23 have any data or anything that shows that the
24 State Attorneys are not following the law as it
25 is now with respect to notification?

1 CHAIRMAN BERUFF: Commissioner Cerio.

2 COMMISSIONER CERIO: Commissioner Joyner,
3 I can tell you, with me right now, data on
4 paper, no. I can tell you we have heard time
5 and time again during the hearings and I can
6 tell you that in my conversations with the
7 State Attorneys they tell -- some say we do a
8 good job, we can do a little bit better.

9 Others feel they are doing a pretty darn
10 good job and others say that it is a very
11 difficult task and they need to do much, much
12 better.

13 CHAIRMAN BERUFF: Commissioner Joyner.

14 COMMISSIONER JOYNER: Isn't it true though
15 that you said people came and testified, but
16 isn't it relative to the total number of
17 victims there are, let's say a million victims
18 and we can find 200 who said they weren't
19 notified? So, I mean, you haven't presented
20 any empirical data and that is the data guru
21 from the Legislature who always said show me
22 the -- show me the data that, that backs up the
23 fact that these victims are not being notified
24 by -- by the State Attorney.

25 It is unconscionable to think that they

1 are not, when it is there, but in addition, I
2 can't see how you can be guaranteed just
3 because you put it in the Constitution that,
4 that ever gets done.

5 CHAIRMAN BERUFF: Commissioner Cerio.

6 COMMISSIONER CERIO: If that is the case
7 then maybe we have wasted the last year of our
8 time, Commissioner Joyner. I mean, with all
9 due respect, the problem is, and you don't ask
10 an unfair question as far as you saying, data,
11 data is evidence.

12 You have other forms of evidence. You
13 have State Attorneys who have explained what is
14 going on in their offices. You have folks
15 showing up at hearings testifying. Senator
16 Brook testified about her experience, and I
17 don't think to you -- and say what if it is a
18 couple hundred people out of millions, I am
19 truly not trying to take your comment out of
20 context, but so what, that is enough.

21 I mean, we are enshrining these rights in
22 the Constitution to protect victims, and the
23 rights that we are giving them, the right to be
24 heard; the right to participate, these -- they
25 should be fairly fundamental. Especially if we

1 are allowing the victim the opportunity to opt
2 in and we are giving -- and we are saying if
3 you don't want to opt in you don't have to, and
4 then we are asking the State to take on the
5 burden if they do opt in. I am not sure how
6 else to answer the question.

7 COMMISSIONER JOYNER: Okay.

8 CHAIRMAN BERUFF: Commissioner Joyner.

9 COMMISSIONER JOYNER: There shouldn't be
10 any victims, but unfortunately there are. I --
11 I just don't think that people should think
12 that we have no protection for victims in
13 Florida. We have great protection in our
14 Constitution and in statute. I would like to
15 know if, in your research, you found anything
16 where any of the states who have already
17 enacted legislation similar to this, because I
18 understand that all Marsy's Laws are not the
19 same, have encountered -- whether they have
20 encountered any problems with the enactment of
21 this legislation?

22 CHAIRMAN BERUFF: Commissioner Cerio.

23 COMMISSIONER CERIO: Commissioner Joyner,
24 I can tell you that under the states that have
25 adopted Marsy's Law, there have been no

1 problems with implementation. I do believe,
2 and I want to give you a full and fair answer.
3 I do think in Montana, Marsy's Law was
4 overturned because there was basically a
5 finding of -- basically a single subject issue
6 and they didn't find a problem with Marsy's
7 Law, they just found that it has to be
8 presented as opposed to one measure or one
9 proposal in six different proposals, so that
10 was a problem.

11 In South Dakota there was some dust-up
12 between the Legislature and the fact that it
13 went on as a ballot initiative, but apparently
14 now all parties have come together and they are
15 changing the proposal. So instead of being a
16 total mandate, it is now an opt in under the
17 same -- under the same rights that we are
18 granting as an opt in. So it is going back on
19 the ballot.

20 But to answer your not unfair question, on
21 implementation, I am not aware of any states,
22 the ones that I mentioned that have adopted it,
23 have encountered any implementation problems or
24 that somehow that sort of gummed up the system
25 and slowed things down.

1 CHAIRMAN BERUFF: Commissioner Joyner.

2 COMMISSIONER JOYNER: So if your proposal,
3 a compilation of some of what appears in the
4 other 18 as opposed to just being one state's
5 entire statute on Marsy's Law or constitutional
6 provision?

7 CHAIRMAN BERUFF: Commissioner Cerio.

8 COMMISSIONER CERIO: It is -- it started
9 off as a very -- and how do I phrase this
10 because I think the current version does a
11 great job of protecting victims.

12 It started off -- and took a very firm
13 position and then with a lot of input from
14 stakeholders on the prosecuting side, the
15 defense side, law enforcement, police,
16 sheriffs. We are where we are today and there
17 is still an -- a strike-all or an amendment to
18 the strike-all that sort of completes that
19 picture. But this is the -- where we are now
20 is an amalgam of a whole lot of input from a
21 whole lot of different people.

22 CHAIRMAN BERUFF: Commissioner Joyner.

23 Okay, Commissioner Gaetz is recognized.

24 COMMISSIONER GAETZ: Thank you very much,
25 Mr. Chairman. Commissioner Cerio, I like your

1 good work and I plan to vote for it, and my
2 question is, is not meant to nitpick, but meant
3 -- it arises out of my own ignorance as a
4 non-lawyer.

5 The predicate for this legislation
6 apparently is that there are victims in the
7 state of Florida whose -- whose rights, at
8 least these rights that are enumerated in this,
9 in this proposal, are not being granted or not
10 being completely fulfilled in all cases.

11 Now, and in answers to previous questions
12 you said that in effect there are some agencies
13 of the State and in the state, who are not
14 following current statute and that nothing much
15 is happening to them as a consequence.

16 So that is why, as I -- as I look at the
17 strike-all and I look at line 158 through 162,
18 I have the following question. And let me read
19 this quick sentence.

20 This section, which is the section having
21 to do with the granting of these rights, "This
22 section may not be construed to create any
23 cause of action for damages against the State
24 or a political subdivision of the State or any
25 officer, employee or agent of the State or its

1 political subdivisions."

2 Now, for good and sufficient reasons we
3 say that certain government officials in our
4 state can be held personally liable if they
5 violate the rights, some rights of some
6 citizens. You can sue them.

7 Is there a particular reason why in this
8 very important piece of legislation, that is
9 trying to affirm and lift up victims' rights,
10 which we say are not being fully respected now
11 in the state of Florida, in all places in all
12 cases, why we would not provide some sort of
13 cause of action if there is an egregious lack
14 of respect for victims' rights and if that --
15 and if that were proven in court?

16 CHAIRMAN BERUFF: Commissioner Cerio.

17 COMMISSIONER CERIO: Commissioner Gaetz,
18 thank you. A very fair question. I would tell
19 you that the intent was not to create a cause
20 of action for damages, for money damages. We
21 want victims to be able to go to court to get a
22 remedy if their rights are not being provided,
23 if they don't get -- and that could yield some
24 very tough and embarrassing consequences, you
25 know.

1 Maybe, you know, an Assistant State
2 Attorney or some office may be admonished.
3 Maybe a defendant's sentencing has to be
4 postponed, but we frankly did want to create a
5 cause of action for money damages.

6 That doesn't mean that there can't be some
7 type of injunctive or prescriptive relief and I
8 also, I am not -- I don't actively practice in
9 this area, but I don't think that a violation
10 of -- just because it is not a violation of
11 Marsy's Law, doesn't mean that the same type of
12 liability would not attach to a public official
13 under 1983 or some other Federal action.

14 But to be fair, to answer your question
15 directly, no, we did not want to create a cause
16 of action for money damages for basically a
17 failure to provide notice to a victim, but we
18 did want to provide some very harsh -- some
19 harsh tools in the Court's toolbox to compel
20 compliance.

21 CHAIRMAN BERUFF: Commissioner Gaetz.

22 COMMISSIONER GAETZ: Thank you, Mr.
23 Chairman, and again, this goes to my lack of
24 legal training, but the section says, "This
25 section may not be construed to create any

1 cause of action for damages." Not financial
2 damages, damages. So I guess I would ask you
3 this question.

4 Other than -- other than a Judge leaning
5 over the bench and saying, by golly, you shall
6 do this and you haven't been doing it and I
7 demand that you do it by Friday, what
8 consequence might follow on if there was an
9 egregious violation of or refusal to respect
10 victims' rights?

11 I only say that in the context of the
12 justification for this Bill, which is that
13 apparently there are such, such denials or
14 failure to respect those rights going on in
15 sufficient numbers, in sufficient places in the
16 state of Florida to bring us here today.

17 CHAIRMAN BERUFF: Commissioner Cerio.

18 COMMISSIONER CERIO: Commissioner Gaetz,
19 damages is typically money damages, and that
20 may bolster the point you are trying to make,
21 right. If we can't hit them for money damages,
22 where is the hammer? Again, not an unfair
23 point.

24 However, in this instance with these
25 rights the idea of injunctive relief from a

1 court compelling adherence if a victim can, has
2 the opportunity which we are giving them to
3 enforce their rights, if then they don't, then
4 they are facing contempt.

5 That is outside of Marsy's Law. They fail
6 to follow a Judge's order enforcing Marsy's
7 Law, then they are looking at contempt and they
8 are risking some money, some money out of their
9 pocket. They may need to start bringing their
10 toothbrush to work if they are refusing to
11 enforce the proposal at that point in time.

12 But again, Senator, the best answer I can
13 give you is that we did not want to put a
14 monetary, a monetary remedy on enforcing -- on
15 the ability to enforce these rights or provide
16 that to the victims just because, you know, and
17 certainly willing to talk about it, but it just
18 did not seem to move the ball forward.

19 CHAIRMAN BERUFF: Commissioner Gaetz.

20 COMMISSIONER GAETZ: Final point. I would
21 just say again, Commissioner Cerio, if you work
22 at a hospital emergency room or in a public
23 school and you suspect or see evidence that
24 could be reasonably construed as suggesting
25 child abuse and you don't report it, you don't

1 just face somebody giving you an order for
2 injunctive relief, you lose your job and go to
3 jail.

4 If you fail to ensure that a citizen's
5 Second Amendment rights are respected by a
6 local government, you could lose your job and
7 there are consequences for you personally. We
8 apparently have a different weight to those
9 kinds of violations of rights or violations of
10 -- of someone's life or limb than we do in this
11 case. And -- and all I would ask you to do is
12 to -- is to bear that in mind because we are
13 writing the Constitution here.

14 We are not writing a statute that we can
15 go fix next year, and I would just ask if you
16 would please keep that in mind. That is my
17 final question. I thank you for your good work
18 and I will support it.

19 CHAIRMAN BERUFF: Commissioner Cerio, I
20 don't think there is an answer.

21 COMMISSIONER CERIO: Thank you,
22 Commissioner Gaetz, thank you.

23 CHAIRMAN BERUFF: Commissioner Schifino,
24 you are recognized.

25 COMMISSIONER SCHIFINO: Very briefly,

1 thank you Chair Beruff. If this were enacted,
2 wouldn't a court also potentially -- I think
3 maybe to alleviate some of Commissioner Gaetz's
4 concern, wouldn't the court also have contempt
5 powers to issue an order mandating compliance,
6 and if that wasn't followed there are
7 significant ramifications to a contempt order
8 from a Judge?

9 CHAIRMAN BERUFF: Commissioner Cerio.

10 COMMISSIONER CERIO: I did not -- thank
11 you, Mr. Chair. Commissioner Schifino, thank
12 you for pointing that out. If I didn't make
13 the point directly enough when I said bring
14 your toothbrush to work, I meant you will be
15 going to jail. So you may be going to jail.
16 So possible jail time, possible monetary
17 sanctions in the face of a contempt order.

18 CHAIRMAN BERUFF: Commissioner Joyner.

19 COMMISSIONER JOYNER: Thank you. One
20 question.

21 COMMISSIONER CERIO: I am sure.

22 COMMISSIONER JOYNER: Are victims of petty
23 crimes and traffic offenses, are they included
24 in a definition of "victim" as contemplated by
25 this proposal? Does --

1 CHAIRMAN BERUFF: Commissioner Cerio.

2 COMMISSIONER JOYNER: Does victim's rights
3 extend to the lowest level in the criminal
4 justice system --

5 CHAIRMAN BERUFF: Commissioner Cerio.

6 COMMISSIONER JOYNER: -- of misdemeanors
7 and petty crimes.

8 COMMISSIONER CERIO: Commissioner Joyner,
9 a good question. There is no cutoff for, you
10 know, a second degree felony or a third degree
11 felony. That is a good question. The victim
12 definition on the strike-all can be found at
13 line 163.

14 It says, "As used in this section, victim
15 is a person who suffers direct or threatened
16 physical, psychological or financial harm as a
17 result of the commission or attempted
18 commission of a crime or delinquent act, or
19 against whom the crime or delinquent act is
20 committed. The term, "victim" includes the
21 victim's lawful representative, the parent or
22 guardian of a minor, and the next of kin of a
23 homicide victim, except upon a showing that the
24 interest of such individual would be an actual
25 or potential conflict with the interest of the

1 victim. The term, "victim" does not include
2 the accused and the terms crime and criminal
3 include delinquent acts and conduct." So it is
4 not parceled out by felony, felony or degree of
5 felony or misdemeanor.

6 CHAIRMAN BERUFF: Commissioner Joyner.

7 COMMISSIONER JOYNER: So it is conceivable
8 that a victim in a traffic offense would have
9 to be notified of the right to opt in or out?

10 CHAIRMAN BERUFF: Commissioner Cerio.

11 COMMISSIONER CERIO: I would say no unless
12 it is a crime, unless it is a delinquent.

13 COMMISSIONER JOYNER: Well --

14 CHAIRMAN BERUFF: Commissioner Joyner.

15 COMMISSIONER JOYNER: The rest of what I
16 wanted to say.

17 COMMISSIONER CERIO: I am sorry.

18 COMMISSIONER JOYNER: When there is a
19 crime being committed?

20 COMMISSIONER CERIO: Yes, ma'am, yes,
21 Commissioner.

22 COMMISSIONER JOYNER: Okay.

23 CHAIRMAN BERUFF: Any further questions on
24 Amendment 350914? I don't see any.

25 Would you like to introduce the amendment

1 to your amendment 221118, Mr. Cerio?

2 COMMISSIONER CERIO: Thank you, Mr. Chair.
3 This is an amendment to the strike-all. This
4 amendment deletes a provision allowing a victim
5 to refuse a deposition. It was clear in
6 introducing the proposal that the most
7 controversial piece it seemed, had to do with
8 the right of a victim to decline a request by
9 the defense to refuse a pretrial interview,
10 deposition or discovery.

11 I think we could have had a really big
12 floor debate on this. I understand, I
13 understand both sides. I do think that Florida
14 would do well to stand with the majority of
15 states and the Federal Government, who do not
16 allow for victim depositions.

17 But in the interest of moving this good
18 proposal forward and in providing at least
19 maybe 18 instead of 19 rights, I filed this
20 amendment and I think that there are some folks
21 who agree with this amendment who can speak
22 passionately and articulately about why it is
23 appropriate, and I heard their voice, I did.

24 And, again, I think it is more important
25 to move what is a very great proposal forward,

1 so that is why I filed this amendment,
2 Mr. Chair.

3 CHAIRMAN BERUFF: So we will take
4 questions on amendment to the amendment.

5 COMMISSIONER CERIO: I --

6 CHAIRMAN BERUFF: Commissioner Stargel.

7 COMMISSIONER STARGEL: Mr. Chair --

8 CHAIRMAN BERUFF: Mr. Cerio.

9 COMMISSIONER CERIO: Somebody, I think it
10 was Commissioner Joyner, 221118 is the bar
11 code.

12 CHAIRMAN BERUFF: Commissioner Stargel.

13 COMMISSIONER STARGEL: Thank you. I have
14 a series of questions through the Chair. The
15 first one, I just want to make sure for the
16 record that this is clear. When you were
17 speaking with Commissioner Gaetz about the
18 permissive nature of this, since this is going
19 into the Constitution, you read this as
20 limiting the Legislature from going above and
21 beyond that to make it a shall in certain
22 situations for certain types of hearings and
23 certain instances.

24 CHAIRMAN BERUFF: Commissioner Cerio.

25 COMMISSIONER CERIO: Commissioner, I am

1 not sure I understand the question. I
2 apologize.

3 COMMISSIONER STARGEL: Since we are
4 putting this in the Constitution in a
5 permissive nature, there is nothing in here
6 that would prohibit the Legislature from going
7 further. For instance, the current victim
8 statute that already goes further, that is not
9 going to invalidate that in any way, correct?

10 COMMISSIONER CERIO: I --

11 CHAIRMAN BERUFF: Commissioner Cerio.

12 COMMISSIONER CERIO: I agree, and I would
13 say that only part of this is permissive, as
14 Commissioner Gaetz and I were discussing, but I
15 agree with you, yes.

16 COMMISSIONER STARGEL: Okay. My second
17 one that I think this --

18 CHAIRMAN BERUFF: Commissioner Stargel.

19 COMMISSIONER STARGEL: I am sorry, Chair,
20 Mr. Chair. If you look to lines 52 and 53 of
21 the amendment I think it is just a drafting
22 error, but you refer in paragraph 7 to the
23 subparagraph (7)(a), (7)(b) and (7)(c). Is
24 that supposed to be now (6)(a), (6)(b) and
25 (6)(c) because of the new drafting, because I

1 couldn't find otherwise where that would refer
2 back to?

3 CHAIRMAN BERUFF: Commissioner Cerio.

4 COMMISSIONER CERIO: Uh-huh. I think that
5 is correct.

6 COMMISSIONER STARGEL: Okay.

7 COMMISSIONER CERIO: Commissioner, I will
8 double check, but I think that is correct.

9 COMMISSIONER STARGEL: Okay.

10 COMMISSIONER CERIO: We will have the King
11 of Style and Drafting, Commissioner Heuchan,
12 address.

13 CHAIRMAN BERUFF: The King is in the back.

14 COMMISSIONER CERIO: He has left the
15 building.

16 CHAIRMAN BERUFF: Commissioner Stargel?

17 COMMISSIONER STARGEL: Okay. The next
18 provision I had a question about was the Right
19 to Restitution, and that is found on line 59,
20 the right to full and timely restitution in
21 every case, and from each convicted offender.

22 What generally happens, let's take an
23 instance where an employee steals from their
24 employer and they take \$10,000. We send them
25 to prison for, you know, 18 months and put them

1 on three years of probation when they come out.

2 They will do the best they can to get a
3 job and to pay that employer back, but at the
4 end of that three-year period it is pretty
5 standard where you would then issue a judgment
6 for the balance of that restitution, it would
7 be a lien, a judgment lien for that.

8 So is it your intent that that would
9 comprise and constitute the full payment that
10 you are discussing here or would we then have
11 to violate their probation and extend them out
12 until they actually paid money in monetary
13 damages for everything?

14 CHAIRMAN BERUFF: Commissioner Cerio.

15 COMMISSIONER CERIO: Commissioner Stargel,
16 that is my intent. I mean, however we get to
17 full and prompt or timely, that is my goal. We
18 changed the restitution provision so it wasn't
19 every penny must be paid before any other fees
20 are conducted and distributed, but that is my
21 intent.

22 CHAIRMAN BERUFF: Commissioner Stargel.

23 COMMISSIONER STARGEL: Thank you. I just
24 want to get a few of these things on the record
25 to make sure that we are clear for future

1 purposes because people look back on what our
2 intention is as a body if this goes into the
3 Constitution.

4 Just after that, on line 63, the Right to
5 Proceedings Free from Unreasonable Delay and to
6 a Prompt and Final Conclusion of the Case. Is
7 it your intention that would be governed by the
8 Trial Judge so that someone could bring that
9 issue up to the Trial Judge, but it would still
10 be in their purview to make that decision?

11 CHAIRMAN BERUFF: Commissioner Cerio.

12 COMMISSIONER CERIO: Yes.

13 COMMISSIONER STARGEL: Okay.

14 CHAIRMAN BERUFF: Commissioner Stargel.

15 COMMISSIONER STARGEL: And then on line 57
16 where it says, "The right to prompt return of
17 the victim's Property when no longer needed as
18 evidence in the case." A lot of times this
19 evidence is kept for many years because as
20 appeals go on you still have to keep that in
21 case for some reason it is overturned and you
22 go back to trial.

23 It is not your intention that upon the
24 conclusion of the trial that somebody could
25 come in and ask for that evidence back until

1 the proceeding is concluded all the way through
2 appeals?

3 CHAIRMAN BERUFF: Commissioner Cerio.

4 COMMISSIONER CERIO: Yes, that is correct.

5 COMMISSIONER STARGEL: And then the final
6 question that I have has to do with
7 Commissioner Joyner asked about the expungement
8 and I had a concern as to what happened. A lot
9 of times these are many years later, you don't
10 know where the victim is. But the way this is
11 worded, if we don't have an address for the
12 victim there would be nothing that would keep
13 the Court from going forward on the
14 expungement, as long as they have made an
15 attempt and nobody has requested notice, is
16 that correct?

17 CHAIRMAN BERUFF: Commissioner Cerio.

18 COMMISSIONER CERIO: That is correct, a
19 reasonable attempt is all that is required.

20 CHAIRMAN BERUFF: Commissioner Bondi.

21 COMMISSIONER BONDI: Commissioner Cerio,
22 thank you for championing this. I think I
23 speak for everyone in here that I think victims
24 deserve to be in our Constitution. When I
25 started prosecuting in my early 20's it was a

1 nightmare. No one was notified on cold rape
2 cases, pleas were being taken, women wouldn't
3 even know until they would see the perpetrator
4 on the street again. Every Judge, defense
5 attorney and prosecutor in the room knows that.

6 So just to clarify things so we can wrap
7 this up hopefully, this is a floor. Florida
8 unlike many states where Marsy's Law was
9 proposed originally, we already have strong
10 victims notification laws within our state.
11 Actually, stronger, you don't have to opt in as
12 a victim. You can opt out.

13 So because this is a floor saying opt in,
14 our statute is going to trump that, right? Our
15 statute, which is tougher, is going to prevail,
16 is that correct? Commissioner, I am sorry,
17 Chairman, and if so, I fully support the Bill.

18 CHAIRMAN BERUFF: Commissioner Cerio.

19 COMMISSIONER CERIO: Thank you,
20 Commissioner Bondi, I like to think that we are
21 raising the floor. So if statutory law
22 provides even greater remedies, then
23 absolutely.

24 CHAIRMAN BERUFF: Commissioner Joyner.

25 COMMISSIONER JOYNER: Thank you,

1 Mr. Chair. Commissioner Stargel spoke about
2 the restitution and if it wasn't done within a
3 time certain, I didn't get it right. He said
4 that probation could be extended -- no, they
5 could be charged with violation of probation by
6 not making restitution within a given period of
7 time.

8 Is that -- I need clarification on that,
9 because if you extend -- if you violate
10 probation then you spend more time
11 incarcerated, which ups the cost of
12 incarceration and cost to the State and I
13 needed a better explanation.

14 CHAIRMAN BERUFF: Commissioner Cerio.

15 COMMISSIONER CERIO: Mr. Chair, I don't
16 want to misstate what Commissioner Stargel
17 asked. For Commissioner Joyner's benefit, I
18 want to say though, that the intent is not to
19 -- it is still the Judge's decision as to
20 whether or not to violate somebody.

21 That is not the intent. The intent is
22 just to, to provide a right to full -- to
23 prompt and full restitution. So how a Judge
24 handles that in a particular case, and I will
25 defer to Commissioner/Judge Stargel to make

1 sure that I am not botching the intent of his
2 question, that is my thought.

3 CHAIRMAN BERUFF: Commissioner Stargel,
4 can you address Commissioner Joyner's question?

5 COMMISSIONER STARGEL: My understanding of
6 Commissioner Cerio's answer is that we would
7 still be able to do what we do today, which is
8 the Judge will make the decision on whether
9 they have violated their probation.

10 What I would do in an ordinary case if
11 somebody comes in, we are going to set
12 probation, set the restitution payments at a
13 certain amount. We hear about what their
14 income is, what their expenses are and we say,
15 you are going to pay \$50 a months for the next
16 three years because that is what they can
17 afford to pay.

18 As long as they do that, then they would
19 be eligible to successfully terminate their
20 probation at the end of it and we would file a
21 judgment lien for whatever the balance was at
22 that time. I wanted to make sure in my
23 question to Commissioner Cerio that we weren't
24 going to be required to continue bumping out
25 that probation until every cent of probation

1 has been paid or until they bump up against the
2 final 15 years, if it is a second degree felony
3 or whatever it happens to be. And I was
4 comfortable with his answer that, yes, we would
5 be able to continue in the process that we,
6 that we currently follow.

7 CHAIRMAN BERUFF: Commissioner Joyner.

8 COMMISSIONER JOYNER: And that is the
9 clarification I was seeking, exactly what, what
10 his intent was and what your answer is. As
11 long as the person is not re-incarcerated for
12 violation, as long as they pay in accordance
13 with the plan that has been devised by the
14 Court.

15 CHAIRMAN BERUFF: Great.

16 Commissioner Martinez is recognized.

17 COMMISSIONER MARTINEZ: Thank you,
18 Mr. Chair. Mr. Cerio, let me have another
19 follow-up question for you on remedy. Because
20 if we are going to do this and I support it,
21 and I am going to vote for it because I want it
22 as a game changer, not just as a piece of paper
23 with certain enunciated rights.

24 So let me ask you this question on remedy.
25 Let's suppose that a client comes to me and

1 says I never got notification that my client,
2 that the victim, that the Defendant was
3 released on bail, the Defendant was released on
4 bail, and that Defendant shouldn't be released
5 on bail unless for any reason or at least I
6 would like to have an opportunity to convince
7 the Judge.

8 Would -- would the victim have as a remedy
9 the right to go to court and ask the court to
10 reset the bail hearing so that a proper bail
11 can be set to take into account the -- the
12 right of the victim to speak at that bail
13 hearing, could that be a remedy?

14 CHAIRMAN BERUFF: Commissioner Cerio.

15 COMMISSIONER CERIO: They absolutely,
16 Commissioner, have the right to ask for that
17 remedy. It is not guaranteed. It will still
18 be up to the Judge, but they would have the
19 right to ask.

20 COMMISSIONER MARTINEZ: Is there any --

21 CHAIRMAN BERUFF: Commissioner Martinez.

22 COMMISSIONER MARTINEZ: Is there anything
23 that gives the victim the right to enforce
24 that? In other words, you can ask for it, but
25 what is the consequence of a violation of that

1 right?

2 CHAIRMAN BERUFF: Commissioner Cerio.

3 COMMISSIONER CERIO: You are not a party,
4 Commissioner Martinez, so you really, you have
5 standing to enforce the notice requirements,
6 but you don't have standing as a party if you
7 don't like the outcome. If you don't like the
8 outcome in the proceeding, say you don't want a
9 Defendant released on bail, you can express
10 your opinion, you lose, you do not have
11 standing as a party to -- to take any further
12 action.

13 Your rights as a victim to go to court
14 have to do with the enforcement of the notice
15 and opportunity to participate provisions, but
16 you can't control the outcome, nor can you
17 dictate the conduct of the State Attorney in
18 what he or she asks for.

19 CHAIRMAN BERUFF: Commissioner Martinez.

20 COMMISSIONER MARTINEZ: Thank you,
21 Mr. Chair. I just want to make sure the record
22 is clear. Thank you for your patience.

23 So you, so the victim would have the right
24 to say, hey, my rights were violated, and that
25 would be it, and the Judge would say, yes, I

1 understand that you were notified and now that
2 you are here you are notified, but I am not
3 going to change the conditions of pretrial
4 release. That would be the extent of it.

5 CHAIRMAN BERUFF: Commissioner Cerio.

6 COMMISSIONER CERIO: Thank you for
7 clarifying. Okay, that is what we are trying
8 to remedy. If a -- if a victim says you
9 didn't -- I didn't receive notification, the
10 Judge doesn't do anything about it, there is an
11 opportunity, according to Marsy's Law, to take
12 that to the Appellate Court if the court won't
13 hear.

14 If there is a rehearing and you don't like
15 the outcome, you don't have a remedy there, but
16 if a Judge -- what we are trying to make clear
17 is if a State Attorney is not adhering to the
18 requirements of Marsy's Law, a victim can go to
19 the Judge. If the Trial Judge doesn't adhere
20 to the requirements in Marsy's Law you can go
21 to an Appellate Court.

22 COMMISSIONER MARTINEZ: And where is that
23 in here?

24 COMMISSIONER CERIO: That is in the end.
25 I may have to go back to the original

1 strike-all. C, line 140 in the strike-all,
2 line 42 in the strike-all.

3 COMMISSIONER MARTINEZ: "Afforded the
4 victim by law in any trial or Appellate Court,"
5 is that it?

6 COMMISSIONER CERIO: Yes.

7 COMMISSIONER MARTINEZ: So -- so follow-up
8 question to that, Mr. Chair.

9 CHAIRMAN BERUFF: Commissioner Martinez.

10 COMMISSIONER MARTINEZ: So -- so it is
11 clear I want to put it on the record because it
12 is important. So if a trial court doesn't give
13 the victim the rights that are included in this
14 proposal, the victim has a right to then appeal
15 that order as a non -- I guess it is a final
16 order as to the victim, appeal that order to
17 the District Court of Appeal, is that correct?

18 CHAIRMAN BERUFF: Commissioner Cerio.

19 COMMISSIONER CERIO: I don't mean to
20 parcel this, Commissioner Martinez. They have
21 a right to assert that they did not have an
22 opportunity to be heard. Again, if they don't
23 like the outcome they have got no standing, but
24 if that, if they were never provided with an
25 opportunity, that is a right that they have the

1 ability to seek to enforce.

2 CHAIRMAN BERUFF: Further questions on
3 amendment to the Amendment 221118? Then seeing
4 none, we will debate the amendment.

5 Commissioner Coxe is recognized on debate
6 for Amendment 221118.

7 COMMISSIONER COXE: Very briefly,
8 Commissioner Cerio. The amendment, this
9 amendment is a product of what created the
10 greatest angst among the judiciary in this
11 state, prosecutors in this state and practicing
12 attorneys.

13 Depositions, so everyone knows, are the
14 vehicle by which cases get resolved and do not
15 unnecessarily waste the resources in trial in
16 the state of Florida.

17 It is a magnificent vehicle and it is
18 effectively used by all parties in the system,
19 especially State Attorneys in their ability to
20 evaluate the strength of their own cases.

21 CHAIRMAN BERUFF: Further debate?

22 Commissioner Sprowls is recognized.

23 COMMISSIONER SPROWLS: Thank you,
24 Mr. Chair, and thank you, members. I want to
25 specifically thank Commissioner Cerio for this

1 strike-all. I think he kind of -- he set the
2 stage a little bit about how this is not
3 something that maybe he would have done as far
4 as taking out the deposition piece.

5 I think most people in the room would
6 agree that to the extent that we can protect
7 victims from having -- whether it is a
8 traumatic situation, in addition to the crime
9 that they have already been victimized, all of
10 us would agree that we would want to do that.

11 And I want to be a little bit more
12 technical, because I think that, you know,
13 reasonable minds could disagree, Commissioner
14 Coxe, on whether that was a good idea.

15 As you know, many states don't have
16 depositions, the Federal system doesn't have
17 depositions, and I agree with what Commissioner
18 Coxe said, and a lot of times both for the
19 Defense and for the State, this is a pressure
20 point in the process.

21 Many defense lawyers will say, I have gone
22 through and I have done all the discovery in
23 the case. I feel confident to advise my client
24 about whether or not they should take a plea,
25 but if my client pleads prior to doing the

1 victim deposition, do I get a better deal?

2 Usually, and the prosecutors in the room
3 probably shake their head, usually the answer
4 is yes. But to the extent of being able to
5 protect the victim by having to go through an
6 additional process, most prosecutors are
7 willing to be a little bit more lenient in
8 conversation with the victim to make sure that
9 they agree with that. So it is a pressure
10 point for both sides, and I think it is a
11 valuable one.

12 As a policy matter, I think it is a good
13 one, but I think there is a bigger issue here
14 that I think Commissioner Cerio has navigated
15 well in the strike-all and I think it is worth
16 just laying the stage for some folks that had
17 indigestion about it, or have indigestion that
18 now the depo piece is no longer in the
19 proposal, which I understand that might give
20 some folks some issues.

21 Every state in America has an entitlement
22 to one of three things in the criminal justice
23 system: Grand Juries, right, every case is
24 filed by Grand Jury. If you go to New York,
25 every felony case commences in a Grand Jury.

1 We don't do that in Florida.

2 We only do it for first-degree murder. It
3 is the only thing the law requires. The case
4 law in Florida says that prosecutors are one
5 person Grand Juries in felony cases, and can
6 indict based on information, a signature on a
7 piece of paper. So we don't have that
8 entitlement.

9 The other is an entitlement to a
10 preliminary hearing. A preliminary hearing
11 usually happens within 14 days of the
12 Defendant's arrest. It happens in an open
13 courtroom. A lot of times the victims will be
14 testifying in that open courtroom subject to
15 cross examination. Several of the Marsy's Law
16 states while they have adopted no depositions
17 for victims or the option for no depositions
18 for victims, you have a preliminary hearing.

19 So they have a victim, they have to come
20 into court within 14 days, testify subject to
21 cross examination in open court. Many of you
22 know depositions usually take place months. If
23 it is a big case it could even be a year after
24 the Defendant is arrested. And the final thing
25 is victim depositions, depositions in discovery

1 cases.

2 Here is the problem. If we would have
3 passed, in my view, the original version of
4 this, we would be the only state in America
5 that does not have an entitlement to a Grand
6 Jury; entitlement to a preliminary hearing or
7 an entitlement to discovery depositions.

8 Now, some people may say, who cares? So
9 what, we want to do it differently, and I think
10 that is certainly worth a policy conversation.
11 Here is the problem with that. The problem
12 with that is in my view, and I could be wrong
13 as has been well stated, I am not maybe as good
14 a lawyer as, you know, Commissioner Martinez, I
15 think that has been well documented.

16 But I do believe that we all can agree
17 that the Supreme Court, the Supreme Court has
18 the sole ability to determine procedure in our
19 state. It is a constitutional provision,
20 right, civil procedure and criminal procedure.
21 If we would have passed the original version of
22 this it is my belief that the Supreme Court
23 would be well within their authority and
24 probably correct to say we are now going to
25 create a preliminary hearing by procedure.

1 So now as a policy matter, that victim
2 might not be coming in to deposition four
3 months into the process. Instead, they are
4 coming in 14 days after the Defendant is
5 arrested, they are testifying in open court,
6 they are subject to cross examination and many
7 of you, many of you like me would say that is
8 probably worse for the victim than the current
9 system.

10 Some of you may not agree with that, but
11 regardless of where, where you are on that I
12 think the good thing is this. We know what we
13 are getting here now. We don't have to worry
14 about what the Supreme Court is going to do,
15 because they cannot create a procedure because
16 essentially in that respect when it comes to
17 depositions, that right is still in tact.

18 So I think that was important to lay that,
19 to lay that, and while reasonable minds may
20 disagree, I think what Commissioner Cerio did
21 here was difficult, because I think this was an
22 issue that came out throughout the state.
23 Depos, you know, victims don't like giving
24 depositions, nor should they. Prosecutors
25 don't like sitting next to victims while they

1 are having to answer tough questions.

2 Nobody likes that, but I think this is
3 something that will maintain our criminal
4 justice ecosystem. It is a good change, I know
5 it was a tough one, but I want to thank you,
6 Commissioner Cerio, for -- for making that
7 change.

8 I think this makes it a great product. I
9 am proud to support it.

10 CHAIRMAN BERUFF: Further debate on the
11 amendment to the amendment?

12 Commissioner Timmann is recognized.

13 COMMISSIONER TIMMANN: Thank you, Mr.
14 Chairman. I, too, would like to thank the
15 sponsor for his hard work on all of this,
16 trying to work with a very diverse group of
17 individuals and professionals who play a role
18 in this whole process. In particular dealing
19 with some of the issues on restitution, for
20 instance, to make sure that there -- it would
21 still be judicial review of the priority of
22 liens in restitution, and making sure that it
23 didn't conflict with any statutory provisions
24 dealing with distribution of varied court costs
25 and fees and fines.

1 I greatly appreciate that. He worked
2 incredibly hard. There is a lot of heart in
3 this, and I think it bodes well for a very good
4 product that is an excellent statement to the
5 victims in this state, and I really hope that
6 everyone can support it, so thank you.

7 CHAIRMAN BERUFF: Further debate? Seeing
8 none -- excuse me, Commissioner Joyner.

9 COMMISSIONER JOYNER: Thank you,
10 Mr. Chair. You worked hard, Commissioner
11 Cerio, and you are to be applauded by the
12 victims and the people. I personally feel that
13 the Florida Statutes and the Florida
14 Constitution already contain essentially
15 everything that you put forth to be added at
16 this point, that victims do have great rights.

17 I am so -- I am pleased that you took out
18 the deposition portion because that was not
19 good in my opinion, because defendants, the
20 United States Constitution gives the defendants
21 great rights also. And they trump the rights
22 of anyone else as far as their liberties are at
23 stake, the deprivation of their liberties are
24 at stake, and consequently the rights to them
25 are paramount in my opinion.

1 Florida stepped ahead of the nation a long
2 time, a long time ago in my opinion, when we
3 enacted the statute back in 2002. I mean, the
4 Constitution initiative as well as the statutes
5 that we have protecting victims' rights.

6 It appears to me that the biggest problem
7 has been with, quote, the State Attorneys and
8 those who are entrusted with the responsibility
9 of informing victims based on your assertion
10 that -- and that of the victims that came
11 before us that they were not being notified.

12 I think that is something that we have got
13 to fix, and I don't feel that putting it in the
14 Constitution is going to fix it. We need
15 comprehensive approach by the Legislature to
16 establish a uniform system of notification in
17 all of the 20 judicial circuits so that victims
18 will all be at the same level, that there will
19 be a level playing field and we won't have --
20 we won't have the problem that -- that is
21 asserted that we have now.

22 This is a very detailed document and as we
23 all know, the devil is in the details. I am
24 concerned about unintended consequences that
25 may arise as a result of the multiplicity of

1 what is in this document, and I am concerned
2 also that we don't forget that the Constitution
3 guarantees rights to the accused that may be
4 affected by what we are doing today.
5 Consequently I will not be voting for this
6 Proposal.

7 CHAIRMAN BERUFF: Further debate? Seeing
8 none, we will now take a voice vote on 221118.

9 All those in favor of the amendment
10 signify by saying yea.

11 (Chorus of yea's)

12 CHAIRMAN BERUFF: All those against
13 signify by saying nay. There was a nay.

14 The amendment moves forward. Now we are
15 going to -- now we are going to debate the
16 Amendment 350914 as amended. Do I have anyone
17 who wants to debate the amendment with the
18 adopted amendment? Seeing none, we move to a
19 voice vote on adopting 350914.

20 All those in favor signify by saying yea.

21 (Chorus of yea's.)

22 CHAIRMAN BERUFF: All those against, nay?
23 It carries. We will move forward now to debate
24 on P-96 as amended. Anyone want to speak on
25 debate on 96 as amended? Commissioner Coxe is

1 recognized.

2 COMMISSIONER COXE: Thank you, Mr. Chair,
3 and I will be joining in applauding
4 Commissioner Cerio in all of his effort here,
5 and we have certainly spent a lot of time
6 dealing with these issues. I feel like I am
7 back like I was yesterday morning when
8 Commissioner Gainey had his proposal here, and
9 that was to say that a red light on that board
10 doesn't mean you don't agree with Commissioner
11 Bondi about the respect for victims and the
12 role they play in the criminal justice system.

13 That is absolutely true, but I want to
14 quote something to everybody here. "Victims of
15 crime or their lawful representatives,
16 including the next of kin of homicide victims
17 are entitled to the right to be informed, to be
18 present and to be heard when relevant at all
19 crucial stages of criminal proceedings to the
20 extent that these rights do not interfere with
21 the Constitutional rights of the accused."

22 That has been in our Constitution for 20
23 years. That is why Florida has been applauded
24 as the leader in the protection of victim
25 rights in this country, before the onset of

1 this Marsy's Law.

2 The word earlier used was overlap. This
3 proposal is not an overlap, it is an overlay of
4 what our Constitution already provides and what
5 the statutes essentially already provide. We
6 require, throughout the criminal justice
7 system, and always have, that victims' be
8 notified. They are notified.

9 The anecdotal claim that there are
10 instances somewhere in the state of Florida
11 that this hasn't happened the way it should
12 happen, nobody can quarrel with. I assume that
13 is probably true, but to use the Florida
14 Constitution as the vehicle to solve isolated
15 anecdotal problems, I don't believe is why we
16 are here.

17 When we were in St. Petersburg a week ago,
18 someone came forward and spoke and said very
19 proudly that the support of Marsy's Law
20 included three elected State Attorneys. That
21 was a week ago. Today I believe Commissioner
22 Cerio identified five, and I would suggest the
23 elephant in the room is where are the other 15?
24 Why are they not coming here in support of this
25 proposal?

1 Because our State Attorneys, 20 of them,
2 all elected, know they are obligated to protect
3 and provide for victims and they do it, and
4 this -- this proposal is essentially an insult
5 to the performance of the 20 State Attorneys in
6 Florida that they have not been doing what they
7 should and to the 67 Sheriffs.

8 The criminal law section made up of
9 Judges, prosecutors and defense attorneys and
10 law professors voted 19 to three to oppose
11 this. They studied it, they submitted the
12 memorandum and all of you have seen it.

13 Now, I want to go to very briefly the --
14 which everyone has, the outside staff analysis
15 of this proposal, and I want to quote:

16 "Proposal 96 has the laudable goal of
17 codifying crime victims' rights in the Florida
18 Constitution. Much of this proposal is already
19 written in statute, specifically in Chapter
20 960, Florida Statutes. Any Constitutional
21 rights granted to victims should be honest,
22 workable and useful. As such, the Constitution
23 Revision Commission, this State's criminal
24 justice system, State Legislators and Florida
25 citizens, citizens must be careful to not

1 create false hopes and expectations or make
2 unworkable promises to victims."

3 "As presently drafted, it appears that
4 Proposal 96 has problems, and it does." Keep
5 in mind the general premise that if we put this
6 in the Constitution as opposed to the statutes,
7 which is already in both, if we do this and
8 something runs afoul, a serious problem, we
9 have to amend the Constitution to correct it.

10 The question came up about expunging
11 records, which I can tell you is all under
12 943.058 of the statutes and it includes the
13 sealing of criminal records and expunging of
14 criminal records.

15 This proposal requires notification about
16 that. The eligibility to have that done
17 operates automatically by the fact that your
18 case did not result in a conviction, number
19 one; and number two, you don't have a prior
20 conviction or anything; and number three, you
21 have not previously had a record sealed or
22 expunged.

23 That now, I believe, to go through that
24 process for one person in the state of Florida,
25 the way it works, you have to have a

1 certificate from the Department of Law
2 Enforcement. They will tell you right now, it
3 takes four to six months in waiting time just
4 to get one certificate for one person in the
5 state of Florida.

6 They deal with tens if not hundreds of
7 thousands of those annually, and this is going
8 to put on our State Attorneys an obligation for
9 notice to those people when they are going to
10 have no ability to argue against it happening
11 anyway, it works as an operation of law.

12 Number two, once a record is sealed it is
13 by law confidential. It gives, it restores you
14 to the position to be able to say you were
15 never arrested in the first place under Florida
16 Law. From the same analysis, in addition, and
17 this is outside counsel this analysis, this did
18 not come internally.

19 "In addition, Proposal 96 provides
20 timeframes for the disposition of State appeals
21 and collateral attacks for non capital cases,
22 parentheses, (two years,) and capital cases,
23 parentheses, (five years.)"

24 "While it is unknown how feasible it will
25 be for the Appellate Courts to meet those

1 deadlines, the likely answer is that it will be
2 very difficult given the current caseloads of
3 the State Attorneys and Public Defenders.
4 Furthermore, Proposal 96 allows the Legislature
5 to adopt legislation to implement these
6 timeframe provisions, but the proposal
7 contradicts itself by simultaneously providing
8 that quote, "the provisions of this section are
9 self-executing and do not require implementing
10 legislation," end quote.

11 I reiterate what I said that nobody in
12 this room, as Commissioner Bondi said, and
13 nobody I know of that have ever dealt with in
14 the criminal justice system disagrees with the
15 emphasis and interest in the protection of
16 victims in the state of Florida. No more or
17 less than you would in any other state in the
18 country.

19 But we have the Constitution and we have
20 the statutes, and we are about to do is not
21 only duplicate it for the most part, but we are
22 going to get into such detail in this
23 Constitution that we are going to create
24 problems we are not going to be able to undo
25 without somebody meeting again and amending the

1 Florida Constitution.

2 There are -- there is a laundry list of
3 issues and I have talked to Commissioner Cerio
4 about it any number of times. I go back to
5 this, the threshold question that we do, why
6 are we doing this? Why, given what we have in
7 the state of Florida, we have been the leader
8 in the country. Why are we doing this?

9 Commissioner Martinez raised the question,
10 what if there is failure to abide by what is
11 required in the Florida Constitution to give
12 notification the person is released from jail?
13 The victim says, Your Honor, I petition under
14 this constitutional provision for relief. The
15 United States Constitution would never allow
16 that person to be remanded to custody because a
17 state provision said you didn't comply with the
18 notice procedure.

19 Your remedies are for the person who is
20 the victim and the remedy is going to go only
21 to failure to notify and that remedy can only
22 go to the person who didn't provide the
23 notification, the prosecutor or the Court.
24 That is where the remedy lies, but not to
25 change the outcome of the criminal case. That

1 can't happen legally.

2 So I just leave it with you, I do applaud
3 everything Commissioner Cerio did. I really --
4 I speak for a lot of people in this system,
5 like what is going on, and I don't mean defense
6 lawyers like myself. Everybody in this, why
7 are you doing this, so I leave it with you.

8 I remember the very first vote we had.
9 This room, the very first organizational
10 meeting for some reason we voted on something
11 and I must not have been paying attention
12 because there were 35 green lights and mine was
13 red. I don't even remember what the issue was.

14 So I took three hits in a four-hour
15 period, over three in front of Commissioner
16 Carlton's committee, so I am thick-skinned
17 about this, so have at it.

18 CHAIRMAN BERUFF: Further debate on
19 Proposal 96? Commissioner Schifino is
20 recognized.

21 COMMISSIONER SCHIFINO: Thank you, Chair
22 Beruff. Boy, this is a tough one, tough in the
23 sense that it -- it sounds very good and it is
24 something -- and I am going to tell you, I am
25 not going to -- I want to listen to what others

1 have to say, because certainly I hope we have
2 done that all so far today. But I listened to
3 our Attorney General, Pam Bondi, and what does
4 she tell us? She told us what we do in Florida
5 is even a heightened standard. That is what
6 she said.

7 So why is it we are establishing a floor?
8 It is -- and I think Commissioner Cerio has
9 agreed for the most part, the vast majority of
10 this is duplicative of what is in place, but I
11 go back to Proposal 26 earlier today and I
12 remember Commissioner Lee getting up at the end
13 of that vote and essentially saying words to
14 the effect, we are simply adopting what is
15 already in the statute, so what are we doing?

16 Your words were, we are just making a
17 statement. And so as we navigate through this
18 I want to think about it, I hope you all do is
19 what are we really doing? Are we creating new
20 law? No. Are we fixing a problem? No. And
21 it may be at the end of this debate we are
22 going to say yes, we want to make another
23 statement, but I think we all need to be very
24 cognizant of that as we navigate through this
25 process, is what are we doing, making law,

1 fixing problems or making statements?

2 Thank you.

3 CHAIRMAN BERUFF: Anyone else on debate?
4 Seeing no -- Commissioner Nocco is recognized.

5 COMMISSIONER NOCCO: Thank you, sir, and
6 there is one thing that I want to thank you,
7 Commissioner Cerio, for all you have done for
8 this Bill and working together and Commissioner
9 Coxe, I am not too insulted as a Sheriff that
10 he brought forward this idea.

11 It was one of those things that as a
12 Sheriff and there is a lot of people and there
13 is victim advocates, General Bondi,
14 Commissioner Gainey, there is a lot of people
15 involved in helping victims, and the one thing
16 I want to thank Commissioner Cerio is because,
17 yes, along this path where we got to where we
18 were, were there concerns, were there issues?
19 Absolutely.

20 The different group is bringing everybody
21 together so work on this, and I think the
22 underlining theme of this and why Commissioner
23 Cerio has done a good job is because everybody
24 is vested, everybody in this room, you are an
25 attorney, a defense attorney, a prosecutor, law

1 enforcement, a citizen of the state, you have a
2 vested interest because in the criminal justice
3 system it seems almost 100 percent of the time
4 the only person that did not want to be there
5 is the victim. Cops, we show up, we wear a
6 uniform, we go to work every day, that is what
7 we do. The prosecutors they go and they
8 prosecute. The defense attorneys defend
9 people. Those that are the suspects of the
10 crime if they are not guilty, that was
11 something happened or if they were the ones
12 that were guilty and they were involved, that
13 was their choice.

14 But 100 percent of the time the victim
15 never chose, the victim never woke up that day
16 and said, you know what, today is the day I
17 want to be a victim. But the one thing we have
18 to do which is critical is protect them,
19 because it is really not just them, it is all
20 of us, because at any moment we would be a
21 victim and we want to make sure during that
22 time we have those rights and if those rights
23 are documented in the Constitution, so be it,
24 because that is where it goes back, we always
25 go back to what we said yesterday. It seems

1 like yesterday was a very critical day for us,
2 but it was, these are things that are
3 fundamental to who we are, and it is
4 fundamental that we protect those that are
5 vulnerable, and you know what, victims aren't
6 always the same.

7 There are some victims that crimes are,
8 you know, if somebody is shoplifting or a
9 larceny and they steal a Snickers bar, that is
10 a larceny; and you know what, but there is
11 other victims that should be held to a much
12 higher standard, you know, children that are
13 involved in domestic violence, victims of rape,
14 domestic violence.

15 Those are the ones that I am deeply
16 concerned about and those are the ones that I
17 am voting for this because I want to make sure
18 they always have those protected rights.

19 CHAIRMAN BERUFF: Commissioner Martinez.

20 COMMISSIONER MARTINEZ: Chair Beruff, I
21 agree with 99 percent of what my friend
22 Commissioner Coxe said. The one percent that I
23 disagree with, is I am going to vote for this
24 but I agree with just about everything else he
25 said and I am going to vote for this, you are

1 more than welcome, I am going to vote for this
2 because I want the people to have an
3 opportunity to vote for this, but the people
4 need to know that if this is supposed to be a
5 game changer, then it has got to be more than
6 just voting for something to put in the
7 Constitution.

8 I think our Attorney General and our state
9 prosecutors and our police and our clerks
10 generally speaking throughout the state do an
11 excellent job protecting victims' rights. In
12 order to take it to the next level to be a game
13 changer, all of those people are going to
14 require a lot more money, a lot more money, and
15 somebody is going to have to be held
16 accountable.

17 I think this goes to Senator Gaetz's I
18 think part of the essence of what you were
19 asking is how do we ensure that these things
20 are going to in fact be implemented. There is
21 a lot of good intentions here, but who is going
22 to be held accountable?

23 The remedies that are in the proposed
24 amendment, with all due respect to my friend,
25 Commissioner Cerio, who by the way has been

1 victimized by all of these questions this
2 afternoon, I think these remedies are for the
3 most part yet to be determined, they are going
4 to be determined in this implementation, but if
5 they are going to be true remedies, these are
6 remedies that are going to have to have some
7 teeth.

8 So when the people go to vote for this
9 they need to make sure that for this to be a
10 game changer, this is a starting point. This
11 is just a starting point. It can't just be
12 words in a Constitution. Much more is going to
13 be need to be required.

14 CHAIRMAN BERUFF: Further debate on 96?
15 Commissioner Cerio, would you like to close on
16 96?

17 COMMISSIONER CERIO: Thank you,
18 Mr. Chairman. I am going to walk around. Gee,
19 thanks, Hank. I want to thank everybody,
20 including my Commissioners and friends who are
21 skeptical. I value your, not just your
22 friendship but your input and you know that.

23 But to address Commissioner Schifino, this
24 is not window dressing. These are my words,
25 not yours, that we are fixing a problem.

1 We have a problem. We have had
2 professionals discuss this candidly. And as I
3 said before, I want to stress, this is not a
4 criticism of our Judges or our prosecuting
5 attorneys or our public defenders and private
6 sector defenders who work very hard. We have
7 an overwhelmed criminal justice system, and
8 Commissioner Martinez is right.

9 This -- this needs to be more than, this
10 needs to be the beginning and there are a whole
11 lot of things that are going to take a whole
12 lot of resources to, to conduct the matters
13 rightly, to make sure that we are informing
14 victims, but if this is a start, I will take it
15 and it is a good start.

16 Commissioner Sprowls, I want to thank you
17 for your comments. I believe you are the
18 self-proclaimed Thomas Jefferson of this body,
19 so it does mean a lot to me and I do want to
20 claim the role of James Madison, if that is
21 still available. But I do, I thank you and I
22 thank you for the time you have spent in trying
23 to hammer out these issues, and Commissioner
24 Nocco as well and all of the co-sponsors, but
25 it is important.

1 And I do have to take issue with some of
2 the things that Commissioner Coxe said. You
3 know, he mentioned that it was, there were
4 three State Attorney endorsements, now there is
5 five.

6 Where is everybody? Well, I think there
7 was, there was compromised language that has
8 been recently filed that we are debating now,
9 it is not five, it is seven, and stay tuned
10 because I think we are going to have a lot
11 more.

12 You mentioned the law enforcements, the
13 Sheriffs have endorsed, the Police Chiefs have
14 endorsed, and I am eternally grateful for them
15 for that.

16 In fairness, and I am not trying to pick,
17 you did mention the criminal law section of the
18 Bar who voted 19 to three to oppose. The
19 Criminal Law Section of the Florida Bar, as I
20 understand it 20 years ago, opposed the section
21 in the Constitution now on victims' rights.

22 Now, is that a fair criticism. I will say
23 I understand. Many of them have clients to
24 defend that are the ones that are defense
25 lawyers, and -- but it isn't fair to say any

1 type of provision of a victim's rights provides
2 me or my client with a tactical disadvantage so
3 I am going to oppose it.

4 I am not suggesting anybody in this room
5 feels that way, but make no mistake, the
6 criminal law section is composed and they are
7 good people, they are composed, they are
8 composed of lawyers and Judges and prosecutors
9 and defense lawyers, but make no mistake, they
10 are dominated by defense lawyers. So I mean, I
11 am just trying to set the record straight.

12 I think that it has been a hard-fought
13 debate. I have done my best to try and listen
14 to everybody from the Florida Association of
15 Public Defenders, the Sheriffs, the
16 prosecutors, they spent a lot of time. I never
17 heard from the Criminal Law Section until I
18 reached out or made the offer to reach out and
19 it really wasn't a terribly productive
20 conversation, the brief conversation I had, but
21 it is what it is.

22 I don't fault anybody for zealously
23 defending your client or taking a position. We
24 have to do that in our everyday lives, not just
25 in this body, but, you know, there are real

1 issues here, they are legitimate concerns. We
2 are fundamentally changing the way we do
3 business in the State of Florida. So I cut
4 people a wide berth for that, it is a way to do
5 business differently, but I think it is the
6 right way.

7 We are defending victims' rights and I am
8 finished, and I want to thank you all for your
9 indulgence and please vote for Proposal 96.

10 CHAIRMAN BERUFF: Secretary, will you open
11 the board please for a vote on Proposal 96?
12 Commissioners, please vote. Close the board.
13 Announce the tally, please.

14 THE SECRETARY: Thirty yea's, three nay's,
15 Mr. Chair.

16 CHAIRMAN BERUFF: And this moves forward
17 to Style and Drafting as approved. Thank you.

18 We are moving on to Proposal 91, which I
19 am hopeful the Commissioner Thurlow-Lippisch
20 will introduce in such a format that it will be
21 quick.

22 COMMISSIONER THURLOW-LIPPISCH: Whoa.
23 Hello, everybody. As you know, I am Jacqui
24 Thurlow-Lippisch from the town of Sewall's
25 Point in Martin County, and I am here to speak

1 on P-91. And I am very excited to let you
2 know, very honored to let you know, that I have
3 1,301 letters of support from the Center of
4 Biological Diversity in St. Pete, and I am
5 planning on reading them one by one.

6 CHAIRMAN BERUFF: We are going to excuse
7 you all and she can read them by herself while
8 we go take a nap.

9 COMMISSIONER THURLOW-LIPPISCH: Just
10 kidding. I would also like to say that I am
11 very honored to have 18 co-sponsors, including,
12 I will just say the last names, Commissioners
13 Martinez, Gainey, Cerio, Heuchan, Keiser,
14 Jordan, Gaetz, Timmann, Plymale, Chair Beruff,
15 thank you very much; Nocco, Joyner, Rouson,
16 Schifino, Johnson, Washington, Carlton and
17 Newsome.

18 I cannot tell you how much I appreciate
19 this support, and I know it is for our
20 beautiful state of Florida that you are giving
21 this support. Many of you heard about this in
22 declaration of rights or in my own committee,
23 general provisions, but for those of you who
24 didn't, I will briefly go through of course
25 what this is and what this isn't so that you

1 know what you are voting on in case you haven't
2 had the time to read everything.

3 And luckily, my -- not my, our P-21 is
4 very short compared to some of the others. And
5 so I am just going to read it to you because it
6 is only about seven lines, and in that you will
7 be able to determine yes or no.

8 CHAIRMAN BERUFF: To correct the record I
9 think you said P-21. It is P-91.

10 COMMISSIONER THURLOW-LIPPISCH: Did I? Is
11 that what you are supposed to work out, P-91?

12 CHAIRMAN BERUFF: I think so, P-91.

13 COMMISSIONER THURLOW-LIPPISCH: Thank you,
14 thank you, Mr. Chair, P-91, so I will quickly
15 read Section C, thank you, of P-91.

16 "To protect the people of Florida and
17 their environment, drilling for exploration or
18 extraction of oil or natural gas is prohibited
19 on lands beneath all state waters which have
20 not been alienated and that lie between the
21 mean high-water line and the outer-most
22 boundaries of the state's territorial seas.

23 This prohibition does not apply to the
24 transportation of oil and gas products produced
25 outside of such waters. This subsection is

1 self-executing."

2 So basically as you probably have learned
3 already, our territorial seas, our coastal
4 waters, are approximately nine miles on the
5 west coast, done through fathoms and three
6 miles on the east coast. And God bless our
7 founding fathers because they were our founding
8 fathers in the 1800s that set our boundaries
9 much broader than any of the other states.

10 In fact, on the east side by our State
11 Constitution, it goes to the Gulf Stream, so I
12 am hoping that the great lawyers of the future
13 can push this out even further.

14 So I have learned so much and people have
15 said things that have stuck with me, and in
16 declaration of rights it was Commissioner
17 Stemberger who did vote for this proposal, but
18 when he started talking he said, and I wrote it
19 down, "Although it doesn't address fundamental
20 rights or the structure of government, Article
21 II, Section 7 of Florida's Constitution is
22 entirely dedicated to natural resources," and
23 states in Section A, "It shall be the policy of
24 the State to conserve and protect its natural
25 resources and scenic beauty."

1 So we are within our good judgment to do
2 what hopefully we will do today, and think
3 about this.

4 Natural resources and scenic beauty. I
5 know we are all tired. I am tired, too, but
6 natural resources and scenic beauty. Look at
7 that beautiful great seal above Chair Beruff,
8 and imagine that is soiled with oil from an oil
9 spill.

10 Imagine the Spanish ship, a platform like
11 something you might see off of Mobile, Alabama,
12 or other states. These things are not what we
13 want along our shorelines. We want to protect
14 our natural resources and our scenic beauty.

15 As we know, our natural resources and our
16 scenic beauty are our number one economic
17 driver. 113 million visitors came to the state
18 of Florida last year, and according to the
19 State of Florida brought in \$67 billion. And
20 not only is it economics, but it is our
21 wildlife, these beautiful animals that live
22 along our shorelines that we must preserve for
23 future generations.

24 It is also our quality of life. It
25 doesn't matter if you are rich or poor or black

1 or white, or an alien from outer space if you
2 get to come here, you can walk these beaches
3 and enjoy what they are. They are for everyone
4 and they are beautiful.

5 They are for our fishing heritage and our
6 fishing working men and women. And they are
7 also for the sports fishing industry that
8 brings in millions of dollars. They are also
9 for our real estate developers, yes, that help
10 bring the highest price to our beautiful
11 shorelines and I know, because I have seen it,
12 that you can develop and you can also have
13 beautiful nature in the state of Florida.

14 This is the essence of what we are. As
15 many of you know from committee, from 1940
16 through 2005, lands were leased for 10 miles
17 approximately off of our west coast from
18 Apalachicola Bay to Naples. It was years and
19 years of argument, arguing and fighting where
20 finally those leases were purchased back
21 because we didn't want the exploration, and
22 then because we are human, as Ms. Joyner said
23 in declaration of rights, we are subject to the
24 whims and caprices of being a human being.

25 Things started to change and Senator Gaetz

1 was there at that time and in 2005 there was
2 actually talk, and I believe it was the
3 President of the Senate in that, around that
4 time or maybe it was the House, I don't know,
5 but I know it was somebody who held a lot of
6 political weight and they were talking about
7 having oil drilling within five miles, five
8 miles of the coast, opening up those leased
9 lands.

10 This is totally true. Then we had in
11 2010 -- I am sorry, that was 2009 where they
12 were discussing such, and then in had 2010 we
13 had the BP oil spill, and that kind of took
14 everything off the table.

15 It will happen again, that it comes up
16 that they want to open those lands up for
17 drilling, because it is money. But the problem
18 is that if we give it away we won't have the
19 economy, the wildlife and all of the other
20 things that come along with what we have today,
21 what make us Florida.

22 What you see in the center of that State
23 Seal, that is the soul of Florida and that is
24 what we are voting on today, our waters, our
25 coastlines, and yes, these are -- they are in

1 -- in 1989 through 1990, it began to be that
2 they stopped allowing oil -- I am sorry, I am
3 so tired -- they stopped allowing oil drilling
4 and gas drilling in our state waters, but we
5 need more than that.

6 We need to make a statement for the world
7 and for the United States of America that we do
8 not want oil and gas drilling along our
9 beautiful coast.

10 Please support me today in this and I am
11 hoping that at some point Senator Gaetz will
12 tell his real story of what happened during
13 that time. Thank you.

14 CHAIRMAN BERUFF: Okay, questions on
15 Proposal 91? I think we can move on to
16 Amendment 874444 which is also you,
17 Commissioner Thurlow-Lippisch.

18 COMMISSIONER THURLOW-LIPPISCH: This is a
19 scrivener's error, and it is just to be
20 corrected, moving -- it to be Article --
21 Section 7 of Article II of the State
22 Constitution. Right now it says 10, which is
23 incorrect.

24 CHAIRMAN BERUFF: I don't suspect there
25 will be any questions. Is there any debate on

1 874444? I don't expect any debate on that
2 either. So with a voice vote, all of those who
3 affirm the amendment by saying yea.

4 (Chorus of yea's.)

5 CHAIRMAN BERUFF: Any nay's? The motion
6 carries. Debate on 91, please. Is there --

7 Commissioner Lee is recognized on debate.

8 COMMISSIONER LEE: Thank you, Mr. Chair,
9 and this is a proposal much like Commissioner
10 Keiser's Proposal and Commissioner Cerio's
11 proposal that are really I think important to
12 send messages. I would just encourage and I am
13 going to support this.

14 I think it is wonderful that you have got
15 this to the floor, Commissioner. I know you
16 have worked on a lot of proposals. Well, you
17 know, we haven't always liked every proposal,
18 but we all sure like you, and you are a
19 wonderful person and you have been a joy to
20 work with.

21 But as you look at this and this goes
22 forward, I don't know that anything that needs
23 to be done or should be done or is even worth
24 thinking about, but this is going to live in
25 our Constitution and there is not a real

1 definition in here of drilling. And I can see
2 a day where technology is advanced to a point
3 where someone may be able to do something with
4 a level of comfort, security and safety that
5 would satisfy you and the rest of us that they
6 could protect Florida's Gulf Coast and still
7 accomplish the objective.

8 We don't want them accomplishing it
9 through what is loosely called drilling today,
10 and just maybe think about whether or not there
11 is some technology, some definition or
12 something that we could add to this for the
13 purposes of making sure that we don't have to
14 amend the Constitution, should in the unlikely
15 events technology evolve and someone can
16 actually accomplish this without, you know,
17 creating the potential environmental calamity
18 that occurred in President Gaetz's area a few
19 years ago, that we are still trying to dig out
20 of. So I am going to support this today and I
21 am happy for you. Thank you.

22 CHAIRMAN BERUFF: Commissioner Timmann is
23 recognized in debate.

24 COMMISSIONER TIMMANN: Thank you,
25 Mr. Chairman. I actually have had the rather

1 unfortunate experience of cleaning wildlife
2 after they have experienced oil drilling off
3 our coastal waters and I brought, I am not
4 picking out any particular product, of course,
5 and I don't want to hear from all of the
6 manufacturers that I am showing preference to
7 one.

8 However, when you can actually have a
9 major company whose advertising is not based on
10 their product, it is based on the fact that
11 they can clean oil off of wildlife, then
12 clearly we either have a big problem right now
13 or we will, and they predict it. So I live in
14 the same coastal area as Commissioner
15 Thurlow-Lippisch and I know this is a very
16 important matter for all of us.

17 She has worked so hard on this, and I
18 believe this is one of those few proposals here
19 today where all of the attorneys in the room
20 don't have to jump up and start debating each
21 other and this may even be one where
22 Commissioner Coxe and I actually agree on
23 something.

24 Okay. I would really, really hope that
25 all of us can support this excellent proposal

1 and certainly I know we all appreciate the hard
2 work that you have done on it, so thank you.

3 CHAIRMAN BERUFF: Further debate?

4 Commissioner Gaetz is recognized.

5 COMMISSIONER GAETZ: Thank you very much,
6 Mr. Chairman. I thank Commissioner
7 Thurlow-Lippisch for bringing this proposal to
8 us.

9 I am reminded by the media in my neck of
10 the woods that I am the only member of this
11 body who lives in the Central Time zone or what
12 we call correct time, and -- and I had the
13 opportunity when I served in the Senate to
14 represent Coastal Northwest Florida at -- at a
15 time when extraordinary things happened to us.

16 The first extraordinary thing was that
17 there was a great effort in the Florida House
18 of Representatives for good and sufficient
19 reasons in their mind, to open the sovereign
20 waters of the State of Florida to oil and gas
21 drilling, and we were pretty close to a vote
22 and probably would have taken a positive vote.

23 The week after all of that came to a head
24 and shortly before a vote might have been
25 scheduled the deep water horizon oil spill

1 occurred, and it probably is, is the good great
2 fortune of those who served in the House at
3 that time that they didn't take the action that
4 they might have taken, because the deep water
5 horizon oil spill was an extraordinary and
6 tragic disaster.

7 It was the greatest manmade environmental
8 disaster in the history of the United States,
9 and when it occurred, we weren't at all sure
10 what the consequences would be. We know this,
11 that even the -- even the perception of oil
12 reaching our Florida beaches on the northwest
13 Florida coast brought our economy, which is
14 largely dependent on tourism, to its knees.
15 And the economic damages that we suffered were
16 in the billions of dollars.

17 Now, there is a person on the floor today
18 who saw past that disaster to possible
19 recovery, and that was the Attorney General.
20 Attorney General Bondi, against the odds, went
21 into Federal Court and sued BP, not for damages
22 that arose for individuals or companies or
23 local cities and counties who had plenty of
24 damages and had through the Clean Water Act
25 plenty of opportunities to make their case for

1 damages, but General Bondi sued BP in Federal
2 Court because the State of Florida, our state,
3 suffered economic damages.

4 And I remember the day she called me and
5 she said, Don, can you meet me in Tampa and I
6 said, sure, General, what is up, what is
7 happening.

8 She said I think, I think we are going to
9 settle this. I think I have got BP where I
10 want them. And she called me that night and
11 she and some of her staff got together and I
12 don't know, General, it was hard to eat dinner
13 that night because we were so sort of
14 frightened and anxious about what would happen.

15 But Pam Bondi sat up all night negotiating
16 with Federal Judges, with BP, with other
17 states, and the next morning we stood at -- at
18 the Port of Tampa and she announced that the
19 State of Florida had secured \$2 billion in
20 economic damages, economic damages on top of
21 the environmental damages, on top of the
22 damages that individuals and cities and
23 counties had suffered, \$2 billion because our
24 state suffered because of the lost revenues and
25 lost income that, that we, the citizens of

1 Florida, had suffered and that our state
2 government had suffered.

3 And I will, I said to General Bondi that
4 day, I am sorry, because Commissioner
5 Stemberger has, has now stopped me probably
6 from doing this.

7 I said, General Bondi, we will name the
8 entire Northwest Florida coast in your honor.
9 Remember that? It was an extraordinary piece
10 of lawyering, and I know you had lots of help,
11 but it was an extraordinary piece of advocacy.

12 I mention that to say that this was a
13 disaster of multi-billion dollar proportions,
14 and the two billion, frankly, that now
15 three-fourths of which is being used to rebuild
16 the economy of Northwest Florida through
17 Triumph Gulf Coast, it was only a small slice
18 of the overall settlement that the General and
19 her fellow Attorneys General were able to
20 secure.

21 But it was a big deal, and we don't know,
22 Mr. Chairman, about the ultimate environmental
23 damage. We know that there are millions and
24 millions and millions of gallons of oil that
25 are on the floor of the Gulf of Mexico and we

1 don't know what the final upshot of that will
2 be. All we know is we sure don't want it to
3 happen again. We don't want it to happen
4 again.

5 Now, we are also very fortunate in this
6 state to have a Governor Rick Scott, who put
7 himself up front with the administration in
8 Washington to say we don't want oil drilling in
9 the Federal waters off the Gulf of Mexico
10 because the deep water horizon oil spill
11 occurred in the Federal waters.

12 Can you imagine what would have happened
13 if it would have occurred in the State
14 sovereign water? I mean, we would have been
15 worse than on our knees. So Governor Scott has
16 led and we deeply are grateful for his
17 advocacy, and he got what he hoped was a
18 commitment from the Secretary of the Interior,
19 to take Florida off the list of states that
20 would be subject to offshore oil and gas
21 drilling.

22 But yet, Mr. Chairman, we saw a statement
23 from the Secretary of the Interior, Secretary
24 Zinke, before a House Committee in Washington
25 last week saying, oh, no, Florida is not really

1 off the list, and so here is what we know.

2 We know that whether it is the Florida
3 Legislature or whether it is an administration
4 in Washington, or whether it is anybody else,
5 that politics ebbs and flows with who is in
6 power and whether or not they have the guts and
7 skill of a Pam Bondi, and -- and we can't just
8 depend on Florida's economic and environmental
9 future, we can't depend on the vagaries
10 associated with who might be in power.

11 So right now we have in Washington a -- a
12 coalition, a bi-partisan coalition of Democrats
13 and Republicans, members of Congress from all
14 over our state, led by Congressman Rooney and I
15 am proud to say by Congressman Gaetz, that are
16 trying to get Federal legislation passed to
17 protect Florida against disasters of this kind
18 that might emerge from Federal waters off the
19 state of Florida.

20 Now, imagine if our members of Congress,
21 Democrats and Republicans are in Washington
22 fighting and our Governor is advocating for
23 that in Washington, and here in the state of
24 Florida are not the sovereign waters that we
25 control that we don't take a stand.

1 But this is more than a stand. It is more
2 than a message or a statement. If we pass this
3 proposal, which I hope we will, it is a
4 constitutional imperative to preserve and
5 protect Florida's maritime environment now and
6 forever.

7 And for that reason, I thank you,
8 Commissioner, for your leadership. I will
9 never be able to pay Commissioner Bondi back
10 for all that she did for Northwest Florida, and
11 I hope that you will vote yes.

12 CHAIRMAN BERUFF: Thank you. Further
13 debate on 91? I only have one comment the day
14 after, Commissioner, General Bondi leaves
15 office, you could still dedicate the west
16 coast.

17 Any further debate? Seeing no further
18 debate would you like to close on Proposal 91?

19 COMMISSIONER THURLOW-LIPPISCH: My mike,
20 my mike is working. I am going to close, but I
21 am going to say I am such a goofball kind of,
22 that I was like afraid to do this, but I am
23 going to do it.

24 And I am just going to close by saying
25 that I went to the beach on the east coast and

1 the west coast with my nieces over the past
2 year and picked up these shells.

3 They are just regular shells, and I am
4 going to ask you all to please, together let's
5 leave a legacy for the state of Florida and for
6 the future, and in closing I will walk around
7 and give you a shell.

8 Thank you so much.

9 CHAIRMAN BERUFF: But not before you vote.

10 COMMISSIONER THURLOW-LIPPISCH: Oh, we
11 have to vote. That is right.

12 CHAIRMAN BERUFF: Secretary, will you open
13 the board for a vote? There you go.
14 Congratulations, Commissioner Thurlow-Lippisch,
15 almost complete. Unlock the -- lock the board
16 and announce the tally, please.

17 THE SECRETARY: Thirty-two yea's, one nay,
18 Mr. Chair.

19 CHAIRMAN BERUFF: Commissioner Lee.

20 COMMISSIONER LEE: I just want to make a
21 light-hearted point to everyone that
22 Commissioner Solari just voted to preempt home
23 rule.

24 CHAIRMAN BERUFF: Yes. The Proposal 91 is
25 committed to Style and Drafting. We are

1 breaking all of the rules now, but go ahead,
2 Commissioner Thurlow-Lippisch.

3 COMMISSIONER THURLOW-LIPPISCH: I do want
4 to say that I love and appreciate Gary Lester,
5 and we have had many conversations and all is
6 good. Thank you.

7 CHAIRMAN BERUFF: We are going to
8 temporarily postpone items four -- three and
9 four, and now we are going to recess for 10
10 minutes and then we will come back.

11 (Brief recess taken.)

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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 191 through 352, is a true and correct record of my stenographic notes.

Dated this 14th day of May, 2018, at Tallahassee, Leon County, Florida.

CLARA C. ROTRUCK

Court Reporter

Commission No.: FF 174037

Expiration date: November 13, 2018