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

4 CHAIRMAN BERUFF: Thank you.

5 Commissioners, we would like to, per our  
6 meeting yesterday, I promised Mr. Stemberger  
7 that he would have a chance to speak before us  
8 today. So Commissioner Stemberger is  
9 recognized.

10 COMMISSIONER STEMBERGER: Thank you, Mr.  
11 Chairman, and thank you, members of this  
12 Commission for allowing me the opportunity to  
13 address on this extraordinary issue which has  
14 got extraordinary attention from this  
15 Commission on both sides.

16 In order to understand Florida's privacy  
17 rights, one has to understand the history of  
18 what happened ten years before it was adopted.  
19 That goes really back to Watergate, with the  
20 break-in where the Nixon administration was  
21 wire-tapping after Watergate. It was uncovered  
22 that the CIA was wire-tapping, literally,  
23 congressional offices, wide-spread wire  
24 tapping.

25 At the same time the TCP/IP Internet

1 protocol was first being developed by the  
2 military; wire transfers from banks were first  
3 happening for the first time; fax machines were  
4 starting to be used in the late '70s and would  
5 explode in their use in the '80s.

6 In fact, Congress in '76, when Carter took  
7 office, had a specific commission to study  
8 specifically informational privacy. It was the  
9 Privacy Protection Study Commission and it was  
10 created to study the database, automatic data  
11 processing and informational systems of  
12 government and reasonable private organizations  
13 in order to determine the standards and  
14 procedures in force for the protection of  
15 personal information.

16 In 1977, the final report was called  
17 Personal Privacy and Information Act, and in  
18 that report, amongst many other things, they  
19 actually asked states to consider adopting  
20 informational privacy clauses in their  
21 Constitution to remedy this because there is no  
22 expressed federal right to informational  
23 privacy.

24 And, in fact, the CRC is gathering at this  
25 time in '77 and '78 and being the astute

1 aggressive body that it was, it recognized the  
2 congressional recommendation and said we need  
3 to do this. And in fact, on the opening day of  
4 the CRC in 1977, Chief Justice Ben Overton made  
5 this statement.

6 He said, "There is a public concern about  
7 how personal information concerning an  
8 individual citizen will be used when it is  
9 collected by government or by business. This  
10 is a new problem that should probably be  
11 addressed."

12 And, in fact, they did not only address it  
13 but they adopted Article I, Section 23, at  
14 least the first form of language in Article I,  
15 Section 23, and it stated this: "Every natural  
16 person has the right to be left alone," quoting  
17 continuing the famous law review from Justice  
18 Brandeis, and "free from governmental intrusion  
19 in his private live, except as otherwise herein  
20 provided."

21 The otherwise herein provided was search  
22 and seizure. That amendment in 1978 failed on  
23 the ballot. It was actually grouped with  
24 several others in Declaration of Rights and it  
25 actually failed.

1           Two years later, the topic of information  
2 and privacy was so important and such in the  
3 culture that the Legislature in this chamber,  
4 Senator Jack Gordon and in the House of  
5 Representatives, Jon Mills, sponsored a joint  
6 resolution to put the same language on the  
7 ballot, but they added a sentence. Because all  
8 the newspapers opposed them, they were  
9 concerned about being able to get and access  
10 public records. So the Legislature added this  
11 language: "This section shall not be construed  
12 to limit the public's right to access public  
13 records."

14           Now, notice that this addition also is  
15 consistent with informational privacy. We are  
16 talking about public records. And in 1980,  
17 with this additional language this amendment  
18 now passed as a stand alone by 60 percent of  
19 the people. Actually, I remember, this is the  
20 first election I voted in, and I voted  
21 respectively for Jimmy Carter and I voted yes  
22 for privacy.

23           We can talk about the Carter vote later.  
24 But I remember specifically thinking, this is a  
25 good idea, I remember studying it because it

1 was my very first election and I wanted to be  
2 up on it and everything that I could read said  
3 it was about informational privacy.

4 Now, speed up the clock nine years later.  
5 Now, understand when this is adopted *Roe versus*  
6 *Wade* had happened in 1972. So from legal  
7 standards it was the law of the land in '72,  
8 and it was the law in 1980, when it was  
9 adopted.

10 Nine years later the Florida Legislature  
11 realized we need to have a parental consent law  
12 for parents to consent before a minor undergoes  
13 an abortion surgery, and in fact, they  
14 overwhelmingly passed it, a parental consent  
15 law.

16 It immediately was appealed by a young  
17 lady who was anonymous, and the case became  
18 known as *In Re: T.W. a Minor*. T.W. was the  
19 initials of the minor. And I was a first-year  
20 law student working for a firm that was  
21 contracted to write an amicus brief on behalf  
22 of 37 Florida legislators.

23 And while my boss went to Canada he left  
24 me alone and I spent weeks and weeks in the  
25 archives, and I listened to every single tape.

1           Let's start before that. I read every  
2 single transcript from the 1978 CRC that had  
3 anything to do with this issue. I read every  
4 single proposal. I looked at every article  
5 that was written in the newspaper, every  
6 editorial that was written. I looked at -- and  
7 then I went to look at the Legislature in 1980,  
8 I looked at all the committee reports, the  
9 committee analysis, the news, the editorials  
10 for and against.

11           I listened to every single committee that  
12 the joint resolution went through, and you know  
13 what was missing? What was missing was the  
14 word "abortion." Nowhere in the record did  
15 even the words "personal autonomy" appear, no  
16 "sexual liberty," nothing even close was  
17 mentioned. The entire history behind this  
18 amendment was informational privacy and the  
19 record is void of any mention whatsoever.

20           Even the opponents who were opposed to it  
21 had other concerns about gun rights and things,  
22 they never even -- I mean, the pro-lifers of  
23 the day had no issues with the privacy right  
24 and much supported it.

25           Now, understand, *Roe versus Wade* was the

1 law of the land in 1972. In '78, when the CRC  
2 met, in 1980 when the Legislature met and in  
3 1989 when the T.W. case. But in spite of all  
4 of that, the Florida Supreme Court suddenly  
5 recognized and found out of thin air a  
6 fundamental right to abortion and locked that  
7 in my -- in my opinion improperly, into the  
8 Constitution, vis-a-vis, Article I, Section 23.

9 And you all know, you have heard this many  
10 times, but a young lady, a minor girl cannot  
11 get an aspirin at school without parental  
12 consent. She can't go on a field trip without  
13 parental consent. She can't even get her ears  
14 pierced without getting parental consent, and  
15 yet we are going to allow an underaged girl to  
16 undergo a major surgical procedure, an  
17 irreversible procedure that is fraught with  
18 physical, psychological and emotional  
19 consequences, without her parents' guidance or  
20 consent.

21 By the way, performed by primarily suspect  
22 doctors, and that is a conservative word if you  
23 understand this industry. Hemorrhaging,  
24 perforation of the uterus, death and sterility,  
25 these are some of the unintended consequences



1 of an abortion that is done improperly.

2 Now, it has been 37 years since the right  
3 to privacy was adopted in 1980. The court has  
4 decided 52 cases. Guess how many cases they  
5 decided where they actually used the right for  
6 what it was intended, informational privacy?  
7 Out of 52 cases, 37 years of litigation, only  
8 one case, the *Rasmussen* case was it ever  
9 recognized, and it wasn't even recognized for  
10 the plaintiff. It was recognized for the other  
11 parties involved.

12 In my opinion, this decision by the  
13 Florida Supreme Court is an outrageous one and  
14 it is a gross injustice. It disregarded the  
15 authority of the Constitutional Revision  
16 Commission. The majority of the court in 1989,  
17 disregarded the history and the intent which  
18 their own case law says you have to look to the  
19 intent. Their own authority says you have to  
20 look to the intent.

21 None of those line of cases were ever  
22 cited in *In Re: T.W.* They disregarded the  
23 legislative branch of government, their  
24 co-equal and they disregarded, most  
25 importantly, parental authority, and the

1 parents' rights to be involved with that  
2 decision, even back to the early 1900s. There  
3 is a case called *Pierce versus Society of*  
4 *Sisters* and the U.S. Supreme says within the  
5 context of the family there is a privacy right,  
6 and parents have a fundamental right to  
7 educate, train and guide their children in  
8 these decisions; and the court ignored all of  
9 that in this decision.

10 In closing, it would be my prayer that  
11 this state and this country would be one in  
12 which we would recognize and honor the rights  
13 and the authority of parents. The radical  
14 children's rights movement, some of which  
15 touched on some of the issues we actually dealt  
16 with, is trying to overturn that.

17 Parents have lots of issues. They don't  
18 need the state interjecting itself in between  
19 them and children, and -- and it is important  
20 to also, to also recognize that this parental  
21 consent law also has a judicial bypass  
22 mechanism. So if parents go crazy, the young  
23 lady, in her opinion, she can go to the court  
24 confidentially and request the abortion apart  
25 from the parents' consent.

1           And even with the judicial bypass  
2 mechanism which is recognized under federal  
3 law, the court still struck it down.

4           Under *Roe versus Wade*, the Federal  
5 abortion law, it actually strikes a balance  
6 between the woman's right to choose the  
7 procedure and the state's right to reasonably  
8 regulate the procedure based upon the safety,  
9 health and welfare of the mother.

10          In Florida, we don't have any of that. It  
11 is one sided. It is all here, no interest to  
12 the state. And, in fact, not only did they  
13 strike down the parental consent law, recently  
14 Representative -- help me out, from -- no,  
15 recently -- I am sorry, the Legislature passed  
16 a 24-hour waiting period. Jennifer Sullivan  
17 was the name I was looking for.

18          Representative Jennifer Sullivan passed a  
19 24 -- it was her Bill, but the Legislature  
20 passed a 24-hour reflection period that a  
21 person had to wait 24 hours, and there is lots  
22 of surgical procedures which you have to go in  
23 and come back for, nothing unusual about that,  
24 and it was struck down. Not under *Roe versus*  
25 *Wade* and its prodigy under federal law, which

1 would have allowed that reasonable regulation,  
2 but these regulations are now being struck down  
3 under state law.

4 In closing it would be my prayer that this  
5 State and this nation would simply recognize  
6 the scientific fact that life begins at  
7 conception and ends at natural death, and when  
8 we are talking about the unborn or the elderly  
9 citizens that Brecht Heuchan was fighting for,  
10 that we would not treat human beings like  
11 property.

12 In 1857, the United States Supreme Court  
13 decided the case of *Dred Scott*. They did not  
14 say black Americans were not human beings.  
15 They said they were not persons. They weren't  
16 entitled to protection under the law. We have  
17 an entire class of citizens in this state and  
18 in this country that are not afforded  
19 protection, simply, it is discrimination based  
20 upon age and location.

21 The place that should be the safest, most  
22 secure place, has become the most dangerous  
23 place on earth, a mother's womb. The right to  
24 life is the sine qua non of all of the rights.  
25 The right to life, all of the rights depend

1 upon the right to life. The right to privacy  
2 means nothing to a corpse, and to quote my  
3 mentor and former CRC Commissioner Ken Connor,  
4 the right to life means nothing to a corpse. I  
5 mean, that is just pretty clear.

6 We should respect life and protect it and  
7 defend it. And so thank you for your time.  
8 Thank you for allowing me to speak.

9 CHAIRMAN BERUFF: Commissioner Stemberger,  
10 thank you for your passion on this issue and  
11 how you vocalized it to us. I appreciate that.

12 We are going to Commissioner Cerio on  
13 Proposal 3. Does Commissioner Cerio have an  
14 opinion?

15 COMMISSIONER CERIO: Thank you, Mr.  
16 Chairman. I do. Commissioners, you may recall  
17 that on Monday Commissioner Lee had proposed a  
18 series of amendments to Proposal 103 by  
19 Commissioner Nunez, and at that time I went  
20 through the standards for evaluating germanity  
21 when a germanity question was called.

22 The standards are in our handbook that  
23 staff kindly provided to us. Our main  
24 provision is Rule 7.4 of our own rules. No  
25 proposition on a subject different from that

1 under consideration shall be admitted under  
2 color of amendment, and we are also authorized  
3 to look for guidance from Mason's Manual of  
4 Legislative Procedures, Section 402, suggest to  
5 determine whether an amendment is germane the  
6 question to be answered is whether the  
7 amendment is relevant, appropriate and in a  
8 natural and logical sequence to the subject  
9 matter of the original proposal.

10 At that time, Representative Nunez's  
11 Proposal 103 under Article III Section 3,  
12 changed the dates for legislative session, and  
13 under the germanity standards set forth above,  
14 I recommended to the Chair that Senator Lee's  
15 amendments pertaining to extending legislative  
16 session under the same article and section did  
17 cover the same subject matter as sessions of  
18 the Legislature, and was therefore germane.

19 And for the same reasons I recommended  
20 that Senator Lee's amendment regarding  
21 adjournment of legislative session was also  
22 germane.

23 However, the amendment pertaining to  
24 budget, budgetary issues and documents that are  
25 needed to be provided during a 72-hour waiting

1 period, found in an entirely different section  
2 of Article III and also addressing a different  
3 subject matter, were not germane, and similarly  
4 there were, I think, five other amendments  
5 concerning different subject matter located in  
6 different sections that were not germane.

7 So in an effort to be consistent, all in  
8 all these address different subject matter and  
9 in an effort to be consistent, Mr. Chairman, I  
10 did meet with Commissioner Gainey and I did  
11 meet and speak with Commissioner Martinez.

12 Commissioner Martinez's proposal removes  
13 the ability -- his original proposal, removes,  
14 pertains to removing the ability of the  
15 Legislature to regulate or prohibit ownership  
16 inherent to disposition and possession of real  
17 property by aliens ineligible for citizenship,  
18 found in Article I, Section 2 of our  
19 Constitution.

20 Commissioner Martinez's Amendment 783324,  
21 amends a different section of Article I,  
22 Section 8, regarding the right to bear arms.  
23 The regulation of firearms is an entirely  
24 different subject than deregulating real  
25 property ownership rights of aliens who happen

1 to be ineligible for citizenship.

2 Nor is the amendment relevant or  
3 appropriate to, or in the natural and logical  
4 sequence of a proposal, removing the authority  
5 of the Legislature to regulate the property  
6 ownership rights of aliens ineligible for  
7 citizenship.

8 So, Mr. Chairman, consistent with our  
9 prior recommendations and in accordance with  
10 Rule 7.4 and Section 402 of Mason's, my  
11 recommendation is the proposed Amendment 783324  
12 is not germane to Proposal 3. And I have to  
13 say that with all due respect in admiration to  
14 Commissioner Martinez and understanding the  
15 true gravity of the issues that we are talking  
16 about, even in spite of that, it is not even a  
17 close call.

18 CHAIRMAN BERUFF: Thank you. The point is  
19 well taken and the amendment is out of order.  
20 Recognize Commissioner Martinez.

21 COMMISSIONER MARTINEZ: Mr. Chairman, good  
22 afternoon, and Commissioner Cerio, thank you  
23 for your analysis. It has always been very  
24 professional and very scholarly. Thank you.

25 Mr. Chairman, at this point in time with



1 the utmost of respect as I really have admired  
2 the leadership that you have demonstrated  
3 through these last couple of days and months, I  
4 am going to be exercising my rights under Rule  
5 1.5 to take an appeal, respectfully, of the  
6 decision by the Chair to rule that it is --

7 CHAIRMAN BERUFF: I will pass the gavel to  
8 Commissioner Diaz.

9 CHAIRMAN DIAZ: Thank you, Commissioner  
10 Martinez. Please explain your appeal.

11 COMMISSIONER MARTINEZ: Thank you very  
12 much, Mr. Chair. Germanity, so I have done  
13 some research, as you would have anticipated,  
14 and to try to come up to speed on what this is,  
15 and germanity, what is the purpose of  
16 germanity?

17 There is a rule, but rules have a reason  
18 to exist. There has to be a purpose behind  
19 them. And what I found out is that the purpose  
20 of germanity is to ensure the orderly process  
21 and consideration of the work of the committee.

22 Now, the work of the committee in this  
23 particular case, is the work of the full  
24 Commission, and I think we have been extremely  
25 orderly. What I am proposing to do is by no

1 means any form of an anarchy.

2 We get along very well. We are very  
3 collegial, we have an excellent leader. We  
4 have an all-star staff. So I have no doubt  
5 that by dealing with this particular issue we  
6 will be able to proceed orderly and conduct the  
7 work of this Commission in a very productive  
8 manner.

9 Also, germanity, an amendment, for it to  
10 be germane must be within the jurisdiction of  
11 the committee. Again the committee at this  
12 stage is the full Commission, the committee as  
13 a whole.

14 And there is no question that this issue  
15 is within our jurisdiction, since this is an  
16 issue that affects the Constitution of the  
17 State of Florida, and that is within our  
18 Constitution. So maybe it may not fit the  
19 actual details of the rules, but the rules  
20 exist for a greater purpose.

21 The rules don't exist just to block  
22 progress, to impede progress, to impede a  
23 lively discussion. I was very glad that  
24 Commissioner Stemberger was able to be given an  
25 opportunity to speak on his issue.

1           I disagree on it very adamantly on the  
2 merits, but I wanted him to be heard. Ideas  
3 don't scare me. Ideas don't scare me. Ideas  
4 give me life. They give all of us life. They  
5 give life to our democracy and the ability to  
6 debate ideas, ideas that are germane to the  
7 work of our Commission is really what this is  
8 all about, so at the end of the day we can put  
9 something on the ballot that the people want to  
10 address.

11           Now, do the people want to address this?  
12 Is this the biggest issue of the day? You  
13 betcha. Is this an issue that has been big for  
14 years? It sure has, for decades. This is not  
15 a new issue.

16           What has happened is that recently because  
17 of an awful tragedy, all of a sudden our  
18 political leadership, and hopefully us, have  
19 shown the will to attack this issue honestly  
20 and openly, not impeded, not constrained by  
21 some sort of restriction that -- that are  
22 really frankly pushed by special interests.

23           The political leadership of this state has  
24 basically been unshackled to address this issue  
25 honestly, and I give them a lot of credit. And

1           what do the people say about the issues that  
2           the legislative leadership under the Governor  
3           have enacted into law?

4                   This is what they say. This is a poll  
5           taken February 28th by (inaudible) and the  
6           question, whether or not "you support  
7           background checks for all gun buyers." The  
8           poll indicated that 96 percent of the voters  
9           supported it. Ninety-four percent of  
10          Republicans, 97 percent of Democrats. And by  
11          the way, for the record, in case you didn't  
12          know, I have been a Republican for 31 years.

13                   What do the polls say about the following  
14          question? What did the public say? "Do you  
15          support or oppose proposing a mandatory waiting  
16          period for all gun purchases?"

17                   Eighty-seven percent of the voters support  
18          it. Eighty-two percent are Republicans,  
19          96 percent are Democrats.

20                   On this question, "Do you support or  
21          oppose requiring individuals to be 21 years of  
22          age or older in order to purchase a gun?"  
23          Seventy-eight percent of the public supports  
24          it; 68 percent Republican, that is beyond our  
25          60 percent threshold; 93 percent are Democrats.

1           In the age group affected, 18 to 34, 77  
2 percent support it. So this is definitely an  
3 issue that has captivated the public and the  
4 public very much supports. They support what  
5 our political leadership has done and if given  
6 the opportunity to vote on this issue in  
7 November, they will support it.

8           Now, Commissioner Gainey, I am glad that  
9 you were chosen or that you chose to speak on  
10 the issue of germanity, because frankly they  
11 selected somebody with a tremendous amount of  
12 credibility on this issue. You were the right  
13 person to do it and I respect your speaking up  
14 as you did.

15           That is your right, sir. But you said  
16 that this issue has not been properly  
17 advertised, and there needs to be debate. All  
18 we would be deciding here today is to --  
19 assuming it gets passed after a debate, is to  
20 let the issue go on the ballot in November.

21           This issue will get tremendous  
22 advertisement between now and November, to the  
23 extent that it needed to be advertised anymore.  
24 There will be a lot of debate. There will be a  
25 lot of debate, but this is not something that

1 we will all of a sudden spring on the public.

2 The public has been very well informed on  
3 this issue for decades. They want now the  
4 opportunity to be heard and to decide for  
5 themselves. This is a once in a lifetime for  
6 all of us issue. This is a once in years issue  
7 because we won't be meeting again until 20  
8 years from now.

9 Please do not give up this opportunity.  
10 Please don't give up this opportunity.  
11 Let's -- let's not punt it down the road, let's  
12 not kick it down the road, let's not drop back  
13 five and punt. We are much better than that.  
14 Listen to what I have to say.

15 I want to listen to what you have to say;  
16 let's debate it and then at the end of the day  
17 let's take a vote. This is really what our  
18 country is about. And this is, frankly, I  
19 think something that this is what is very much  
20 germane to the work of our body, and that is  
21 why I proposed it in the first place and I hope  
22 you will consider it.

23 Thank you.

24 CHAIRMAN DIAZ: Thank you, Commissioner  
25 Martinez. Having timely requested the appeal

1 of the Chair's ruling, the debate here is only  
2 to the point of order, not to the original  
3 proposal.

4 Does anyone else wish to speak on the  
5 appeal of the Chair's ruling? Does anybody  
6 else want to speak?

7 Commissioner Smith.

8 COMMISSIONER SMITH: Thank you, Mr. Chair.  
9 To the point. It was ruled out of order in  
10 that it is not germane to the underlying -- the  
11 underlying proposal, but I would argue that it  
12 is germane to the proposal.

13 The underlying proposal deals with real  
14 property and it deals with ownership of real  
15 property. The amendment filed by Commissioner  
16 Martinez deals with the ownership of personal  
17 property.

18 So it would, and under the Supreme Court  
19 case of *Horne versus the Department of*  
20 *Agriculture*, which is a 2015 case, Justice  
21 Roberts, when dealing with the Fifth Amendment  
22 taking clause, associated those two together.  
23 Associated with the taking clause can be used  
24 for a real property, it can also be used for  
25 personal property.

1           So the Supreme Court just said a mere two  
2 years ago, associated those two, those two  
3 things together. And I would -- I would  
4 suppose that the take -- the real property  
5 discussion and the original proposal should be  
6 associated with the personal property that  
7 Commissioner Martinez is proposing in his  
8 amendment.

9           So under that case and for the reasons --  
10 and I would associate myself with the comments  
11 of Commissioner Martinez, I would think it is  
12 well-taken that you should overrule the ruling  
13 of germanity.

14           CHAIRMAN DIAZ: Commissioner Smith.  
15 Commissioner Solari.

16           COMMISSIONER SOLARI: Thank you very much,  
17 Mr. Chairman. There are lots of, I guess,  
18 ideas of germanity but again as a local  
19 official, they deal with a couple of things  
20 that weren't mentioned.

21           One is transparency, and this type of  
22 move, I don't believe, is transparent. The  
23 second is notice. But more importantly, going  
24 to Commissioner Smith's comments. I was a  
25 co-sponsor of this amendment, and I was a



1 co-sponsor of this amendment because of what  
2 the public said to us, as we spoke to the  
3 public, particularly in Miami. Not about real  
4 property.

5 That was not the subject of their talk.  
6 Their talk was about civil rights, and how they  
7 were blatantly discriminated against. And if  
8 we can't understand that, I think we are  
9 missing a big part of what we are supposed to  
10 be doing here today.

11 The amendment which I believe is offered  
12 in tremendously good faith by Commissioner  
13 Martinez, but it is -- it is not about the  
14 civil rights, it is not about racism. It is  
15 about a natural right which every person is  
16 born with. It is about something fundamental  
17 to the foundation of our country.

18 If we don't believe in natural rights,  
19 those rights which God and nature gave us, then  
20 we are denying a lot of the American  
21 Constitution, and we are denying anything that  
22 Commissioner Gaetz wanted to be learned in  
23 civil literacy.

24 This is the distinction: Civil rights  
25 versus a natural right, and the underlying

1 proposal is, in my view, not germane to the  
2 present one, which I was proud to be a  
3 co-sponsor of.

4 Thank you.

5 CHAIRMAN DIAZ: Thank you, Commissioner.  
6 Any further speakers? Any further comment?  
7 Commissioner Sprowls. Where?

8 Okay, Commissioner Coxe.

9 COMMISSIONER COXE: Thank you, Mr. Chair.  
10 Very briefly. When we gathered, we were  
11 charged with revising, amending, deleting from,  
12 putting into the Florida Constitution. It was  
13 that simple. And what the original proposal  
14 that Governor -- excuse me, Commissioner  
15 Martinez has proposed to amend deals with  
16 Article I, the Declaration of Rights. The  
17 amendment deals with Article I, the Declaration  
18 of Rights.

19 We operate with some interesting dynamics  
20 at play right now. The events that  
21 precipitated this discussion occurred after the  
22 filing deadline that was set by this  
23 Commission. So what we say to the world is,  
24 well, we set a filing deadline, we understand  
25 the significance and the horrific events going

1 on in the world and in the state, but we had a  
2 filing deadline so we just can't address it.

3 Number two, so it is germane to Article I.  
4 Number two, Article I, when it says Declaration  
5 of Rights, encompasses a host of issues that we  
6 have to deal with sitting here on the  
7 Constitution Revision Commission.

8 I mentioned the irony of some events that  
9 have taken place, one of which is when the  
10 events at this high school occurred. Another  
11 event took place, which was the withdrawal by  
12 Commissioner Carlton of a proposal that had  
13 seen the light of two committees and was  
14 withdrawn probably two days before Governor --  
15 Commissioner Martinez, Commissioner Plymale,  
16 myself, Commissioner Kruppenbacher,  
17 Commissioner Smith, Commissioner Joyner filed  
18 these amendments.

19 So I am back to saying I think Article I,  
20 in Declaration of Rights is sufficiently  
21 germane.

22 I would have difficulty telling somebody  
23 in the state of Florida that this Commission  
24 which meets only every 20 years and only has  
25 the power to amend the Florida Constitution has

1 a rule called one point whatever it is, sorry,  
2 we can't help you. Thank you.

3 CHAIRMAN DIAZ: Any further comments?

4 Commissioner Bondi.

5 COMMISSIONER BONDI: Thank you. And  
6 Commissioner Martinez, I have great respect for  
7 you, Commissioner Martinez, I have great  
8 respect for you, and I do agree that ideas  
9 should not scare us.

10 But not following the rule, the rules that  
11 we all share by being on this Commission should  
12 scare every one of us, and as Commissioner  
13 Cerio pointed out, this is not even a close  
14 call as to whether it is germane.

15 It is not. It is not even close to being  
16 germane. And to say that a shooting came up  
17 recently, well, we have Pulse Night Club a year  
18 ago. You have all known now from day one. No  
19 one did anything on that. We acted with the  
20 Legislature on a timely basis in following the  
21 laws of our land.

22 We all have to follow the rules. That is  
23 why we are all here, and that is why we are all  
24 sworn Commissioners, thank you.

25 CHAIRMAN DIAZ: Any further comments?

1 Further comments?

2 Commissioner Gaetz.

3 COMMISSIONER GAETZ: Thank you very much,  
4 Mr. Chairman. Commissioner Martinez has been  
5 generous with his time. He has talked to a  
6 number of us about his -- his concerns and his  
7 concerns didn't start yesterday or the day  
8 before. His concerns have been -- on this  
9 issue have been going on for some time, and I  
10 appreciate that.

11 As I said early in these proceedings, he  
12 is clearly one of the most learned and  
13 respected leaders in our state, not just of the  
14 legal profession, but in terms of our civic  
15 life.

16 Commissioner Martinez said in introducing  
17 or in explaining his appeal to the decision of  
18 the Chair, that this issue has been, his words,  
19 "big for years," and so the Attorney General is  
20 right. And also Commissioner Coxe is right.  
21 Commissioner Coxe is right that the most recent  
22 horrific incident that has precipitated so much  
23 angst and debate in our state occurred  
24 recently.

25 But other horrific incidents, the Pulse

1 Night Club as the -- as the Attorney General  
2 has explained, and -- and the serious angst  
3 about gun rights and the implications and  
4 consequences of gun rights, both for those of  
5 us who are strong believers in the Second  
6 Amendment, and those who may believe that  
7 interpretations of the Second Amendment have  
8 gone too far.

9 It is in Commissioner Martinez's words,  
10 been big for years, and I say this with all  
11 respect, and that is we had an opportunity, all  
12 of us did, to file proposals. I filed several  
13 and candidly, there are a couple of things that  
14 I think are important, certainly not as  
15 important as this that have come up that people  
16 have suggested to me, since we couldn't file  
17 proposals anymore.

18 And so people have said why not have it as  
19 an amendment, and I have had to explain that it  
20 really doesn't relate, it is not really  
21 germane. What is germanity? It means that you  
22 can't -- you can't bring up a topic that you  
23 haven't brought up already so that people had a  
24 chance to hear about it in committee and debate  
25 it and amend it and change it and accept it or

1           defeat it and subject it to public hearings.

2           And because this issue has been big for  
3 years, I believe that there was sufficient  
4 opportunities to bring this issue forward as a  
5 proposal in time for it to be vetted through  
6 our committee process and subjected to public  
7 hearings across the state. That wasn't the  
8 case here.

9           And so consequently I believe that, that  
10 the idea of saying in effect we should pretend  
11 that we don't have these rules or that they  
12 don't apply, is an overstretch.

13           Secondly, Commissioner Martinez said that  
14 this is a once-in-a-lifetime opportunity or  
15 obligation for us, and it may be. But the fact  
16 is that we have -- we have had some sport  
17 talking about the Legislature. By gosh, the  
18 Legislature should have done this, just because  
19 they haven't done it we have got to do  
20 something. Or the Legislature did it wrong so  
21 we are going to fix it in the Constitution.

22           Here is a case where Commissioner Martinez  
23 has taken the precise words that the  
24 Legislature has already passed and proposes to  
25 place them in the Constitution. It wasn't a

1 once-in-a-lifetime opportunity to address this  
2 issue.

3 We have had opportunities. No matter how  
4 you feel about what the Legislature did, they  
5 did it, and it is done. Now, Commissioner  
6 Martinez says that the urgency of this matter  
7 being in the State Constitution is therefore to  
8 protect what the Legislature did from any  
9 constitutional challenge. That is a darn good  
10 point.

11 And I am not a lawyer, but it sounds good  
12 to me, except that my understanding is that the  
13 challenge to what the Legislature did will be  
14 made in Federal Court on the basis that the  
15 Second Amendment is in the United States Bill  
16 of Rights.

17 Now, you may be interested to know that in  
18 43 states, the Second Amendment is in State  
19 Constitutions; not in our state. But in 43  
20 other states. So I don't believe that this is  
21 a once-in-a-lifetime opportunity. There was an  
22 opportunity, the Legislature took it. Maybe  
23 each of us could have written a better law than  
24 the Legislature passed, I don't know, but they  
25 passed it and what Commissioner Martinez has



1 done is to simply parrot what the Legislature  
2 has already done. And I don't think the reason  
3 to place it in the Constitution deals with the  
4 challenge that will really occur, which will be  
5 in Federal Court.

6 And then it is true, this is an issue that  
7 has been big for years. It has been debated in  
8 every single year that any of us who have been  
9 around here in one form or another, every  
10 single year. It has been debated in the  
11 Florida Legislature, in the Florida courts, in  
12 County Commissions, in City Councils, when  
13 Sheriffs get together, when Chiefs of Police  
14 get together, when Clerks of Courts get  
15 together, this issue is debated and discussed.

16 And there have been plenty of  
17 opportunities for us, I think, to have  
18 understood this issue very well and to have  
19 brought it forward as part of our proceedings.  
20 And if we would have, we would have had the  
21 opportunity, perhaps, to shape something that  
22 we all could have gotten comfortable with or at  
23 least enough of us get comfortable with that  
24 we, if we felt it needed to be in the  
25 Constitution, we could place it there.

1           I would also say, just for point of  
2 reference, that none of the provisions that are  
3 in this proposed amendment which has been ruled  
4 non-germane, none of them are in any other  
5 constitution of any other state in the United  
6 States. So it is a not -- it is not a  
7 constitutional issue anywhere in America in any  
8 state.

9           For those reasons I support the Chair, I  
10 support the decision of the Chair that the  
11 amendment is not germane. The issue is ripe,  
12 the issue ought to be dealt with. The issue  
13 has been dealt with by the Legislature, and  
14 will be dealt with further by the Legislature  
15 and by the courts. But it is not germane to  
16 the -- to the proposal to which it is attempted  
17 to be attached. And so I support the decision  
18 of the Chair.

19           CHAIRMAN DIAZ: Commissioner  
20 Kruppenbacher.

21           COMMISSIONER KRUPPENBACHER: Thank you,  
22 Mr. Chairman, members of the Commission. I am  
23 one of the co-sponsors of one of these issues,  
24 and I find myself torn on this issue. So I  
25 feel compelled to explain why I will support

1 the Chair in this issue.

2 I found myself growing into a society in  
3 this country in which I watched states and  
4 leaders consistently say, well, we are not  
5 going to follow that law. And I start with  
6 this. I am a lawyer.

7 I hate rules. Anybody who has ever been  
8 around me knows I almost live on challenging  
9 rules. My wife learned early on, don't ever  
10 give me a rule, I almost just enjoy disobeying  
11 it.

12 But on this serious issue, we are a  
13 country that has been stabilized and operated  
14 on a rule of law. It is the one constant, all  
15 right, and what we are seeing is the  
16 willingness to say, I don't like the law, I  
17 won't follow it, sanctuary cities, just decided  
18 we are not going to follow it.

19 Judges saying well, you don't have to  
20 follow the law if you don't want to follow it.  
21 Right, and now I look at us dealing with the  
22 very framework of our state in the Constitution  
23 and being role models for many of the people  
24 who have raised this issue that I have stood up  
25 for and believe in, and in doing the very thing

1 I would like to get done, basically saying,  
2 guess what, you don't have to be accountable to  
3 the rules.

4 You can just throw them aside, and that is  
5 a terrible -- I think that is a bigger, more  
6 terrible message to send on this issue than  
7 anything. To say that we adopted a rule, we  
8 have lived by the rule, you know, Senator Lee,  
9 and now we decided, well, we are going to move  
10 that rule aside and we are going to deal with  
11 the topic.

12 That is not how we are supposed to operate  
13 and I don't think as role models we are  
14 supposed to operate that way.

15 We -- I apologize to the people who have  
16 wanted this, that I wanted to support on it.  
17 Candidly, I never contemplated this rule of  
18 germanity probably because I don't like rules,  
19 right. But we did have a ton of opportunity to  
20 address the issue.

21 And if we are going to say we are going to  
22 set aside the rule, then I can tell you there  
23 have been instances where I have spoken to Jeff  
24 and Jeff said it is too late to file that  
25 amendment. And I have gone back to people and

1 say it is too late.

2 If we do this, do I have an obligation to  
3 go back to those people and say, well, I am  
4 going to file all of those amendments and say  
5 to this body, guess what, and, Judge, you  
6 probably know better than anyone, we are built  
7 and Attorney General, we are built on laws and  
8 rules and we are talking about basically  
9 saying, let's ignore our rules.

10 And as great as we want to do it I  
11 actually think the ramifications of that in  
12 sending a message to the public and the people  
13 is far worse than the goal we would want to  
14 achieve. So I will be supporting the Chair on  
15 this issue.

16 CHAIRMAN DIAZ: Any further comments?  
17 Commissioner Schifino.

18 COMMISSIONER SCHIFINO: Thank you, Chair,  
19 very briefly. I find myself in an untenable  
20 situation of actually agreeing with  
21 Commissioner Kruppenbacher, and I don't want to  
22 make light of this. I just couldn't help but  
23 rip Commissioner Kruppenbacher a little bit.

24 General Bondi, you are correct and so are  
25 many of you, in that we need to follow our

1 rules.

2 I can't ignore our rules, but I will say  
3 this: I don't think that Commissioners Coxe or  
4 Martinez have suggested we ignore our rules.  
5 The question that we each have to consider,  
6 because I didn't hear that come out of their  
7 mouths.

8 What I heard was that they believed that  
9 amendment, the amendment was germane. So I  
10 don't criticize, I don't think any of us should  
11 criticize Commissioners Coxe and Martinez for  
12 their argument. They are arguing it is  
13 germane, and that is what you all have to  
14 consider in this vote that we are going to take  
15 in just a minute. Do you believe it meets the  
16 definition of germanity? So I wanted to make  
17 sure my position on this was clear.

18 I haven't heard either of those gentlemen  
19 suggest or encourage you to ignore a rule. I  
20 think they have argued to you that it is  
21 germane, and the decisions will be each of ours  
22 with this upcoming vote. There is other ways  
23 to address this issue, and there is other rules  
24 that we can look to within our rules in staying  
25 consistent.

1           So if we are going to have this debate,  
2           there is another avenue that maybe someone will  
3           address as a way to get this to the floor, but  
4           we will wait to see.

5           Thank you.

6           CHAIRMAN DIAZ: Commissioner Sprowls?

7           COMMISSIONER SPROWLS: Thank you,  
8           Mr. Chair, and thank you, members. You know,  
9           yesterday we had a situation where one of our  
10          rules that we have all agreed to, right, we had  
11          a vote many months ago now to approve our  
12          rules. I actually didn't vote for those rules  
13          at the time, but I consented to be governed by  
14          whatever rules that we adopted as a group and  
15          rules were adopted.

16          But yesterday two of our Commissioners  
17          utilizing the rules that we all approved wanted  
18          to bring up proposals out of committee and I  
19          think the general sentiment of the group was we  
20          saw this, the train off the rails, and out of  
21          the grace of those two Commissioners, they  
22          said, hey, let's, let's bring it back, let's  
23          undo that so we don't go astray.

24          And here we are again dealing with a  
25          similar situation, except this time these --

1           our rules speak directly to this issue. And I  
2           want to address some of the things that  
3           Commissioner Gaetz said because frankly he said  
4           it better than I could, addressing things like  
5           once-in-a-lifetime opportunity.

6                     Just a few weeks ago the Legislature  
7           addressed these issues. In fact, all of the  
8           issues that have been filed in the amendments  
9           and in a moment, Mr. Chair, I am going to talk  
10          about germanity and this will be the only time  
11          I will speak on these amendments because I  
12          foresee a situation where we may do this  
13          multiple times.

14                    But several weeks ago -- I am on record on  
15          all of these issues already. This was debated  
16          by the duly-elected representatives of the  
17          people of the state of Florida, all 20 million  
18          plus of them. And General Bondi has sat many  
19          times and waited for juries to come back on  
20          cases, and Judges always say what she said at  
21          the end of her speech, which is nobody has the  
22          right to violate the laws we all share. Or in  
23          this case the rules we all share.

24                    But Commissioner Schifino said something  
25          important. He said the issue that they are



1 bringing up, there isn't -- they are not  
2 challenging, they are not saying that we should  
3 ignore the rules, they are saying, they are  
4 arguing that this is germane, so let's talk  
5 about germanity.

6 Germanity is defined as a close  
7 relationship or a relative to and something  
8 that is pertinent to the topic being discussed,  
9 in this case the Alien Land Law section in  
10 Article I. Our rules specifically say no  
11 proposition on a subject different from that  
12 under consideration shall be admitted under the  
13 color of an amendment, and that is not an  
14 unusual statement.

15 If you go back into the late 1700s and the  
16 1780s, all of the way up to 1822, the U.S.  
17 House of Representatives, when they adopted an  
18 amendment on germanity, a body that  
19 Commissioner Gaetz's son now serves in, it says  
20 no motion or proposition on a subject different  
21 from that under consideration shall be admitted  
22 under the color of an amendment.

23 All right, germanity is not new. It is  
24 not unique to this body. It is something that  
25 our founding fathers believed was important.

1 In fact, not to say this based on the  
2 conversation the last couple of days, but  
3 Jefferson's Manual talks about germanity, and  
4 how important it is to protect the minority  
5 against the majority, against the powerful.  
6 Rules are important to govern ourselves,  
7 particularly in bodies that have great power  
8 such as this one.

9 What about the Florida Legislature? The  
10 Florida House, Rule 12.8, the Florida Senate.  
11 We have two former presiding officers of the  
12 Florida Senate in this room. 7.1, the rules  
13 prohibit the Legislature from considering an  
14 amendment that relates to a different subject  
15 or is intended to accomplish a different  
16 purpose from that of the pending question.  
17 These amendments substantially expand the scope  
18 of the original proposal.

19 So let's address a few other items. We  
20 talked about jurisdiction, Commissioner  
21 Martinez mentioned jurisdiction. Jurisdiction  
22 isn't dispositive on germanity, right? This is  
23 a Constitutional Revision Commission. Surely  
24 we are going to address things in the  
25 Constitution.

1           Commissioner Smith brought up an  
2 interesting point. He said that the proposal,  
3 the underlying proposal for the Alien Land Law  
4 deals with personal property, in that case,  
5 real property. The underlying amendment deals  
6 with firearms, which are also personal  
7 property. Now, remember, this proposal is to  
8 eliminate that section of the Constitution. It  
9 is an expansion of rights.

10           The amendment is a limitation of rights,  
11 not germane. Our rules say, you know, in the  
12 absence of, if our rules aren't specific  
13 enough, which I think in this case they are,  
14 you look at Mason's Manual. So what does  
15 Mason's Manual say? Does this amendment deal  
16 with a different topic? Surely, it does.

17           Alien Land Law versus Firearms. Does the  
18 amendment unreasonably or unduly expand the  
19 subject of the proposal? Surely it does. Does  
20 the amendment introduce an independent question  
21 to the body? It seems like that is what the  
22 proponents of this amendment are specifically  
23 asking for.

24           We didn't think to do this before because  
25 Parkland hadn't happened yet. They are saying

1 we wanted to address an independent question,  
2 which is prohibited under germanity.

3 Is the amendment relevant and a natural or  
4 logical to the subject matter under the  
5 original proposal. I submit to you that it is  
6 not. Here is the other issue. Someone would  
7 say, well, let's just ignore the rule. Let's  
8 just ignore the rule, because this is  
9 important.

10 And I don't judge that statement, by the  
11 way. I think that is a sincerely held belief  
12 by Commissioner Martinez and I respect it  
13 greatly, although I disagree in this context.  
14 But just so we can talk about, you know, some  
15 of the contexts of that. There were 782 public  
16 proposals that were filed by Floridians.

17 As you know, there was no limit as to how  
18 many they could file or who could file them.  
19 183 public proposals were on Article I.  
20 Nineteen of them dealt with this section,  
21 Section 8.

22 Only one of the 19 was a limitation on the  
23 Right to Bear Arms. The other 18 were public  
24 proposals on the expansion of the Right to Bear  
25 Arms. This was something that was dealt with

1 by the public. We had the opportunity to view  
2 those proposals. We had opportunities to file  
3 proposals and didn't.

4 But here is a bigger issue. Let's talk  
5 about the Article I proposals that were filed,  
6 because if we were to do this, we should bring  
7 up Proposal 18 by Commissioner Donalds that  
8 dealt with Article I, if we are going to open  
9 up the whole section.

10 There is 26 sections in Article I. We  
11 could bring up Proposal 30 by Commissioner  
12 Martinez, Article I, Proposal Number 40 by  
13 Commissioner Keiser dealt with Article I.  
14 Proposal Number 64, to help grandparents by  
15 Commissioner Rouson, was in Article I.

16 Proposal 75 by Commissioner Martinez,  
17 Article I. Proposal 81, dealing with public  
18 records by Commissioner Heuchan dealt with  
19 Article I. That is a dangerous precedent,  
20 members.

21 Article I is a significantly large section  
22 of the Constitution. What we are being asked  
23 to do by the proponents of this appeal is to  
24 violate the rules that we all share, and  
25 although I had the opportunity to sit across

1 the hall and deal with these issues just  
2 several weeks ago and on record on all of the  
3 topics that we are talking about today, rules  
4 matter.

5 Rules matter in republics. Rules matter  
6 in commissions like this, and in government  
7 bodies; it is why our government has been so  
8 deeply committed to ensuring that rules are  
9 followed.

10 So members, I would ask you for the sake  
11 of valuing the rules that we all consented to  
12 live by in this Commission, and for the rest of  
13 the work that we must get accomplished before  
14 these amendments go to the ballot that you  
15 support the Chair on the ruling on germanity.

16 CHAIRMAN DIAZ: Thank you, Commissioner  
17 Sprowls.

18 Seeing no further comments, Commissioner  
19 Martinez, you are recognized to close.

20 COMMISSIONER MARTINEZ: Thank you very  
21 much. I will try to address some of these  
22 points. The big issue of the day, this has  
23 been a big issue for a long time and it has  
24 been a big issue for a long time.

25 There was mention of the awful tragedy

1 that occurred at Pulse where the gay community  
2 in Florida was targeted and there was an awful  
3 massacre, and what did the Legislature do about  
4 that?

5 Does anybody want to raise their hands?  
6 No, no hands? That is because they did  
7 nothing. You are right, they did nothing. So  
8 this tragedy happens. It happened in February,  
9 February 14th, Valentine's Day. The deadline  
10 to file amendments was October 31st. The  
11 Legislature addressed it because it was within  
12 their deadline, but it passed ours. Does that  
13 mean that we now don't address it because,  
14 whoops, it missed our deadline?

15 I understand deadlines, but this was not  
16 an issue that really was attracting the  
17 attention of the public and the political  
18 leadership until the tragedy that occurred at  
19 Parkland. And it wasn't until then that the  
20 political leaders demonstrated a tremendous  
21 will to do the right thing.

22 As to whether or not the challenge is  
23 going to be in Federal or State court, the  
24 challenge that it was filed, the lawsuit on the  
25 same day that the act was signed, that lawsuit

1 was filed in Federal Court here in the Northern  
2 District in Florida under the Second Amendment.

3 However, if somebody wanted to, they could  
4 also file challenges under the State  
5 Constitution because as we all know, the State  
6 Constitution can expand rights. So if somebody  
7 who was against the act wanted to hire a  
8 capable lawyer, which there are many in this  
9 room, they could go to a Federal or a State  
10 Court and they could use the State Constitution  
11 to challenge the act.

12 And what this would do, what this  
13 amendment would do, is it would make that  
14 challenge, to use a pun, bullet proof. Now, we  
15 are not passing a law today. What we are  
16 doing, if we were to pass this proposal, what  
17 we would do is we would put this proposal on  
18 the ballot, on the ballot so that the public  
19 would have an opportunity to vote on it in  
20 November.

21 We didn't have the opportunity, that is  
22 true, to vet the issue at our committee, but  
23 the Legislature, including some of you here,  
24 had an opportunity to vet this issue fully and  
25 you all did an excellent job. And I doubt that



1 we would do a better job than you did, so we  
2 have the benefit of that vetting. The public  
3 has the benefit of that vetting.

4 So let me just conclude with respect for  
5 the rules. We all have respect for rules. I  
6 had the privilege for seven years to be a  
7 federal prosecutor. There are a number of  
8 federal prosecutors in this room, former and  
9 current, the Attorney General, Commissioner  
10 Coxe, Commissioner Jordon, Commissioner  
11 Sprowls. There might be others.

12 As a prosecutor you make a decision  
13 whether or not to charge based upon the facts  
14 and the law, but at the end of the day it isn't  
15 just a computer, it isn't just an automatic  
16 formula. The prosecutor gets to use his or her  
17 discretion, and what you look at is, what is  
18 the purpose of what you are trying to  
19 accomplish?

20 What is the interest that you are trying  
21 to vindicate? That is what we ask.  
22 Prosecutors don't just willy nilly charge  
23 everybody because the facts fit the law. They  
24 also determine what is -- are we seeking  
25 justice here?

1           What is the greater good that we are  
2 trying to accomplish? And the purpose of this  
3 rule in my opinion, the germanity rule, is to  
4 make sure that the work of this body is done  
5 orderly, and I have no doubt that we would do  
6 the work orderly if this matter were to go  
7 forward.

8           The question I would ask is, that I would  
9 ask you to ask yourself is, what is the harm?  
10 What is the harm done if we were to go forward,  
11 debate this issue, vote on it. Can you see any  
12 harm? This is a very professional responsible  
13 group. What is the benefit?

14           The benefit is unlimited. The benefit is  
15 that it would allow the people to have a voice  
16 to debate publically for the next couple of  
17 months this issue. And it is to give the  
18 people, the folks we serve, the opportunity in  
19 November to decide for themselves whether or  
20 not they want to enshrine into the Constitution  
21 the Firearms Safety Provisions of the act.

22           That is the benefit. Does that benefit  
23 outweigh the harm, to the extent there is any  
24 harm? Tremendously. So I ask you respectfully  
25 to allow this matter to go forward. Thank you

1 for giving me this opportunity.

2 CHAIRMAN DIAZ: Any Commissioner,  
3 Commissioner Beruff, Chairman, you also have an  
4 opportunity to close.

5 CHAIRMAN BERUFF: Thank you. Yesterday we  
6 took up this matter on a different issue and  
7 decided that the rules is -- more eloquently  
8 Commissioner Sprowls said, are important to us  
9 as a society. I don't think we should change  
10 that because of the unfortunate circumstances  
11 of Parkland.

12 So in the end we agreed that the same  
13 rules will apply today. Proposal 3, the Alien  
14 Land Law, which is obviously a terribly  
15 outdated law and has no proper place in our  
16 Constitution, has nothing to do with this  
17 subject matter.

18 The Right to Bear Arms is an entirely  
19 different section of Article I. Based on  
20 Commissioner Cerio's recommendation, my ruling  
21 should be upheld.

22 Separately, as Commissioner Gaetz very  
23 clearly spoke on, the Legislature took this up  
24 and did the right thing and they had time to  
25 debate it and we should follow the law that

1 they have created.

2 Thank you very much.

3 CHAIRMAN DIAZ: Thank you, Chairman.

4 Commissioners, please note that this vote will  
5 be a verbal call. Those that vote in the  
6 affirmative will be ratifying the decision of  
7 the Chair. A vote in the affirmative does mean  
8 that you are upholding the Chair's ruling.

9 With that, all those in favor of upholding  
10 the Chair's ruling, say yea.

11 (Chorus of yea's.)

12 CHAIRMAN DIAZ: Opposed, nay?

13 (Chorus of nay's.)

14 CHAIRMAN DIAZ: The yea's have it. Let's  
15 move to the next amendment. Amendment 117574  
16 by Commissioner Smith.

17 Commissioner Smith, you are recognized to  
18 explain your amendment.

19 COMMISSIONER SMITH: Thank you, Mr. Chair.  
20 What this amendment is, is what has been  
21 debated and deliberated and talked about by  
22 Floridians for months. This is an issue that  
23 the Floridians, the 20 million Floridians as  
24 mentioned by Commissioner Sprowls, haven't had  
25 a chance to vote on.

1           About 160 of them voted on it a month ago,  
2           but the 20 million didn't get a chance to vote  
3           on it. We have a representative democracy, so  
4           the representatives discussed it, but as we  
5           have seen by just turning on the television, as  
6           we have seen by just going to our church, to  
7           our synagogue, as we have seen by going to an  
8           athletic event, to a park, to our jobs,  
9           everywhere, it is being debated by those  
10          20 million Floridians.

11          Those 20 million Floridians are discussing  
12          it, talking about it, and I think it is time  
13          that we gave them an opportunity to vote on it.  
14          By putting this amendment in and putting this  
15          on the ballot, it is not an affirmation that  
16          you support an assault weapon ban, but it is an  
17          affirmation that you see that the 20 million  
18          Floridians actually want to vote on this.

19          It is an affirmation that you understand  
20          that Floridians want to have a voice on this.  
21          It is being debated right now in your home  
22          offices. It is being debated in the parking  
23          lots of Publix. It is being debated throughout  
24          this state.

25          We are in a unique opportunity to give

1 those 20 million a chance to actually vote on  
2 it. So I ask that you approve this amendment  
3 to Proposal 3.

4 COMMISSIONER GAINNEY: Point of order.

5 CHAIRMAN DIAZ: For what purpose does  
6 Commissioner Gainey rise?

7 COMMISSIONER GAINNEY: On the germanity of  
8 the amendment.

9 CHAIRMAN DIAZ: Please do state the point.

10 COMMISSIONER GAINNEY: Mr. Chair, under  
11 Rule 7.4, the rule is different from the  
12 subject that is under consideration. It is  
13 simply not germane, it should not be admitted  
14 under the color of the law. As previously  
15 stated, Proposal 3 amends the Equal Protection  
16 Provision of Article I, Section 2 of the State  
17 Constitution to remove the disability of  
18 non-citizenship regarding the ownership of real  
19 property.

20 The amendment amends the Right to Bear  
21 Arms Provision, an entirely different section  
22 of Article I, to regulate the sale of weapons  
23 and/or ammunition. This amendment is not a  
24 logical sequence to the deregulation of land  
25 ownership by aliens, and thus should not be

1 allowed under the color of amendment.

2 Mr. Chair, a personal statement to my  
3 fellow Commissioner, and for me it is about  
4 rules. You see, 35 years ago when I raised my  
5 hand, and the oath that I took went something  
6 like this:

7 "I, Emery Gainey, do solemnly swear or  
8 affirm to support, protect and defend the  
9 Constitution and government of the United  
10 States and of the State of Florida. I am duly  
11 qualified to hold office under the Constitution  
12 of this State." There is a few other promises  
13 it makes, and then it ends with, "So help me  
14 God."

15 What does it matter? What is the harm for  
16 not following the rules? Perhaps the  
17 individual that I put a pair of handcuffs on,  
18 they would care. Taking away or removing their  
19 freedom, the right to freedom. The rules are  
20 important for good reason.

21 Mr. Chair, that is my objection.

22 CHAIRMAN DIAZ: Chairman Cerio, are you  
23 prepared to make a recommendation on the point  
24 of order?

25 COMMISSIONER CERIO: Mr. Chairman, may I

1 have one moment to confer with Commissioner  
2 Smith and Commissioner Gainey?

3 CHAIRMAN DIAZ: We will stand in informal  
4 recess for three minutes.

5 (Brief recess taken.)

6 CHAIRMAN DIAZ: Have all members recorded  
7 their presence? Have all members recorded  
8 their presence?

9 THE SECRETARY: Quorum call, quorum call.  
10 All Commissioners indicate your presence. All  
11 Commissioners indicate your presence. Quorum  
12 call, quorum call, all Commissioners indicate  
13 your presence.

14 A quorum present, Mr. Chair.

15 CHAIRMAN DIAZ: We are back in session.  
16 Commissioner Cerio, are you prepared to make a  
17 recommendation to the point of order?

18 COMMISSIONER CERIO: I am, Mr. Chairman.  
19 After having conferred with Commissioner Smith,  
20 Commissioner Gainey, reviewing this amendment  
21 and consistent with our prior rulings with this  
22 amendment, Mr. Chair, likewise to the previous  
23 one, is on a subject different from that under  
24 consideration.

25 It does concern gun rights, very different



1 than the ownership of property by aliens  
2 ineligible for citizenship. The recommendation  
3 is that this amendment is not germane to the  
4 original proposal.

5 CHAIRMAN DIAZ: Chairman Beruff, you are  
6 recognized.

7 CHAIRMAN BERUFF: A point well taken. The  
8 amendment is not germane. Thank you.

9 CHAIRMAN DIAZ: Commissioner Smith.

10 COMMISSIONER SMITH: Thank you, Mr. Chair,  
11 for a motion?

12 CHAIRMAN DIAZ: You are recognized.

13 COMMISSIONER SMITH: Mr. Chair, under Rule  
14 9.2 I move that we waive the rule on germanity.  
15 And if I may have a moment. Last night we were  
16 supposed to end at 6:00 and we were in the  
17 middle of discussing a proposal, and you know  
18 what Commissioner Cerio did? He stood up and  
19 said, I would move we waive the rules to go to  
20 7:00.

21 We weren't done at 7:00, and he stood up  
22 and said I move we waive the rules and go to  
23 8:00. We finished at 8:15 and left. We didn't  
24 stay until 2:00, we didn't stay until 3:00, we  
25 didn't stay until 4:00 or 5:00. We waived the

1 rules a couple of times, got what we had to get  
2 done and we left. It wasn't a slippery slope.  
3 We weren't here through the night.

4 We waived the rules twice, didn't think  
5 about it because we have work to do and get it  
6 done. And about the rules, and everyone has  
7 spoken how the Legislature acted this year.  
8 The Legislature acted and did a great job in  
9 dealing with this issue, and that was the  
10 impetus of Commissioner Martinez's amendment.  
11 The Legislature acted. You know how the  
12 Legislature acted?

13 Guess what, they waived the rules. In the  
14 House and in the Senate, you can file a Bill  
15 after the beginning of session and then it  
16 happened, the tragedy happened, and  
17 Commissioner Sprowls and the Senate, do you  
18 that what they did? They didn't fear anarchy.  
19 They didn't like die on the rules. They said,  
20 you know what, this is too important.

21 We are going to, guess what, waive the  
22 rules and introduce this Bill in the House.  
23 We are going to, guess what, waive the rules  
24 and introduce it in the Senate. We are going  
25 to waive the rules and put it in committee. We

1 are going to waive the rules and have committee  
2 meetings. We are going to waive the rules and  
3 bring it on the floor. We are going to waive  
4 the rules and roll it over.

5 We are going to waive the rules and pass  
6 this because Floridians need it, because  
7 Floridians are clamoring for it. They waived  
8 the rules for this great Bill that everyone  
9 just spoke about. They want to say it is good  
10 that the Legislature did it and the only way  
11 the Legislature did it is by, guess what,  
12 waiving the rules.

13 So I have a proposal here that Floridians  
14 are talking about. I have a proposal here that  
15 Floridians really want to discuss, that  
16 Floridians, whether they want to pass it or  
17 not, really should have the opportunity to vote  
18 on, and I am asking us to have the courage that  
19 the Legislature had when faced with this exact  
20 same issue no less than two months ago. And  
21 the Legislature had the courage to do what?

22 Waive the rules. So under Rule 9.2, I ask  
23 that the rules be waived and it be allowed.

24 CHAIRMAN DIAZ: Commissioners, waiver of  
25 the germanity rule requires a two-thirds vote.

1           It will be a verbal call. All in favor of  
2 waiving the germanity rule to allow for the  
3 introduction of Commissioner Smith's amendment,  
4 say yea.

5           (Chorus of yea's.)

6           CHAIRMAN DIAZ: Nay?

7           (Chorus of nay's.)

8           CHAIRMAN DIAZ: The nay's have it. Show  
9 the germanity rule not waived and the amendment  
10 not introduced.

11           Let's move on to the next amendment,  
12 Amendment 615688 by Commissioner Coxe and  
13 others.

14           Commissioner Coxe, you are recognized to  
15 introduce your amendment.

16           COMMISSIONER COXE: Thank you, Mr. Chair.  
17 This was joined in filing by Commissioner  
18 Plymale, Commissioner Kruppenbacher and  
19 Commissioner Joyner, and I can proudly say that  
20 it was filed by representatives of three of the  
21 four appointing authorities to this  
22 Constitutional Revision Commission.

23           And we did not have one from the Speaker  
24 of the House of Representatives. I did get a  
25 letter from the Speaker of the House of

1           Representatives today telling us we had no  
2           business doing this today.

3                        So having said that, I want to begin by  
4           saying I believe in gun rights just like  
5           Commissioner Martinez. Have I ever had a gun?  
6           Yes, I had to have a gun in the mountains of  
7           western Virginia during the rabies epidemic of  
8           foxes when I was living in law school, and they  
9           were everywhere, rabid, and that is what you  
10          use to protect yourself.

11                       I have shot an AR-15, I have shot an  
12          AK-47. I know what it means to shoot those  
13          guns, and as different people have said, timing  
14          is often what we have to deal with in life, and  
15          the timing of what happened in the high school  
16          in Broward County very recently is to large  
17          measure why we are here.

18                       It is troubling to listen to all of the  
19          things that weren't done after what happened in  
20          Orlando. Yesterday we had proposal after  
21          proposal that we took up having to deal with it  
22          because the Legislature would not act or could  
23          not act as we thought they should have acted.  
24          So we filed these proposals and I know we are  
25          well up in the high double digits, many of

1 which are because the Legislature would not  
2 solve it.

3 So the legacy of the CRC is as we stand  
4 here now, given the germanity issue that we  
5 worry about victim's rights in Marsy's Law,  
6 that we worry about the greyhounds, but we,  
7 because of this adherence to this rule, we do  
8 not worry about reducing the number of people  
9 murdered in the state of Florida.

10 I would like to quote from a court opinion  
11 that I think does as good a job as any in  
12 capturing what these circumstances are and why  
13 the amendment that the four of us proposed is.

14 This is from the United States Court of  
15 Appeals of the Fourth Circuit. That would be  
16 Maryland, Virginia, North Carolina, South  
17 Carolina, and it comes from a decision that the  
18 State of Maryland made who had not undergone  
19 any massacre as the State of Florida already  
20 has twice, and I quote.

21 This is when they passed the law to ban  
22 assault weapons and they passed a law to ban  
23 high-capacity magazines, and it was argued that  
24 that contravened the Second Amendment to the  
25 United States Constitution. And here is what

1 the Court said in the first two paragraphs.

2 "On the morning of December 14th, 2012, in  
3 Newtown, Connecticut, a gunman used an AR-15  
4 type Bushmaster rifle and detachable 30-round  
5 magazines to murder 20 first graders and six  
6 adults in the Sandy Hook Elementary School."

7 "Two additional adults were injured by  
8 gunfire and just 12 children in the two  
9 targeted classrooms were not shot. Nine  
10 terrified children ran from one of the  
11 classrooms when the gunman paused to reload  
12 while two youngster successfully hid in a  
13 restroom."

14 "Another child was the other classroom's  
15 sole survivor. In all, the gunman fired at  
16 least 155 rounds of ammunition within five  
17 minutes, shooting each of his victims multiple  
18 times. Both before and after Newtown, similar  
19 military-style rifles and detachable magazines  
20 have been used to perpetrate mass shootings in  
21 places where names have become synonymous with  
22 the slaughters that occurred there."

23 "Like Aurora, Colorado, 12 killed, 15  
24 wounded, July of 2012, in a movie theater. San  
25 Bernandino, California, 14 killed, more than 20

1 wounded in December, 2015, at a holiday party.  
2 In the early morning hours of June 12th, 2016,  
3 a gunman killed 49 and injured 53 at the Pulse  
4 Night Club in Orlando, Florida, making it the  
5 site of this country's," and this is at the  
6 time this was written, and this was written in  
7 2017, "the site of the country's "deadliest  
8 mass shooting yet."

9 "According to news reports the Orlando  
10 gunman used a Sig Sauer MCX, a semi-automatic  
11 rifle that was developed at the request of the  
12 Army Special Forces, and is known in military  
13 circles as the Black Mamba."

14 "Other massacres have been carried out  
15 with handguns equipped with magazines holding  
16 more than ten rounds, including those at  
17 Virginia Tech, 32 killed and at least 17  
18 wounded in April 27th, and Ft. Hood, Texas, 13  
19 killed and more than 30 wounded in November of  
20 29; as well as Binghamton, New York, 13 killed  
21 and four wounded in April 2, of 2009 at an  
22 immigration center. And then Tucson, Arizona,  
23 six killed and 13 wounded at the Congressman's  
24 Woman's constituent meeting at a grocery store  
25 parking lot," and they go with others.



1           What this court did, the United States  
2 Court of Appeals, in interpreting the Second  
3 Amendment to the United States Constitution  
4 said that the people of this country enjoy the  
5 right to possess firearms, but there are  
6 certain types of firearms they do not the enjoy  
7 the right to possess because they are not used  
8 and traditionally handled in ordinary  
9 circumstances, as one would have expected or  
10 derived or divined from the United States  
11 Constitution when the Second Amendment was  
12 drafted by our forefathers.

13           So they upheld Maryland's right to say it  
14 is illegal to have those guns. They banned the  
15 assault rifles and are they banned the high  
16 capacity magazines.

17           Las Vegas occurred since that opinion;  
18 Parkland occurred since that opinion. Again,  
19 with high capacity magazines, and assault  
20 rifles. And when I say, assault rifles, in my,  
21 in our proposal, we do not define assault  
22 rifle, because I will be the first to  
23 acknowledge that they have become almost  
24 incapable of precise definition and certainly  
25 not in the Constitution, and that was by this

1 proposed amendment to the Constitution, left to  
2 the decision of the Legislature.

3 So in short, what the amendment proposes  
4 is to ban -- or let me tell you specifically,  
5 that a purchaser of a firearm must be at least  
6 21 years of age; that there be a mandatory  
7 waiting period, and I would have to defer to  
8 Commissioner Kruppenbacher, who argued to I  
9 think was 30 or 60 days, I don't recall what it  
10 was; but what we included was -- I am talking  
11 about Commissioner Kruppenbacher, a mandatory  
12 waiting period between the purchase and  
13 delivery of any firearm, a comprehensive  
14 background check, the mandatory waiting period  
15 would be ten days, excluding weekends and  
16 holidays.

17 It would ban bump fire stocks, assault  
18 weapons and high-capacity detachable magazines  
19 that fire over nine rounds. So that is what  
20 the proposal is. Seventy-three percent, and I  
21 go back to Commissioner Smith, 73 percent of  
22 the people in this state, when they were polled  
23 said they want the right to vote themselves at  
24 the ballot on this decision, this decision,  
25 assault rifles.

1           Of those who would vote, of those  
2           73 percent, 64 percent said they would vote to  
3           ban assault weapons. I understand this  
4           germanity argument. I don't understand why we  
5           wouldn't waive the rules as Commissioner Smith  
6           asked for. I don't understand that.

7           We meet every 20 years and we leave here  
8           in a couple days and come back after Style and  
9           Drafting finishes and we go, whoa, we could  
10          have done something. Is it a solution to the  
11          problem? Of course not, nobody has got a  
12          solution to the problem.

13          The solution has so many tentacles, we  
14          know, it is the schools, with Commissioner  
15          Stewart; it is Commissioner Gainey's world, it  
16          is the judicial world. They all hold keys to  
17          this success. This is just one small step, but  
18          it is a step, because for my ability to fire 40  
19          rounds in about seven seconds is wrong, and the  
20          United States Supreme Court said we are not  
21          going to review the Fourth Circuit opinion.

22          They have already denied review of that  
23          opinion. So the Fourth Circuit law stands. It  
24          is, in Maryland, illegal to have assault weapon  
25          and it is illegal to have a high-capacity

1 magazine, and it is illegal to have a bump  
2 stock; and how we, the State of Florida, the  
3 third largest nation in this country, larger  
4 than many other countries of the world, cannot  
5 do something like this that is so simple,  
6 simply by waiving the rules. Let's forget  
7 germanity, just waive the rules and I close by  
8 saying this.

9 How many of these pink sheets have we seen  
10 in the last two-and-a-half days has been going  
11 around the public never saw when these  
12 amendments come shooting out of the printer?  
13 They didn't see that.

14 Everybody in this room knows what this  
15 issue is. I don't think you can come in this  
16 room and say I am really not prepared on this  
17 issue. You know what this issue is. You are  
18 prepared on it. The State of Florida is  
19 prepared on it. That is how the State of  
20 Florida knows that 73 to 74 percent of them  
21 want the right to vote on this issue, and that  
22 is all we would be doing, giving them the right  
23 to vote on it. We wouldn't say they are  
24 illegal, we wouldn't say they are legal.

25 We would say you, the citizens, have

1 encountered such a horrible, horrific  
2 experience after experience in this state,  
3 let's lead this country and do something about  
4 it. Thank you.

5 COMMISSIONER GAINNEY: Point of order.

6 CHAIRMAN DIAZ: Commissioner Gainney, for  
7 what purpose do you rise?

8 COMMISSIONER GAINNEY: Point of order on  
9 the germanity of the amendment.

10 CHAIRMAN DIAZ: Please state the point.

11 COMMISSIONER GAINNEY: Mr. Chair, I will  
12 put on the record the factual basis of the  
13 point, simply that Rule 7.4 of the amendment is  
14 a different subject than the one under  
15 consideration; it is simply not germane, it  
16 should not be admitted under the color of an  
17 amendment.

18 Proposal 3 amends the Equal Protection  
19 Provision of the Article I, Section 2 of the  
20 State Constitution to remove the disability of  
21 non-citizenship regarding ownership of real  
22 property.

23 The amendment amends the Right to Bear  
24 Arms, an entirely different section of Article  
25 I, relating to the sale of weapons and/or

1 ammunition. Therefore, this amendment is not  
2 in a logical sequence to the deregulation of  
3 land ownership by aliens, and therefore, should  
4 not be allowed.

5 I would agree with Honorable Commissioner  
6 Coxe in that if you look around this country,  
7 and I get many of those reports daily  
8 unfortunately, and while there have been many  
9 mass shootings with large capacity weapons,  
10 there are by far more large shootings by  
11 handguns in this country as well, on a regular  
12 basis.

13 As I mentioned earlier in my first  
14 objections, I am very comfortable in agreeing  
15 the time has come to have this debate as a  
16 state, as a people, one that I would look  
17 forward to join in, but for the purposes of  
18 this rule, Mr. Chair, I object, it is not  
19 germane.

20 Thank you.

21 CHAIRMAN DIAZ: Thank you. Commissioner  
22 Cerio, are you prepared to being a  
23 recommendation on the point of order?

24 COMMISSIONER CERIO: May I make a motion?

25 CHAIRMAN DIAZ: We are still dispensing

1 with this motion carries and then when it is  
2 dispensed we will let you -- Commissioner.

3 COMMISSIONER CERIO: Thank you, Mr. Chair.  
4 I have conferred with Commissioner Coxe, I am  
5 ready to make a recommendation. Like the prior  
6 amendments, this amendment is on a subject  
7 different from that under consideration.  
8 Regulation of firearms is an entirely different  
9 subject and deregulating real property  
10 ownership rights of aliens who happen to be  
11 ineligible for citizenship and my  
12 recommendation is that this motion or this  
13 amendment to the proposal is not germane.

14 CHAIRMAN DIAZ: Commissioner Beruff, do  
15 you have a statement?

16 CHAIRMAN BERUFF: I concur with  
17 Commissioner Cerio's synopsis and the motion to  
18 amend is not germane. Thank you.

19 CHAIRMAN DIAZ: Commissioner Coxe, you had  
20 a motion?

21 COMMISSIONER COXE: I do not seek review  
22 of the Chair's ruling, decision on the  
23 germanity. We have heard enough of that, I  
24 don't.

25 CHAIRMAN DIAZ: Thank you.

1           COMMISSIONER COXE:  What I would like to  
2 do is rise and move that we waive the rules and  
3 let the Commission hear this issue.

4           CHAIRMAN DIAZ:  Commissioner Coxe has  
5 moved to waive the rules.  Waiver of the  
6 germanity rule requires a two-third vote.  That  
7 is what you are requesting, correct?

8           COMMISSIONER COXE:  Yes.

9           CHAIRMAN DIAZ:  Okay, all in favor of  
10 waiving the germanity rule to allow for the  
11 introduction of Commissioner Coxe's amendment  
12 say yea.

13           (Chorus of yea's.)

14           CHAIRMAN DIAZ:  All in favor say no.

15           (Chorus of nay's.)

16           CHAIRMAN DIAZ:  It seems that the no's  
17 have it.  I show the germanity rule not waived  
18 and the amendment not introduced.

19           We are back on the Bill and we can take a  
20 five-minute break to gather ourselves after  
21 those amendments.  I would appreciate it, so we  
22 are on a break.

23           (Brief recess taken.)

24           THE SECRETARY:  A quorum present,  
25 Mr. Chair.



1           CHAIR KARLINSKY: Thank you very much,  
2 Madam Secretary.

3           So Commissioners, we are back on Proposal  
4 3, and in the interest of getting everyone  
5 level set again, Commissioner Martinez, you are  
6 recognized to explain your proposal.

7           COMMISSIONER MARTINEZ: Thank you, if I  
8 may have a mike, there you go, thank you, and  
9 hopefully will be succinct to the point, okay.

10          So this deals with Article I, Section 2,  
11 and is to eliminate from the Florida  
12 Constitution the clause, a clause that is  
13 anachronistic. And in fact the Legislature put  
14 this same amendment, worded differently than  
15 the way we are going to word it if it  
16 successfully comes out of here, on the ballot a  
17 couple of years ago.

18          If you look at the -- it is important that  
19 you read this, it is all about the words. And  
20 it is the clause that begins, "Except that the  
21 ownership, inheritance, disposition and  
22 possession of real property by aliens  
23 ineligible for citizenship may be regulated or  
24 prohibited by law."

25          Now, those words, "aliens ineligible for

1 citizenship", are, should be uncommon for  
2 everybody in this room, it is not something  
3 that we usually deal with. So why, why those  
4 words in the Florida Constitution?

5 If you look at the staff analysis which  
6 was provided by our great staff, and I am not  
7 sure who wrote this one, but I think this came  
8 out of the Declaration of Rights, it may have  
9 been Tashiba Robinson, one of the many great  
10 staffers; it gives you a great analysis.

11 And what you learn is that our  
12 Constitution used to have a provision, Section  
13 18, that was adopted in 19 -- in 1855 that said  
14 that foreigners shall have the same rights as  
15 to the ownership, inheritance, and disposition  
16 of property in this state as citizens of the  
17 state. So then what happened?

18 Well, what happened was that there was a  
19 movement afoot throughout the country, it  
20 started in California, targeting Asians, in  
21 particularly the Japanese. So somebody  
22 decided, the movement decided to put it in the  
23 different constitutions of the various states,  
24 a provision to target the Japanese and the  
25 Asians.

1           And in 1926 the language that I just read  
2           to you found its way into our Constitution.  
3           And if you want to know why those particular  
4           words, you need to read the staff analysis. I  
5           want to direct you to page 3, footnote 15, and  
6           what you see here is that those words came from  
7           the Immigration Act of 1924.

8           And I am going to read the following to  
9           you. It said that, "The statutes provided that  
10          the provisions of the Naturalization Act shall  
11          apply to aliens being free white persons and to  
12          aliens of African nativity and to persons of  
13          African descent."

14          The footnote containing this, thus, every  
15          other race was ineligible for citizenship under  
16          the Immigration Act of 1924. The Immigration  
17          Act of 1924 also included a provision excluding  
18          from entry any alien who by virtue of race or  
19          nationality was ineligible for citizenship.

20          As a result, groups not previously  
21          prevented from immigrating, the Japanese in  
22          particular, would no longer be admitted to the  
23          United States. So the Alien Land Law that we  
24          have in our Constitution, it really is the  
25          racists land law, that is what it is, it is an

1           anachronistic. It shouldn't be in here. It is  
2           targeting, by its very wording and its history,  
3           Asians and the Japanese. And by the way, no  
4           statute has ever been passed by this body  
5           pursuant to that provision of the Constitution,  
6           nor has any Federal or State Court ever  
7           examined the law as to whether or not it is  
8           constitutional.

9           However, if you read the memo, the staff  
10          analysis, and I actually read the opinion. If  
11          you go to page 8, what you see in the staff  
12          analysis is that there is certain  
13          classifications that require strict scrutiny,  
14          and one of those classifications, if they, the  
15          classifications that they involve, race,  
16          national origin, religion, aliens and poverty,  
17          if the Legislature passes a law that deals with  
18          any of those classifications, then the courts  
19          need to apply strict scrutiny.

20          And to pass strict scrutiny the  
21          Legislature must have passed a law to further a  
22          compelling governmental interest and must have  
23          narrowly tailored the law to achieve that  
24          interest.

25          Now, clearly in this particular case what

1 we are talking about here, the only interest  
2 that could be passed by the Legislature would  
3 be a law to target the Japanese and the Asians,  
4 clearly a racist law that wouldn't pass strict  
5 scrutiny.

6 So what I am seeking to do here is very  
7 simply to eliminate from the Florida  
8 Constitution a provision that should not be in  
9 there, but it has been for some time, that is  
10 offensive, that is racist, that is illegal. It  
11 is as simple as that.

12 Thank you.

13 CHAIRMAN KARLINSKY: Thank you,  
14 Commissioner Martinez. Are there any questions  
15 on the proposal? Questions on the proposal?  
16 Seeing none, is there debate on the proposal?  
17 Commissioner Solari, you are recognized.

18 COMMISSIONER SOLARI: I thank Commissioner  
19 Martinez for bringing this forward. When this  
20 process just started I thought that the most  
21 important proposal that I could be supporting  
22 anyway would be the one on the Chevron  
23 deference which we discussed the other day.  
24 But as Commissioner Martinez mentioned, when he  
25 was a School Board member he went around and

1 visited one school a day for a long period of  
2 time. What I do often to help me to try to get  
3 a better understanding of things, is to read  
4 different books, and I have read a lot of this  
5 Harry V. Jaffa, over time, who was extremely  
6 focused on five words in the Declaration of  
7 Independence: "All men are created equal."

8 And I am just beginning my work on  
9 thinking this whole thing through, but what is  
10 clear to me at this point is while the greatest  
11 threat to American democracy, may or may not  
12 be, as I believe the administrative state, we  
13 cannot have a real democracy if we don't really  
14 realize what those five words mean, "all men  
15 are created equal," and clearly we have had a  
16 great history where we haven't gotten there.

17 I believe we are getting closer to that  
18 point, but the removal of these three lines as  
19 insignificant as they may appear, and when we  
20 have this, and this is my version of the  
21 Florida Constitution, is about two pounds, a  
22 lot of words, and you might think that removing  
23 three lines couldn't be that material, but  
24 think of the Confederate War statute problem we  
25 have had or issue we have had in times.

1           For many Americans today that was an  
2           incredibly significant issue, and I believe  
3           based on the public hearings what we heard from  
4           a lot of Asian Americans, was that these three  
5           lines are crucial for them being able to think  
6           that they are as all Americans, ought to be  
7           truly created equal. So for those reasons I am  
8           very happy to support Commissioner Martinez's  
9           proposal.

10           Thank you, Mr. Chairman.

11           CHAIRMAN KARLINSKY: Thank you.  
12           Commissioner Keiser, you are recognized in  
13           debate.

14           COMMISSIONER KEISER: Thank you,  
15           Mr. Chair. Thank you, fellow Commissioners. I  
16           rise in support of Commissioner Martinez's  
17           proposal. I am an Asian American and with your  
18           indulgence I will tell a little bit of my  
19           story.

20           My father's intelligence arm of the Air  
21           Force, he met my mom, who is Philippina by  
22           descent, they met at Indiana University. They  
23           met there because my mom was a Fulbright  
24           Scholar and were later married. Her field was  
25           early childhood education.

1           When they were newly married they wanted  
2           to acquire property, and my mom at that time  
3           married to my father, thought that she couldn't  
4           be a property owner. I hesitate to make things  
5           personal, but this is somewhat personal to me,  
6           and I do believe that this is discriminatory,  
7           and for Florida we have a duty to strike this  
8           language and to make things right.

9           I want you to know that she went on to be  
10          a university professor at Florida State, and  
11          once I had the great honor of serving with all  
12          of you, asked me to look into it and when I did  
13          I saw that this was still in place. So I want  
14          to ask for your vote.

15          I want to thank Commissioner Martinez,  
16          Commissioner Solari and all of you for your  
17          leadership; and with that, thank you.

18          CHAIRMAN KARLINSKY: Thank you.  
19          Commissioner Keiser. Any further debate?

20          Seeing none, Commissioner Martinez, you  
21          are recognized to close your amendment.

22          COMMISSIONER MARTINEZ: I waive close.

23          CHAIRMAN KARLINSKY: Waiving close, the  
24          Secretary will unlock the board and the  
25          Commissioners will prepare to vote. Have all



1 Commissioners voted? Have all Commissioners  
2 voted? Please lock the board and record the  
3 vote.

4 THE SECRETARY: Twenty-seven yea's, zero  
5 nay's, Mr. Chair.

6 CHAIRMAN KARLINSKY: So the motion is  
7 adopted and the proposal is committed to the  
8 Style and Drafting Committee.

9 Let's take up the next proposal, which is  
10 Proposal Number 4, by Commissioner Martinez as  
11 well.

12 Commissioner Martinez, you are recognized.

13 COMMISSIONER MARTINEZ: Thank you very  
14 much. I appreciate your support on that one.  
15 I know a lot of people here wanted to do that a  
16 long time ago, and I want to thank those ladies  
17 that came to see us in FIU and FAU, those two  
18 ladies of Asian American descent.

19 So Proposal 4, Proposal 4 is designed to  
20 get rid from the Florida Constitution what is  
21 known as the Blaine Provision. So let me start  
22 off by telling you that we have in our U.S.  
23 Constitution and in our State Constitution the  
24 Establishment Clause. The Establishment Clause  
25 provides that public funds cannot be used to

1 further a religion.

2 Public funds cannot be used to further  
3 religion. We are not doing anything by this  
4 amendment that in any way would obviously  
5 eliminate the Federal Constitution nor the  
6 State Constitution. I support that.

7 I support that those provisions by -- I  
8 was raised Roman Catholic. I am not a member  
9 of any organized religion. As my Jewish  
10 friends will tell you, I have felt more Jewish  
11 in the last couple of decades than Christian,  
12 doesn't matter. I actually have my own beliefs  
13 and they are private, and the fact that I am  
14 not a member of any organized religion is,  
15 speaks badly of me, and I am very lucky for  
16 those religions.

17 So I am not here trying to push any  
18 particular religion. But I just think that  
19 this -- these words in our Constitution are  
20 unnecessary, they are unnecessary, I think they  
21 are also unconstitutional, based upon the most  
22 recent decision of the U.S. Supreme Court  
23 passed last year in the case of *Trinity*  
24 *Lutheran versus Comer*.

25 And in that particular case the U.S.

1 Supreme Court by a vote of seven to two, that  
2 included two of the liberal, the quote,  
3 unquote, "liberal" justices, Justice Kagan, an  
4 excellent Judge, and Justice Breyer, an  
5 extremely bright man and Judge, and they ruled  
6 that a provision in the Missouri law identical  
7 to this one, it might be a word or two off, but  
8 it is pretty much identical, was  
9 unconstitutional as applied because it  
10 basically barred a church by virtue of a status  
11 and nothing else, from participating in a  
12 neutral state program, funding program, that  
13 dealt with a playground.

14 Now, I am going to read to you Justice  
15 Breyer's opinion, Justice Breyer's opinion, he  
16 concurred, and this is one of the more liberal  
17 quote, unquote, "liberal" Justices of the  
18 Supreme Court, and what he said was: "The  
19 Court," it is on my Ipad here. Okay. Hold a  
20 second, I apologize, there you go, Breyer.

21 "The Court stated in *Everson*," this is  
22 another Supreme Court case, and I believe that  
23 one dealt with public transportation. I think  
24 that was providing bus services to -- School  
25 Board providing bus transportation services to

1 children in its district attending parochial  
2 schools, I think that is what that case was  
3 about, and he said, the Court stated in *Everson*  
4 and I quote, "Cutting off church schools from  
5 such general government services as ordinary  
6 police and fire protection is obviously not the  
7 purpose of the First Amendment."

8 Here the State would cut Trinity Lutheran  
9 off from participation in a general program  
10 designed to secure or to improve the health and  
11 safety of children. I see no significant  
12 difference. The fact that the program at issue  
13 ultimately funds only a limited number of  
14 projects cannot, itself, justify a religious  
15 distinction; nor is there any administrative or  
16 other reason to treat church schools  
17 differently.

18 The sole reason advanced and explains the  
19 difference is faith, and it is that last  
20 mentioned fact that calls a Free Exercise  
21 Clause into play. We need go no further.

22 So what that opinion held was that the No  
23 Aid Provision as applied in Missouri was a  
24 violation of the Free Exercise Clause which put  
25 an impediment, it put a penalty on a religion,

1 on a religious organization strictly by virtue  
2 of a status. And that is exactly what our  
3 provision does in our State Constitution.

4 Now, how has this been applied in our  
5 state? It has been applied in our state, in my  
6 opinion, inconsistently and the courts have  
7 recently performed, I say this with all respect  
8 to the Judges who are involved in those  
9 opinions, they perform legal jujitsu in order  
10 to find that programs in effect constitutional  
11 and not in violation of the No Aid Provision,  
12 even though those programs provided aid to a  
13 religious organization.

14 Now, I will give you the most recent  
15 example without boring you with all of these  
16 because you can read it for yourself in the  
17 staff analysis. It involved providing  
18 faith-based institutions with a contract, I  
19 believe with the Department of Corrections, to  
20 provide social services in the prison system.

21 Clearly the money was going to a  
22 faith-based organization to provide a social  
23 service, a neutral social service, pretty  
24 similar to what was ruled unconstitutional by  
25 the First District Court of Appeal in the *Bush*

1           *versus Holmes* case in which they held as a  
2           violation of the No Aid Provision a voucher  
3           program, the voucher program that was given to  
4           the parents to be used in a school, in a school  
5           of their choice. And in the *Bush versus Holmes*  
6           case the DCA, First DCA held that that program  
7           was a violation of the Blaine Amendment, the No  
8           Aid Provision Provision.

9           However, in this case in the *Council for*  
10          *Secular Humanism versus McNeil* that ultimately  
11          when it is remanded it is called *Council for*  
12          *Secular Humanism versus Jones*, in that case the  
13          First DCA said, you know what, that program  
14          doesn't run afoul of the No Aid Provision. And  
15          it goes through this whole bunch of legal  
16          jujitsu, jujitsu and it says there are certain  
17          factors that we look at.

18          One, whether the government-funded program  
19          is used to promote the religion of the  
20          provider; two, whether it is significantly  
21          sectarian in nature; three, whether it involves  
22          religious indoctrination; and four, whether it  
23          requires participation in religious ritual; or  
24          five, encourages the preference of one religion  
25          over another.

1           Well, you know what, that is pretty much  
2 the same analysis they use in the Establishment  
3 Clause cases. The statute, the wording that I  
4 am seeking to eliminate from the Constitution  
5 it says, "No public funds shall be used  
6 directly or indirectly in aid of any church,  
7 sectarian or religious denomination."

8           Clearly in that case the money was being  
9 used indirectly to aid a religious organization  
10 but it was to be used to provide social  
11 services, and yet the First DCA said, you know  
12 what, that is not a violation of the No Aid  
13 Provision.

14           Well, I suggest respectfully to the Court  
15 the reason they did that is basically to  
16 salvage the No Aid Provision because had it, in  
17 fact, applied the wording of the Constitution,  
18 and it is not a matter of applying it strictly,  
19 had it just applied the wording of the  
20 Constitution as it is stated, that program  
21 would have been in violation of the No Aid  
22 Provision.

23           So it is time to get rid of this provision  
24 in our Constitution. It is unnecessary. We  
25 have the Establishment Clause that protects us

1 and the use of public funds to further  
2 religious organization. This clause is most  
3 likely now unconstitutional based upon the  
4 Court's decision last year in *Trinity Lutheran*.

5 So I submit it to you as a proposal for  
6 your consideration so that we can put it on the  
7 ballot in November and let the voters decide  
8 for themselves as to whether or not those words  
9 should continue to be in the Constitution.

10 CHAIRMAN KARLINSKY: Thank you for that  
11 explanation, Commissioner Martinez. Are there  
12 questions on the proposal?

13 Commissioner Joyner, you are recognized.

14 COMMISSIONER JOYNER: Thank you,  
15 Mr. Chair. Commissioner Martinez, has this  
16 issue ever been placed on the Florida ballot  
17 before?

18 CHAIRMAN KARLINSKY: Commissioner  
19 Martinez.

20 COMMISSIONER MARTINEZ: Yes, it is my  
21 understanding that it was a couple of years  
22 ago, before the opinion in *Trinity Lutheran*.  
23 The voters had an opportunity to vote on this  
24 and they didn't vote to strike the words from  
25 the Constitution.



1           I think it is important, Commissioner  
2 Joyner, that the voters had -- were given that  
3 choice prior to the Supreme Court's opinion  
4 which came down last year.

5           CHAIRMAN KARLINSKY: Further questions,  
6 Commissioner Joyner.

7           COMMISSIONER JOYNER: Yes, with respect to  
8 the *Trinity Lutheran* opinion, what I have read  
9 is that it was a narrow decision holding that a  
10 religious institution cannot be denied a  
11 generally-available public benefit for a  
12 non-religious youth recesses in a playground,  
13 which is that -- that is what the case was  
14 about, solely because of the status as a  
15 religious institution.

16           Consequently the decision was limited to  
17 grant funding that does not advance religion  
18 and even more narrowly limited to playground  
19 resurfacing. So that -- that interpretation of  
20 the opinion differs from yours because it is  
21 narrowing limiting the playground resurfacing.  
22 So one could reasonably differ on what the  
23 opinion means and how it affects the Blaine  
24 Amendment.

25           CHAIRMAN KARLINSKY: Commission Martinez,

1           you are recognized.

2                   COMMISSIONER MARTINEZ: Thank you. Yes,  
3           that is the famous Footnote 3 I think you were  
4           referring to. I don't think -- the Supreme  
5           Court of the United States doesn't take on a  
6           case just to decide an issue involving a  
7           playground. They take on cases to decide  
8           issues of principle.

9                   Since the opinion in *Trinity Lutheran*  
10          there have been two cases that have sought a  
11          cert before the U.S. Supreme Court involving  
12          the same Blaine Amendment. I think that came  
13          out of Colorado, and the Supreme Court sent  
14          them back to be considered -- to be remanded --  
15          to be considered in consideration with the  
16          Court's opinion in *Trinity Lutheran*.

17                  It is the principle of *Trinity Lutheran* as  
18          articulated I think best by Justice Breyer that  
19          when you have a status bar based upon the fact  
20          that you are a religion and nothing else, that  
21          that in and of itself runs afoul of the Free  
22          Exercise Clause of the First Amendment.

23                  If, in fact, the program is fostering a  
24          particular religion, then that would run afoul  
25          of the Establishment Clause. So if we were to

1 get rid of the Blaine Amendment, okay, and if  
2 the Legislature or local government were to  
3 appropriate funds to further a religion, well,  
4 clearly that would run afoul of the  
5 Establishment Clause. So I think the evil that  
6 you are trying to safeguard, but I know it is  
7 of interest to you, Commissioner Joyner, as it  
8 is to me.

9 That I don't want the State involved in  
10 religion, in furthering your religion, but I  
11 also don't want the State to put a bar and  
12 disable a religion based upon its status, and  
13 neither did our founders. Our founders put  
14 into the First Amendment two clauses dealing  
15 with religion.

16 One, the Establishment Clause, and  
17 favoring one religion over the other, let's not  
18 get into a business of perpetuating one  
19 religion or proselytizing one religion. But on  
20 the other hand, let's also not put an  
21 impediment on a religious organization just  
22 because they happen to be a religious  
23 organization.

24 CHAIRMAN KARLINSKY: Further questions on  
25 Proposal 4? Are there further questions on

1 Proposal 4? Seeing no further questions there  
2 are three amendments. Commissioner Martinez,  
3 139874, 139874, you are recognized to explain  
4 your amendment.

5 COMMISSIONER MARTINEZ: That one will be  
6 withdrawn.

7 CHAIRMAN KARLINSKY: Show 138974  
8 withdrawn. Amendment 142498 by Commissioner  
9 Martinez. You are recognized to explain that  
10 amendment.

11 COMMISSIONER MARTINEZ: That will be  
12 withdrawn as well.

13 CHAIRMAN KARLINSKY: Show that withdrawn  
14 as well. One further amendment, 371292 by  
15 Commissioner Gamez.

16 Commissioner Gamez, you are recognized to  
17 explain your amendment.

18 COMMISSIONER GAMEZ: That amendment will  
19 also be withdrawn.

20 CHAIRMAN KARLINSKY: Okay, show those  
21 three amendments withdrawn. We are on debate  
22 for Proposal 4, on debate.

23 Commissioner Solari, you are recognized.

24 COMMISSIONER SOLARI: Thank you very much,  
25 Mr. Chairman. Thank you very much for bringing

1 this proposal before us, Commissioner Martinez.  
2 I would like to begin by stating that my  
3 opinion on religious belief of others is much  
4 the same as that of Thomas Jefferson who said,  
5 "But it does me no injury for my neighbor to  
6 say there are 20 Gods or no God. He neither  
7 picks my pockets nor breaks my leg."

8 We disagree, however, in the spin he was  
9 later to give the Religious Freedom Clause of  
10 the First Amendment, quoting the 1802 letter  
11 that he sent to the Danbury Baptist  
12 Association, Jefferson quoted the First  
13 Amendment and interpreted it with peculiar  
14 spin.

15 Quote, "I contemplate with sovereign  
16 reference the act of the whole American people  
17 which declared that the Legislature should make  
18 no law respecting an establishment of religion  
19 or prohibiting the free exercise thereof, thus  
20 building a wall of separation between church  
21 and state."

22 For many Americans, this wall of  
23 separation between church and state have  
24 displaced the actual words of the U.S.  
25 Constitution. Indeed in CRC public hearings,

1 many who spoke against Proposal 4, built their  
2 argument around Jefferson's phrase.

3 One woman even said that Jefferson had  
4 written these words in the Declaration of  
5 Independence. He did not. In fact, none of  
6 the founding documents, including Jefferson's  
7 own Bill for establishing religious freedom,  
8 even hint at a separation of church and state.  
9 In his Bill for establishing religious freedom  
10 there is no mention of separation of church and  
11 state and the thrust of the Bill is not to put  
12 a wall between church and state, but rather a  
13 push for freedom of conscience against a  
14 then-established church.

15 I thought it might be helpful to look at  
16 perhaps the most important founding documents  
17 to see what they actually do say about the  
18 state, church and religion.

19 These documents are the Declaration of  
20 Independence, the Articles of Incorporation,  
21 the Northwest Ordinance, the U.S. Constitution  
22 and the Bill of Rights. There are 13  
23 references to a supreme being, religion or  
24 church beginning in time with the Declaration  
25 of Independences, the Law of Nature and

1 nature's God, and ending with the Bill of  
2 Rights, Congress shall make no law respecting  
3 the establishment of religion or prohibiting  
4 the free exercise thereof.

5 In the Northwest Ordinance passed by the  
6 Congress of the Confederation in 1787, there  
7 were three references crucial to our  
8 understanding of the founders' intent, and for  
9 extending the fundamental principles of civil  
10 and religious liberty which forms the basis  
11 whereon these republics and the laws and  
12 constitutions are erected.

13 The next, no person demeaning himself in a  
14 peaceable and orderly manner shall ever be  
15 molested on account of his mode of worship or  
16 religious sentiments. And for me perhaps the  
17 most important, religion, morality and  
18 knowledge are necessary to good government and  
19 the happiness of mankind, schools and the means  
20 of education shall forever be encouraged.

21 Taken as a whole, these references not  
22 only suggest no wall, but it recognize the  
23 founders' belief in the importance of religion  
24 to the Republic. Taken together, a look at the  
25 founding documents and the history of the

1 American Revolution, help uncover what many,  
2 including myself, believe is the miracle of the  
3 revolutionary period.

4 The common ground, the balancing of reason  
5 and revelation of Athens and Jerusalem, which  
6 is a key to American exceptionalism. And any  
7 who doubt the importance of balancing reason  
8 and revelation, might consider the French  
9 Revolution which began a few years later and  
10 ended with a Reign of Terror and an emperor.

11 In the 18th century the First Amendment  
12 was meant to protect religion and churches from  
13 the State, just as most of the Bill of Rights  
14 were meant to protect Americans from an  
15 over-bearing government.

16 Time and politics have built a wall of  
17 misunderstanding between the original meaning  
18 of Religious Freedom Clause and how many people  
19 understand it today. This misunderstanding  
20 began with the presidential election of 1800  
21 when Jefferson ran against Adams.

22 Jefferson's supporters using the idea of a  
23 separation of church and state to attract  
24 anti-establishment voters, particularly in New  
25 England where the established churches



1 generally supported Adams. It was essentially  
2 an attempt to deter Federalist clergymen from  
3 exercise their freedom of religion and speech  
4 basically a demand that clergy give up the  
5 exercise of rights enjoyed by other Americans.

6 While great as a metaphor for spin  
7 purposes, the wall of separation between church  
8 and state is a terrible one for interpreting  
9 the Constitution.

10 Perhaps the first bricks used to build the  
11 wall of separation of church and state we use  
12 that as we mean it today, came from New York in  
13 the 1940s.

14 The Papist Irish and nativist Protestants  
15 quarreled over public school funds.  
16 Protestants controlled the public schools and  
17 Catholics claimed equal rights to public school  
18 funds.

19 The Protestants believe that all should  
20 simply go to public schools. This was fine for  
21 the Protestants as the public schools used the  
22 King James Bible and other Protestant tracts to  
23 teach their children.

24 The Catholics wanted to use their Bible  
25 and teach their own religious beliefs. The

1 tensions grew over the years to the point where  
2 in 1875, President Grant, in an appeal to  
3 liberal and nativist sentiment, proposed  
4 constitutional amendments in favor of  
5 separation.

6 Taking Grant's lead, Congressman James G.  
7 Blaine rewrote the First Amendment to include  
8 in part these words, "And no money raised by  
9 taxation in any state for the support of public  
10 schools or derived from any public funds  
11 thereof, nor any public lands thereto, shall  
12 ever be under the control of any religious  
13 sect."

14 As it was said at New York's 1894  
15 Constitutional Convention by a Baptist  
16 delegate, Owen Cassidy, this amendment's  
17 intent, quote, "Is intended to discriminate.  
18 It cuts off Catholic schools and cuts off  
19 Hebrew schools, but allows Protestant schools  
20 to draw public funds for their support."

21 Discrimination, not religious freedom is  
22 the basis for Florida's Blaine Amendment, found  
23 at Article I, Section 3 of our Constitution.  
24 In 2016, as Commissioner Martinez has  
25 mentioned, the U.S. Supreme Court in the

1           *Trinity, Lutheran Church* case, clearly will not  
2 allow the State of Florida to favor one church  
3 or religion over another. But it does say that  
4 denying a generally available benefit solely on  
5 account of religious identity imposes a penalty  
6 on the free exercise of religion that can only  
7 be justified -- that can be justified only by a  
8 state interest of the highest order.

9           For too long small groups of Americans  
10 have discriminated against other Americans  
11 because of their religious beliefs. More  
12 recently some have tried to push religion out  
13 of the public square and behind a wall of  
14 separation. The founders never considered, nor  
15 does the Constitution require, a wall of  
16 separation between church and state. What the  
17 founders envisioned was a partnership between  
18 church and state.

19           And I ask my fellow Commissioners to join  
20 me and Commissioner Martinez today and to vote  
21 to move Proposal 6 forward, correcting a  
22 historical wrong and to help renew the  
23 partnership between church and state, this done  
24 so much to make American the exceptional  
25 country that it is.

1 Thank you.

2 CHAIRMAN KARLINSKY: Thank you,  
3 Commissioner Solari. Further debate?

4 Commissioner Gaetz, you are recognized.

5 COMMISSIONER GAETZ: Thank you, Mr.

6 Chairman. Not my favorite political  
7 philosopher, but Ulysses S. Grant said one time  
8 in exasperation, "The best way to get rid of a  
9 bad law is through its stringent execution."

10 And the question that I would -- I would  
11 pose for Commissioner Martinez to consider when  
12 he closes, is what would happen if there was a  
13 stringent execution of the Blaine Amendment, an  
14 amendment which as Commissioner Solari has said  
15 was written by Senator James G. Blaine of  
16 Maine.

17 And it was written because when he ran for  
18 President the Catholics worked against him and  
19 helped defeat him and he blamed them for his  
20 defeat and he worked out his grudge with the  
21 Blaine Amendment, and it is -- it is a, and it  
22 is religious intimidation, religious  
23 discrimination and it is still in some State  
24 Constitutions as a relic of that discrimination  
25 yet today.

1           So I would ask Commissioner Martinez to  
2 consider in his closing, commenting on what  
3 would happen if this Blaine Amendment which  
4 says that you can't provide any support to  
5 anything that is faith-based were stringently  
6 executed.

7           What would happen to the Miami Jewish Home  
8 and Hospital for the Aged, where every year we  
9 provide taxpayer funds to purchase services  
10 there. We provide funding so that people can  
11 use the facilities and services of that Jewish  
12 institution because we find it in the public  
13 interest to buy services from that institution  
14 for the citizens of Florida.

15           And so we send taxpayer money to them,  
16 they put it in the bank account of the Miami  
17 Jewish Home, and people live there who  
18 otherwise would have to live somewhere else,  
19 perhaps at a greater expense.

20           I happen to be a Lutheran. Lutheran  
21 Social Services of Florida has contracts with  
22 the State of Florida to provide services in the  
23 area of foster care, for example. And what  
24 would happen if we had -- if the Blaine  
25 Amendment were truly administered and executed

1 in the stringent fashion?

2 It would mean that the Lutheran Social  
3 Services, the Baptist Home and many other  
4 faith-based institutions who provide  
5 extraordinarily useful services to our foster  
6 care system could be challenged, could be  
7 challenged by someone who decides to push the  
8 issue.

9 And I happen in my -- in my district to  
10 have an extraordinary institution called Sacred  
11 Heart Hospital. It is a Catholic hospital. It  
12 is a great hospital. And every year we send  
13 millions of dollars of taxpayers' money there  
14 to buy services, health care services, and the  
15 stringent execution, a stringent interpretation  
16 of the Blaine Amendment would say we can't do  
17 that, because they are a Catholic institution.  
18 Lutheran Social Services is Lutheran; the Miami  
19 Jewish Home is Jewish; and you go down the list  
20 with every other denomination in the state in  
21 one form or another.

22 If you think that I am stretching the  
23 point, I would just say this: The only place  
24 that the -- that the adherence and advocates of  
25 the Blaine Amendment have decided to make their

1 stand is in education. They know better than  
2 to try to throw people out of the Miami Jewish  
3 Home. They know better than to take on and --  
4 and oppose the interest of foster children in  
5 our state.

6 They know better than to go to Pensacola  
7 and try to shut down part of Sacred Heart  
8 Hospital. But they take on -- they take on  
9 education.

10 Apparently that is where the line is  
11 drawn, and I guess I would ask Commissioner  
12 Martinez in his -- in his analysis and in his  
13 research of the legal history of the Blaine  
14 Amendment, where in the world is there a bright  
15 line that has been written by the courts that  
16 says that it is okay to apply the Blaine  
17 Amendment in education, but you can neglect and  
18 pretend that the Blaine Amendment doesn't exist  
19 when it comes to health care or foster services  
20 or some other services.

21 Some of you will remember the terrible  
22 hurricane that devastated New Orleans and parts  
23 of the Gulf Coast, and when that happened we  
24 have a Catholic school in -- in my community,  
25 St. Mary's School and I happened to be the

1 elected Superintendent of Schools in that  
2 school district at that time, and when the  
3 storms came through, St. Mary's School, which  
4 lies near the water and lies low, had a lot of  
5 damage.

6 And their school books were damaged and  
7 their kitchen was damaged, and they were having  
8 a lot of trouble opening school even though we  
9 opened school in the public schools. They had  
10 trouble opening school.

11 And so I had a call that said, "we are  
12 having trouble getting the school open, do you  
13 know any place where we can buy books, buy  
14 desks and maybe someplace that would sell us  
15 food?"

16 I said we will provide it from the public  
17 schools for free starting today. And there was  
18 a pause and on the other end of the phones,  
19 aren't you worried about legal challenges,  
20 because you can expect to get some.

21 So I called a friend of mine who was a  
22 Judge, and I said I am going to do this anyway,  
23 but try to help me plate myself up here a  
24 little bit in case I get a challenge, because I  
25 am told I will.



1           And the Judge said take out your copy of  
2 the Constitution of the United States and see  
3 if you can find anywhere in there that says you  
4 can't provide food to kids, you can't provide  
5 school books to kids, not religious books, math  
6 books, science books, see if you can't, if  
7 there is anything in the Constitution that  
8 prevents you from -- from providing surplus  
9 desks to that school so they could open.

10           Because if they can't, they are going to  
11 show up at your doorstep, Don, and you are  
12 going to have to buy lunches, you are going to  
13 have to haul in desks, you are going to have to  
14 get books out of your warehouse and take care  
15 of them anyway.

16           I said, Judge, I think that is a good  
17 point. And fortunately Jeb Bush was Governor  
18 and I had the chance to ask him and he just --  
19 well, I won't tell you what he said, but I can  
20 tell you what we did. We did what was right,  
21 we did what was legal. The Blaine Amendment is  
22 a shameful relic of discrimination and  
23 political intimidation.

24           It is unconstitutional, it is violated  
25 every day of the week in almost every county in

1 the state, but we don't pay any attention to it  
2 except in education, and there is no legal or  
3 constitutional or moral or historical  
4 validation for that kind of discrimination, and  
5 that is why, Commissioner Martinez's proposal  
6 is timely, it is overdue, and we ought to put  
7 it on the ballot.

8 And the fact now that we have a Supreme  
9 Court decision that I believe validates the  
10 position that he has taken, gives us, I think,  
11 the extra incentive to ask the voters if they  
12 would consider changing our Florida  
13 Constitution to conform with the Constitution  
14 of the United States and with what all of them  
15 know in their own daily lives and their own  
16 communities is exactly the right thing to do.

17 CHAIRMAN KARLINSKY: In debate,  
18 Commissioner Grady, you are recognized.

19 COMMISSIONER GRADY: Thank you, Mr.  
20 Chairman, and as also I am captivated and  
21 enthralled by Commissioner Gaetz's oratory and  
22 oracy and yet I have to confess, Commissioner,  
23 that my eyes drifted towards the ceiling  
24 precisely when you were speaking about the  
25 effect of this on any support for any

1 faith-based institution and I read the four  
2 words in the Chamber where you have spent so  
3 much time and it says, "In God We Trust", I  
4 think this is such an institution.

5 Thank you, Mr. Chairman.

6 CHAIRMAN KARLINSKY: Thank you,  
7 Commissioner Grady.

8 Commissioner Stemberger, you are  
9 recognized.

10 COMMISSIONER STEMBERGER: It is hard to  
11 improve upon Commissioner Solari's and  
12 Commissioner Gaetz's matters on this, but in  
13 the spirit of civic literacy, and if your  
14 amendment passes, I would hope that the  
15 Legislature deals with this issue, because I  
16 don't think we had a person that opposed the No  
17 Aid Provision that didn't invoke this phrase,  
18 "separation of church and state", and you are  
19 right, it is not found in the Magna Charter.

20 It is not found in the Declaration; it is  
21 not in the Constitution; it is not in the Bill  
22 of Rights. The origin of the phrase is  
23 actually a letter that Thomas Jefferson wrote  
24 when he was not even in the country. He was  
25 writing the Danbury Baptist Association and he

1 was explaining the concept.

2 And at the time when the First Amendment  
3 was enacted, there were actually state  
4 churches, that is all they knew was state  
5 churches, established state churches.

6 I am not saying we should go there, I am  
7 just saying when it was established that was  
8 the environment in which it was established.  
9 The intention was to prohibit a national  
10 religion, they wanted a plurality of faiths.

11 They didn't want a national established  
12 faith. So you could, if you wanted to be a  
13 Methodist you go to this state, if you wanted  
14 to be Episcopal you would go to that state and  
15 that is what -- that is what it came out. So  
16 the First Amendment was intended to protect  
17 religion and religious people from governmental  
18 interference.

19 It wasn't intended to protect  
20 non-religious people from the presence of  
21 religion, and that is what it has been twisted  
22 to be. People act like religious is a virus,  
23 it is like a bacteria, we have to scrub society  
24 and make it sterile so it doesn't exist.

25 That is really not what our framers

1 intended, and I think a better model is  
2 accommodation, we want to accommodate all  
3 religions. We are going to put a fresh, we put  
4 a menorah, we celebrate faith, we allow faith  
5 to flourish in society. So I am concerned  
6 about this widespread public notion of  
7 separation of church and state and allow  
8 certain things. And you are exactly right,  
9 Commissioner, amazing work, human trafficking,  
10 soup kitchens, foster care, hospitals, disaster  
11 recovery, you could go on and on, the private  
12 public partnerships where non-sectarian  
13 services are being provided.

14 Even in the Bush administration he  
15 realized that why are we letting government  
16 provide these services. We have people in  
17 communities that know and love and physically  
18 care for people, let's let them provide the  
19 services. And there is obviously provisions  
20 where you can't force sectarian beliefs upon  
21 someone, but there is no reason for that, and  
22 while this has only been used in an educational  
23 sense in the courts, I think we are exactly  
24 right and I think that to rid the No Aid Clause  
25 would bring us a better society.

1 Thank you.

2 CHAIRMAN KARLINSKY: Thank you,  
3 Commissioner Stemberger. Further debate?  
4 Further debate?

5 Commissioner Joyner, you are recognized.

6 COMMISSIONER JOYNER: Thank you,  
7 Mr. Chair. In 2012 Florida voters rejected a  
8 Constitutional repeal of its Blaine Amendment  
9 prohibiting funding for religious schools. And  
10 Senator, Commissioner Gaetz was correct about  
11 religiously affiliated organizations providing  
12 social services. Because the Florida No Aid  
13 Provision does not prevent the State from  
14 contracting with such organizations as Catholic  
15 Charities, Lutheran Social Services and Jewish  
16 Federations.

17 They enter into a contract with the State  
18 of Florida to provide these services, and in  
19 *Bush V. Holmes* the Court noted that nothing in  
20 the No Aid Provision bars the State from aiding  
21 or funding not-for-profit  
22 religiously-affiliated organizations.

23 So if the rule, if it were stringently  
24 applied as Commissioner Gaetz stated, someone  
25 can challenge it if they so desired, but the

1 Court has already held that this is  
2 permissible, and Florida does do that and we do  
3 provide food and desks and others.

4 However, the reason why the Court in *Bush*  
5 *V. Holmes* ruled that it was unconstitutional  
6 because at the time it was at the hearing the  
7 Court found that schools operated by religious  
8 or church groups with an intent to teach to  
9 their attending students the religious and  
10 sectarian values of the group operating the  
11 school, thus the opinion that it was  
12 unconstitutional.

13 When the voters of Florida spun the  
14 measure, it was done in an effort to overcome  
15 the 2006 Florida Supreme Court decision,  
16 finding that the State Voucher Program which  
17 allowed parents to use state issued vouchers to  
18 pay private religious schools was  
19 unconstitutional as I previously stated, this  
20 proposal seeks to do an end run around that  
21 decision, notwithstanding the most recent  
22 decision of *Trinity*, which opinions vary as to  
23 the ruling and the interpretation of the  
24 ruling.

25 We all have freedom of religion and we

1 have the right to send our children to private  
2 schools of our choice, religious or otherwise,  
3 but should your freedom become my responsible,  
4 my financial responsibility? Should the  
5 taxpayers of Florida be forced to pay for your  
6 choice?

7           Should the taxpayers be required to send  
8 their money to a religious group they don't  
9 believe in, who's teachings they reject,  
10 because that is what this amendment would do.  
11 Equally and there is no accountability for how  
12 that money is spent, no strings attached to the  
13 money the public is forced to pay. No  
14 guarantees that the money will be used in a way  
15 the public would approve, nothing.

16           There is a reason separation of church and  
17 state has stood the test of time. Would the  
18 backers of this amendment be so enthusiastic  
19 about supporting religious schools if the  
20 majority of them were Muslims or Buddhists?

21           Will the same zeal to fund non Christian  
22 schools still remain? Since at least the 1800s  
23 the principle of separation of church and state  
24 has governed in this country and with good  
25 reason. Look no further than the wars



1 continuing to rage in the Middle East today to  
2 understand the devastation competing religions  
3 can yield.

4 Look no further than attack on black  
5 churches in North Florida and Synagogues in  
6 South Florida. One of this country's founding  
7 fathers, John Dickinson, wrote on the eve of  
8 the American Revolution, "While religion and  
9 government are kept distinct and apart, the  
10 peace and welfare of society is preserved and  
11 the ends of both are answered by mixing are  
12 answered. But by mixing them together, feuds,  
13 animosities and persecutions have been raised  
14 which have deluged the world in blood and  
15 disgraced human nature."

16 We would do well to remember these words  
17 of John Dickinson and reject this intrusive  
18 amendment.

19 CHAIRMAN KARLINSKY: Thank you,  
20 Commissioner Joyner. Further debate? Further  
21 debate.

22 Commissioner Solari, you are recognized.

23 COMMISSIONER SOLARI: Thank you very much,  
24 Mr. Chairman. I believe that most of what our  
25 esteemed colleague, Commissioner Joyner, says

1 are a package of red herrings. First, this  
2 proposal speaks nothing of granting any aid to  
3 any church for any purpose.

4 For me it is simply the removal of an anti  
5 discriminatory piece of the Florida  
6 Constitution, and I will read a couple of  
7 paragraphs from a June 27th, 2017, editorial  
8 that was in the Wall Street Journal.

9 That is a relic of the anti Catholic  
10 Blaine Amendment, amendments that swept the  
11 country in the late 1800s to deny funds to  
12 religious schools. Chief Justice John Roberts  
13 overruled the state noting that the church  
14 isn't seeking a subsidy, but only to  
15 participate in the public program without  
16 having to disavow its religious character.

17 Denying the participation for that reason  
18 violates the First Amendment's Free Exercise  
19 Clause. This is not about granting anybody any  
20 additional rights.

21 This is simply about giving one section of  
22 our country some of our fellow countrymen the  
23 same rights that we want and in wish to  
24 exercise every day.

25 Thank you.

1           CHAIRMAN KARLINSKY: Thank you,  
2 Commissioner Solari. Further debate?  
3 Commissioner Levesque, you are recognized.

4           COMMISSIONER LEVESQUE: Thank you,  
5 Mr. Chair. And I rise of course in support of  
6 this proposal, but I want to, I want to take  
7 the opportunity to thank Commissioner Gaetz for  
8 his just extremely eloquent articulation of the  
9 reasons why we should support this.

10           And I only correct him in one thing when  
11 he said that it seems like the only area that  
12 this is challenged in is in education, and  
13 actually it is more specific than that. It is  
14 only in K-12 education, because public funding  
15 from this Legislature it goes directly to pay  
16 for Bright Futures scholarships.

17           It goes direct thing to pay for  
18 scholarships at Christian and Catholic and  
19 faith-based colleges in the state. Pre-K money  
20 in this state, 400 and something million  
21 dollars goes to parents and parents can choose  
22 to send their child to faith-based preschool  
23 programs. It is only in the area of K-12 where  
24 this seems to have been applied.

25           The silver lining in all of this is, as

1 Commissioner Martinez said, is that the U.S.  
2 Supreme Court has started down a path of saying  
3 this is not right. They did it in the *Trinity*  
4 *Lutheran* case, and what Commissioner Martinez  
5 alluded to, Commissioner Joyner, is after they  
6 made that decision they vacated two other  
7 decisions from two other states.

8 The New Mexico decision related to sharing  
9 of textbooks with allowing faith-based schools  
10 to use textbooks that were publicly funded.  
11 And the other was a Colorado case where the  
12 U.S. Supreme Court said, we vacate this  
13 decision and we want you in a voucher case to  
14 go back, Colorado, and rethink, rethink your  
15 decision in light of our new decision.

16 I just want to thank Commissioner Martinez  
17 for bringing this proposal to us. It is a  
18 proposal that I carried to the Tax and Budget  
19 Reform Commission that -- that took a bunch of  
20 motions for reconsideration to finally get it  
21 passed by one vote. And then it wasn't  
22 eventually put on the ballot back then because  
23 of a challenge and a decision as that said it  
24 was just outside the scope of our work.

25 I know how important this proposal is to

1 Commissioner Martinez and he knows how  
2 important and close to my heart that it is, and  
3 I just want to thank him for being such a  
4 champion on this issue and carrying this  
5 proposal.

6 CHAIRMAN KARLINSKY: Thank you,  
7 Commissioner Levesque. Further debate?

8 Seeing none, Commissioner Martinez, you  
9 are recognized to close on Proposal 4.

10 COMMISSIONER MARTINEZ: Thank you, and I  
11 will be brief. I want to thank everybody who  
12 spoke on this, including Commissioner Joyner.  
13 I think you are a fantastic advocate for  
14 whatever cause you happen to be championing and  
15 I think no one can articulate your position  
16 better than you. So I thank you for that.

17 Let me -- let me just pose this question,  
18 it is kind of a rhetorical question. If the  
19 State of Florida or our local government were  
20 to have a program that provided money to  
21 private citizens for them to use at their  
22 discretion as to whether to use that money in  
23 scholarship and the school of their choice, and  
24 whether that school is public or private or  
25 religious, would that be constitutional under

1 the Establishment Clause of the United States?

2 The answer is yes. In 2002, the U.S.  
3 Supreme Court in the case of *Zelman versus*  
4 *Simmons-Harris* held that to be constitutional,  
5 not in violation of the Establishment Clause.  
6 In Florida that would also be constitutional  
7 under the Establishment Clause, but it would be  
8 unconstitutional under the No Aid Provision.  
9 Really that provision really has no place in  
10 our Constitution anymore. And I am going to  
11 ask at this point in time, what I am going to  
12 ask the Chair with the Chair's indulgence is  
13 for the opportunity to TP it for the time  
14 being.

15 CHAIRMAN KARLINSKY: Show Proposal 4 TP'd.  
16 Thank you, Commissioner Martinez.

17 Now, we are going to move to Proposal 54  
18 by Commissioner Kruppenbacher. Commissioner  
19 Kruppenbacher, you are recognized to explain  
20 Proposal 54.

21 COMMISSIONER KRUPPENBACHER: Thank you,  
22 Mr. Chairman. Commissioner Gaetz is looking at  
23 me. I remember the time I took my family on a  
24 trip to Montana and we were horseback riding  
25 and you had the look of the cowboys who looked

1 at me, because when they brought out the horses  
2 for my family and children I was the last one  
3 they brought out, a gigantic mule with ears  
4 that were this big and he is looking at me  
5 prior to my presentation with that same look.

6 This is a strike-all of the amendment on  
7 the Certificate of Needs, right. Under  
8 President Nixon's administration they came up  
9 with the idea of requesting every state to have  
10 a Certificate of Need program as a condition of  
11 Federal funding involving health care.

12 Before they ever deployed the program they  
13 turned around and asked the states to repeal  
14 the Certificates of Need, except industry  
15 learned what they had gotten and only so many  
16 states repealed. I think there is about  
17 20-some-odd states that currently repealed  
18 including Texas and Florida.

19 So I originally proposed a complete repeal  
20 of Certificates of Need. For example, in Tampa  
21 there is one hospice for Hillsborough County.  
22 I can regale you as I did at the committee,  
23 stories of hospitals using Certificates of Need  
24 to block competition and block it from  
25 charitable entities that are aren't going to

1 ask for it.

2 That said, the Legislature, I think the  
3 House, Commissioner Sprowls actually proposed  
4 repealing it did not get through the Senate.  
5 This issue is heavily contested by industry.  
6 It is not well understood by the public, right.

7 So in the interest of trying to basically  
8 look to obtain something in the Constitution  
9 that would begin to move the ball, there is a  
10 modified strike-all that would basically say  
11 that if any hospital in a county, in a county  
12 maintains an infection rate above the statewide  
13 average, then there could not be a defense of a  
14 Certificate of Need to another health care  
15 provider applying to open and provide quality  
16 healthcare, something I think the general  
17 public would very simply understand.

18 There is a standard for health care. Now,  
19 in Style and Drafting, as I spoke with  
20 President Gaetz about the language, it is not  
21 perfect, of using the infection rate. So we  
22 looked to try and figure out if we can get that  
23 better, but the goal here is to begin to move  
24 the needle because, one, I can tell you, and  
25 Mr. Newsome knows this.



1           The infection rates are actually pretty  
2 bad out there. Hospitals do not like to talk  
3 about them. They don't like to publish them,  
4 they don't like people to hear about it. I  
5 will tell you this story. My next door  
6 neighbor is the premier colon rectal surgeon,  
7 he had an accident in front of our house,  
8 almost died. They operated on him.

9           The next morning he called me and said,  
10 "Get me out of the hospital." I said what. He  
11 said this is the worse place to be. If you are  
12 not in intensive care, you are at risk. And I  
13 was stunned by that, but he said you do not  
14 understand something. I don't want an  
15 infection. Get me out of this place.

16           So this is an effort to move health care  
17 in the right direction and basically put some  
18 competition into it from the standpoint if you  
19 don't act at a high level for the benefit of  
20 the public that you are not going to be able to  
21 hide behind this Certificate of Need that  
22 currently exists. So with that I turn it over  
23 for any questions.

24           CHAIRMAN KARLINSKY: Thank you very much,  
25 Commissioner Kruppenbacher. Let me just make

1           sure we are in the proper posture here.  There  
2           is a strike-all amendment, 540794.

3                     Did you just explain your strike-all or  
4           were you explaining the base proposal?

5                     COMMISSIONER KRUPPENBACHER:  I explained  
6           the strike-all.

7                     CHAIRMAN KARLINSKY:  Okay.  All right.  So  
8           that is okay.  With that, are there any  
9           questions of Commissioner Kruppenbacher?  There  
10          are still four amendments to the strike-all  
11          that we will be taking up in a few minutes if  
12          they are not withdrawn.

13                    But are there any questions on  
14          Commissioner Kruppenbacher's strike-all 540794?  
15          Seeing no questions on 540794, please show  
16          951858 withdrawn, 795800 withdrawn, 926650  
17          withdrawn, and are we also withdrawing 283866  
18          by Plymale, Gaetz and Timmann?  Commissioner  
19          Gaetz?  Commissioner Plymale?

20                    Okay, show that withdrawn as well.  Is  
21          there -- are there any questions, are there  
22          questions?  Seeing none, is there debate on the  
23          proposal?  Debate, the question.

24                    Sorry, Commissioner Joyner, you are  
25          recognized.

1 COMMISSIONER JOYNER: I missed --

2 CHAIRMAN KARLINSKY: Before we do that, we  
3 are back on the amendment. Is there debate on  
4 the amendment? Bar code 540794?

5 COMMISSIONER JOYNER: The strike-all  
6 amendment?

7 CHAIRMAN KARLINSKY: Yes, ma'am.

8 COMMISSIONER JOYNER: Which, well, I can  
9 wait until we adopt it. I mean, I can ask now.

10 CHAIRMAN KARLINSKY: Yes.

11 COMMISSIONER JOYNER: I know, but you can  
12 also ask questions after an amendment.

13 CHAIRMAN KARLINSKY: We are in debate on  
14 the strike-all, 540794.

15 COMMISSIONER KRUPPENBACHER: Ask the  
16 question.

17 COMMISSIONER JOYNER: That is left to the  
18 discretion of the Chair.

19 CHAIRMAN KARLINSKY: Commissioner Joyner,  
20 you are recognized.

21 COMMISSIONER JOYNER: For a question.

22 CHAIRMAN KARLINSKY: The answer is yes.

23 COMMISSIONER JOYNER: Well, I just want to  
24 follow the rules. I missed the last statement  
25 that you made. I was away from the desk, and

1           you were talking about someone was in the  
2           hospital.

3           COMMISSIONER KRUPPENBACHER:  What this is,  
4           I was talking about a physician telling me the  
5           last place he wanted to be when he had a  
6           horrible accident was in the hospital because  
7           of the risk of infection.  And the goal of this  
8           is to basically, if a hospital does not  
9           maintain their infection rates below the state  
10          average, then they lose the benefit of being  
11          protected under the CONs and competition can  
12          come in and look to open another hospital.

13          So you got to maintain a Cracker Jack  
14          operation or you risk losing the protection of  
15          a CON.

16          CHAIRMAN KARLINSKY:  Commissioner Joyner.

17          COMMISSIONER JOYNER:  What is the  
18          infection rate that is in effect -- is there a  
19          general -- yes, what is the infection rate that  
20          would -- that a person, that a hospital would  
21          have to --

22          COMMISSIONER KRUPPENBACHER:  I had the  
23          AHCA head here earlier and I wish he was here.  
24          I can't answer that.  I know right now where  
25          this would operate based upon the national

1 average, but the Legislature and AHCA would  
2 deal with setting up what those rates are.

3 CHAIRMAN KARLINSKY: Commissioner Joyner.

4 COMMISSIONER JOYNER: Okay. I -- I should  
5 know this because I was on the health care for  
6 a few years. So you limited it to the  
7 infection rate as opposed to just doing away  
8 with CONS altogether, is that correct?

9 CHAIRMAN KARLINSKY: Commissioner  
10 Kruppenbacher.

11 COMMISSIONER KRUPPENBACHER: Yes, ma'am.

12 COMMISSIONER JOYNER: But --

13 CHAIRMAN KARLINSKY: Commissioner Joyner.

14 COMMISSIONER JOYNER: Can you give any  
15 other information about the infection rate? I  
16 understand --

17 COMMISSIONER KRUPPENBACHER: I can tell  
18 only tell you as a lawyer that as a General  
19 Counsel to the largest personal injury law  
20 firm, the infection rates are a lucrative sort  
21 of money for personal injury firms, because  
22 they are a major issue in hospitals in Florida.

23 And this is basically saying whatever that  
24 rate is, that national average and whatever the  
25 State of Florida comes up with as the standard,

1 if you don't maintain that level, you are not  
2 better than that, then you risk having  
3 competition come in that can open up and  
4 compete with you and you cannot use the  
5 Certificate of Need process to impair that  
6 competition's ability to open.

7 CHAIRMAN KARLINSKY: Commissioner Joyner.

8 COMMISSIONER JOYNER: So at this point we  
9 -- do we have any data about the various  
10 hospitals and their infection rates in the  
11 state of Florida?

12 COMMISSIONER KRUPPENBACHER: I said a few  
13 minutes ago the AHCA person was here --

14 COMMISSIONER JOYNER: No.

15 COMMISSIONER KRUPPENBACHER: -- I don't  
16 right now standing here.

17 COMMISSIONER JOYNER: All right, thank  
18 you.

19 CHAIRMAN KARLINSKY: Further debate?  
20 Commissioner Coxe.

21 COMMISSIONER COXE: Maybe, Commissioner  
22 Kruppenbacher, you can answer it.

23 COMMISSIONER KRUPPENBACHER: Sure.

24 COMMISSIONER COXE: Which is my interest  
25 in knowing how frequently the infection rates

1 are determined and if it is a matter of -- if a  
2 hospital wanting to come in can strike quickly  
3 and then the hospital whose infection rate went  
4 too low can jump, get right back up, is that it  
5 for the new hospital coming in?

6 CHAIRMAN KARLINSKY: Commissioner  
7 Kruppenbacher.

8 COMMISSIONER KRUPPENBACHER: Yes.

9 COMMISSIONER COXE: I asked a question, I  
10 apologize.

11 COMMISSIONER KRUPPENBACHER: The answer is  
12 you don't fall below this level, because the --  
13 the requirement to maintain the integrity of  
14 the health in the hospital is constant. You  
15 don't get a buy and go, well, the month of  
16 January you can be out of whack. You have to  
17 be above the average all along.

18 CHAIRMAN KARLINSKY: Commissioner Keiser,  
19 you are recognized in debate.

20 COMMISSIONER KEISER: Commissioner  
21 Kruppenbacher, perhaps you can address these  
22 more -- these questions in your close. Having  
23 served on a hospital board and knowing that  
24 they are a highly-regulated industry and there  
25 are many performance measures of any particular

1 hospital or hospital system, I do agree that  
2 the infection rate is a performance indicator  
3 -- indication of quality, or not the quality  
4 that you would like to see in the hospital.

5 I do think it is important, however, to  
6 look at this over a certain length of time.  
7 And my question would have to do with the other  
8 performance indicators that can be considered.  
9 Was there an interest in focusing on other  
10 performance indicators in addition to the  
11 infection rate, because they are highly  
12 regulated and there are many areas of several  
13 measures of performance as it relates to  
14 outcomes and quality systems?

15 CHAIRMAN KARLANSKY: Commissioner  
16 Kruppenbacher, you are recognized.

17 COMMISSIONER KRUPPENBACHER: Commissioner,  
18 no. It was to base it on infection rates which  
19 were deemed the indicators, the greatest risk  
20 factor to the public.

21 CHAIRMAN KARLINSKY: Anything further?  
22 Commissioner Grady, you are recognized.

23 COMMISSIONER GRADY: Thank you, Mr.  
24 Chairman. I also served on a hospital board  
25 and one of the first things I noticed when I



1 joined that board is that all of the members of  
2 the administration, all the doctors,  
3 physicians, nurses wore a badge, much like  
4 ours.

5 And it had a picture of someone washing  
6 their hands and I thought that was a little  
7 strange in a hospital. That one thing, the one  
8 thing, that they want to focus on more than  
9 anything else is washing their hands.

10 Why? Because in a hospital setting the  
11 most important thing is the risk of infection.  
12 If you are getting a surgical procedure there  
13 are two things that really matter.

14 One is, where you go, because the  
15 infection rate is really important. Two is the  
16 doctor as well as the facility, you want to  
17 know the frequency with which that doctor has  
18 performed that procedure, and you want to know  
19 how that facility handles the frequency of that  
20 doctor's visits to that facility.

21 So infection rate seems to me to be a  
22 brilliant place to land for this amendment  
23 because there is probably largely agreement on  
24 the subject of the importance of the infection  
25 rate in an institution.

1           And it seems to me this also gives people  
2           in counties where they have a below-average  
3           hospital the opportunity for choice. And we  
4           spoke earlier today about choice, students  
5           choice, lots of choices. Choice generally is  
6           good, consumer choice is generally good.

7           If you only have one place to go and it is  
8           lousy and your risk of infection is high, it  
9           seems to me reasonable that that is a good  
10          place to go in order to accomplish a better or  
11          achieve a better outcome for that patient in  
12          that county.

13          So I think the amendment is -- is terrific  
14          and I will speak further to the proposal as  
15          amended. I think optimistically that it will  
16          be. Thank you.

17          CHAIRMAN KARLINSKY: Thank you,  
18          Commissioner Grady. Commissioner Keiser, you  
19          are recognized.

20          COMMISSIONER KEISER: Thank you,  
21          Mr. Chair. Commissioner Kruppenbacher, the --  
22          I want to be clear that I recognize that the  
23          infection rate is critical in terms of  
24          determining quality.

25          My question really had to do with, and

1 again, if you wouldn't mind addressing it in  
2 your close, there are other issues that are  
3 evaluated over time in terms of staffing as it  
4 relates to quality, and other issues such as  
5 how long someone remains in the emergency room.

6 So there are many different measures as it  
7 relates to quality. And just a little bit of  
8 explanation, although I think Commissioner  
9 Grady did touch on that, but that was really my  
10 question in terms of, I do see value but I  
11 wondered were there any other performance  
12 criteria discussed as it relates to this  
13 particular proposal?

14 And again, I think your point to, you  
15 would not want to fall below this average. But  
16 if you could address the length of time because  
17 it might be intermittent and I don't think that  
18 that is necessarily acceptable, but what I  
19 wanted to know is the length of time it is  
20 measured, if you could speak to that in your  
21 close.

22 Thank you, sir.

23 CHAIRMAN KARLINSKY: Commissioner  
24 Kruppenbacher, you are either recognized or you  
25 can deal with that in close.

1           COMMISSIONER KRUPPENBACHER: I will deal  
2 with it in close.

3           CHAIRMAN KARLINSKY: Okay, any further  
4 questions/slash debate on this, on this  
5 amendment, 540794? Seeing none, all those in  
6 favor of the amendment say aye.

7           (Chorus of ayes.)

8           CHAIRMAN KARLINSKY: All opposed? The  
9 amendment passes. So are there any questions  
10 on the proposal as amended? Any questions on  
11 the proposal as amended?

12           Seeing none, is there debate? Is there  
13 debate?

14           Commissioner Gaetz, you are recognized in  
15 debate.

16           COMMISSIONER GAETZ: Thank you very much,  
17 Mr. Chairman. And Commissioner Kruppenbacher  
18 and I have had some occasion to chat about  
19 this, because I -- I believe that he is  
20 extraordinarily well-intentioned. Having had  
21 something to do with writing the hospice  
22 Certificate of Need and licensure laws in the  
23 state, I know why they were written, when they  
24 were written and that to a large extent, they  
25 have served their purpose.

1           And I have had occasion, as head of  
2 hospital systems and health care organizations  
3 to gain and lose and compete for Certificates  
4 of Need all over the country. And I have had,  
5 Mr. Chairman, one absolutely consistent view of  
6 Certificate of Need in the 30 years I have been  
7 in health care.

8           In those places where I have it, it is  
9 enlightened public policy. In those places  
10 where I don't, it is a communist plot to  
11 restrain trade. I have never deviated from  
12 that view.

13           But now the proposal that we have before  
14 us is unfortunately a proposal that I think is  
15 -- is not ready for the oven, and Commissioner  
16 Kruppenbacher and I have talked about that. We  
17 have in front of us a proposal which would  
18 eliminate CON for hospice, it would eliminate  
19 CON for nursing homes and eliminate CON for  
20 hospitals that have higher than an average  
21 infection rate.

22           I am not a clinician. I am married to  
23 one, and having been around hospitals and  
24 operating hospitals and health care  
25 organizations for a lot of years, I can tell

1           you that in general there are a lot of  
2           variables that go into an infection rate, a lot  
3           of variables.

4                     So what I am about to suggest to you is  
5           simply one variable, but it can be a count  
6           founding variable that could certainly affect  
7           the infection rate and then affect whether or  
8           not that hospital would be exempt from or not  
9           exempt from the Certificate of Need law.

10                    In general, hospitals what performed  
11           surgical, more surgical procedures, have higher  
12           infection rates. In general hospitals that are  
13           surgery hospitals that perform more orthopedic  
14           surgery tend to have higher infection rates  
15           because orthopedic surgery has higher infection  
16           rates.

17                    It is not a good thing, it is a bad thing,  
18           but it is -- it tends to be the case. And some  
19           infection rates, Mr. Chairman, are worse than  
20           others. You can have a hospital-acquired  
21           infection in a minor sort of fashion.

22                    You take antibiotics, you are in, you are  
23           out, it is too bad, but it happened. But you  
24           are part of the infection rate, or you can get  
25           a severe staph infection, leading to

1 rehospitalization or having to go back in to  
2 surgery or having an amputation or even leading  
3 to death.

4           And the problem is when we say in the  
5 Constitution infection rate we beg the  
6 question. There are some hospitals that might  
7 have a quote, unquote, "lower infection rate"  
8 but the kinds of infections they have, have far  
9 more serious consequences. In other hospitals  
10 that could conceivably have a higher infection  
11 rate, but the kinds of infections that their  
12 patients suffer, while regrettable, are not  
13 life threatening or taken back into the O.R.

14           And as, as Leader Joyner has indicated,  
15 and as Commissioner Keiser has suggested, there  
16 are other indices that we may want to look at,  
17 and whether or not this can be done in Style or  
18 Drafting, I don't know, but Commissioner  
19 Kruppenbacher and I have chatted about this and  
20 maybe this can be done, maybe it can't be.

21           But Chairman Beruff headed a commission  
22 for Governor Scott that dealt with the whole  
23 issue of cost. So if -- if we find it to be a  
24 bit puzzling to have to discern between  
25 hospitals and whether or not they ought to be

1 -- be subject to Certificate of Need or not  
2 based on their infection rate, I think by the  
3 way, if you have a high infection rate what you  
4 need is a strike force from Quality Assurance  
5 and the Agency for Health Care Administration  
6 to come in and shake the place up and fix it up  
7 and clean it up, if that is the problem, as  
8 opposed to giving them, applying an exemption  
9 or a non-exemption from the Certificate of Need  
10 law.

11 But there are other indices that you may  
12 want to consider using if you want to have an  
13 index for determining who is doing a good job  
14 and who ought to have -- who ought to have  
15 competition.

16 Higher comparable costs. Chair Beruff and  
17 his commission did an exhaustive study of like  
18 procedures in like hospitals and what kind of  
19 costs are incurred. Well, that is an index.  
20 Higher non-clinical administrative overhead,  
21 now, there is some hospitals that have a lot of  
22 layers, they got as many vice-presidents as  
23 they have nurses.

24 They just have high administrative  
25 overhead. Chair Beruff and his commission



1 looked at that. That certainly is an index in  
2 my -- in my world that we look at in evaluating  
3 healthcare organizations. And that is what  
4 percentage of their resources are they spending  
5 on patient care as opposed to spending it on  
6 country club memberships for the CEO.

7 And then there is another very significant  
8 index to performance that you may want to  
9 consider looking at, and I don't mean to go  
10 deep into the weeds, but it is called  
11 diagnostic relating groupings and outliers.

12 We don't have cost-based reimbursement  
13 anymore, we have diagnostic-related groupings  
14 where people come in a hospital, and based on  
15 their diagnosis coming to the hospital, you  
16 know, that becomes -- that becomes sort of the  
17 description of how much money the hospital is  
18 going to receive for the time that they spend  
19 in the hospital.

20 And if you stay an extra day, well, the  
21 hospital doesn't get paid more unless there is  
22 a new diagnosis. And so therefore there is a  
23 financial incentive to provide the care and not  
24 keep patients longer than they need to be kept.

25 So if you are looking at an index of

1 quality that relates back to the taxpayer and  
2 the patient and the community, you may want to  
3 look at diagnostic-related group outliers,  
4 because there is some hospitals that have great  
5 significant outliers. They go beyond the DRG  
6 groupings of Medicare and Medicaid and instead,  
7 they keep patients in hospitals a lot longer,  
8 and then they turn around to their local  
9 communities and say we need money to keep the  
10 doors open. But the reason they need more  
11 money or a reason they need more money is  
12 because they kept the patients in the hospital  
13 longer than they needed to be.

14 Or success rates, success rates based on  
15 the kinds of procedures that are performed,  
16 what the morality rates are, what the  
17 readmission rates are, what the rates are of  
18 rehabilitation, if it is a procedure or a  
19 treatment that requires rehabilitation.

20 My point is that Commissioner Keiser is  
21 absolutely right, and that is there are many  
22 ways to judge health care. That doesn't mean  
23 that we shouldn't judge health care, because it  
24 is hard to do it. It is like education,  
25 Commissioner Stewart, we have to look at

1 indices that really matter that relate to what  
2 we value, and I would simply suggest with all  
3 due respect as we say in the Senate when we are  
4 about to really attack someone, that -- that  
5 the amended proposal that is before us right  
6 now uses a flawed methodology, a methodology  
7 that just has too many confounding variables.

8 And that if we seek a method of  
9 determining who ought to be subject to CON and  
10 who not, and if we are persuaded that we ought  
11 to use metrics to performance instead of simply  
12 repealing CON or modifying CON by provider  
13 group, I think we have more work to do before  
14 we can vote for this.

15 So in its current form I have difficulties  
16 with the proposal, serious difficulties with  
17 the proposal before us, but I believe that the  
18 issue and the subject are one that the  
19 Legislature should certainly take up.

20 This as you can imagine is an industry  
21 food fight. CON is a nerdy kind of sub topic  
22 that the health care industry fights about  
23 every single year, and Commissioner Sprowls and  
24 I both have the Bill to repeal CON, just do a  
25 clean repeal. And you would have thought that,

1           you know, that we were hoisting the hammer and  
2           sickle over the Capitol.

3           We just got chewed up because it was an  
4           industry food fight, but if the House passed  
5           it, the Senate didn't. There have been times  
6           when the Senate has passed it and the House  
7           hasn't. But this industry food fight I don't  
8           think should be resolved this way in the  
9           Constitution of Florida.

10           CHAIRMAN KARLINSKY: Thank you,  
11           Commissioner Gaetz. Commissioner Beruff, you  
12           are recognized.

13           CHAIRMAN BERUFF: Thank you, Chair. As  
14           having, I think the Governor picks me to go on  
15           some of these things because I know nothing  
16           about them, and with that I go in with a clear  
17           mind and then try to figure it out and try to  
18           not drown.

19           So when he let me be the Chair of the  
20           Florida Health Care Commission, I had the  
21           pleasure of meeting some really interesting  
22           folks. And one was a gentleman named Dr.  
23           Martin Makary who wrote a very good book, if  
24           you want to read a great book on health care  
25           called "Unaccountable." Dr. Martin Makary is

1 Chief of Surgery for pancreatic, pancreatic  
2 surgery at Johns Hopkins.

3 I read the book, I called him up, had him  
4 come down and talk to us. If you read the book  
5 there is two things that you need to do to  
6 really transform health care in this country:  
7 Transparency and pricing and competition.

8 To that end, the Certificate of Need is  
9 one of the things that reduces competition in  
10 the state of Florida. Those of you that know  
11 the system, Commissioner Gaetz knows it pretty  
12 well, they -- when you go to open up a hospital  
13 somewhere, who do you think fights that  
14 Certificate of Need application more than  
15 anybody else? The other hospital in the  
16 region.

17 They pick it a part, they pick up, they  
18 challenge the application and that -- because  
19 they have sort of a protected status. But  
20 then, again I could bore you for hours on  
21 things that I learned that some are important,  
22 some not so much. But another thing that I  
23 found interesting, politically I would say that  
24 the two most diametrically opposed states in  
25 this country are Texas and California.

1           Neither one of those states have  
2 Certificate of Need. We are the third largest  
3 state right after those two. Why should we?  
4 So I would like, I am going to support this  
5 because at the end of the day, guys much  
6 smarter than me convinced me through ten months  
7 of hearings from across the country that we  
8 interviewed, that the solution to reducing the  
9 costs to our citizens to health care is  
10 transparency and competition.

11           Thank you very much.

12           CHAIRMAN KARLINSKY: Thank you,  
13 Commissioner Beruff. Commissioner Lee, you are  
14 recognized.

15           COMMISSIONER LEE: Well, thank you,  
16 Mr. Chair, and I don't have the depth of  
17 experience that apparently Commissioner Beruff  
18 has, and I certainly don't have the depth of  
19 experience that President Gaetz has.

20           I was -- I did get heavily involved in  
21 health care a few years ago as the  
22 Appropriations Chair, and Chairman Beruff and  
23 his comments are consistent with some of the  
24 conversations I have had with the Speaker about  
25 competition and transparency as being potential

1 game changers, certainly long term in the  
2 health care industry.

3 And I just -- this is one of those  
4 arguments that I have heard on the floor in the  
5 last couple of days where I feel like everyone  
6 is right. The question is, you know, how do we  
7 deal with this in the Constitution, and is this  
8 too prescriptive, are the metrics associated  
9 with this proposal actually going to be the  
10 metrics you are going to want to use 20 years  
11 or 10 years from now, and do we really  
12 understand what happens in some of these states  
13 that have CON.

14 Because what I learned over the -- that  
15 don't have CON, because what I have learned  
16 over the years, the last few years is that some  
17 of these states that don't have CON actually  
18 end up spending more money on health care and  
19 here is why.

20 Because the hospitals that want to start  
21 up in the suburbs as they develop with the new  
22 populations and they want to cherry pick the  
23 high profit cases are allowed to open up a  
24 hospital absent a CON process, but the  
25 incumbent hospitals, some of which are safety

1 net hospitals and non-profit hospitals that are  
2 located in the more traditional and aging urban  
3 areas, remain critical elements of the health  
4 care safety net.

5 They do many, many, many lost leader  
6 services that these for-profit institutions  
7 will not do. I have sat on the board of a  
8 public hospital, of a for-profit hospital. I  
9 have seen how they allocate capital and they  
10 allocate it based upon the projected return of  
11 investment that a particular new service is  
12 going to provide for the institution, not as --  
13 as it is measured in terms of what that  
14 hospital is currently achieving, but as is  
15 compared to all of the other capital projects  
16 that are being asked for throughout the country  
17 by that hospital group.

18 And only the hospitals that can prove that  
19 they will create the highest return on capital  
20 get the capital for the expansion. So they are  
21 looking at what services are profitable, not  
22 necessarily what services are needed, and the  
23 niche services that are needed in the  
24 community.

25 The less profitable services end up at



1 your safety net hospitals, the Shands, the  
2 Jackson Memorials, the Tampa Generals and  
3 others around the state. The for-profit  
4 hospitals which provide a great service to our  
5 state, want those not-for-profit hospitals to  
6 remain, and the reason is they don't want to  
7 have to pick up those unprofitable services.

8 They lose money on them. They don't go to  
9 the bottom line. So when the Legislature  
10 convenes in some of these other states the  
11 for-profit hospitals join with the  
12 not-for-profit hospitals.

13 And much like we described earlier when we  
14 talked about higher education and the  
15 backfilling that goes on under our correct  
16 budgets while we keep tuition artificially low,  
17 the for-profits and the not-for-profits come to  
18 the Legislature and they ask for very large  
19 sums of money to backfill the operating losses  
20 to those safety net hospitals in those states.

21 And the Legislature typically does it  
22 because it, A, is often critical to the health  
23 care fiber in the fabric in the community.  
24 They want to preserve these hospitals. And as  
25 I said, the for-profit hospitals want to see

1 these not-for-profit hospitals that are  
2 providing the dialysis and the transplant units  
3 and all of the things that the for-profit  
4 hospitals aren't going to touch. Those  
5 services will not exist in this state, because  
6 they don't make money.

7         So I understand that we need competition  
8 and I understand we need price transparency,  
9 but one of the hardest things this Commission,  
10 anyone that has ever sat in these chairs or in  
11 the House Chamber has ever had to do, I have  
12 seen it 100 times, is try to retrofit a new  
13 business model and overlay that over the top of  
14 an existing industry where billions has already  
15 been invested in reliance upon the laws of our  
16 state or our country.

17         It is always difficult, it is a very  
18 difficult needle to thread. The beauty of our  
19 democracy is that it lines up so well with  
20 capitalism because people will not invest and  
21 expose their money to risks unless there is  
22 stability in our government and predictability  
23 and reliability of our statutes.

24         Now that is not to say what we are trying  
25 to do here is inappropriate, but I personally

1 believe that it is too much, too quick, and it  
2 is something that doesn't really have enough --  
3 will not stand, that I don't predict will stand  
4 the test of time in terms of a public policy  
5 that you want to embed in your Constitution.

6 And I would just encourage you for so many  
7 reasons that have been said here over the last  
8 three days, to not put this in our  
9 Constitution.

10 I fear that we will live to regret it. As  
11 much as I support the spirit of with what is  
12 trying to be done here, and I am hopeful that  
13 over time our Legislature, working with the  
14 Executive Branch, will continue to be  
15 innovative and try to come up with new ways,  
16 med-surge centers, all of these things that are  
17 along the lines of what Chairman Beruff has  
18 suggested, continue to let them grow so that we  
19 can have that kind of competition in our state;  
20 and I thank you for the opportunity.

21 CHAIRMAN KARLINSKY: Thank you,  
22 Commissioner Lee. Commissioner Grady, you are  
23 recognized.

24 COMMISSIONER GRADY: Thank you, Mr.  
25 Chairman. I think we have just heard some good

1 arguments for and against the original  
2 proposal, the original Proposal 54. By the  
3 way, I think Commissioner Gaetz, if I heard you  
4 correctly, you said that the amendment applies  
5 to nursing homes and other facilities. And I  
6 understand the amendment does not, the  
7 amendment applies purely to hospitals.

8 So I think I would like to make that point  
9 and be clear. But the original proposal to  
10 change dramatically the Certificate of Need  
11 process is one that as Commissioner Gaetz  
12 pointed out, has been addressed by the  
13 Legislature in the past, and we have heard this  
14 before in connection with several proposals.

15 It doesn't necessarily independently  
16 justify our doing anything, but it has not been  
17 successful. Not only has it not been  
18 successful, but it resulted in an industry food  
19 fight where the Legislature was chewed up in  
20 connection with the potential for repealing.  
21 And I think this is the kind of classic example  
22 where you have the people, who are unprotected  
23 or not connected against those who are  
24 protected and are connected, and this is a good  
25 opportunity for a Commission such as ours to

1 take advantage of that and represent the people  
2 who don't have those voices, who don't hire the  
3 best lobbyists, who can't afford and don't even  
4 know who the best lobbyists are in order to  
5 bring about a result that we all may think is  
6 good.

7 I think the proposal that we have on the  
8 table is -- actually, before I do that,  
9 Commissioner Lee, it slipped my mind. You made  
10 some very good comments and you are more  
11 knowledgeable than I, about the economics of  
12 health care and it is complicated. I am not as  
13 knowledgeable as you or the other speakers on  
14 the subject of health care, but even in a term  
15 in the State House I learned that 25 percent of  
16 our general revenue budget then, I don't know  
17 what it is now, was dealt -- was dedicated to  
18 Medicaid.

19 That is a lot of money for Medicaid, and  
20 that is just a piece of health care. So the  
21 economics are daunting and they are complicated  
22 and they are difficult and that might give one  
23 pause to support what would otherwise be a very  
24 good thing in my view to repeal Certificates of  
25 Need.

1           If you are, in fact, a proponent of free  
2 markets and free people and choice, you should  
3 make those things easier, but you give pause to  
4 that based on the economics.

5           This amended proposal doesn't have the  
6 challenges that the original proposal had. It  
7 is not without challenge. Everything is in the  
8 details, the devil is in the details in  
9 defining what infection rates mean and how that  
10 is going to be applied is obviously something  
11 that is going to be very difficult. And  
12 Commissioner Gaetz, you had said that maybe  
13 that can be done in Style and Drafting and  
14 maybe it can't, you are not sure.

15           And I would suggest that we give that a  
16 shot and that we take this to Style and  
17 Drafting. It doesn't become at that point a  
18 proposal, it just means it comes back to you  
19 with a higher burden for passage.

20           And if we succeed in Style and Drafting,  
21 terrific; and if we don't, then we don't. But  
22 I think this is a wonderful way to move the  
23 ball further towards patient choice.

24           You don't have a choice if you only have  
25 one facility in your region. I suspect that if

1 this did pass that the additional hospitals  
2 that might be feared would be fairly small in  
3 number, because hospitals will improve on the  
4 metric, the metric that is provided as the  
5 basis for allowing additional competition if  
6 they don't improve. And I think that would be  
7 a good thing. So I do support the proposal as  
8 amended.

9 CHAIRMAN KARLINSKY: Thank you,  
10 Commissioner Grady. Further -- Commissioner  
11 Stemberger, you are recognized.

12 COMMISSIONER STEMBERGER: Thank you, Mr.  
13 Chairman. I love to debate public policy. I  
14 love to learn public policy, but I just want to  
15 remind everyone that we are not a mini  
16 Legislature.

17 We are a Constitution Revision Commission,  
18 and there are a small handful of us in this  
19 Chamber that are asking the question, is this a  
20 fundamental right, does this deal with the  
21 structure of government, does this deal with  
22 limiting the powers of government, or are we  
23 amending something in the State Charter that  
24 can't be amended any other way because it is in  
25 there and you have to change it through the

1 Constitution.

2 If there is not -- we were initially  
3 making arguments for that even they are weak,  
4 now we are just going to the policy issue. So  
5 I would still like to hear anyone who favors  
6 this with their best argument as to why this  
7 should be in the State Constitution.

8 CHAIRMAN KARLINSKY: Further debate,  
9 Commissioner Newsome, you are recognized.

10 COMMISSIONER NEWSOME: I will keep this  
11 brief, but again I would respectfully disagree  
12 with Brother Stemberger on this. That is not  
13 the standard; it is just not. That may be the  
14 standard for the United States Constitution,  
15 but this state, this Constitution, is a very,  
16 very different standard.

17 I am not going to go into all my reasons  
18 again, but I respectfully disagree. I think  
19 this is entirely appropriate for this body.  
20 And to the extent that some others have made  
21 some comments about why it is necessary and  
22 needed, I -- I find myself in favor of this  
23 amendment.

24 CHAIRMAN KARLINSKY: Further debate?  
25 Commissioner Plymale, you are recognized.



1 COMMISSIONER PLYMALE: Thank you.

2 CHAIRMAN KARLINSKY: In debate.

3 COMMISSIONER PLYMALE: Chairman Karlinsky.  
4 I am no expert on health care. I am a citizen  
5 who does read the paper and reads other things,  
6 and I think we are delving into a regulated  
7 industry. I mean, every part of medicine and  
8 hospitals are regulated and we want to fix one  
9 little part. And I just don't think that is  
10 very wise.

11 I think it takes -- it should be, it  
12 should be addressed in a very comprehensive  
13 manner, not just fix one little part of it.  
14 The big part though might be, it is -- there is  
15 regulations everywhere. I don't think this is  
16 appropriate for us.

17 CHAIRMAN KARLINSKY: Further debate?  
18 Seeing none, Commissioner Kruppenbacher, you  
19 are recognized to close your proposal as  
20 amended.

21 COMMISSIONER KRUPPENBACHER: Thank you,  
22 Mr. Chair, and members of the Commission. I  
23 would like the opportunity to take this to  
24 Style and Drafting. I think this is one of the  
25 most important rights and that is the health of

1 the members of the public.

2 I started with an amendment to wipe out  
3 Certificates of Need. The United States  
4 Department of Justice, United States Trade  
5 Commission, have published repeated papers on  
6 this, calling for the repeal of all  
7 Certificates of Need. As one, the effect would  
8 be the reduction of cost, and surprisingly, an  
9 improvement in the quality of medicine and  
10 health care, right.

11 Now, I recognize the almost insurmountable  
12 mountain to talk about and put on there a topic  
13 about repealing them totally. So I move to how  
14 do we improve health care and came up with this  
15 one. So what I would like is the opportunity  
16 to go to Style and Drafting and work with  
17 Commissioner Gaetz and Commissioner Keiser and  
18 see if we can't come up with a metric that  
19 stands the test of time, and basically improves  
20 health care and does with all due respect,  
21 President Gaetz, you know because you were  
22 there for eight years, it is not going to get  
23 fixed in this building.

24 It is just not. The history in the record  
25 of the lobbying and the hold on the Legislature

1 that health care has is going to prevent it,  
2 and it is health care and nursing homes and  
3 hospice, alright. So here we have a chance to  
4 raise the quality of health care and I have  
5 redirected it that way.

6 It is not perfect. I am here to tell you  
7 right now, I do not profess to be an expert on  
8 this, but I profess that I am good at listening  
9 and saying, okay, how do we make something  
10 better for everybody so we could have a  
11 win/win.

12 And I would like to have the opportunity  
13 to do that with Style and Drafting and if we  
14 can't get there in that group, then we  
15 shouldn't be coming back to you with this  
16 proposal. But I would like that opportunity,  
17 and thank you for listening to me.

18 CHAIRMAN KARLINSKY: Commissioner  
19 Kruppenbacher, having closed on Proposal 54 as  
20 amended, the Secretary will unlock the board  
21 and the Commissioners will prepare to vote.  
22 Have all Commissioners voted? Have all  
23 Commissioners voted?

24 Please lock the board and announce the  
25 vote.

1           THE SECRETARY: Nineteen yea's, 14 nay's,  
2 Mr. Chairman.

3           CHAIRMAN KARLINSKY: So the motion is  
4 adopted and the proposal is committed to the  
5 Style and Drafting Committee. A quick  
6 recognition of Commissioner Stemberger for a  
7 very quick announcement of some guests in the  
8 gallery.

9           COMMISSIONER STEMBERGER: Yes, one of I  
10 think our collective regrets, we have had a  
11 number of students visit us, and we have not  
12 had a chance to recognize them.

13          CHAIRMAN KARLINSKY: Okay.

14          COMMISSIONER STEMBERGER: And we do have a  
15 group of law students who are studying  
16 constitutional law from Florida State  
17 University, and I just wanted to thank them for  
18 coming and observing.

19           Who knows, in 20 years from now they may  
20 be sitting in this room in this capacity. So  
21 welcome.

22           (Applause)

23          CHAIRMAN KARLINSKY: Thank you,  
24 Commissioner Stemberger and welcome to the  
25 Constitution Revision Commission.

1           And now, Commissioner Heuchan, you are  
2 recognized for a motion, I believe.

3           COMMISSIONER HEUCHAN: Thank you, Mr.  
4 Chairman, and this motion comes at a particular  
5 time, before you hand the gavel over to Senator  
6 Smith.

7           My motion is that I move that the notice  
8 rules be waived and that Style and Drafting  
9 Committee be authorized to meet tomorrow,  
10 Thursday, March 22nd; and if necessary, Friday,  
11 March 23rd, from 9:00 to 5:00 both days.

12           I have met with and talked with everybody  
13 on the Style and Drafting Committee. Most  
14 people, because we got finished -- listen, you,  
15 you weren't here.

16           CHAIRMAN KARLINSKY: Commissioner  
17 Kruppenbacher, you are out of order.

18           COMMISSIONER HEUCHAN: Exactly. So, no,  
19 in all seriousness, because it appears as  
20 though we are going to get done much, much  
21 sooner than we had imagined.

22           The Style and Drafting Committee would  
23 like the opportunity to meet tomorrow and  
24 Friday so that we can get going, and in  
25 exchange for that, we would not be meeting --

1 and I will outline a lot of this later, but we  
2 would not be meeting the week after. So I  
3 would appreciate that if you could help me do  
4 that.

5 CHAIRMAN KARLINSKY: So upon Commissioner  
6 Heuchan's motion, all in favor say aye.

7 (Chorus of ayes.)

8 CHAIRMAN KARLINSKY: All those in favor  
9 say aye.

10 (Chorus of ayes.)

11 CHAIRMAN KARLINSKY: Opposed?

12 (Chorus of nay.)

13 CHAIRMAN KARLINSKY: Show it adopted. And  
14 now as scary as it may seem to some, I am going  
15 to turn the podium over to Senator Smith. You  
16 are recognized.

17 CHAIRMAN SMITH: The first order of  
18 business is to rescind all of the unfair  
19 rulings of the Chair against Commissioner  
20 Smith.

21 (Spontaneous laughter.)

22 A VOICE: That is hilarious.

23 CHAIRMAN SMITH: I have got some things I  
24 want to bring up. We have three more proposals  
25 to go to bring this thing in for a landing. We

1 are going to start with Commissioner Timmann  
2 with Proposal 12.

3 Commissioner Timmann, you are recognized  
4 to explain your Proposal.

5 COMMISSIONER TIMMANN: Thank you,  
6 Mr. Chairman. So this is a little bit of good  
7 news here. I actually want to remove something  
8 from the Constitution. So it is not -- there  
9 you go.

10 My proposal is to delete actually a  
11 repealed provision, Article X Section 19, High  
12 Speed Ground Transportation. And I sponsored  
13 this actually from a member of the public. So  
14 this was a public proposal, number 700202, to  
15 remove language that was subsequently repealed.  
16 So this proposal is really just following  
17 through with clear voter intent.

18 It is not about the merits of the issue.  
19 The voters clearly already decided on the  
20 merits of the issue and asked us to remove that  
21 language from the Constitution. So this is  
22 really just a clean-up amendment.

23 The text again is Article X, Section 19,  
24 and in November of 2000, Florida voters  
25 approved an amendment to Florida's Constitution

1 mandating that the State establish a system of  
2 high speed trains.

3 This became Article X, Section 19, but it  
4 only passed by 53 percent. As you know, that  
5 is not the threshold now.

6 However, shortly thereafter in November of  
7 2004, the voters overwhelmingly voted to repeal  
8 that same provision, and that vote passed by  
9 64 percent.

10 So, Mr. Chairman, that is the summary of  
11 my proposal.

12 CHAIRMAN SMITH: Having explained her  
13 proposal, are there any questions of  
14 Commissioner Timmann of her proposal? Any  
15 questions? Being that there are no amendments,  
16 we will go into debate. Is there any debate on  
17 Proposal 12?

18 Commissioner Solari.

19 COMMISSIONER SOLARI: After just  
20 discussing health care I want to warn  
21 Commissioner Timmann in advance that I may  
22 actually support this. So don't be shocked.

23 CHAIRMAN SMITH: Is there anymore debate  
24 on Proposal 12? Any more debate?

25 Commissioner Timmann, you are recognized



1 to close on your proposal.

2 COMMISSIONER TIMMANN: I simply ask for  
3 your support to remove this repeal provision.

4 Thank you.

5 CHAIRMAN SMITH: Having closed on the  
6 proposal, we can open the board up for a vote  
7 on Proposal 12.

8 All members have voted, close the board.

9 THE SECRETARY: Thirty yea's, zero nay's,  
10 Mr. Chair.

11 CHAIRMAN SMITH: Proposal 12 will be  
12 committed to Style and Drafting.

13 We are on to Proposal 83. Commissioner  
14 Washington, you are recognized to explain  
15 Proposal 83.

16 COMMISSIONER WASHINGTON: Good afternoon,  
17 and it is awesome that I get to go right after  
18 that one. Maybe mine will be as quick and  
19 uncontroversial. So Commissioners, this  
20 Proposal, Proposal 83 is sponsored by  
21 Commissioners Plymale, Martinez and myself.

22 It recognizes the Florida Constitution --  
23 the Florida College System, not the  
24 Constitution, and its mission in the  
25 Constitution.

1           The Education Article, Article IX of the  
2           Constitution currently provides for the  
3           framework and governance structures of our  
4           public K-12 education system and our public  
5           universities, but leaves out one critically  
6           important system, that is the Florida college  
7           system.

8           The Florida college system is comprised  
9           for those of you who don't live in my world, of  
10          the 28 state and community colleges across the  
11          state from Florida Keys Community College in  
12          the south up to north Florida or the Florida  
13          State College at Jacksonville and then all the  
14          way across to Pensacola and Pensacola State  
15          College.

16          They were established starting in the  
17          1930s to serve as a primary access point to  
18          higher education, to ensure that all Floridians  
19          would have access to higher education within a  
20          relatively short drive.

21          The ability to access higher education is  
22          important because as we know, more than  
23          60 percent of today's jobs require education  
24          and training beyond high school. Currently  
25          less than half of our working population has

1 those -- have those degrees or certificates.

2 The Florida College System provides both  
3 degrees and certificates. Over time we have  
4 seen the Florida College System grow and expand  
5 and evolve and continue to meet the needs of  
6 their community, the local workforce needs.

7 The Florida College System now serves more  
8 than 60 percent of high school graduates who  
9 pursue higher education. That is 800,000  
10 students across the state, and produces more  
11 than 100,000 degrees and certificates annually  
12 so that those graduates can go back into  
13 Florida's workforce.

14 Ninety percent of Florida College System  
15 graduates remain and work in the state of  
16 Florida.

17 Colleges also provide access to a diverse  
18 population of students. These are part time,  
19 these are working age, these are low income  
20 students who really just want to make a better  
21 life for themselves by having access to an  
22 affordable higher education.

23 So what the proposal does, it places the  
24 Florida College System and its mission in  
25 current governance structure into the

1 Constitution.

2 Its mission is to provide access to  
3 undergraduate education, to originate pathways  
4 to a Bachelor's degree, and to respond quickly  
5 to the workforce needs and demands of their  
6 community.

7 The proposal constitutes and preserves the  
8 integrity of the local District Board of  
9 Trustees to govern these institutions. These  
10 trustees are appointed, community and business  
11 leaders that create partnerships that ensure  
12 that the institution continue to meet local  
13 regional needs.

14 That is the mechanics of the proposal.  
15 But on a broader note, this proposal, what it  
16 does, it validates those 800,000 students that  
17 choose the Florida College System as their path  
18 to the American dream.

19 It validates the role that the Florida  
20 College System plays in access, higher  
21 education and economic development in the  
22 state.

23 It validates the role of the local Boards  
24 of Trustees who serve as volunteers, but they  
25 are the liaisons between the community, the

1 business world and higher education in their  
2 community.

3 This proposal is another value proposal.  
4 It talks about what we value as a state. But  
5 it does more than that, it is also an  
6 inconsistency, because we currently do have --  
7 and for those of us who have argued about more  
8 things or less things in the Constitution, I  
9 agree with you.

10 Actually, in education we had a  
11 conversation with Commissioner Levesque about,  
12 you know, I don't think any of these should be  
13 in there. But currently they are, and two of  
14 them are in there and one of them is not.

15 So I would like to thank Commissioner  
16 Plymale for all of our work together for  
17 partnering with me on this effort. The  
18 amendment that -- or the proposal that you have  
19 in front of you, is actually a joint effort  
20 between the two of us.

21 I would like to thank Commissioner  
22 Martinez for co-sponsoring. I would also like  
23 to thank the students, presidents and trustees  
24 who spoke in favor of this proposal during our  
25 public hearings.

1           We heard from mothers, we heard from  
2 international students, first generation  
3 students, who highlighted why the Florida  
4 College System has transformed their lives by  
5 providing them better opportunities.

6           I would also like to thank the Florida  
7 College System President, the Chancellor and  
8 the Department of Education, many of whom have  
9 sent letters to all of us supporting this  
10 proposal and telling us how valuable the  
11 college system is.

12           So this proposal is about the people in  
13 our state recognizing the value of one of our  
14 key economic drivers, who helps the State train  
15 the educated workforce we need for the jobs of  
16 today and tomorrow.

17           It recognizes all that makes their college  
18 system great, the students, faculty, boards,  
19 presidents, community members.

20           Our college system is number one in the  
21 country. It might be number two, but there is  
22 a small state that is number one, so it doesn't  
23 count.

24           (Spontaneous laughter.)

25           COMMISSIONER WASHINGTON: That is true.

1 It is true, it is like South Dakota. So that  
2 is why it is important this proposal, and I  
3 encourage your favorable support as well.

4 CHAIRMAN SMITH: Commissioner Washington  
5 having explained Proposal 83, are there any  
6 questions on the proposal? Commissioner Lee.

7 COMMISSIONER LEE: Thank you, Mr. Chair.  
8 Commissioner Washington, this has been a topic  
9 that has been heavily discussed in the  
10 Legislature, particularly in the Senate over  
11 the last couple of years. And so I wanted to  
12 ask a couple of questions, if I could.

13 If I am reading this correctly, are you  
14 not embedding current statute into the  
15 Constitution, the current governing structure?

16 CHAIRMAN SMITH: Commissioner Washington.

17 COMMISSIONER WASHINGTON: Yes, I am,  
18 actually. In maintaining the current  
19 governance structure in statute I heard from a  
20 number of presidents and other stakeholders, we  
21 are number one in the country. So the  
22 governance structure I am led to believe is  
23 currently working. So that is the reason why I  
24 just maintained that structure in the  
25 Constitution.

1           CHAIRMAN SMITH:  Commissioner --  
2           Commissioner Lee, you can engage in a --

3           COMMISSIONER LEE:  Thank you, thank you.  
4           Do you also not believe that the governance  
5           structure for the State University System is  
6           working?

7           COMMISSIONER WASHINGTON:  I do not  
8           disagree that that system is working.

9           COMMISSIONER LEE:  One of the proposals  
10          that was before the Legislature, and I was  
11          vehemently opposed by the way, to Senate Bill  
12          374.  I thought it was just poor public policy  
13          for the most part.

14          But the one part of it I thought had merit  
15          was the governance structure that was in that  
16          proposal that would have done just the opposite  
17          of what we are doing here.  And I know that the  
18          university -- I know the Community College  
19          System did not support that, but I thought they  
20          were -- they were wrong about that.

21          What was being proposed, as you may know,  
22          was that there -- that we create basically a  
23          Board of Governors for the Community College  
24          System and retain all of the local boards as  
25          well, and that they work through the Board of



1           Governors, much like the State University  
2           System does, to take the parochialism out of  
3           the appropriations process.

4           Did you think about that possible idea and  
5           discard it for any particular reason?

6           COMMISSIONER WASHINGTON: Thank you for  
7           that question. So the universities are  
8           governed by a Board of Governors. We have a  
9           couple of members here actually in this -- in  
10          this body. The universities have a very  
11          different mission and structure as to how they  
12          are governed.

13          The universities are State public  
14          institutions. They pull from across the state.  
15          They are -- their students, their mission is  
16          very different. The community, the state and  
17          community colleges that make up the Florida  
18          College System are local institutions that are  
19          meant to serve the local workforce needs.

20          And so in speaking with various board  
21          members and presidents, we felt that it was  
22          important to maintain that ability and that  
23          nimbleness at the local level, and to maintain  
24          again the coordination with the State Board,  
25          which is another critical part of this because

1 the coordination -- I mean, at one point we had  
2 a K-20 system, right, where all of them were  
3 under one body.

4 And why we chose to do that was to  
5 maximize coordination and cooperation between  
6 the systems. So what we have now between K-12  
7 and the college system, we have dual enrollment  
8 programs. We have collegiate academies. We  
9 have a number of things that actually fit in  
10 between them, that if you brought them out, it  
11 might create some -- I wouldn't say  
12 disincentives, but I think it messes up what  
13 some of the good things that we really have  
14 going on.

15 COMMISSIONER LEE: Do you have any  
16 evidence of that?

17 COMMISSIONER WASHINGTON: Evidence of the  
18 good things that are --

19 COMMISSIONER LEE: The bad things that are  
20 going to happen if you were to go to another  
21 system? We are embedding this in the  
22 Constitution. The premise is we are embedding  
23 this in the Constitution. It is already in  
24 statute. You are making it impossible  
25 virtually, for us to change this going forward.

1           The governance structure that exist today  
2           may or may not be good, five, 10, 15, 20 years  
3           from now. It is debatable whether it is good  
4           today. There are many people in the Florida  
5           Legislature that would disagree. They don't  
6           believe there would be any harm done by going  
7           to a State Board that governed the State  
8           College System, and allow those local boards to  
9           continue.

10           And we are embedding it in the college.  
11           So I think it is incumbent upon you, in your  
12           effort to embed this in the Constitution, to  
13           explain to us why you would like to take the  
14           Legislature's flexibility away, to do something  
15           that has been a high topic of conversation,  
16           that is go to a slightly different governance  
17           structure.

18           COMMISSIONER WASHINGTON: So, through the  
19           Chair. I disagree with the -- the lack of  
20           flexibility. The current governance structure  
21           was imposed in 2003, after a Constitutional  
22           Amendment. That actually created the State  
23           Board of Education.

24           So the one thing I will say that people in  
25           this state care about is education. So I do

1 not think it is 100 percent inflexible.

2 Also, if you look at constitutional  
3 authority and authorities in other -- in other  
4 states, there -- this does not preclude the  
5 Legislature from creating, coordinating boards  
6 or advisory boards as long as it is consistent  
7 with the structure of the Board of Education --  
8 of the current governance structure.

9 So there are -- there is some flexibility,  
10 I would say, in this to do some of the things  
11 if that were the purview of the Legislature.

12 CHAIRMAN SMITH: Commissioner Lee.

13 COMMISSIONER LEE: But it would preclude  
14 the Legislature from establishing an  
15 independent governing board for the State  
16 College System to coordinate with the K-12 and  
17 the university system for articulation all  
18 through the process. It would have to remain  
19 at the Department of Education and the local  
20 boards would have to remain the governing  
21 boards of each individual institution.

22 COMMISSIONER WASHINGTON: Yes, that is the  
23 current structure and I believe that structure  
24 is working.

25 COMMISSIONER LEE: One final question.

1           CHAIRMAN SMITH:  Yes, sir.

2           COMMISSIONER LEE:  Would you be adverse to  
3           an amendment that would make it permissive for  
4           the Legislature to -- as long as they retained  
5           all of these local boards, to establish a  
6           statewide governing board if, in fact, they  
7           thought it was in the benefit of the system?

8           COMMISSIONER WASHINGTON:  At this time I  
9           think that, I don't -- it goes back to  
10          fundamentally, is the current governance system  
11          working.  The Florida College System since this  
12          change has become number one in the country.  
13          We have number one completion rates in the  
14          country.

15          I would have a really hard time amending  
16          to create something that I didn't know would  
17          work.  I think there is flexibility within the  
18          current structure to do some of what you are  
19          asking.

20          CHAIRMAN SMITH:  I am going to recognize  
21          Commissioner Cerio for a motion.

22          COMMISSIONER CERIO:  Mr. Chairman, in  
23          light of the late hour and the fact that we  
24          have one proposal left after this one, a lot of  
25          good reasons, I move that the rules be waived

1 to extend the time until 6:00 p.m. for  
2 adjournment.

3 CHAIRMAN SMITH: So Commissioner Cerio,  
4 wanting us to waive the rules. We have one  
5 proposal left and we have -- the motion is to  
6 waive the rules until 6:00 p.m. All those in  
7 favor?

8 COMMISSIONER CERIO: Waive the rules to  
9 adjourn at 6:00 p.m.

10 CHAIRMAN SMITH: Waive the rules to  
11 adjourn at 6:00 p.m.

12 COMMISSIONER CERIO: To allow us.

13 CHAIRMAN SMITH: All of those in favor of  
14 waiving the rules, say yea.

15 (Chorus of yea's.)

16 CHAIRMAN SMITH: All those opposed?

17 (Chorus of nay's.)

18 COMMISSIONER CERIO: We can come back  
19 tomorrow. That is fine.

20 CHAIRMAN SMITH: The yea's have it. We  
21 will adjourn at 6:00 p.m. I think there was  
22 another question, Commissioner Beruff.

23 CHAIRMAN BERUFF: Commissioner Washington,  
24 over here, the short guy over here.

25 COMMISSIONER WASHINGTON: Yes, sir.

1           CHAIRMAN BERUFF:  Commissioner Washington,  
2           as I understand your proposal, it -- all we are  
3           doing is giving the State College System of  
4           Florida the same constitutional codification  
5           that exists for K through 12 and the University  
6           System; is that yes or no?

7           COMMISSIONER WASHINGTON:  That is a yes.

8           CHAIRMAN BERUFF:  And by popular demand of  
9           many of the state colleges which we are either  
10          number one or number two behind a small state that  
11          will go unmentioned, they support the  
12          governance system in place and we are not  
13          changing any of that?

14          COMMISSIONER WASHINGTON:  That is correct.

15          CHAIRMAN BERUFF:  Thank you.

16          CHAIRMAN SMITH:  Commissioner Coxe.

17          COMMISSIONER COXE:  When you stood up you  
18          said you were going to be as short as  
19          Commissioner Timmann on a high speed rail.  So  
20          I am going to vote against you.

21          COMMISSIONER WASHINGTON:  I was trying.

22          COMMISSIONER COXE:  Why hasn't this  
23          already been in the Constitution?

24          COMMISSIONER WASHINGTON:  Why is the  
25          Florida College System not in the Constitution?

1 That is a very good question.

2 COMMISSIONER COXE: Thank you very much.

3 COMMISSIONER WASHINGTON: It is a question  
4 I cannot answer. What I will say, is prior  
5 to -- it is my understanding that the college  
6 system and the universities were all sort of  
7 one in the clause, in the old education clause  
8 when it was actually amended and the  
9 universities came out. There was no similar  
10 clause that provided for the colleges.

11 CHAIRMAN SMITH: Are there anymore  
12 questions on Proposal 93 -- 83, anymore  
13 questions? We are in debate. Any debate on  
14 Proposal 83? Debate?

15 Commissioner Keiser.

16 COMMISSIONER KEISER: Thank you,  
17 Mr. Chair. I rise in support of Proposal 83.  
18 This was in the Education Committee, we talked  
19 about it at length. I think it is only fitting  
20 that the State College System, a system that is  
21 number one, as Commissioner Washington and  
22 Commissioner Plymale shared with us, in the  
23 country, it is only fitting that this system  
24 would be recognized like the State University  
25 System.



1           It is a very effective system and we have  
2 talked about the importance of what belongs in  
3 the Florida Constitution. And I think it is  
4 absolutely fitting that the State College  
5 System finds a home in the Florida  
6 Constitution.

7           Thank you.

8           CHAIRMAN SMITH: Commissioner Martinez.

9           COMMISSIONER MARTINEZ: Thank you, thank  
10 you, Commissioner Washington for submitting  
11 this proposal. I rise strongly in favor of it.  
12 So I first got into citizen volunteer service  
13 in the State of Florida because our friend,  
14 Governor Bush, appointed me to the Miami-Dade  
15 College Board of Trustees where I served for  
16 six years as his Chair.

17           And I saw firsthand the good work that it  
18 did in our community. It served -- it is a  
19 game changer for many people in our community.  
20 It is the -- for many the only way to advance  
21 one's self with regards to an educational  
22 opportunity. It just does tremendous things  
23 and it does it very efficiently. It is very  
24 responsive to the needs of the community.

25           The beauty of the way we have structured

1 the college system is that each board is made  
2 up of members of that community. They know the  
3 community, they know what the community needs,  
4 they know what the students need.

5 They know what the business community  
6 needs and the State's College System is able to  
7 respond very quickly and very efficiently to  
8 the needs of the business community, the  
9 economy and the students.

10 This has been a great success. So all  
11 this does is this puts into the Constitution,  
12 as it should have been done, I think a long  
13 time ago, the current institution we have and  
14 it places it alongside the K through 12 system  
15 and the State University System.

16 It is long overdue and I strongly support  
17 it.

18 CHAIRMAN SMITH: We are in debate, anymore  
19 debate on Proposal 83? Anymore debate on  
20 Proposal 83?

21 Commissioner Lee.

22 COMMISSIONER LEE: Well, thank you,  
23 Mr. Chair, and look, I appreciate, I did not  
24 sit on this committee, I wish I had in  
25 retrospect. I have -- you would be hard

1           pressed to find a stronger advocate in the  
2           current Legislature for the State College  
3           System than I have been. I didn't pay as much  
4           attention in high school as my parents might  
5           have liked me to.

6           I had more fun than I probably should have  
7           and didn't apply myself as well as I could  
8           have. And but for the State College System I  
9           might not have gone to college, and I excelled  
10          there, and was able to go on to a four-year  
11          university as a result of it.

12          And so I don't want to see us do anything  
13          that hurts the State College System. I am  
14          grateful that it is a highly-performing  
15          institution. I don't mind that it has a home  
16          in the Florida Constitution. I think that is  
17          appropriate and I think there are some that has  
18          used that as the reason we should do this.

19          I also don't object to a strong governing  
20          board at the local level. I think that is  
21          critical to the functioning of state colleges  
22          around our state. I have been a strong  
23          opponent of some of the efforts by the  
24          Legislature to tie the hands of the State  
25          College System in an arbitrary way by putting

1 arbitrary standards -- arbitrary limits on the  
2 delivery of Baccalaureate degrees.

3 I think that much of the Baccalaureate  
4 programs that the State College System is doing  
5 today is being done because the State  
6 University System doesn't want to, and they  
7 cannot do it affordably, or because of their  
8 workforce development needs and the local  
9 colleges need to continue to be able to respond  
10 to those needs.

11 I also thought that it was incongruent or  
12 inconsistent for us to talk about wanting to  
13 do, you know, \$10,000 education, four-year  
14 education and to other comments that have been  
15 associated with trying to keep an education  
16 affordable and yet drive people out of the  
17 State College System and into the State  
18 University System, which was at least  
19 15 percent higher per credit hour than the  
20 State College System before you began to add  
21 all of these other fees.

22 So I have been very supportive of the  
23 State College System, and will continue to be  
24 for all of the reasons I have stated.

25 What concerns me about this proposal is

1           that it is being -- it is being offered based  
2           upon this theory that what we are doing is  
3           working, so why -- why would we change it,  
4           which is always fair.

5                     But now we are embedding it in the  
6           Constitution, and I think there is a -- there  
7           are a lot of people out there outside of the  
8           State College System that believe that a  
9           statewide governing structure that allowed  
10          there be a governing board would stop some of  
11          the infighting that goes on in these  
12          institutions.

13                    And I will just tell you, not that I think  
14          it will matter at this late hour, but once  
15          again, if you -- if you have ever been involved  
16          in the Legislature, you know that there are a  
17          litany of supplemental appropriation requests  
18          that come in for various different programs,  
19          administrative support, on and on and on again,  
20          and on again.

21                    And who gets those is the people that  
22          happen to be -- have their colleges, you know,  
23          located in an area where there is leadership,  
24          it is not a systemic approach, it is a  
25          fragmented approach. It is not a meritocracy.

1           These programs are not funded based upon a  
2 need or an established need, reviewed in the  
3 statewide basis and approved by a statewide  
4 governing structure much like we do in the  
5 State University System.

6           There are reasons why these statewide  
7 governing boards sometimes are helpful and I  
8 would just suggest to you, although I can sense  
9 that this ship has left the station, this train  
10 has left the station, that we may live to  
11 regret having embedded this in the  
12 Constitution. Thank you.

13           CHAIRMAN SMITH: Anymore debate?  
14 Commissioner Stewart.

15           COMMISSIONER STEWART: Thank you, Chair.  
16 I had earlier determined that I was not going  
17 to speak again, but I -- I feel compelled to do  
18 so.

19           While I understand that we have to be very  
20 careful of the Constitution, I think it is  
21 appropriate to put the College System into the  
22 Constitution.

23           I also believe that, and as I sit here  
24 with less than a year remaining in my role as  
25 Commissioner of Education, which does oversee

1 the College System, and work with the State  
2 Board in their oversight of the College System  
3 and a system that has worked extremely well  
4 over the years, as Commissioner Washington has  
5 pointed out, since this structure went into  
6 being.

7 And we are essentially number one in the  
8 country, certainly have been recognized for the  
9 good work and, as she has pointed out, the  
10 American dream.

11 I think that since we do have governance  
12 structure of the College System and the K-12  
13 system in the Constitution, it is exactly  
14 appropriate to have that governance structure  
15 put into the Constitution.

16 I think to have a separate board, as  
17 Commissioner Washington has pointed out, does  
18 not lend itself to that cooperation between the  
19 College System and K-12. It is the only system  
20 that there is pure overlap.

21 We have a two-plus-two, but we have  
22 students with both feet in each of those  
23 systems. They do dual enrollment that has  
24 grown under the current structure. The State  
25 Board of Education has done an outstanding job

1 of paying attention to, being mindful of,  
2 putting controls on the College System which  
3 has led it to be at the level it is today.

4 I think growing government in our  
5 Constitution is the wrong thing to do, and to  
6 leave the possibility for the Legislature to  
7 have a separate board and grow government is  
8 the wrong thing for us to do. So I would  
9 suggest that if the College System goes into  
10 the Constitution, it go in there with the  
11 current governance structure. Thank you.

12 CHAIRMAN SMITH: Commissioner Plymale.

13 COMMISSIONER PLYMALE: Every time I look  
14 up we have new Chairman these days. I would  
15 like the indulgence of the Commission, and I  
16 know it is late, to temporarily pass this so  
17 that I can refile as a late-filed amendment the  
18 amendment that I withdrew about two hours ago,  
19 which meets the exact criteria that Senator Lee  
20 was talking about that we needed.

21 I withdrew it because I was asked to and  
22 in the interest of comradery, but I think it  
23 probably deserves a hearing from what people  
24 are saying. So if you would indulge me and  
25 temporarily pass it, which I believe we have to



1 vote on to do, I will bring this right back on  
2 pink paper.

3 CHAIRMAN SMITH: There is a motion to  
4 temporarily pass. Now I will allow  
5 Commissioner Washington to speak to it before  
6 we vote.

7 COMMISSIONER WASHINGTON: Thank you, and I  
8 appreciate the effort but I would like -- I  
9 would like, it is my intent not to TP this  
10 Bill. Can you forward it to vote?

11 CHAIRMAN SMITH: Okay. There is a motion  
12 by Commissioner Plymale to TP the Bill and just  
13 let you know we will -- we have this Bill and  
14 another one, this proposal and another one to  
15 go, so there is a motion to TP it.

16 All in favor on TP'ing this proposal.  
17 Commissioner Coxe.

18 COMMISSIONER COXE: I don't know how the  
19 rules work for you guys who live in this place.  
20 How long would it take to do that? Are we  
21 talking five minutes? That is all.

22 CHAIRMAN SMITH: It has been filed for an  
23 amendment and for staff, staff is looking, it  
24 will take them about five minutes, the  
25 amendment. But there is a motion on the floor

1 to TP the Bill. All in favor say yea.

2 (Chorus of yea's).

3 CHAIRMAN SMITH: All opposed.

4 (Chorus of nay's.)

5 CHAIRMAN SMITH: Let's try it again, make  
6 sure, you know. Let's do a -- we here, all in  
7 favor say yea.

8 (Chorus of yea's)

9 CHAIRMAN SMITH: All opposed?

10 (Chorus of nays.)

11 CHAIRMAN SMITH: It doesn't pass. We are  
12 still on debate on the -- on the -- we have one  
13 hand, two hands, three hands, open the board.

14 This is on the motion to temporarily  
15 postpone. All those who want to TP vote in the  
16 affirmative. All opposed, vote negative.

17 Lock the board, announce the vote.

18 THE SECRETARY: Ten yea's, 22 nay's,  
19 Mr. Chair.

20 CHAIRMAN SMITH: The motion did not pass.  
21 So we are still on debate on Proposal 83.  
22 Anymore debate on Proposal 83? Anymore debate  
23 on Proposal 83?

24 Commissioner Washington, you are  
25 recognized to close on Proposal 83.

1           COMMISSIONER WASHINGTON: Thank you. And  
2 thank you, Commissioners and thank you for this  
3 great debate. When we embarked on this journey  
4 we as Commissioners were charged with  
5 critically reviewing the Constitution with the  
6 intention of improving it for the betterment of  
7 Florida's future.

8           I do appreciate the debate today, and your  
9 level of consideration for this proposal. When  
10 listening to the commentary on, you know, does  
11 this rise to the -- to the level of being in  
12 the Constitution? I think it does.

13           It does actually address the structure of  
14 government and it does make us feel good and it  
15 does impact a lot of students. So this  
16 proposal if we continue to move it through the  
17 process will send a message to Floridians that  
18 we have value and we value access and  
19 affordable higher education that will continue  
20 to meet the workforce needs of today and  
21 tomorrow.

22           I encourage your favorable support.

23           CHAIRMAN SMITH: Members, there is an  
24 amendment filed, while still on this proposal.  
25 So we will have to go back and discuss the

1 Amendment 871582 as a late-filed. It needs  
2 two-thirds for introduction to consider the  
3 amendment. So first we are going to vote on  
4 the introduction of this late-filed amendment,  
5 late-filed 871582.

6 I think staff is trying to get it out now.  
7 Commissioner Lee.

8 COMMISSIONER LEE: Thank you, Mr. Chair.  
9 Is it -- are we in a position to confirm for  
10 the body that this amendment has -- is the  
11 exact same amendment that has been out for days  
12 and -- but was withdrawn and that there are no  
13 changes to it?

14 CHAIRMAN SMITH: It is my -- it is my  
15 intent to, once they are passed out, or while  
16 they are being passed out, to give Commissioner  
17 Plymale a chance to at least explain the  
18 amendment before we vote on its introduction.

19 I will give her the courtesy of a brief  
20 explanation of the amendment before we vote on  
21 the introduction of it.

22 Commissioner Plymale, you are recognized  
23 to explain this amendment.

24 COMMISSIONER PLYMALE: Sorry, for a minute  
25 I was very confused. I am going to be brief

1 because I don't think I have ever taken too  
2 long. But this is exactly the same amendment  
3 that you had in your packet when you came in  
4 here today.

5 And the purpose -- the purpose was to just  
6 not do anything about governance in the  
7 Constitution, just put the system into the  
8 Constitution. Governance would be at the  
9 discretion of the Legislature.

10 My thought was that it would continue  
11 where it is unless times change, society  
12 changes, things change, and that would allow it  
13 to be changed and not ensconced in the  
14 Constitution.

15 CHAIRMAN SMITH: Commissioner Gaetz.

16 COMMISSIONER GAETZ: Ask for a question,  
17 Mr. President.

18 CHAIRMAN SMITH: Yes.

19 COMMISSIONER GAETZ: Commissioner Plymale,  
20 my understanding of your amendment, correct me  
21 if I am wrong, is that it maintains all of the  
22 authority and control and position of the local  
23 Board of Trustees unchanged, but leaves the  
24 question of State governance as to whether or  
25 not there would be a Board of State Colleges,

1 or leave it within the Board of Education to be  
2 decided as the State College System evolves and  
3 matures, is that correct?

4 COMMISSIONER PLYMALE: That is absolutely  
5 correct.

6 COMMISSIONER GAETZ: Thank you.

7 CHAIRMAN SMITH: Commissioner Martinez.

8 COMMISSIONER MARTINEZ: Commissioner  
9 Plymale, just following up on Commissioner  
10 Gaetz's question. So ultimately whether or not  
11 the State College System will report to the  
12 State Board of Education or to another State  
13 body will be determined by the Legislature, is  
14 that what you are saying?

15 COMMISSIONER PLYMALE: If they care to.  
16 If they don't, I haven't really -- they have  
17 really not quite addressed it. It just kind of  
18 fell to the Florida Board, and the Florida  
19 Board does a fine job. By the way, the former  
20 State Board did fine, too. I mean, there was a  
21 State Board of Community Colleges for at least  
22 20 years before the school code changed.

23 And they did a fine job and we were number  
24 one then, too. So this just doesn't ensconce  
25 State oversight of that system with the Florida

1 Board.

2 It will allow the Legislature, if they saw  
3 the need to create, create something. It  
4 doesn't even say they would have to create a  
5 board, it just says they have to create, if  
6 they don't -- it doesn't say anything. It says  
7 they have the option if they need to.

8 COMMISSIONER MARTINEZ: So --

9 CHAIRMAN SMITH: Commissioner Martinez.

10 COMMISSIONER MARTINEZ: Thank you. So, in  
11 other words, if -- if we pass your amendment  
12 and it goes on the ballot and it gets approved,  
13 what it does is it provides a vehicle, an  
14 opportunity for the Legislature to change that  
15 which has been successful for the last 30  
16 years?

17 COMMISSIONER PLYMALE: Not 30.

18 COMMISSIONER MARTINEZ: Twenty.

19 COMMISSIONER PLYMALE: Sorry, I was the  
20 last Chairman of the State Board of Community  
21 Colleges. So I really do remember that. That  
22 was 2001.

23 COMMISSIONER MARTINEZ: But, in other  
24 words, what has been successful for the last 20  
25 years, the system of governance that we have

1 for the local Board of Trustees, but ultimately  
2 reporting to the State Board of Education, that  
3 which has been stellar world class success,  
4 what your proposal does is it allows an  
5 opportunity for the Legislature in their  
6 collective wisdom, or maybe not so, to change  
7 that structure to something else, correct?

8 COMMISSIONER PLYMALE: That is right.

9 COMMISSIONER MARTINEZ: Thank you.

10 CHAIRMAN SMITH: Members, what I want to  
11 do because we are still on a motion to just  
12 introduce and I think we are going into debate.  
13 It takes two-thirds to introduce this as a  
14 late-filed amendment, and we are going to do  
15 that on a voice level. It takes two-thirds to  
16 introduce this as an amendment.

17 So all those in favor of introduction of  
18 this late-filed amendment signify by saying  
19 yea.

20 (Chorus of yea's).

21 CHAIRMAN SMITH: All those opposed, nay?

22 (Chorus of nay's.)

23 CHAIRMAN SMITH: It is not introduced. We  
24 are back on the Proposal 83. Now, what we are  
25 going to do, because we found ourselves in a



1 little hiccup.

2 Commissioner Washington hadn't closed but  
3 in fairness, you know what, let's vote it up.  
4 We are going to open the board for a vote on  
5 Proposal 83. Please open the board. Unlock  
6 the board and announce the vote.

7 THE SECRETARY: Twenty-six yea's, eight  
8 nay's, Mr. Chair.

9 CHAIRMAN SMITH: So the motion is adopted  
10 and the proposal is committed to Style and  
11 Drafting Committee. We are on to Proposal 93  
12 by Martinez.

13 Commissioner Martinez, you are recognized  
14 to explain your proposal.

15 COMMISSIONER MARTINEZ: Mr. Chair, I  
16 think -- I think I did before. Are we on the  
17 amendments? We are on the amendments.

18 CHAIRMAN SMITH: You know what, we are  
19 going to take -- let's take a three-minute  
20 break.

21 COMMISSIONER MARTINEZ: Do we need to ask  
22 Commissioner Cerio? Okay.

23 CHAIRMAN SMITH: Let's take a three-minute  
24 break.

25 (Brief recess taken.)

1           CHAIRMAN SMITH: All right, members, we  
2 are going to start back up. So members, where  
3 we are, we are on the last proposal, 93, by  
4 Martinez that was TP'ed. He had already  
5 introduced the proposal and explained the  
6 proposal.

7           We were on an amendment by Commissioner  
8 Washington. She had explained that amendment  
9 and it was TP'd, and we were TP'd. So we are  
10 going to go back now, start with her the  
11 amendment, but there are numerous amendments to  
12 the amendment that we are going to start taking  
13 up.

14           So just so we know where we are,  
15 Commissioner Washington, if you can do a brief  
16 explanation of your amendment before we start  
17 on the amendments to the amendment.  
18 Commissioner Washington is recognized on  
19 Amendment 264476.

20           COMMISSIONER WASHINGTON: Thank you. As I  
21 explained earlier, Commissioners, this  
22 amendment is intended to clarify the language  
23 around the Innovation School Districts instead  
24 of calling them Charter Districts, and provide  
25 the Legislature to develop a process for

1 providing high performing school districts with  
2 some flexibilities, similar to those afforded  
3 by our public charter schools.

4 CHAIRMAN SMITH: Having explained the  
5 amendment now we are going to go to the  
6 amendments to the amendment. And the first  
7 amendment to the amendment is amendment to the  
8 amendment 703196 by Commissioner Donalds.

9 Commissioner Donalds is recognized to  
10 explain the amendment to the amendment 703196.

11 COMMISSIONER DONALDS: Okay, the Amendment  
12 703196 changes lines 35 through 39. The  
13 original amendment, Commissioner Johnson's  
14 amendment, says that school districts seeking  
15 Innovation District status shall be eligible  
16 for exemptions.

17 I changed the word "seeking" to "granted".  
18 So school districts that are actually granted  
19 the Innovation District status shall be  
20 eligible. I changed the word "exemption" to  
21 "flexibility," and I removed the word "all"  
22 from all provisions of Florida law in the same  
23 manner as other public schools designated by  
24 Florida law.

25 Because as we have heard in debate on this

1 proposal, there are some provisions for which  
2 charter schools are exempt that these  
3 Innovation School Districts would not be able  
4 to be exempt.

5 CHAIRMAN SMITH: Are there any questions  
6 of Representative -- of Commissioner Donalds in  
7 her amendment to the amendment? Any questions?  
8 Is there any debate?

9 Commissioner Donalds, you are recognized  
10 -- Commissioner Newsome, were you --  
11 Commissioner Newsome?

12 COMMISSIONER NEWSOME: I would like a  
13 little bit of clarification as to what the  
14 amendment that you are -- that we are about to  
15 vote on does.

16 COMMISSIONER DONALDS: Okay, thank you for  
17 that question. In my conversations with  
18 Commissioner Washington, I don't think that  
19 this amendment changes the intent of the  
20 original amendment at all.

21 I think the word "flexibility" is more  
22 easily understood by the voters than the word  
23 "exemption," and the term, as I said,  
24 "granted," we want to make sure that they are  
25 actually granted the status, not just seeking

1 the status that would make them eligible for  
2 those flexibilities or exemptions.

3 And then also in the original amendment  
4 the word, "all" obviously encompasses some  
5 aspects of the charter provisions that we would  
6 not want the Legislature to have to provide  
7 flexibility or exemptions from.

8 I think it is along the lines of the  
9 intention of the sponsor, but I will let her  
10 speak to that.

11 CHAIRMAN SMITH: Commissioner Washington,  
12 did you --

13 COMMISSIONER WASHINGTON: To clarify,  
14 Commissioner Donalds and I did have a  
15 conversation about this and the language  
16 actually is consistent. The intent is  
17 consistent with the original amendment. So  
18 thank you.

19 CHAIRMAN SMITH: We are still in questions  
20 on the amendment to the amendment.  
21 Commissioner Joyner.

22 COMMISSIONER JOYNER: Thank you. Is the  
23 term "flexibility" in the statute that other  
24 public schools are able to get under the  
25 Schools of Excellence?

1           I mean, you told -- I want to know, if  
2 "flexibility" equals "exemptions" and will  
3 it -- and is there a definition anywhere so  
4 that when somebody seeks flexibility can say,  
5 well, you can't get all exemptions that the  
6 others get because it is not defined that way.

7           CHAIRMAN SMITH: Commissioner Donalds.

8           COMMISSIONER DONALDS: I believe the word  
9 "flexibility" is used in the statutes. I  
10 cannot say that for absolute certain, but I am  
11 almost positive that that is a term that is  
12 used in relation to charter schools which is  
13 why I think with the intention of this proposal  
14 is an appropriate word to be used here.

15          CHAIRMAN SMITH: Commissioner Joyner, a  
16 follow up.

17          COMMISSIONER JOYNER: For the record, your  
18 intent is that flexibility in this amendment  
19 is -- what is it, is the same as exemptions  
20 with respect to what charter schools receive?

21          COMMISSIONER DONALDS: That is correct.

22          COMMISSIONER JOYNER: Okay, all right.

23          CHAIRMAN SMITH: Anymore questions to the  
24 amendment to the amendment? Any debate on the  
25 amendment to the amendment?

1           Commissioner Donalds, you are recognized  
2 to close on your amendment.

3           COMMISSIONER DONALDS: Waive close.

4           CHAIRMAN SMITH: Waive closing on her  
5 amendment to the amendment. All in favor say  
6 yea.

7           (Chorus of yea's.)

8           CHAIRMAN SMITH: All opposed.

9           (Chorus of nay's.)

10          CHAIRMAN SMITH: Show the amendment to the  
11 amendment adopted. We will move to the next  
12 amendment to the amendment, and that one is by  
13 Representative or Commissioner Martinez.

14          COMMISSIONER MARTINEZ: Thank you,  
15 Mr. Chair, this is very simple. I just wanted  
16 to make sure through this amendment that these  
17 Innovation School Districts will maintain all  
18 civil and students rights. In particular the  
19 student rights to have access to a free public  
20 education in the state of Florida and whatever  
21 the civil rights provided by statutes that are  
22 currently, the schools are currently subject  
23 to. I just wanted to make it clear.

24          CHAIRMAN SMITH: Having explained this  
25 amendment to the amendment, is there any

1 questions? Are there any questions?

2 Commissioner Donalds.

3 COMMISSIONER DONALDS: Do you have any  
4 reason to believe that the original amendment  
5 without this language would exempt Innovation  
6 School Districts from meeting the same  
7 criteria?

8 COMMISSIONER MARTINEZ: I --

9 CHAIRMAN SMITH: Commissioner Martinez.

10 COMMISSIONER MARTINEZ: I do not, but I  
11 just wanted to make it explicit. I think there  
12 were some questions at the committee stage and  
13 I just wanted to make it explicit. If this  
14 language isn't adopted and if what passes is  
15 the original proposal as amended by  
16 Commissioner Washington, no, all of those  
17 students would be still -- all of those schools  
18 would be subject to those laws. It was just to  
19 make it expressly clear.

20 CHAIRMAN SMITH: Commissioner Donalds.

21 COMMISSIONER DONALDS: Do you have any  
22 concern that adding language like this may  
23 alert someone to think that without this  
24 language that the exemptions or flexibilities  
25 as they are now, would open the door?



1           I think, my question is, do you share my  
2 concern that a voter reading this would say,  
3 well, wait a second, why do they have to say  
4 that? That is my question.

5           CHAIRMAN SMITH: Commissioner Martinez.

6           COMMISSIONER MARTINEZ: You know, I  
7 really -- I really wasn't thinking about that.  
8 I mean, voters are going to come up with so  
9 many different questions on every one of these  
10 proposals. I appreciate you asking these  
11 questions. It really was designed to address  
12 some questions at the committee level.

13           It is just to make it explicit, and it is,  
14 just to make it clear on the record here.  
15 Whatever laws currently apply to the school  
16 districts with regards to the rights, the  
17 rights of students, civil rights, for example,  
18 and student rights under the Constitution to  
19 have access to a high quality free public  
20 education, those rights remain.

21           CHAIRMAN SMITH: Are there anymore  
22 questions? Commissioner Grady.

23           COMMISSIONER GRADY: Thank you,  
24 Mr. Chairman. What are student rights?

25           CHAIRMAN SMITH: Commissioner Martinez.

1           COMMISSIONER MARTINEZ: The one right that  
2 I was concerned about, because it was asked of  
3 us at a committee, was whether or not these  
4 Innovation Districts would have the right to  
5 exclude certain students that otherwise are  
6 afforded the right to attend a free high  
7 quality public education.

8           It was designed to address that particular  
9 right, Commissioner.

10          CHAIRMAN SMITH: Commissioner Grady.

11          COMMISSIONER GRADY: Thank you,  
12 Mr. Chairman. Are you concerned that by  
13 including language such as this in the  
14 Constitution that there will implicitly be some  
15 expectation that there are some additional  
16 student rights being granted that are not  
17 already provided for in the Constitution?

18          COMMISSIONER MARTINEZ: No, that was not a  
19 concern of mine.

20          CHAIRMAN SMITH: Are there anymore  
21 questions of Commissioner Martinez? We are in  
22 debate. Is there any debate on the amendment  
23 to the amendment?

24          Commissioner Donalds.

25          COMMISSIONER DONALDS: Sorry, I didn't

1 have a chance to talk to you more about this  
2 before, but I -- I would encourage that we not  
3 adopt this language on this proposal. I do  
4 think it just raises questions, and as  
5 Commissioner Grady pointed out, it uses a term,  
6 "student rights," which is not currently in the  
7 Constitution in any other context, and could  
8 raise questions as to what "student rights"  
9 are.

10 I recall a presentation that was in the  
11 Education Committee over the fundamental value  
12 language that is in Article IX of the  
13 Constitution, and that it was deliberate that  
14 that was not outlined as a right of the people  
15 of Florida or of the students of Florida, but  
16 as a fundamental value.

17 And so I would just raise a concern with,  
18 since this doesn't, in effect, change anything,  
19 I would raise a concern with the language in  
20 adding terms that we have not defined yet.

21 CHAIRMAN SMITH: Anymore in debate?  
22 Anymore in debate?

23 Commissioner Martinez, you are recognized  
24 to close on your --

25 COMMISSIONER MARTINEZ: Thank you. I

1           respect all the questions that were asked here,  
2           I think they are all valid. I was really  
3           intending to do something explicit, but not to  
4           add anything new and certainly not to create  
5           any uncertainty. So I am going TP it, I am  
6           going to withdraw it.

7           CHAIRMAN SMITH: Show the amendment to the  
8           amendment TP, TP'd.

9           COMMISSIONER MARTINEZ: I am going to  
10          withdraw it, whatever the actual term I need to  
11          use. I am withdrawing it from further  
12          consideration.

13          CHAIRMAN SMITH: Show it withdrawn. We  
14          have a late-filed amendment to the amendment by  
15          Commissioner Donalds.

16          Commissioner Donalds, you can explain and  
17          then we have to vote on the introduction of it.

18          COMMISSIONER DONALDS: Thank you. The  
19          late-filed amendment changes the word "within"  
20          to "establish by" consistent with the language  
21          that we adopted earlier in Proposal 71. It is  
22          the amendment Commissioner Johnson presented by  
23          Commissioner Washington's amendment mirrors the  
24          term from the earlier section of Article IX in  
25          line 29 of the amendment, "operate, control and

1 supervise all free public schools within the  
2 Innovation School District."

3 My late-filed amendment will change the  
4 word "within" to "establish by" in order to  
5 mirror the other proposal that will also appear  
6 alongside this proposal if passed.

7 CHAIRMAN SMITH: Commissioner Martinez for  
8 a question.

9 COMMISSIONER MARTINEZ: A question as to  
10 how it would operate. So let's suppose they  
11 both go on the ballot with the establish  
12 language, and this passes and the other one  
13 doesn't, that is fine, right. I mean, it would  
14 still be that the School Boards would still be  
15 controlling all the schools within this  
16 district?

17 CHAIRMAN SMITH: Commissioner Donalds.

18 COMMISSIONER DONALDS: That is correct.

19 COMMISSIONER MARTINEZ: Okay.

20 CHAIRMAN SMITH: Anymore questions? This  
21 is a late-filed amendment to the amendment, so  
22 it takes a two-thirds to introduce the late  
23 filed amendment to the amendment. All those in  
24 favor say yea.

25 (Chorus of yea's).

1           CHAIRMAN SMITH: All those opposed? Show  
2 the amendment to the amendment introduced. We  
3 are on the amendment to the amendment. Are  
4 there any questions on the -- is there any  
5 debate?

6           Commissioner Donalds, you are recognized  
7 to close on your amendment to the amendment.

8           COMMISSIONER DONALDS: We have closed to  
9 waive close.

10          CHAIRMAN SMITH: Waive to close on the  
11 amendment to the amendment. All those in favor  
12 signify by saying yea.

13           (Chorus of yea's).

14          CHAIRMAN SMITH: Opposed. Show the  
15 amendment to the amendment adopted. We are on  
16 the amendment to the amendment 353018,  
17 late-filed by Commissioners Washington and  
18 Martinez.

19          Commissioner Washington, you are  
20 recognized to explain the amendment to the  
21 amendment.

22          COMMISSIONER WASHINGTON: So  
23 Commissioners, this amendment addresses the  
24 issue that was brought up by Commissioner  
25 Levesque earlier about the standard for high

1 quality.

2 This actually just adds "high performing  
3 school district" in front of the original  
4 amendment language. It was taken out in  
5 drafting.

6 CHAIRMAN SMITH: Are there any questions  
7 regarding the amendment to the amendment? We  
8 are going to vote now on introducing the  
9 late-filed amendment to the amendment. All in  
10 favor signify by saying yea? All those  
11 opposed?

12 (Chorus of yea's.)

13 CHAIRMAN SMITH: Show it introduced. Now  
14 we are on the amendment to the amendment  
15 353018. Any questions? Any debate?

16 Without objection, show the amendment to  
17 the amendment 353018 adopted.

18 Now we are back on the original amendment,  
19 264476 as amended. Commissioner Washington.  
20 Are there any questions on the amendment? Is  
21 there any debate on the amendment?

22 Without objection show the amendment  
23 adopted.

24 We are back on the Proposal 93 by  
25 Commissioner Martinez. Is there any debate on

1 Proposal 93 by Commissioner Martinez?

2 Commissioner Martinez, you are recognized  
3 to close on Proposal 93 as amended.

4 COMMISSIONER MARTINEZ: As I understand  
5 it, just to make sure everybody understands it,  
6 my Proposal 93 is amended by the 264476.

7 CHAIRMAN SMITH: Yes.

8 COMMISSIONER MARTINEZ: And the subsequent  
9 amendments, okay.

10 CHAIRMAN SMITH: Yes, sir.

11 COMMISSIONER MARTINEZ: That basically is  
12 a strike-all offered by Commissioner  
13 Washington.

14 CHAIRMAN SMITH: Yes.

15 COMMISSIONER MARTINEZ: All right, I think  
16 that this proposal, I am very excited about it  
17 because this really takes innovation and  
18 flexibility to a different level. And I think  
19 it is what the people of the state of Florida  
20 are looking for. And actually Commissioner  
21 Donalds, I think if this proposal makes it as  
22 an amendment to the ballot, I think actually it  
23 enhances the chances of your proposal, number  
24 71, to get 60 percent of the votes.

25 So I think on its own it is meritorious



1 and to the extent that those of you that  
2 support Commissioner Donalds' proposal and  
3 would like to see that as part of the amendment  
4 to the Constitution, I encourage you to support  
5 it as well for that additional reason.

6 Thank you.

7 CHAIRMAN SMITH: Having closed on this  
8 Amendment 93 please open up the board. Members  
9 vote.

10 Unlock the board and announce the vote.

11 THE SECRETARY: Twenty-four yea's, nine  
12 nay's, Mr. Chair.

13 CHAIRMAN SMITH: By your vote, show it  
14 referred to the Style and Drafting Committee.

15 I think we have an unresolved motion. I  
16 think we are bringing back Proposal 94 by  
17 Nunez. I just wanted to see if the blue shirts  
18 wake up up there.

19 CHAIRMAN BERUFF: I am glad I am up here  
20 for the last laugh. I am going to another 30  
21 seconds of personal privilege, and I have to  
22 tell you, I -- when I got into this I had no  
23 clue what I was going to get into. But I have  
24 enjoyed working with you immensely.

25 I have learned a lot. I have not been

1           bored for 10 seconds, and I want to thank you  
2           for giving me the honor of being your Chair.

3                     We got one more week. When we get back  
4           together, I look forward to that and I look  
5           forward to Style and Drafting fixing  
6           everything. At this point I think I will  
7           entertain a motion to adjourn.

8                     No, excuse me. See, I want to go already,  
9           but Heuchan has got to get the last word.

10                    COMMISSIONER HEUCHAN: Yes, I know,  
11           Mr. Chairman, I should have gone ahead of you,  
12           because you are going to make me cry.

13                    It has been enjoyable. He doesn't get  
14           emotional very often. All right, so you know,  
15           and look, it -- we have -- it is fun to kind of  
16           make fun of some of the fixing issues and I was  
17           doing it, too, because it turned as kind of an  
18           inside joke for us.

19                    But the truth is that I, when I realized I  
20           was going to be involved in Style and Drafting,  
21           one of the first calls I made was to my friend  
22           Patricia, and she is brilliant in many, many  
23           ways.

24                    She chaired, as I mentioned before, the  
25           Style and Drafting Committee for the Tax and

1 Budget Reform Commission, and they had been  
2 disappointed at least on two occasions by  
3 things that happened after they finished, by  
4 people that challenged things that they had  
5 done.

6 And she told me many things in that  
7 meeting. But the thing that I walked away from  
8 as being the most important piece of advice she  
9 gave me, was that words matter a lot, a lot.

10 And we could look no further than --  
11 irrespective of how you feel about the words  
12 that Commissioner Stemberger shared with us  
13 today on the substance of things that he cares  
14 a lot about, those words do matter. They  
15 mattered when they were talked about in a body  
16 just like ours 40 years ago and 20 years ago.

17 There is a reason that they matter. And  
18 so this fixing piece that we are going to do,  
19 we are going to do it. We are going to do it,  
20 as I said the other day, well, for you. I  
21 believe that.

22 We have a lot of smart people helping us,  
23 not just our -- the people on the committee,  
24 the lawyers that are going to help us, but many  
25 of you, Commissioner Plymale and others have

1 expressed a great interest. And so all I will  
2 say is that as we go through this fixing,  
3 grouping, ordering ballot title summary,  
4 drafting, process that in exchange for our  
5 stewardship of the work that you gave us, it is  
6 your responsibility to be engaged in that  
7 process, because as we do this work I will make  
8 every effort that you will not be disappointed  
9 in the openness, the fairness and the -- and  
10 the discretion that we give each of you on  
11 things that matter. You will not be  
12 disappointed, I promise you.

13 You will not be disappointed really with  
14 any, anything remotely related to that in terms  
15 of our motives, our -- the most sincere mine  
16 are, I know it is shared by the other people on  
17 the committee; but here is the other real  
18 truth.

19 You may be disappointed in what -- in what  
20 we do. You may -- you will not be disappointed  
21 in how we do it. But you may be disappointed  
22 in what we do, because we have to make some  
23 really, really tough choices. We have to  
24 balance the length of the ballot with the clear  
25 and conciseness of the ballot title summaries

1 with the groupings.

2 So those are big decisions. So those are  
3 my promises to you, but I am telling you, it is  
4 in return you are going to be available to us  
5 to give us your counsel on the things that  
6 matter to you.

7 And so with that I will just,  
8 Mr. Chairman, if I could, just tell you we had  
9 noticed we were going to meet this afternoon.  
10 We are not going to do that because everyone is  
11 probably as tired as me, maybe even more.

12 But we are going to start tomorrow. I  
13 think it is at 9:00 o'clock. It is going to be  
14 in 412 Knott and I encourage everyone to come  
15 and we will get going.

16 CHAIRMAN BERUFF: Commissioner  
17 Kruppenbacher is recognized as he won't let me  
18 adjourn.

19 COMMISSIONER KRUPPENBACHER: I just wanted  
20 to say that if you are not happy with Style and  
21 Drafting I have Brecht's cell phone number and  
22 you can see me so I can give it to you, because  
23 I will be finding him to make sure you are  
24 happy. But I actually wanted to just put one  
25 thing on the record personally.

1           I really want to thank Jeff, our Executive  
2 Director. You have done a spectacular job.

3           Mr. Chair, I wanted to thank you as  
4 Chairman for putting up with everyone. You  
5 actually won today's beauty contest. Fred was  
6 a close second. All right.

7           CHAIRMAN BERUFF: It is a tie, it is a  
8 tie.

9           COMMISSIONER KRUPPENBACHER: But thank you  
10 all, and thank the whole staff, but Jeff, you  
11 carried it.

12          CHAIRMAN BERUFF: Commissioner Cerio and  
13 then Commissioner Keiser.

14          COMMISSIONER CERIO: Very quickly, two  
15 things. Jeff loves affirmation, so you guys  
16 have made his year, he is going to be -- he is  
17 going to be on cloud nine and he deserves it.

18          And secondly, at the risk of making Brecht  
19 cry, if everybody could hang out and get a  
20 quick picture with staff and all of us, that  
21 would be great.

22          CHAIRMAN BERUFF: Love that. Commissioner  
23 Keiser.

24          COMMISSIONER KEISER: Thank you, Mr.  
25 Chairman. My comments were really just the

1 same. Thank you for all of the wonderful  
2 support, Jeff, from you and your team. Thank  
3 you for your leadership, Mr. Chair, and I  
4 wanted to get a picture of everyone as well.  
5 So thank you.

6 CHAIRMAN BERUFF: If somebody will figure  
7 out how to do that, then let's go to the  
8 picture and we stand adjourned.

9 (Whereupon, the proceedings were  
10 adjourned.)

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C E R T I F I C A T E

STATE OF FLORIDA )

COUNTY OF LEON )

I hereby certify that the foregoing transcript is of a tape-recording taken down by the undersigned, and the contents thereof were reduced to typewriting under my direction;

That the foregoing pages 186 through 23 represent a true, correct, and complete transcript of the tape-recording;

And I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

Dated this 24th day of May, 2018.

\_\_\_\_\_

CLARA C. ROTRUCK

Notary Public

State of Florida at Large

Commission Expires:

November 13, 2018

Commission NO.: FF 174037