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CONSTITUTION REVISION COMMISSION

A.M. SESSION

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CLARA C. ROTRUCK

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

2 CHAIRMAN BERUFF: All Commissioners and
3 guests in the gallery, please silence all
4 electronic devices. The Commission is now in
5 order.

6 Commissioners and guests, please rise for
7 the opening prayer to be given this morning by
8 Commissioner Lester.

9 COMMISSIONER LESTER: Let us pray.

10 Holy Father, we gather together with
11 grateful hearts. We are blessed with freedoms
12 and opportunities that few in human history
13 have ever enjoyed, and you have given us an
14 opportunity to be stewards of those freedoms
15 and those opportunities. So help us to be
16 faithful in that work. Help us not just to
17 skim the surface intellectually, emotionally,
18 or spirituality, but to dig deep. For like any
19 good parent, you do not expect us to be
20 perfect, but you do want us to do our best. So
21 help us here in this gathering to do our best
22 and to draw out the best in those that we work
23 with by being encouraging and kind and
24 gracious. All this we pray with humble and
25 grateful hearts. Amen.

1 CHAIRMAN BERUFF: Amen.

2 Please remain standing for the Pledge of
3 Allegiance, which will be led by Commissioner
4 Cerio.

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

10 CHAIRMAN BERUFF: Thank you.

11 We will now proceed to the daily order of
12 business. Are there any communications
13 received?

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

16 CHAIRMAN BERUFF: Introduction of
17 proposals?

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

20 CHAIRMAN BERUFF: Reports of committees?

21 THE SECRETARY: None on the desk,
22 Mr. Chair.

23 CHAIRMAN BERUFF: Matters on
24 reconsideration?

25 THE SECRETARY: None on the desk,

1 Mr. Chair.

2 CHAIRMAN BERUFF: Special orders
3 determined by rules and administration
4 committee?

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

6 CHAIRMAN BERUFF: Thank you.

7 We will now proceed to consideration of
8 the proposals listed on the special order
9 calendar.

10 Take up proposal No. 49. Commissioner
11 Gainey, you are recognized to explain your
12 proposal.

13 COMMISSIONER GAINNEY: Fellow
14 Commissioners, it is a pleasure to be here with
15 you this morning to present Proposal 49
16 regarding our state's first responders and
17 members of our military.

18 This proposal seeks to put in the
19 Constitution a death benefit that will be paid
20 when you lose a firefighter, paramedic,
21 emergency medical technician, a law enforcement
22 officer, a correctional or correctional
23 probation officer, a member of the Florida
24 National Guard or member of United States
25 military in the line of duty.

1 This proposal seeks to put the highest of
2 emphasis on the loss of life of one of our
3 first responders who every day suit up in
4 uniform, put on bunker gear or go out in plain
5 clothes and run into deadly emergency
6 situations that everyone else moves away from,
7 and rightfully so.

8 You see, we don't ask every citizen to run
9 into danger, but as public service executives,
10 some of which are here today with us, we
11 absolutely expect our first responders and our
12 military members to do so and simply not to
13 back down in the face of resistance and danger.

14 And these men and women who take on these
15 jobs as protectors and rescuers do not hesitate
16 to put their lives on the line when every call
17 for service comes in. Yes, some of these calls
18 are statistically less likely than others to
19 result in injury or death; however, all of us
20 who are first responders simply know that even
21 the most routine of call can and has led to
22 death or injury.

23 So what we really know in this business is
24 that there isn't any such thing as a routine
25 call for service. Every one of them can

1 quickly turn to a deadly situation. But
2 despite that, men and women all over the state,
3 in every county, in every city, they
4 volunteered for these jobs to protect their
5 country in terms of the military, our state,
6 your county and your cities. These are
7 firefighters running into burning or collapsed
8 buildings to rescue trapped citizens or put out
9 a fire to save your property, the inner scenes
10 where known and unknown chemicals are present
11 for the sake of saving others, oftentimes
12 strangers they don't even know.

13 You see paramedics treat injured and
14 bleeding patients on the side of the road
15 without the benefit of knowing their medical
16 history, and thus are often exposed to a
17 variety of blood-borne pathogens at risk to
18 their health and that of their families.

19 Law enforcement officers are running
20 towards gunfire in order to stop the threat of
21 innocent citizens being killed.

22 A member of our state's National Guard and
23 our nation's military are willing to stand up
24 against tyranny all over this world for the
25 sake of the very freedoms that we expect and

1 enjoy here back home.

2 But there are unfortunately times when
3 these first responders are killed, not as a
4 result of a horrific incident or a mass
5 shooting, but because they are attempting to
6 rescue our citizens from a traffic crash and
7 are struck and killed by a driver on the road
8 who fails to slow down or pay attention to that
9 law enforcement/emergency vehicle that is
10 indeed responding to assist someone else in
11 crisis.

12 Sometimes they are accidentally killed
13 while training and preparing to be the best in
14 order to do their jobs that we ask them to do
15 every single day, and that every citizen that
16 is in distress expect us to do to the highest
17 of standards.

18 We simply owe them a great deal of
19 gratitude, them and their surviving families.
20 We owe them respect and comfort when we lose
21 one of them in the line of duty.

22 Therefore, Mr. Chair and fellow
23 Commissioners, this proposal asks that we add
24 to our Constitution an amendment that ensures a
25 death benefit as established by Legislature to

1 the surviving spouse, children, or parents of
2 those we lose in the line of duty. It seeks to
3 ensure that the surviving spouse or children
4 under age 25 are guaranteed a college education
5 in one of our fine institutions of higher
6 learning in this state.

7 I should stop and note here that current
8 statute provides these benefits for law
9 enforcement and correctional officers and
10 correctional probation officers, but our
11 members of our National Guards and military are
12 not. And we are asking here that we have this
13 in our Constitution to ensure it is not changed
14 at any time later.

15 I want to take just a few minutes and talk
16 about a few of these heros in this state that
17 have lost their lives in the line of duty, and
18 this will be early '17. These are the men and
19 women behind these badges, uniforms, bunker
20 gear. They are fathers and mothers, sons and
21 daughters, brothers, sisters, and friends.

22 Back in early 2017, Orlando Police
23 Department Lieutenant Deborah Clayton, a
24 17-year veteran, 42 years old, was shot and
25 killed on Monday morning, January 9, while

1 attempting to arrest a suspect accused of
2 killing his ex pregnant girlfriend. She was a
3 wife and a mother, and she also was one of the
4 first responding officers that arrived at the
5 Pulse Nightclub in June of 2016.

6 Orange County Deputy First Class Norman
7 Lewis, a 35-year-old loving son, an 11-year
8 veteran of the force, was killed in a
9 motorcycle accident when a driver failed to
10 yield when turning his back as he was
11 responding to the manhunt for Lieutenant
12 Clayton's killer. Ironically, those two fine
13 law enforcement officers was killed on National
14 Law Enforcement Appreciation Day.

15 Later in '17, Kissimmee Police Department
16 Sergeant Richard Sam Howard, a 35-year-old who
17 was one month shy of his 36th birthday, a
18 ten-year veteran of the force, was mortally
19 wounded on August 18th, while responding to
20 assist a fellow officer on a suspicious persons
21 call. Sergeant Howard died the next day,
22 August 19. Sergeant Howard also served two
23 years of duty in Iraq prior to joining the
24 Kissimmee Police Department. He was a husband
25 and a father whose daughter -- whose daughter

1 turned 17 years old two days after she buried
2 her beloved father.

3 Kissimmee Police Officer Matthew Baxter,
4 who was shot and killed during the same call as
5 Sergeant Sam Howard. Office Baxter was a
6 27-year-old, three-year veteran, father of
7 four, husband to a fellow Kissimmee police
8 officer at the time of his death, and she still
9 serves in law enforcement as she raises their
10 four young children, young children who at the
11 time of their death was eight years old and
12 then one that's not quite a year at the time of
13 their father's death.

14 United States Sergeant LaDavid Johnson of
15 Cooper City, Florida, was a 25-year-old soldier
16 assigned to the Second Battalion, Third Special
17 Forces group out of Ft. Bragg, North Carolina.
18 Also was the recipient of multiple metals
19 during his tours, had just left for a second
20 deployment in Africa on August 28th of last
21 year, was killed five weeks later on October
22 4th along with three other U.S. Army sergeants
23 during the same incident.

24 These five men and women represent the
25 loss of lives and broken families by so many of

1 our first responders and members of our
2 military that have simply given their all.
3 They've made their last call. They paid the
4 ultimate sacrifice to so many citizens in this
5 country whom they never knew and likely would
6 have never met again. They are our public
7 sector heros who gave it all.

8 So, Mr. Chair, and my -- this concludes my
9 presentation on Proposal 49. I respectfully
10 ask that you and my fellow Commissioners
11 support this proposal on behalf of future first
12 responders who, indeed, one day will give their
13 all.

14 Thank you.

15 CHAIRMAN BERUFF: Thank you, Commissioner
16 Gainey. Are there questions on the proposal?

17 Mr. -- Commissioner Diaz is recognized.

18 COMMISSIONER DIAZ: Thank you, Mr.
19 Chairman.

20 The first question I have is, do any other
21 states actually have this in their
22 Constitution?

23 COMMISSIONER GAINNEY: I am not familiar if
24 other states have it in their Constitution.

25 CHAIRMAN BERUFF: Commissioner Gainey --

1 Diaz, please.

2 COMMISSIONER DIAZ: Do any other states
3 have this in statute? Is there such a program
4 in another state?

5 CHAIRMAN BERUFF: Commissioner Gainey.

6 COMMISSIONER GAINNEY: Mr. Chair, it is my
7 understanding that some other states do have a
8 version -- a similar type of version within
9 their state legislature.

10 CHAIRMAN BERUFF: Commissioner Diaz.

11 COMMISSIONER DIAZ: On running the staff
12 analysis, it says certain conditions enumerated
13 in Florida Statute 112.18 are considered to be
14 presumptions for death attributed to a special
15 responder that has now got in a condition like
16 tuberculosis and heart disease and
17 hypertension, that they would be in the line of
18 duty pursuant to Florida Statute.

19 Are those officers considered eligible for
20 these benefits?

21 CHAIRMAN BERUFF: Commissioner Gainey.

22 COMMISSIONER GAINNEY: Mr. Chair, yes, as
23 long as they are actively in the line of duty
24 at the time, they will be eligible, as opposed
25 to when one is off-duty and they would not be

1 classified as eligible.

2 CHAIRMAN BERUFF: Commissioner Diaz.

3 COMMISSIONER DIAZ: I know the Legislature
4 has been playing around with it for a while and
5 very seriously taking into consideration
6 increasing these presumptions to include
7 cancer. It's been a big fight in the
8 Legislature. If this cancer presumption was
9 included into 112.18, would those officers who
10 died due to cancer while they were in the line
11 of duty, would their survivors also be eligible
12 for these monies?

13 CHAIRMAN BERUFF: Commissioner Gainey.

14 COMMISSIONER GAINNEY: My proposal did not
15 speak of really intimate specifics,
16 Commissioner, as I feel those decisions are
17 most appropriate for the Legislature.

18 CHAIRMAN BERUFF: Commissioner Diaz.

19 COMMISSIONER DIAZ: So the Legislature
20 would be able to, I guess, narrow the focus in
21 statute of who can and can't receive these
22 benefits?

23 CHAIRMAN BERUFF: Commissioner Gainey.

24 COMMISSIONER GAINNEY: Yes, and I think
25 that is most appropriate.

1 CHAIRMAN BERUFF: Commissioner Diaz.

2 Thank you. Are there any other questions
3 on Proposal No. 49?

4 Commissioner Stemberger.

5 COMMISSIONER STEMBERGER: Commissioner
6 Gainey, has -- are you aware that the
7 Legislature has attempted to provide any of the
8 benefits which are lacking that your proposal
9 does provide currently? Has there been a Bill?

10 CHAIRMAN BERUFF: Commissioner Gainey.

11 COMMISSIONER GAINNEY: I am not aware that
12 they're lacking. I think there's been a number
13 of requests and seeking certain benefits over
14 the years, Commissioner Stemberger, and a
15 number of those as mentioned are currently in
16 statute as it relates to firefighters, our law
17 enforcement, our correctional officers, but not
18 members of our military reserve and/or our
19 paramedics, EMTs.

20 CHAIRMAN BERUFF: Any other questions on
21 Proposal No. 49? Commissioner Joyner is
22 recognized.

23 COMMISSIONER JOYNER: Thank you, Mr.
24 Chair.

25 So you are adding three categories that

1 presently are not in statute; is that correct?

2 CHAIRMAN BERUFF: Commissioner Gainey.

3 COMMISSIONER GAINNEY: That is correct.

4 CHAIRMAN BERUFF: Commissioner Joyner.

5 COMMISSIONER JOYNER: Thank you,

6 Mr. Chair.

7 So will the Legislature need to do
8 anything -- I think Representative Diaz --
9 Commissioner Diaz touched on what the
10 Legislature needs to do, if anything, about
11 this, and I would like to know with respect to
12 those three categories of first responders that
13 you mentioned, will the Legislature have to do
14 anything to make sure that this occurs?

15 CHAIRMAN BERUFF: Commissioner Gainey.

16 COMMISSIONER GAINNEY: Yes, Commissioner,
17 it will. The proposal will call for the
18 Legislature to enact legislation to address
19 those three additional categories.

20 CHAIRMAN BERUFF: Are there any other
21 questions on Proposal No. 49?

22 Commissioner Schifino is recognized.

23 COMMISSIONER SCHIFINO: Yes. Commissioner
24 Gainey, the -- there's been a couple of
25 questions about what the Legislature will have

1 to do, and I think you've acknowledged they
2 will have to take certain action.

3 As I read Section G of your proposal, it
4 states, "This section does not limit the
5 Legislature from enacting laws." That does not
6 -- would you agree that does not compel the
7 Legislature to do anything? So how in effect
8 would that work?

9 CHAIRMAN BERUFF: Commissioner Gainey.

10 COMMISSIONER GAINNEY: I think there is an
11 amendment coming forth that should in part
12 address that.

13 COMMISSIONER SCHIFINO: Thank you, sir.

14 CHAIRMAN BERUFF: Are there any other
15 questions on Proposal No. 49?

16 Commissioner Gainey, you are recognized to
17 close on Proposal 49.

18 COMMISSIONER GAINNEY: Mr. Chair, I simply
19 say, and fellow Commissioners, that -- thank
20 you for your consideration. Someone said to
21 me, "Well, is that not treating these men and
22 women special?" We asked a lot of them. Is --
23 this is the group of men and women that we
24 simply ask to run into danger and to address it
25 and not to back down. They are our public

1 service protectors, our first responders, the
2 men and women that we expect to protect us all
3 in the face of danger.

4 Mr. Chair, that completes my close.

5 CHAIRMAN BERUFF: Commissioner Gainey,
6 would you like to address Amendment 409438,
7 please? Sorry, I took this out of sequence.

8 COMMISSIONER GAINNEY: That's okay.

9 Mr. Chair, thank you.

10 Amendment 409438 seeks to add in Section
11 G, "The Legislature may implement this
12 amendment by general law." In Section 8, that
13 this amendment shall become effective July 1,
14 2019.

15 And going to the question raised
16 specifically by Commissioner Joyner, and to a
17 degree by Commissioner Diaz, it allows the
18 Legislature ample time to address this issue
19 upon the legislative session of 2019. So I
20 thought it most appropriate to move the
21 implementing date to July 1.

22 CHAIRMAN BERUFF: Thank you, Commissioner
23 Gainey.

24 Are there questions on Amendment 409438?

25 Commissioner Schifino is recognized.

1 COMMISSIONER SCHIFINO: Thank you.

2 Commissioner Gainey, did you consider --
3 and if you look at G, the proposed amendment,
4 it states, "The Legislature may implement this
5 amendment by general law." Did you consider
6 utilizing the term "shall"? Because to me, as
7 I read this, it appears it is discretionary.

8 CHAIRMAN BERUFF: Commissioner Gainey.

9 COMMISSIONER GAINNEY: There was a number
10 of discussions about whether or not the word
11 should be "may" or "shall." I think that's
12 clearly something that we might be able to
13 address at a later time, but I think we are
14 comfortable at this point, given the current
15 legislation that's been on the books for a
16 number of years, that simply adding these three
17 sections I am -- I feel assured that the
18 Legislature is going to address it currently
19 and without concerns.

20 CHAIRMAN BERUFF: Are there any other
21 questions on Amendment 409438?

22 Seeing none, I think we can close debate.
23 Question or debate now?

24 COMMISSIONER GAINNEY: Waive close.

25 CHAIRMAN BERUFF: Questions are closed.

1 Debate on 409438. Recognize Commissioner
2 Gainey to close on your amendment.

3 COMMISSIONER GAINNEY: Mr. Chair, I waive.

4 CHAIRMAN BERUFF: Waive. So we will call
5 the question on the amendment. Will the
6 Secretary open up the board? We can take a
7 voice vote.

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

10 (Chorus of yea's.)

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

13 The amendment passes.

14 Now we will take up the vote. Open up the
15 board for Proposal No. 49.

16 Oh, debate on the proposal, I'm sorry,
17 guys. By Wednesday I'll get it right just as
18 we're finishing.

19 Commissioner Diaz, please proceed.

20 COMMISSIONER DIAZ: Thank you, Mr.
21 Chairman and Commissioner.

22 I could not think of a more worthy first
23 test of this body than this proposal. I think
24 it is altruistic. I think it is noble. These
25 are first responders. These are the people

1 that put themselves on the line for us. But
2 over the next few weeks and months maybe,
3 there's going to be a lot of issues that are
4 going to come before us that are going to
5 require us to vote not based on what is
6 altruistic and noble, but based on what should
7 be in the Constitution.

8 That's the threshold question for me, when
9 we look at our most sacred, sacrosanct
10 document, what can be accomplished there and
11 there alone, and what can be accomplished
12 elsewhere by legislative enactment and statute
13 by the Legislature.

14 Having served in the Legislature for so
15 many years, I firmly believe that if this
16 proposal were given to a Legislature -- and I
17 have some of my former colleagues who are
18 serving in this body now, I think that they
19 would consider this proposal and they would
20 probably like a version of it that looks at
21 more than just a macro view of how something
22 like this would work.

23 It would look at funding. It would look
24 at the nuances of the law. What happens if
25 somebody has been in Florida one day? What

1 happens if somebody is coming to Florida to
2 retire and they are on active duty in the
3 National Guard and something happens where all
4 of a sudden, you know, Florida is on the hook
5 even though the person's family is still living
6 in Tennessee? There's a lot of concerns that I
7 have about putting something like this in the
8 Constitution, and though it's going to be very
9 easy to vote yes on this, I really do mean it
10 when I say I think that this is our first big
11 test.

12 It is an amazing program. I commend
13 Commissioner Gainey for his thoughtfulness. I,
14 unfortunately, am going to vote no. I think
15 you will see a lot of no from me over the next
16 few weeks, and I encourage you to also vote no.
17 It hurts sometimes when you go back home and
18 you look at people in the eyes on an issue that
19 would have helped a friend or a neighbor or a
20 family member.

21 It might seem callous, but we are not
22 asked to come up here to be kind. We are asked
23 to protect our Constitution, and that is a
24 charge that I take very seriously and it is,
25 unfortunately, the reason I am voting no now.

1 It is not because the issue is not amazing or
2 wonderful or that people that serve our state
3 are not amazing or wonderful. I just do
4 believe that this does not rise to the level of
5 having to be in our Constitution, and because
6 of that, I am down and I ask others to think
7 about going the same way.

8 CHAIRMAN BERUFF: Would someone else like
9 to be recognized in debate? Commissioner
10 Stemberger.

11 COMMISSIONER STEMBERGER: I would like to
12 echo the sentiments of Commissioner Diaz. I
13 think that this is our first test. And let me
14 just first thank Commissioner Gainey and
15 Commissioner Timmann and others, Commissioner
16 Nocco and others that brought this amendment.

17 This is probably one of the most noble
18 ideas before this body, without question, and I
19 am embarrassed that the State of Florida
20 doesn't already do this. I am kind of stunned
21 that it's not already happening. I would also
22 be stunned that if in the next legislative
23 session, given this debate, it didn't happen on
24 its own.

25 But I would like to submit, as we're here

1 on the first proposal, a grid for us to all
2 think about these things. I believe that the
3 Constitution is reserved for rights that are
4 fundamental or important, it is reserved for
5 the structure of government, and it is reserved
6 to limit the powers of government, and this is
7 a very important point.

8 In fact, it's the difference between a
9 republic and a democracy. In a democracy,
10 whether it is representative democracy or
11 direct democracy, the law rules the rulers --
12 I'm sorry, rules the people. But in a
13 republic, the law rules the rulers. This is
14 why -- and the best example of this is the
15 First Amendment. It says Congress shall make
16 no law. The Constitution limits the power of
17 government. And so this is a very important
18 thing; in other words, Government, keep your
19 cotton-picking hands out of this area of life
20 or liberty.

21 The other area, because we are in a state
22 constitutional context, is would there be some
23 other provision in the Constitution that we
24 have to amend, because you can't by statute
25 amend something that's already in the

1 Constitution. And while I think that it's
2 embarrassing to me as a state that we're not
3 already protecting these men and women and
4 looking -- have the backs of their family when
5 they've paid the ultimate price, I do agree
6 with Commissioner Diaz, I do not think this is
7 an appropriate -- this is a wonderful policy,
8 but I can't get past the constitutionality.

9 It does not deal with fundamental rights
10 or important rights, it does not deal with the
11 structure of government, and it does not deal
12 with the limitation of powers, nor does it
13 amend a provision that exists which can't be
14 passed by the Legislature.

15 I think the Legislature can and will and
16 should pass this if we don't.

17 CHAIRMAN BERUFF: Commissioner Levesque.

18 COMMISSIONER LEVESQUE: Thank you, Mr.
19 Chairman. And, Commissioner Gainey, I want to
20 also thank you for this incredible proposal,
21 and I agree with Commissioner Stemberger, it is
22 probably one of the most well-intentioned and
23 altruistic and good proposals that is in front
24 of us. But members -- so last week was spring
25 break for our children here in Leon County, and

1 my husband and I took our children up to
2 Washington, DC. We felt like they were old
3 enough to see the memorials and the monuments
4 and to remember and understand some of the
5 things that those memorials stand for. And it
6 was cold, we were tired and walked a lot, but
7 there were two or three times in our trip last
8 week where we have those light-bulb moments
9 where my children understood some things.

10 And the first time was when we were
11 visiting the Korean War Memorial, and on the
12 wall next to the fountain, there's a saying,
13 "Freedom is not free." And I was able to ask
14 my children, "What does that mean, that freedom
15 is not free? Who paid for it? How did they
16 pay for it?" And you could see little light
17 bulbs going off where they were starting to
18 understand what sacrifice means, they were
19 starting to understand what it meant that
20 someone else a long time ago or even recently
21 gave their lives so my children can have
22 freedom.

23 Two days later, we were visiting the World
24 War II Memorial, and there is a fountain there
25 that has 4,000 gold stars, and each gold star

1 stands for 100 Americans who gave their life
2 during World War II. And right in front of
3 that fountain there's another saying, "Here we
4 mark the price of freedom." And we were able
5 to again talk about the price, who paid the
6 price and what did they sacrifice.

7 And I loved that my children were finally
8 starting to understand the beauty of our
9 country and how we have freedoms. We visited,
10 of course, the White House and the Capitol, and
11 you could see standing out in front of the gate
12 of the White House people just yelling, yelling
13 at tourists, yelling at each other, debating
14 different issues, debating things that they
15 were yelling at the White House. They were
16 yelling at each other. You could see a protest
17 on the grass of the Capitol building because we
18 live in a free country where men and women have
19 sacrificed and we're allowed to disagree with
20 government.

21 I wholeheartedly support the underlying
22 proposal that's in front of us, and if I were a
23 law-maker, I'd file legislation to enact this
24 proposal. But I'm not a law-maker. I'm a
25 member of the Constitution Revision Commission,

1 and part of my charge is -- part of our charge
2 is to look at these proposals, not only for the
3 good and the underlying value, but make that
4 hard call.

5 It is our duty -- it is our duty to make
6 sure proposals do not get in front of the
7 voters that are things that should not be in
8 the Constitution, things that can amply be
9 handled in the statute. And for those
10 purposes, I'm going to have to vote no on your
11 really good proposal. Thank you.

12 CHAIRMAN BERUFF: Thank you.

13 Commissioner Newsome is recognized.

14 COMMISSIONER NEWSOME: Thank you, Mr.
15 Chairman. And I, first of all, appreciate the
16 comments, and like Commissioner Stemberger, I
17 just wanted to stand up as a preliminary matter
18 and talk about sort of this threshold, because
19 I do think that even though this is just this
20 one proposal, this is a discussion that is
21 probably going to apply to the rest of the
22 discussions we have about all these proposals.
23 And I want to take a little bit of an issue
24 with this notion about what is our
25 Constitution.

1 Unlike the Federal Constitution, Florida's
2 Constitution is different. It is a living
3 document. And for those of you who read the
4 Mary Atkins book, Professor Atkins is a law
5 professor at the University of Florida College
6 of Law, and she wrote this great book called
7 *Making Modern Florida*, and it talks about this
8 story, and we've had some discussions about
9 this in some of our committees, but where did
10 we come from as a Constitution Revision
11 Commission? Why are we here? And there was
12 this long, 100-year history that happened with
13 the pork chop game where they were holding onto
14 segregation and they were completely preventing
15 the one vote -- one person/one vote rule until
16 the United States Supreme Court came out with
17 this decision that basically broke this lock
18 that this group of North Florida legislators
19 had, a grip of -- on power that was preventing
20 laws and preventing policies and preventing
21 good things that the people of Florida wanted.

22 And so when the 1968 Constitution was
23 created, they said, you know what, we are going
24 to make sure that that doesn't happen again and
25 we're going to have this group come together

1 once every 20 years and the Constitution
2 Revision Commission to see what the people want
3 and to put it in the -- in the law if it's not
4 there. And so that is not something that
5 happens in the Federal Constitution. This is
6 unique.

7 And I would suggest that this document is
8 not so rigid that prevents good public policy
9 if the people want it and if there's consensus,
10 which is why we held hearings.

11 So I would suggest a different three
12 criteria, and this is something that we have
13 talked about as a group, individually, at our
14 committee meetings, but I would like to talk
15 about it now. And the three criteria, at least
16 for me, are as follows:

17 First of all, is there consensus among the
18 voters? Is there consensus among the voters?
19 That is why we hold public hearings. Is this
20 something that everybody feels good about, or
21 whether is it going to be a wedge issue that's
22 going to drive us apart? If it's so, that's a
23 discussion for another day maybe with the
24 Legislature or elsewhere, but that's not why
25 we're here.

1 I would suggest that's why it requires a
2 60 plus percent vote, is there consensus,
3 because if I got to -- I got to suggest,
4 members, and maybe this is or isn't important
5 for some of us, but if we don't have an issue
6 that starts with a very high number, 70 plus,
7 forget about it ever getting passed to the
8 ballot. Then we are going to have this issue
9 of too many things on the ballot and voter
10 congestion and none of our stuff is going to
11 get through.

12 So Issue No. 1, is there consensus, and on
13 this one, I would say yes, there is consensus.
14 This is feel good. People are going to want to
15 vote -- no one is going to vote against it. So
16 it will pass if it gets on the ballot. That is
17 No. 1, consensus.

18 No. 2, will it do a lot of good for a lot
19 of people? Will it do a lot of good for a lot
20 of people? And, here again, I think the answer
21 is yes. For every man and woman in uniform,
22 this is going to be good, it is going to feel
23 good for them. They are going to feel like,
24 you know what, if I go out there and put myself
25 on the line, at least my family is taken care

1 of. So checkmark No. 2 for me, is it going to
2 do a lot of people -- good for a lot of people?
3 Yes.

4 And then No. 3, and this is where it gets
5 a little more sticky, but I'm going to still
6 vote for it, but Issue No. 3 is, is this
7 something that the Legislature hasn't or won't
8 do? That is really the key that I think we
9 should suggest, not that, yes, they could do
10 it, but is there some powerful special interest
11 stopping it?

12 Are they more concerned with -- with other
13 budget priorities? Is there some reason, like
14 with the pork chop game, that they just can't
15 do it politically? That's why we're here.

16 So the Legislature's never done this
17 before. I think for the three criteria, again,
18 for me is consensus among the people; No. 2, is
19 it going to do a lot of good for a lot of
20 people; No. 3, is there a reason that we need
21 to do it because the Legislature can't or
22 won't. I think on that third part, it is a
23 little close for me, but because the consensus
24 is so strongly there, I'm going to vote for it.

25 But I would suggest that the bigger issue

1 of my point in standing up now is at the
2 beginning, let's think about why we were
3 created as a body. We are kind of a little
4 legislative body unto ourselves, we really are,
5 and that's why we are sitting here, and most
6 importantly, to do things that the Florida
7 Legislature can't or won't.

8 So for all three of those reasons, it
9 meets my three prongs. Commissioner Gainey, I
10 hope your proposal passes.

11 COMMISSIONER GAINNEY: Thank you.

12 CHAIRMAN BERUFF: Thank you.

13 Commissioner Nocco is recognized.

14 COMMISSIONER NOCCO: Thank you very much,
15 and I apologize, I am fighting pollen, it's
16 crushing me right now.

17 But I just want to point out, I heard a
18 couple people speak already, and there is no
19 doubt in my mind if you had a choice and
20 another way to help those people killed in the
21 line of duty and their families, you would do
22 it in a heartbeat. That is not in question.
23 That will never be in question because I know
24 the character of the people in this room, and
25 you believe that.

1 But there's one thing that I want to just
2 stand up and just speak about Commissioner
3 Gainey's Bill is the fact that the women and
4 men who join, they swear to defend the
5 Constitution. When they get up, they know that
6 any actions they may take, they may die
7 defending the Constitution. And it is very
8 hard, in May we have the memorial services, but
9 it's even more difficult when you see the kids
10 of the fallen officers, firefighters, military
11 personnel, that have been killed and they are
12 going on with their lives, and what kind of
13 memory of their parent do they have?

14 So I would just say as you're thinking
15 about how you're going to vote on this, if
16 there's fundamental principles, there's also
17 the people. What's a constitution stand for?
18 It should be standing for those that defend it.

19 CHAIRMAN BERUFF: Commissioner Hutchins is
20 recognized.

21 COMMISSIONER HUTCHINS: Thank you, Mr.
22 Chairman and members. I rise to voice my
23 support for this proposal, as well for the
24 reasons that Commissioner Gainey mentioned and
25 Commissioner Nocco mentioned. And I also want

1 to address this issue of belonging and not
2 belonging.

3 This is an issue -- and I am glad,
4 frankly, that it's happened so early on in our
5 process, so people can say how they feel about
6 this very subjective issue of belonging and not
7 belonging.

8 I read the memo that was circulated last
9 week that relied entirely or mostly on two
10 things: One, it relied on this idea that we
11 ourselves can change the Constitution. Of
12 course, we know that not to be true. It also
13 relied on this notion that someone else could
14 do it, whether it be the Legislature, a court,
15 some other venue, some other forum, some other
16 format.

17 I will tell you that whether it is about
18 this proposal or any of them, I am going to be
19 a lot of yes's today and this week because my
20 view of what we are here to do is to behave in
21 a way and respond to things that we have heard
22 to prepare our state for the next 20 years and
23 beyond, and it is not -- I don't view it as a
24 competition between the Legislature or a court.
25 They have a role, both of them do, and their

1 role should not be diminished by what we do,
2 but our role cannot be diminished by what they
3 do, or could do.

4 And so I, like all of you, have thought
5 long and hard about this issue of belonging,
6 and whether -- it's not an issue of me being
7 right or Commissioner Diaz being right or
8 either of us being wrong. It is -- it is an
9 issue of what -- where do we go from here and
10 how do we best prepare our state. And whether
11 you use the term that Commissioner Newsome
12 mentioned of rigid or flexible or pick your
13 term, for me, sometimes the other forums and
14 formats need a little urging.

15 And I also think that with regard to
16 things that belonging and not belonging
17 ultimately, the people decide what belongs and
18 what doesn't belong. And I have very similar
19 thresholds that Commissioner Newsome has, I
20 have -- there's more than three for me, but my
21 votes throughout this week and beyond are going
22 to be primarily decided on would I vote for it
23 myself as a voter. So that is one of my
24 thresholds in addition to the others.

25 I -- again, I just want to say that people

1 aren't wrong or right about the very subjective
2 idea of belonging and not belonging, and I know
3 that there's kind of strict constructionists,
4 so to speak that, in fact, aren't all lawyers,
5 I mean, I've talked to many, many of you about
6 your ideas of belonging and not belonging, but
7 there's -- in my view, there is nothing that we
8 could do as a Commission and as a State of
9 Florida to recognize the loss of people that
10 are employed to keep us safe.

11 And so for those reasons, I am going to be
12 voting yes.

13 CHAIRMAN BERUFF: Commissioner
14 Kruppenbacher is recognized.

15 COMMISSIONER KRUPPENBACHER: Thank you,
16 Mr. Chairman, members of the Commission, I will
17 be brief.

18 One, I would hope as we go through this
19 week we'll address the proposals. I've heard a
20 lot of people express opinions on the whole
21 process.

22 We're not a legislative body, Commissioner
23 Newsome, at all, because what we vote on does
24 not go into law. It goes to the public to
25 decide.

1 Commissioner Gainey, congratulations on
2 putting forth an amendment that I think is
3 spectacular. I would ask you all as you're
4 sitting at your table to just turn the pages of
5 the Florida Constitution, and when you say what
6 should or shouldn't be in it, the people of
7 Florida have repeatedly put massive amounts of
8 things in the Constitution that they believe
9 rise to the level of values representing who
10 they are. There are rights throughout this
11 document on all sorts of topics and all sorts
12 of topics that the Legislature could act on.

13 So I would urge you to look at that
14 document and urge you to say that this is a
15 value worth putting in the Constitution and
16 telling our young and telling the people we
17 value the people that are protecting us, so
18 much so that we protected them in our
19 Constitution. Thank you.

20 CHAIRMAN BERUFF: Commissioner Solari,
21 recognized.

22 COMMISSIONER SOLARI: The issue of
23 belonging is certainly one that will interest
24 us for the next weeks, and I, again, believe
25 there is no right or wrong, but one question

1 that I asked that Commissioner Newsome didn't
2 is that is it consistent with the most
3 important principles of our Constitution?

4 And the Constitution, Section 2 at the
5 beginning says, "All natural persons, female
6 and male alike, are equal before the law and
7 have inalienable rights." And it is -- that
8 idea that all men are crea- -- or all people
9 are created equal has a long history in both
10 the history of the United States and the State
11 of Florida.

12 And it is only because of this work I've
13 done in the Constitution over the last months,
14 trying to help me understand what our purpose
15 is here, that it's really brought to me or
16 maybe hit home about how fundamental this idea
17 that all people are created equal is to our
18 democracy. If we don't believe that -- or at
19 least for me, and, obviously, this is all
20 personal to me -- if we don't believe that all
21 people are created equal, then we can't have a
22 really functioning democracy.

23 And while I am with everyone who believes
24 that we ought to do everything we can and the
25 Legislature ought to do everything we can for

1 our first responders, as a fundamental
2 constitutional provision, I believe it is
3 outweighed by all people are created equal.
4 And we haven't gotten there yet. I believe
5 we've made great strides over the last 250
6 years, but we are not there yet.

7 And, clearly, unlike many, for me this
8 puts another class of people in the
9 Constitution, and I don't believe that's where
10 it belongs.

11 So, again, I am not saying I am right or
12 wrong on this, but for me, that is a driving
13 force, which is why, sir, I will be voting
14 against your proposal. Thank you.

15 CHAIRMAN BERUFF: Commissioner Cerio is
16 recognized.

17 COMMISSIONER CERIO: Thank you, Mr. Chair.
18 Sorry to walk around, but some mean person put
19 these way too close together for me.

20 I want to -- I want to say that I am
21 pleasantly surprised, if not shocked, to find
22 myself agreeing with my good friend,
23 Commissioner Newsome, so early in this process.
24 You know, I do consider -- I do consider myself
25 a purist in a lot of ways when we're talking

1 about the Constitution, and I -- I do -- I
2 don't believe it is a living document, I would
3 not go so far to say that, and I am pretty much
4 a strict constructionist in its interpretation.

5 But Commissioner Kruppenbacher, Baker is
6 right, this is not a skeletal document that we
7 have in the State of Florida. We have a lot of
8 things in there like net, you know, fishing
9 ban, net bans, we have pregnant pigs, things of
10 that nature. Does that mean it is a good
11 thing? No, but the people of Florida have
12 decided to put things in the Constitution, and
13 they will do so after -- after we meet over the
14 next 20 years until the next CRC meets. We
15 have things in there that are policy decisions,
16 they are an expression of state values.

17 Now, having said that, I don't fault
18 anybody for having their own position as to why
19 they want to vote, you know, for their own
20 criteria for what belongs in the Constitution,
21 what doesn't. That's our role as
22 Commissioners. I am of the opinion that things
23 that are an expression of values that maybe the
24 Legislature has not acted or has been -- and I
25 don't mean any disrespect to the courts, but

1 maybe has been stymied by the courts because
2 for what -- for whatever reason or another and
3 they -- and folks wants to take a crack at
4 amending the Constitution to address an issue,
5 I believe this is the forum to do that. And I
6 can't think of any better issue to do that than
7 to stand up and say we're going to honor our
8 first responders.

9 When you look at was this pretty -- pretty
10 a big document that we have as a Constitution,
11 I think that is -- that is an expression of the
12 value that has a whole lot of merit; again, not
13 trying to diminish what else is in there.

14 So I do rise today in support of it. I
15 thank Commissioner Gainey for bringing this
16 proposal, and, again, no -- no -- no disrespect
17 to anybody who has their own criteria, but I
18 just think we're not talking about a skeletal
19 document. And I will close with this point:

20 You know, as Commissioners, we could have
21 filed a completely -- we could have tried to do
22 a completely new Constitution. We could have
23 tried to create a document that had very
24 limited but specific fundamental rights that
25 only -- and it was truly a skeletal document,

1 and we didn't do that. So that is -- that is
2 the perspective that I am bringing, and I share
3 Commissioner Hutchins' view as what do we want
4 in this document, would I vote for it as a
5 voter, and that's the perspective I'm going to
6 try and bring to this process. Thank you.

7 CHAIRMAN BERUFF: Commissioner
8 Thurlow-Lippisch is recognized.

9 COMMISSIONER THURLOW-LIPPISCH: Does this
10 work? It works, great.

11 I just thought this was an appropriate
12 time to read the preamble of our Constitution,
13 which states, "We, the people of the State of
14 Florida, being grateful to Almighty God for
15 constitutional liberty, in order to secure its
16 benefits, perfect our government, ensure
17 domestic tranquility, maintain public order,
18 and guarantee equal civil and political rights
19 to all, do ordain and establish this
20 Constitution."

21 I support Commissioner Gainey and I think
22 the values are stated right off the bat. Thank
23 you.

24 CHAIRMAN BERUFF: Thank you.

25 Commissioner Lee is recognized.

1 COMMISSIONER LEE: Thank you, Chairman.
2 I'm going to rise in support of this proposal,
3 but I'd like to do it with some caveats. I
4 think that -- I forget who said what here, but
5 it's all been said so well, and the point I
6 want to focus on is that this is our first --
7 whoever said this is our first test.

8 And I think that is a fair point to make
9 as we go through these proposals now, and we've
10 got 36 of them to deal with, and it is good for
11 us all to try to get a sense of where everyone
12 is coming from on these things. And, you know,
13 I would just like to make a couple of points in
14 why I am supporting this.

15 I think it goes too far. I think it is
16 written like a statute. And I believe a lot of
17 what has been said about the Constitution
18 setting forth our rights and limitations of
19 government rights and the structure of
20 government and what-have-you, but it's also a
21 statement of our values. And this could easily
22 have been a proposal that framed up an
23 important core value of the State of Florida
24 and left to the Legislature much of this
25 detail.

1 And I talked to -- to Chairman Hutchins
2 about the Style and Drafting Committee, he's
3 written a long letter, and I think there's a
4 number of us that hope that as these -- as
5 these proposals move out of the -- off the
6 floor here and into Style and Drafting, that
7 the Style and Drafting Committee will have the
8 ability to work with the sponsor of these
9 amendments to clean up, which is kind of a
10 harsh term, but you get the point I am making,
11 kind of take the edges off or improve upon some
12 of these so that they can really be more
13 aspirational, more goal-oriented, more
14 value-oriented, to the extent that they get
15 outside of those specific core functions of
16 government and are more statements of what we
17 would -- the messages we would like to send
18 back to the public, much of which came from
19 them to begin with, about who we are as a
20 people.

21 And so I'm going to support this today and
22 leave you with one other caveat, and I believe
23 Commissioner Newsome sort of touched on this in
24 his comments, but the Legislature is
25 compromised in ways that this Commission isn't.

1 I've seen a lot in my time in the Legislature,
2 and there are reasons that things will never
3 get out of the Florida Legislature. It is much
4 easier to kill something than it is to pass it.
5 All you have to have is one Chairman sitting in
6 one place, or the wrong place at the wrong
7 time, depending on how you view it, and it's
8 dead.

9 And there have been issues come before the
10 Legislature time and time and time again and
11 while I am not interested anymore than some of
12 the others in cluttering our Constitution with
13 a lot of detail, I do recognize that this body
14 has a unique opportunity to go directly to the
15 voters with things that the special interest
16 groups have been successful time and time and
17 time again at killing in the Florida
18 Legislature. And the more -- if you talk to
19 special interests, if you talk to people that
20 lobby the Legislature, I can promise you
21 they're almost all going to tell you to do
22 nothing, because they know how to manage the
23 Legislature, they got that figured out.

24 And I won't get into a lot of airing the
25 dirty laundry about how that works, but, you

1 know, some days I feel like a first responder
2 where I have seen the sausage made, and it
3 leaves a scar on you. And this Commission can
4 do some important work.

5 So while I support this proposal, I
6 support it as a concept more than I do some of
7 the detailed specificity. And I had the
8 privilege of chairing a select committee to
9 implement the constitutional amendments that
10 were adopted in 2002 for the Senate, and
11 there's a lot of work that the Legislature
12 needs to do typically when these amendments
13 pass to create definitions, the indoor
14 workplace and not smoking for indoor workplace
15 was one of them, and there were no definitions
16 in that Constitution, what constituted a
17 workplace and what exemptions would be
18 authorized.

19 Now, the Legislature can't go outside the
20 construct of the amendment itself, but within
21 the construct of that amendment, there are a
22 lot of things that will require further
23 definition, typically, and it's why I don't
24 think you really needed your amendment, because
25 that is implicit in all of these, that the

1 Legislature has the right and indeed the duty,
2 and to the extent that things are left vague,
3 they will have the responsibility, affirmative
4 responsibility to come in and tighten these
5 things up, much as they did in 2002.

6 So I -- I hate the fact, Mr. Chairman,
7 that I rambled outside the four corners of the
8 Commissioner's proposal, but this is an
9 opportunity for us to begin to kind of set the
10 tone for where we're headed here, and I have a
11 different perspective than some and wanted to
12 support the amendment, but do so with -- with
13 some reservations about the level of detail in
14 which it's written and -- and my hope that the
15 Style and Drafting Committee will be able to
16 work with various sponsors to see if there is a
17 possibility of cleaning some of these things up
18 and making them a little less specific or
19 whatever other changes might need to be made.
20 Thank you, Mr. Chairman.

21 CHAIRMAN BERUFF: Commissioner Schifino is
22 recognized.

23 COMMISSIONER SCHIFINO: Very briefly, and
24 thank you, Commissioner Lee, and I share many
25 of your concerns that you raised as to the

1 specificity and the detail.

2 I do want to say as we navigate through
3 this process, let's remember words are very
4 important, not to play the lawyer role right
5 now, but I think there is a very significant
6 difference between the word "may" and "shall."
7 If this is something you believe and this is a
8 proposal that you want to see on the ballot,
9 and that if adopted, is implemented, I am one
10 that -- and I understand, Commissioner Lee,
11 that your thought is the Legislature will take
12 it up and that is an obligation they have.

13 Well, I would prefer at the end of the
14 day, if this is the position that we are going
15 to take, that it does say the word "shall."
16 Thank you.

17 CHAIRMAN BERUFF: Commissioner Sprowls is
18 recognized.

19 COMMISSIONER SPROWLS: People in the
20 Legislature -- thank you, Mr. Chair -- always
21 say "I didn't intend to speak" right before
22 they speak." And up and to this point, I have
23 been faithful to not do that, so now I have
24 broken a streak which I intended never to
25 break. But I do think that this is worth

1 getting up and talking about.

2 Commissioner Gainey, I am going to support
3 the proposal today, but I, like Senator Lee,
4 would like to narrow it significantly. There's
5 a lot of language. It is like a legislative
6 proposal. I think we can be aspirational. We
7 can put something in there that asks the
8 Legislature, you know, to implement something
9 that takes care of our first responders, but I
10 do think that there's a couple of things worth
11 responding to.

12 Commissioner Nocco talked about how we
13 treat our first responders, especially our
14 military, our police officers, a little bit
15 differently, and I think that makes sense,
16 right? It's not just because they step into
17 the breach for us, but it's also more than
18 that.

19 From a citizenship -- and Commissioner
20 Solari talked a little bit citizenship
21 perspective, you know, they take a special
22 oath, right, to defend our Constitution against
23 enemies, foreign and domestic. Some of the
24 people in this room have taken that oath.
25 Others have not. And that's different. And

1 how we treat those individuals as a government
2 and as a society should be different, and I am
3 okay with it being different. I think we can
4 do it in a little bit different way, but I am
5 okay with it.

6 But I also think some other things are
7 worth mentioning, and with the indulgence of
8 the Chair, some folks have kind of set up a
9 rubric of how they look at these things, and I
10 think that's really important. And although I
11 differ a little bit from -- on this particular
12 proposal from Commissioner Diaz, Commissioner
13 Levesque, and others, I agree with what they
14 said, which is we should be very, very
15 judicious as to what we are putting forward to
16 go to the ballot.

17 There's been a lot of talk in this room
18 today about essentially what amounts to direct
19 democracy, saying that there's things that the
20 Legislature can or can't or won't do because of
21 whatever reason, whether it is apathy, special
22 interests, all kinds of things. But I'd also
23 encourage you to go through this document and
24 highlight the things that you think are in here
25 from special interests, because I guarantee

1 you, you will find some, because it has become
2 a tool for special interests. Things that
3 cannot get done in the Legislature, they try to
4 go here. And then you'll have special
5 interests dueling back and forth. They will
6 put up their proposal, the rival association
7 will put up their proposal and so on and so on.
8 And that is something that we should be
9 cognizant of as well.

10 And I differ from others who believe that,
11 you know, this is something where we should
12 just put laws that can't get done into the
13 Constitution. That's not what the Constitution
14 is for.

15 Commissioner Thurlow-Lippisch rightfully
16 read the preamble to the Florida Constitution,
17 and those of you who remember it from -- from
18 civics class -- I know Commissioner Gaetz,
19 Senator Gaetz, will talk about civics at some
20 point during this -- during this CRC, but it is
21 very similar to the United States Constitution
22 preamble, right? And yet the things that we
23 find in that document are aspirational. They
24 are goals that we share as a people.

25 And although it's been troublesome along

1 the way and there's had to be amendments, not
2 nearly like the document that we have in this
3 blue cover here before us. So I would
4 encourage us to be thoughtful about the
5 aspirational goals that we seek in the
6 Constitution and not to continue to clutter the
7 Constitution with proposals, where albeit the
8 goals might be in the right place and the
9 policy might be the right policy, the venue is
10 just not the appropriate one. Thank you,
11 Mr. Chair.

12 CHAIRMAN BERUFF: Thank you.

13 Commissioner Coxe is recognized.

14 COMMISSIONER COXE: Thank you, Mr. Chair.

15 I am reminded of leaving Jacksonville to
16 come here last night in a debate with my wife,
17 and her parting words were, "I'd love to agree
18 with you, but then we'd both be wrong."

19 I want to say to Commissioner Gainey's
20 proposal, I have a father who served in the
21 Pacific of World War II, a brother who served
22 in Viet Nam, I've represented sheriffs, I've
23 represented first responders, and I have
24 friends who died in the line of duty, good
25 friends. And so all that means is one thing,

1 how much we appreciate the value of life. And
2 I think the value of life is the value that
3 separates this nation from the rest of the
4 world. And that's Commissioner Gainey, what
5 you are speaking to. It is an implementation
6 in one small way to recognize the value of the
7 lives of these people who served.

8 On the other hand, I have heard this
9 morning on this discussion what I think is
10 going to be 37 different analyses of what
11 should go in the Constitution now. I haven't
12 heard any two people stand up and give the same
13 reason why something should go in the
14 Constitution, all the way from Commissioner
15 Newsome -- and I will put you at one end of the
16 spectrum -- and Commissioner Stemberger -- I
17 will put him at the other.

18 I come from the school that the
19 Constitution is the framework of how
20 governments are structured, of how governments
21 interact with their people, as their citizens,
22 and to get beyond that requires a major stroke.
23 I don't measure it by what's popular as to
24 whether something should go in the
25 Constitution.

1 You have proposed what I think is the most
2 beneficial value to some of the people in the
3 State of Florida. But the staff analysis says
4 it's already being done by the Legislature, and
5 I don't believe for a minute isn't going to
6 continue to be done to include the people that
7 this doesn't include. So for that reason
8 alone, I would push the red button.

9 The other thing I want to say, maybe not
10 to you, Commissioner Gainey, because I know you
11 understand, not to the people in this room, but
12 to the world, when we get in these
13 circumstances and we push the red button, it
14 does not mean we do not appreciate the value of
15 what's being proposed, it doesn't mean we don't
16 appreciate the significance of what's being
17 proposed. It just means that this particular
18 person in his or her analysis determines it
19 doesn't belong in Florida's Constitution. So
20 thank you.

21 CHAIRMAN BERUFF: Commissioner Gainey is
22 recognized to close on the proposal as amended,
23 unless there's anymore debate. Commissioner
24 Joyner is recognized for debate.

25 COMMISSIONER JOYNER: Thank you,

1 Mr. Chair.

2 The overriding concern for me is does it
3 rise to the level that it should be in the
4 Florida Constitution. That is -- that's been
5 my question from day one. I value life and I
6 value all of those who -- who seek and do every
7 day keep us safe.

8 I share Senator Lee's thoughts in that
9 it's very specific and perhaps too specific,
10 and my thoughts are, are there any unintended
11 consequences that we haven't been able to
12 visualize at this point in this proposal, and I
13 do know that if it gets the requisite votes
14 today, then it comes back third reading, as we
15 would say, and then that's drop-dead time.

16 But consistent with my -- my thought of
17 does it rise to the level of -- is it a
18 fundamental right that should be in the Florida
19 Constitution, notwithstanding some other things
20 that are in there that shouldn't in my opinion
21 and the opinion of many others, why did we put
22 pregnant pigs in the Constitution.

23 Well, the people did that because the
24 Legislature didn't act. And maybe we should
25 have had something here to allow the people to

1 have statutory amendment process, and then they
2 could propose a statute change and we wouldn't
3 be trying to put so many of these items in the
4 Florida Constitution. But we didn't do that,
5 and I didn't think about it in time. That's
6 for another time.

7 But today my heart is with the sense of
8 this proposal, but it just doesn't pass my test
9 as to whether or not it should be in the
10 Florida Constitution and I will not be able to
11 support it today.

12 CHAIRMAN BERUFF: Is there any
13 Commissioner who wants to speak further on
14 debate?

15 Commissioner Gainey, you are recognized to
16 close on your proposal as amended.

17 COMMISSIONER GAINNEY: Thank you,
18 Mr. Chair.

19 One point of clarification that I think
20 might be helpful. As is in historic current
21 statutory scheme in this proposal does indicate
22 that the employing agency will be responsible
23 for the payments. It is not any financial --
24 extra financial burden on the State of Florida
25 except for those that are members of the U.S.

1 military. Obviously we cannot compel the
2 federal government to pay.

3 So those individuals, if passed, will be
4 paid by the State of Florida. Otherwise, those
5 payments are from the employing agency, and if
6 we look at the history, unfortunately, of the
7 loss of lives in this state, the majority of
8 those are always local agencies because those
9 carry the most of the first responders. They
10 are not majority of state officers that is in
11 there.

12 So -- and the current scheme provides for,
13 and I think it is appropriate, that either a
14 local city or county can pay out of their ad
15 valorem funds, taxes, and/or they can secure
16 insurance premiums to cover for any of those
17 losses, and some of those agencies both do a
18 varying scheme.

19 Mr. Chairman, with that, I think we've had
20 great debate, various opinions by fellow
21 Commissioners. I feel no need to add to that
22 any further. Thank you.

23 CHAIRMAN BERUFF: Thank you. The
24 Secretary will unlock the board. Please vote,
25 Commissioners. Thank you.

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

3 THE SECRETARY: 25 yea's, 7 nay's,
4 Mr. Chairman.

5 CHAIRMAN BERUFF: Thank you. The proposal
6 carries to Style and Draft.

7 We will now take up Proposal No. 6.
8 Commissioner Martinez, you are recognized to
9 explain your proposal.

10 COMMISSIONER MARTINEZ: Mr. Chairman, good
11 morning, members of the Commission, good
12 morning. It is my privilege to be associated
13 with you and to have worked with you the past
14 few months. And, Mr. Chairman, I want to
15 congratulate you, sir, for organizing and
16 leading this Commission, and in particular, for
17 putting together a first-rate staff. They have
18 been extremely responsive, their work product
19 has been excellent, they have been a pleasure
20 to deal with, and I probably have abused that
21 privilege more than anybody else, as I am sure
22 you probably know, and I want to congratulate
23 you for that.

24 CHAIRMAN BERUFF: Only second to me.

25 COMMISSIONER MARTINEZ: Anyway, thank you,

1 they have been really terrific, sir. It's all
2 been very smooth the last couple of months.

3 So this proposal, P-6, this proposal deals
4 with the structure of government. This
5 proposal deals with one of the great organizing
6 principles of our constitutional form of
7 government, a proposal dealing with the
8 separation of the branches.

9 Now, we all know about that. We all
10 studied that in school over the years, or we
11 know about it from our daily work. In Florida,
12 unlike the Federal Constitution, Florida
13 actually incorporates into the wording of the
14 Constitution the concept of the separation of
15 the branches. And it is found in Article II,
16 Section 3. I am going to read it to you.

17 It states: "The powers of the state
18 government shall be divided into legislative,
19 executive, and judicial branches. No person
20 belonging to one branch shall exercise any
21 powers appertaining to the other -- to either
22 of the other branches, unless expressly
23 provided herein -- unless expressly provided
24 herein."

25 Now, that principle has been made explicit

1 in Florida's Constitution six times, even
2 before Florida entered the Union as a state.
3 The Florida Supreme Court, with regards to
4 expounding upon what that means, has written
5 the following with regards to Article II,
6 Section 3:

7 "Under the express separation of powers
8 provision in our State Constitution, the
9 judiciary is a co-equal branch of the Florida
10 government vested with the sole authority to
11 exercise judicial power -- to exercise judicial
12 power."

13 Now, this is the way we have organized our
14 form of government since the beginning. This
15 is the way the U.S. Constitution organized the
16 federal government since the beginning. But
17 something happened along the way, and it really
18 began to germinate pretty much in the middle of
19 the last century, sometime around the 1940s
20 during World War II in the federal government,
21 and then it caught fire a little bit in the
22 state government. And what developed was a
23 judicial doctrine.

24 A judge made doctrine dealing with a
25 deference to the administrative agencies. And

1 the danger of that doctrine -- and I will
2 explain this explicitly in a second -- is that
3 it has encroached upon the power of both the
4 legislative branch and the judicial branch.
5 And the doctrine created by Judges reads as
6 follows as it is articulated in Florida by the
7 Florida Supreme Court. This is a doctrine not
8 created by statute, not created by the
9 Constitution, it is created by the courts. And
10 this is how the Florida Supreme Court has
11 recognized this doctrine.

12 It states as follows: "In interpreting a
13 statute by an agency, an interpretation of a
14 statute by an agency charged with its
15 administration is entitled to great weight and
16 will not be overturned unless it is clearly
17 erroneous." That is the law in Florida.

18 Let me read that again: "An
19 interpretation of a statute by an agency
20 charged with its administration is entitled to
21 great weight and not -- and will not be
22 overturned unless it is clearly erroneous."

23 What that means is that when you go into
24 litigation and you are litigating against an
25 administrative agency, whether you are an

1 individual, a business, or even a local
2 government or even a county government, the
3 burden of proof is upon you to show that the
4 agency's interpretation is clearly erroneous.

5 What does that mean? In order to show
6 that an interpretation is not clearly
7 erroneous, it is sufficient if it is within a
8 range of possible and reasonable
9 interpretations.

10 Now, let me tell you how this works in
11 practice, and I apologize that you all can't
12 see this from far away, but let me just use a
13 graphic. This is a depiction of Lady Justice,
14 you've all seen it. I'm sure my fellow trial
15 lawyers here have seen it.

16 And Lady Justice is carrying a sword,
17 which is a sign of authority, the authority of
18 the rule of law, and she's also holding the
19 scales of justice, which show that before her
20 the parties are on equal footing, nobody has an
21 advantage, and it also shows her blind-folded.
22 Lady Justice is blind. She doesn't care who's
23 before her. She's going to rule equally.

24 This is what happens when you litigate
25 against an administrative agency. I don't know

1 if you can see it from far away. This is what
2 Lady Justice looks like. The scales of justice
3 are tipped in favor of the administrative
4 agency, and Lady Justice is peeking. She wants
5 to see who the party is before her. And if the
6 party is an administrative agency, she will
7 from the beginning defer to the administrative
8 agency with regards to an interpretation of a
9 statute or rule that is within the jurisdiction
10 of that administrative agency.

11 So from the beginning, the thumbs are on
12 the scales of justice tipping in favor of the
13 administrative agency.

14 Let me give you an example of the type of
15 cases in which you will find this scenario,
16 this doctrine, being applied. And I have
17 listed -- I am going to list nine, but there
18 are literally hundreds that you can find in the
19 law books. It involves an appeal -- these are
20 examples -- by a hospice company of ACHA's
21 finding regarding a Certificate of Need and the
22 granting of a Certificate of Need. It deals
23 with an appeal by an employer to an order of
24 the Unemployment Appeals Commission finding the
25 claimant worked in an insured employment

1 capacity. It deals with an appeal by a
2 claimant to an order of the Unemployment
3 Appeals Commission regarding the exclusion from
4 unemployment compensation benefits. It has
5 been dealt with and appealed by a county
6 government of an order the Department of
7 Environmental Regulations, the predecessor DEP,
8 issuing a permit for the construction of a
9 hazardous storage facility and waste treatment
10 plant that involves Escambia County in that
11 particular case.

12 It has been dealt with in an appeal by a
13 nursing home patient of a DCF decision
14 establishing the amount that she was required
15 to contribute to her care. It has been used
16 with regards to an appeal by a public interest
17 organization of orders by the Public Service
18 Commission setting numeric demand side
19 management goals for electric utilities.

20 It has been used by an appeal by a Metro
21 Dade government of an order by the Department
22 of Environmental Protection approving the
23 eligibility of an owner of contaminated
24 property to participate in the Florida dry
25 cleaning contamination cleanup program.

1 It has been held in the case of an appeal
2 by a civil engineer of a decision of the
3 Construction Industry Licensing Board denying a
4 certified marine specialty contractor's
5 license. It has been also used in the case of
6 an appeal by a claimant of an order of the
7 Reemployment Assistance Appeals Commission.
8 Their claimant was ineligible to receive
9 reemployment assistance benefits.

10 These are just examples, and in each one
11 of those cases, the decision of the
12 administrative agency was affirmed because the
13 burden of proof was so high. This -- all these
14 cases dealt with the interpretation of a
15 statute or a rule within their jurisdiction.

16 Now, the doctrine was first announced in
17 Florida in 1952, and it didn't really take off,
18 it didn't really explode until the 1980s, when
19 there was a comparable doctrine that was --
20 that was approved by the U.S. Supreme Court in
21 the case of Chevron, a very well-known case.
22 It's similar, but our doctrine is actually even
23 more Draconian. It took off in the 1980s.
24 There were 20 cases in the 1980s. There were
25 40 plus cases in the 1990s. And since the term

1 of the millennium, there have been in excess of
2 90 cases.

3 CHAIRMAN BERUFF: Commissioner Martinez,
4 if you could kind of wrap it up.

5 COMMISSIONER MARTINEZ: Yes, sir.

6 So what I'm asking you here to do is to
7 approve Proposal No. 6, and what Proposal No. 6
8 would do is it would place into the
9 Constitution, although I have introduced it as
10 part of Article V, Section 21, it really
11 belongs as part of Article II, Section 3. It
12 is an extension of the separation of branches
13 of doctrine in our Constitution.

14 Thank you, sir.

15 CHAIRMAN BERUFF: Thank you. Is there
16 questions on Proposal 6? Commissioner Johnson
17 is recognized.

18 COMMISSIONER JOHNSON: Thank you, Chair.

19 Commissioner Martinez, I just wanted to
20 hear your explanation of -- one of the reasons
21 they give deference to these administrative
22 agencies is because of their expertise. And I
23 was trying to think through as a Judge how you
24 get that same level of understanding and
25 appreciation for the issues in front of you in

1 order to yield the best decision and the best
2 outcome. Could you help me appreciate a little
3 bit better what that process would look like in
4 the judicial world if no deference was given?

5 COMMISSIONER MARTINEZ: Well --

6 CHAIRMAN BERUFF: Commissioner Martinez is
7 recognized.

8 COMMISSIONER MARTINEZ: I'm sorry,
9 Mr. Chair.

10 The Judge would still be entitled to
11 listen to the opinion of the agency, obviously,
12 certain agencies of expertise with regards to
13 their area of expertise, but what this deals
14 with is an interpretation of a statute. It is
15 a matter of law.

16 So although the Department of Education,
17 the Department of Environmental Protection and
18 other departments may have certain subject
19 matter expertise, with regards to an issue of
20 law, it is really the Legislature who passed
21 the statute, and they are the ones who
22 establish the law. And it's really not up to
23 the administrative agency to tell -- to
24 determine what the law is. It is really for
25 the judiciary to do so.

1 So the court can still listen to the
2 opinion of the agency, it can still give it
3 great weight if it believes that it's
4 persuasive, but what this does is that it
5 prevents the Judge from deferring to it
6 reflexively and creating a presumption in its
7 favor that could only be overturned if clearly
8 erroneous.

9 CHAIRMAN BERUFF: Is there anyone else who
10 would like -- that has a question on Proposal
11 No. 6? Commissioner Kruppenbacher is
12 recognized.

13 COMMISSIONER KRUPPENBACHER: Thank you,
14 Mr. Chairman.

15 Commissioner Martinez, having been on both
16 sides of these issues, one of the most
17 important things that I think exists in law is
18 consistency.

19 CHAIRMAN BERUFF: Commissioner
20 Kruppenbacher, would you hold the mike a little
21 bit --

22 COMMISSIONER KRUPPENBACHER: Yes.

23 One of the most important things that I
24 look for in law is consistency. So if you open
25 this up to Administrative Law Judges or Judges

1 making their own interpretations without regard
2 to a regulating body's thoughts or opinions, in
3 terms of having great deference, do you end up
4 with a system that could be this activist Judge
5 goes to the right, this conservative Judge goes
6 to the right, the activist goes to the left,
7 you're all over the place, whereas now we're
8 set up with a number of governmental bodies
9 across the state.

10 I want to give you a good example. School
11 districts every day are placing students who
12 have exceptional education needs in different
13 programs, and if a parent doesn't like it, they
14 can request a hearing. If you were to say
15 you're not going to give deference to the
16 school systems into their interpretation of the
17 statutes and DOE's interpretation of the
18 statutes, in my opinion, you risk opening the
19 door to an enormous amount of claims being
20 filed where lawyers go, well, we might as well
21 roll the dice because we may get a different
22 opinion this time, whereas now I know because I
23 both defend these and I am on the offensive
24 side of them, it kind of puts an end to what I
25 call plaintiffs' lawyers just following them

1 because they know that deference is going to be
2 given. So I am really concerned about this.

3 Are you undoing a system that has worked,
4 and I'm trying to figure out where it hasn't
5 worked. Has it not worked because somebody has
6 lost? But, overall, the system seems to work.
7 So what are we fixing?

8 CHAIRMAN BERUFF: Commissioner Martinez.

9 COMMISSIONER MARTINEZ: Yes, actually, the
10 concern that you've expressed is greater if it
11 -- if it remains the way it is, because what
12 happens in practice is the following:

13 Now we have a Governor. In a couple of
14 months we will have a new Governor, and that
15 new Governor will constitute his or her own
16 administrative agencies, and that
17 administrative agency comes in and they can
18 interpret that same statute or rule
19 differently. So the danger of inconsistency
20 arises in the way it is constituted right now.

21 Whichever -- whichever agency is in power
22 is going to use the interpretation that it
23 wants to its advantage, and that agency is part
24 of the executive branch, it is not part of the
25 legislative branch. So it would essentially be

1 changing the law, its interpretation of the
2 law, to meet its own policy objective.

3 So I think the danger is greater now with
4 the way it is, it's greater the way it is.

5 CHAIRMAN BERUFF: Thank you. Is there any
6 more questions?

7 Seeing none, Mr. Martinez would close --
8 oh, no, we got to open for debate. Questions
9 are closed. Is there any debate on Proposal
10 No. 6? I said I'd get it right sooner or
11 later. Commissioner Solari is recognized.

12 COMMISSIONER SOLARI: Thank you, Mr.
13 Chairman.

14 Commissioner Kruppenbacher, I would start
15 by disagreeing with your statement that the
16 system seems to work. I believe that the
17 system is broken because of this problem, and
18 that they -- the people's sense that government
19 is not working is driven by this problem. And
20 the reasons are largely as Commissioner
21 Martinez says, is because the administrative
22 state has worked, especially through the
23 Chevrons doctrine and the State of Florida's
24 version, to undermine the separation of powers
25 and just begin -- the main problem I start by

1 saying that the checks and balances block the
2 rise of extra legal power, and it blocks extra
3 legal power by placing legislative power
4 exclusively in the Legislature, and it prevents
5 extra legal adjudication by placing judicial
6 power exclusively in the courts.

7 This has changed with the rise of
8 administrative law and how it works. While the
9 administrative state is ostensibly part of the
10 executive branch, the deference has upset the
11 constitutional balance, as Justice Neil Gorsuch
12 said while on the U.S. Court of Appeals. This
13 allows, according to now Chief Justice Gorsuch,
14 executive bureaucracy to swallow huge amounts
15 of core judicial and legislative power.

16 Consider the power agencies now have.
17 They are given the task of implementing what is
18 today some incredibly long, complex, and
19 ambiguous legislation. The agency gets to
20 write the rules. It gets to apply the rules to
21 the people. If things are not clear, it gets
22 to clarify the rules, and if a citizen
23 disagrees, he not only has to overcome the high
24 standard of clearly erroneous, but often must
25 do this before an Administrative Law Judge.

1 Even if not before an Administrative Law Judge,
2 the Judge he is before is told to defer to the
3 interpretation of his opponent in the case,
4 which just happens to be the fairly powerful
5 State of Florida.

6 This brings us to a second problem, which
7 is due process, the right that no person shall
8 be deprived of life, liberty or property
9 without due process of law. When one party
10 writes the rules, enforces the rules, and then
11 decides that the private litigant has properly
12 followed the rules, the possibility of due
13 process is a practical impossibility.

14 The deference is also inconsistent with
15 Canons 1 and 3 of the Florida Code of Judicial
16 Conduct: A Judge shall uphold the integrity
17 and independence of the judiciary, a Judge
18 shall perform the duties of judicial office
19 impartially and diligently. Simply, due
20 process is significantly impaired when the
21 playing field has been significantly altered by
22 this deference.

23 The third problem, which is actually more
24 political, but we have to remember politics has
25 constitutional significance in a democracy.

1 Think for a moment about how representative
2 democracy is supposed to work. If you have a
3 problem, you see your representative. In
4 Indian River County, this is quite simple.

5 With a federal legislative issue, people
6 know they -- or can quickly find out that they
7 should call Congressman Posey's office or
8 Senator Rubio's or Nelson's office. With a
9 state problem, they should simply call Senator
10 Mayfield or Representative Graw. With a county
11 issue, they can simply stop me when I'm out for
12 a walk or visit my office.

13 If you have a problem with the EPA, who do
14 you call? A few months ago, I went to
15 Washington, DC on county business. People
16 there, when talking about federal agencies,
17 talked about silos in different agencies, about
18 how difficult it was, if they can even figure
19 out who they should see, to actually get in
20 front of that person.

21 For me, as an elected representative of
22 146,000 Floridians, to see the person I needed
23 to see say at the EPA or U.S. DOT, I would need
24 not only a lobbyist, but a lobbyist who knew
25 the right person who could open the right door

1 to the right silo. The ordinary Floridian
2 stands no chance against such a leviathan.

3 If this proposal is passed by the citizens
4 of Florida, it will do three important things:
5 It will reinforce the structure of Florida's
6 Constitution by strengthening the separation of
7 powers and their checks and balances, it will
8 help restore due process by putting private
9 parties and government agencies on a somewhat
10 more level playing field during litigation, and
11 it will help make our government more
12 transparent and accountable, which should help
13 increase Floridians' trust in their government.

14 For these reasons, I certainly support
15 Commissioner Martinez's proposal. Thank you,
16 Mr. Chairman.

17 CHAIRMAN BERUFF: Commissioner Gaetz is
18 recognized.

19 COMMISSIONER GAETZ: Thank you very much,
20 Mr. Chairman.

21 Back when I was in graduate school when we
22 wrote on the walls of caves, one of the things
23 I learned about the Administrative Procedures
24 Act was the deference paid to agencies. And
25 then as I became a practitioner in the fields

1 of business that I was involved in, I had
2 occasion to -- to be on both sides of those
3 issues in health care and in education and then
4 subsequently as a legislator.

5 And the reason why I support Commissioner
6 Martinez' proposal is because it is perhaps,
7 with all respect to everybody else's proposals,
8 including my own, it is perhaps the most
9 fundamental change that we might really look at
10 in the structure of government in this
11 Constitutional Revision Commission.

12 Nowhere else, as far as I know, in our
13 system of government does somebody come into
14 court with an automatic advantage. But yet
15 because of the deference that is built into our
16 Constitution for administrative agencies, when
17 the citizen comes into court, he comes in at a
18 constitutional disadvantage. When the agency
19 comes into court, whether the court is a DOAH
20 hearing or Circuit Court or the Supreme Court
21 or anywhere else in our state, they come in
22 with a constitutional advantage.

23 As I read Commissioner Martinez' proposal
24 and studied it and listened to the debate, I
25 would just say this: There is nothing in

1 Commissioner Martinez' proposal that eliminates
2 the ability of the agency to promulgate rules.
3 They can still do all of the research, they can
4 become the subject area expert, they can write
5 the rules, they can -- they can exercise their
6 best and good faith interpretation of
7 legislative intent and the clear language of
8 the law in writing the rules, and when there's
9 a challenge to an agency decision and the
10 agency comes into court, the agency does not
11 leave its expertise at home, it does not leave
12 the tremendous amount of experience that that
13 agency has in dealing with the issue back at
14 the office.

15 Instead, that can be fully presented to
16 the court or to the DOAH hearing, and the
17 agency can -- can expose to the Judge all of
18 the reasons built on the experience of the
19 agency and the expertise of the agency, why the
20 agency is correct. Nothing in Commissioner
21 Martinez' proposal changes that.

22 However, not every -- in every case does
23 the agency actually possess the greatest
24 expertise. There are in the private sector
25 people who are experts in issues that come

1 before DOAH hearings or come before the court,
2 and oftentimes we have circumstances where
3 people who have headed agencies go into the
4 private sector, are part of developing a body
5 of knowledge in the private sector about an
6 issue, and they can come in as an expert
7 witness, and it is not always the case that the
8 agency knows best.

9 The agency should have to make its case,
10 should be listened to with great respect, but
11 neither the agency nor the citizen should be
12 extraordinarily deferred to and assumed to be
13 correct when the hearing starts.

14 This is a profound change we would make in
15 the structure of government, the notion that
16 the citizen walking in to challenge the king
17 has the opportunity to be viewed as an equal
18 before the law. Nothing is more fundamental in
19 the language that was read by Commissioner
20 Thurlow-Lippisch and of the language read in
21 our founding documents by other Commissioners
22 here today than the notion that the citizen who
23 walks into court, whether that citizen
24 represents a vast, large, and rich company or
25 just as a nursing home resident who has come to

1 court because they believe that they've been
2 unfairly dealt with by the determination of an
3 agency. Nothing is more fundamental than that
4 the person who comes into court be treated
5 equally and is given the opportunity to present
6 her or his case and be judged equally.

7 And for that reason, I believe that this
8 is a fundamentally important change to be made
9 in our Constitution, it is long over due, and I
10 strongly support Commissioner Martinez. I find
11 it reassuring that this proposal comes from one
12 of the most judicious and respected members of
13 the Bar and one of the most judicious and
14 respected leaders in our state, Commissioner
15 Martinez. For that reason as well, I will vote
16 yes.

17 CHAIRMAN BERUFF: Thank you.

18 Is there any further debate on Proposal 6?
19 Commissioner Lee is recognized.

20 COMMISSIONER LEE: Thank you, Mr. Chair,
21 and I would not have said this except that I
22 don't think it's -- it's the one thing that I
23 don't think has been observed yet in detail.

24 There is one additional reason to support
25 this proposal, and I think it's the one

1 proposal I have to say I did not know anything
2 about when this Commission -- this was all news
3 to me. I thought we were talking about gas
4 stations originally and -- but I learned
5 quickly that there was a real philosophical
6 principle at stake here and -- and the one
7 thing that I think we all need to understand
8 about the merits of this proposal is that
9 increasingly over modern history, agencies have
10 become the alter ego of the executive of our
11 state.

12 I have seen a good friend of mine who was
13 Insurance Commissioner, served as Insurance
14 Commissioner under Governor Bush and served as
15 Insurance Commissioner under Charlie Crist and
16 then served as Insurance Commissioner under
17 Rick Scott, Governor Scott. You want to talk
18 about philosophical -- philosophical whiplash,
19 try serving those three individuals and their
20 views on insurance.

21 Recommendations were made, decisions were
22 made, regulatory decisions were made, and that
23 happens all the time in our government. And
24 the administrative -- the recommendations from
25 agencies take on the philosophy of the Chief

1 Executive, and that is something that ebbs and
2 flows. And so, you know, I butter my bread in
3 the real estate world, as does Commissioner
4 Lester, and we've seen County Commissions and
5 we've seen other governmental agencies, the DCA
6 when we had one, flip in terms of their
7 philosophy, have a big mood swing as
8 administrations change over how they view
9 development rights in our state, and Florida
10 was no different before and after that election
11 except that a new agency head was put in place.

12 And now we have a new set of rulings
13 coming down that are being taken to an
14 Administrative Law Judge, and that -- that
15 agency is getting deference, and yet it
16 couldn't have disagreed more with the previous
17 administration. And that is just not fair to
18 the people.

19 The trial courts ought to be a jump ball.
20 That's what an Administrative Law Judge is.
21 When you go to the Appeals Court, that's a
22 different story. But I think it is important
23 for us to acknowledge in the four corners of
24 this proposal that government is not static and
25 that these individuals that make these rulings

1 on behalf of their administrations typically
2 derive their philosophy from the political
3 philosophy of the person that they work for.
4 We all work for someone, we know how that
5 works, and I would encourage you to support
6 this proposal for those reasons as well.

7 CHAIRMAN BERUFF: Thank you.

8 Commissioner Stemberger is recognized.

9 COMMISSIONER STEMBERGER: So this is an
10 appropriate matter for the Constitution because
11 it does deal with the structure of government.
12 I rise in support, Commissioner Martinez. I
13 thought your debate was very compelling,
14 Commissioner Gaetz.

15 I just wanted to add to the debate. In
16 2015, a Michigan versus Environmental
17 Protection Agency decided by the United States
18 Supreme Court, Justice Clarence Thomas in
19 concurring says this. He's talking about --
20 he's observing that the interpretive rule
21 requiring Judges to defer to an administrative
22 agency's interpretation, quote, "improperly
23 wrests from the courts the ultimate
24 interpretive authority to say what the law is
25 and hands it over to the executive."

1 This is truly a separation of powers
2 issues. If you think that the Legislature and
3 the executive branch should have the more
4 controlling force in interpreting these things,
5 then that's the way you should vote. If you
6 believe that the courts are intended to
7 interpret the law, then you should vote the
8 other way. Thank you.

9 CHAIRMAN BERUFF: Thank you.

10 Anymore debate on Proposal 6?

11 Commissioner Martinez, would you like to
12 close on your proposal?

13 COMMISSIONER MARTINEZ: Thank you, Your
14 Honor -- I mean Mr. Chairman, just briefly. I
15 am used to a different forum, but you also
16 deserve that title, sir.

17 CHAIRMAN BERUFF: Just following the
18 rules.

19 COMMISSIONER MARTINEZ: Well, thank you,
20 and thank you everybody who rose in favor of
21 the proposal. I appreciate your support.

22 This proposal will ensure an equal playing
23 field to anybody who goes into a court of law,
24 whether it is an individual, a business, or
25 even a local government, and the other side is

1 an administrative agency. And the issue is an
2 interpretation by statute or rule. Everybody
3 would be on an equal playing field. Thank you.

4 CHAIRMAN BERUFF: Thank you.

5 The Secretary will unlock the board.
6 Please, Commissioners, vote.

7 Has everyone voted? Thank you.

8 Please announce the vote, Secretary.

9 THE SECRETARY: 28 yea's, 4 nay's,
10 Mr. Chair.

11 CHAIRMAN BERUFF: Thank you. We will now
12 take up Proposal No. 20. Commissioner Rouson
13 is recognized.

14 COMMISSIONER ROUSON: Thank you very much,
15 Mr. Chair. Good morning, Commissioners.

16 This Proposal 20 amends Section 9, Article
17 X, of the Florida Constitution. It is
18 generally referred to as the savings clause,
19 which is a limitation on the Legislature's
20 ability and authority to correct an injustice.
21 By passing this amendment, it affects the
22 fundamental right towards justice to obtain
23 justice by a citizen of this state. By passing
24 this amendment, it creates a humane balance by
25 allowing the Legislature in its wisdom to apply

1 retroactively a sentence to an accused.

2 This provision removes seven words from
3 the Constitution and adds three. So it
4 streamlines the Constitution.

5 The net effect is giving wisdom to the
6 legislative authority to allow the impact of a
7 sentence to be treated favorably upon an
8 accused.

9 An example would be in -- prior to
10 June 30th of 2014, we had certain mandatory
11 sentencing for crimes, but because of the
12 evolution of time, we realized that these
13 things were a harsh injustice and we changed
14 that. But the provision currently in the
15 Constitution did not allow the Legislature to
16 apply that retroactively.

17 Therefore, a person sentenced under some
18 of these mandatory sentencing prior to
19 June 30th would serve five times longer than
20 someone who committed the same crime after that
21 date.

22 This amendment -- this proposal only
23 allows the Legislature in its wisdom and in its
24 discretion to retroactively apply sentencing,
25 and that is the proposal.

1 CHAIRMAN BERUFF: Thank you.

2 Questions on Proposal 20 by Commissioner
3 Rouson? Commissioner Coxe is recognized.

4 COMMISSIONER COXE: Mr. Rouson -- thank
5 you, Mr. Chair.

6 Mr. Rouson, can you give an example of
7 numbers; for example, a ten-year sentence that
8 predates this amendment as to what the
9 Legislature may do afterwards and how it is
10 impacted?

11 CHAIRMAN BERUFF: Commissioner Rouson.

12 COMMISSIONER ROUSON: Thank you very much.

13 I don't have the specifics. There is an
14 example in the analysis where it talks about
15 the example I gave, mandatory sentencing, and
16 some of you may remember the Marissa Alexander
17 case in Jacksonville where we thought it was
18 harsh that she came under the 10/20 mandatory
19 sentencing and we changed that, but because of
20 this clause, we were prevented from being
21 applied to assist her.

22 CHAIRMAN BERUFF: Is there any other
23 questions on Proposal 20?

24 Seeing none, we can open for debate, if
25 anyone has a reason to debate Proposal 20.

1 Commissioner Cerio.

2 COMMISSIONER CERIO: I apologize. May I
3 ask Commissioner Rouson a question? I'm sorry,
4 I missed the opportunity.

5 CHAIRMAN BERUFF: We'll reopen the
6 questions.

7 COMMISSIONER CERIO: Thank you, thank you.

8 COMMISSIONER ROUSON: I object to the
9 question.

10 COMMISSIONER CERIO: Commissioner, just
11 where the word "or amendment," why is the word
12 "or amendment" stricken as opposed -- I think I
13 understand the intent, and, frankly, agree with
14 it. I'm just -- I'm curious as to why "repeal"
15 is still left in, but not "amendment."

16 COMMISSIONER ROUSON: The removal of "or
17 amendment and/or punishment" would only prevent
18 the repeal of a statute from affecting the
19 prosecution of a crime.

20 COMMISSIONER CERIO: Okay. So if it's
21 just amended, the prosecution could go forward
22 or would not be impacted?

23 COMMISSIONER ROUSON: That's my
24 understanding.

25 COMMISSIONER CERIO: All right, Mr.

1 Chairman.

2 CHAIRMAN BERUFF: Thank you for messing up
3 my order.

4 COMMISSIONER CERIO: I apologize, Mr.
5 Chairman.

6 CHAIRMAN BERUFF: Back to debate.
7 Commissioner Lee is recognized in debate.

8 COMMISSIONER LEE: Well, Mr. Chair, if I
9 could -- if we could, Mr. Chair, revert to
10 questions since -- since the --

11 CHAIRMAN BERUFF: So I don't get this
12 right.

13 COMMISSIONER LEE: No, no, it is okay.
14 No, you're spot on, sir. But since our rules
15 chairman --

16 CHAIRMAN BERUFF: Broke his own rules?

17 COMMISSIONER LEE: Right. I saw we did
18 that by the required two-thirds vote, I think.

19 But, seriously, Commissioner Rouson, the
20 import of this is should this be adopted, what
21 -- what can we anticipate happening -- let's
22 just say -- let's just say the Legislature
23 decides in its wisdom that it wants to reduce
24 the penalty for, you know, a particular crime.
25 Would this in any way affect people previously

1 convicted and sentenced under the old statute?

2 COMMISSIONER ROUSON: It could, but it is
3 not automatic upon adoption by the people. The
4 Legislature must take some affirmative action.

5 CHAIRMAN BERUFF: Commissioner Lee.

6 COMMISSIONER LEE: Thank you, Mr. Chair.

7 So this seems to be a fair -- kind of a
8 fairness issue. So as society evolves, we have
9 people that are -- are -- commit crimes and are
10 sentenced under those crimes, and then society
11 evolves and we change our view of how serious
12 that crime might be and we might lower the
13 penalty. And the aspiration here is that the
14 Legislature have the ability to make that
15 retroactive to people that were previously
16 sentenced under a harsher sentencing guideline
17 *per se*, correct?

18 CHAIRMAN BERUFF: Commissioner Rouson.

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

21 That's my understanding and my reading.

22 COMMISSIONER LEE: So what affirmative
23 action would they have to take? Would they
24 have to affirmative apply Article X, Section 9,
25 to that particular crime in order for this

1 section to apply retroactively to that? It
2 wouldn't be, in other words, self-executing?

3 CHAIRMAN BERUFF: Commissioner Rouson.

4 COMMISSIONER ROUSON: Thank you,
5 Mr. Chair.

6 That is correct.

7 CHAIRMAN BERUFF: Commissioner Lee.

8 COMMISSIONER LEE: Thank you.

9 So, in effect, I assume that there is some
10 like *ex post facto* or some deal that you guys
11 have in the law where you can't go back and,
12 you know, some Latin term where you can't go
13 back and change a sentence that was done
14 previously. This gives the constitutional
15 footing of some sort for you to -- for you to
16 do that, right?

17 CHAIRMAN BERUFF: Commissioner Rouson.

18 COMMISSIONER ROUSON: Mr. Chair.

19 That's correct, Senator.

20 COMMISSIONER LEE: Okay. Thank you,
21 Mr. Chair.

22 CHAIRMAN BERUFF: Thank you. I'm going to
23 ask questions, the question is still open,
24 because I keep wanting to close to debate, but
25 I just want to make sure all the questions are

1 done.

2 Okay. It appears that the questions are
3 done. I now will take debate on Proposal No.
4 20.

5 Okay. Seeing no debate, if Commissioner
6 Rouson would close on Proposal 20, we can put
7 it up for a vote.

8 COMMISSIONER ROUSON: I'll waive close.

9 CHAIRMAN BERUFF: Thank you.

10 Secretary, please open up -- unlock the
11 board. Everybody please vote.

12 Secretary, please -- has everybody voted?

13 Secretary, please announce the vote.

14 THE SECRETARY: 29 yea's, 2 nay's, Mr.
15 Chairman.

16 CHAIRMAN BERUFF: Very good. Thank you.

17 We will now take up Proposal 41.

18 Mr. Schifino, would you introduce your
19 proposal, Commissioner.

20 COMMISSIONER SCHIFINO: Thank you, Chair
21 Beruff.

22 I will be bringing before you Proposal 41,
23 and then I will follow after that with 47, both
24 dealing with Article V and both addressing the
25 judiciary.

1 Proposal 41 very briefly deals with
2 raising the retirement age from what we have in
3 place today as 70 to the age of 75, and also
4 eliminating the provision in Article V, Section
5 8, which states, "or to complete a term
6 one-half of which has been served."

7 And for those that aren't familiar with
8 that, what that essentially does, terms are six
9 years. If you are in office or have served
10 your term, when you turn 70, for three years
11 and one day, you can serve the balance of that.

12 I've spent 33 years in this profession of
13 mine. I served last year as the President of
14 the Florida Bar. I have been on a judicial
15 nominating commission for eight years and have
16 helped with many a judicial campaign. I make a
17 living representing clients, mostly businesses,
18 mostly businesses, but not always businesses in
19 front of our judiciary. The vast majority of
20 my work is in state court in front of our
21 circuit bench.

22 What I do know is that if you ask any one
23 of your clients what they would like to see in
24 a Judge, they're going to say I want to see a
25 Judge who has experience, I want a Judge who is

1 a quality Judge, that knows how to apply the
2 law, stays within their lanes. I'm going to
3 also want a Judge that has been on the bench a
4 while.

5 You represent a business, you represent an
6 individual, whatever that case may be, whether
7 it is a domestic violence case, whether that's
8 a sentencing at a capital punishment, whether
9 it be life or death.

10 So what we have done is after spending
11 some time touring the state, one thing that I
12 did learn was we have many, many fine Judges
13 who have been forced to retire at age 70, many,
14 many Judges who -- that could continue to serve
15 the citizens of our state.

16 Now, there's a -- not only raising the
17 limit from 70 to 75, it is a hard stop at 75.
18 And I do want to acknowledge Commissioner
19 Martinez and Commissioner Stemberger who are
20 co-sponsors of this particular proposal. And I
21 know -- and I don't want to speak for
22 Commissioner Stemberger, but I will a little
23 bit, and that is a very important part of this
24 proposal is that hard stop at 75. Why? As the
25 system presently works today, your Appellate

1 Judges, or any of your Judges, but particularly
2 we'll look at the Appellate Courts and the
3 Supreme Court, they retire at the end of their
4 term, all right.

5 So you have multiple Judges retiring at
6 the same time. What do we have? We have a
7 unique situation that we are addressing here in
8 the State of Florida. I'm sure all of you are
9 aware of it, but what we will have happening in
10 early January is three Supreme Court Justices
11 that are stepping down on the same day. And
12 that is the same day that our Governor will be
13 going out of office.

14 With this particular proposal, when you
15 have a hard stop at 75, you will not have that
16 issue happen again unless you happen to have
17 Justices born on the same day, same year,
18 sitting on the same court. Chances of that are
19 pretty slim. So that is a -- that is a
20 definite, I think, byproduct and an intended
21 consequence of this particular proposal.

22 I do want to note the federal system,
23 there is no retirement age in the federal
24 system. We workshopped this in the judiciary
25 committee. We had presentations on it. One of

1 the issues that we learned was in 1972 when
2 this was embedded in our Constitution -- and
3 let's remember that, this is -- we're not
4 creating something new. We are simply tweaking
5 something that's already in the Constitution.

6 1972 is when the retirement age was
7 established at 70. The life expectancy at that
8 time was 69.9, thereabouts. The life
9 expectancy today, however many years later that
10 may be, 60 or so years later, the life
11 expectancy is 80. You all are quite aware --
12 you're doing fine, Don -- Commissioner Gaetz,
13 excuse me.

14 The -- I do want to point out because I
15 think it is important to note the judiciary
16 committee did debate this issue, we did discuss
17 it, we did analyze it, and in a vote of nine to
18 zero, we passed this on Commissioners Bondi,
19 Cerio, Coxe, Joyner, Lee, Martinez, Timmann,
20 and, of course, myself. It then went to ethics
21 and elections, and there, too, it passed
22 unanimously.

23 No other branch of government has a
24 mandatory retirement age, and in the end, as I
25 will address in few moments when we get to 47,

1 the goal here is let's maintain and keep the
2 best and brightest on the bench, assure we have
3 a quality judiciary dispensing justice in an
4 appropriate fashion. Thank you.

5 CHAIRMAN BERUFF: Your amateur Chairman
6 didn't want to interrupt, Mr. Schifino, but I
7 have to go back to Motion 20 for the record and
8 say that it was adopted. The proposal is
9 committed to Style and Drafting Committee.

10 So with that said, is there any questions
11 of Mr. Schifino's Proposal 41?

12 Commissioner Smith is recognized.

13 COMMISSIONER SMITH: Thank you, Mr.
14 Chairman.

15 I asked this question earlier. There's a
16 concern that I had in meeting with some
17 constituents this weekend. A lot of people are
18 concerned about diversity within the judiciary,
19 and as I began to profess that, I really
20 appreciate and agree with this proposal that
21 was brought up.

22 Well, if we are increasing the age limit,
23 doesn't that limit the amount of opportunity to
24 diversify the bench because you are just
25 keeping the same people on there? So what is

1 the number of Judges who are actually going to
2 affect with this?

3 COMMISSIONER SCHIFINO: And thank you for
4 the question, Commissioner Smith, because, one,
5 it affects at most about 70 out of about 1,300
6 trial Judges in Appellate and Supreme Court
7 Justice. So you've got about 70 that if they
8 choose to stay may benefit from that.

9 And let me speak to the diversity issue
10 because for the last ten years I was on the --
11 as you know, a member of our Board of
12 Governors, before that on the JNC for many
13 years. I can assure you that one thing not
14 only does the Florida Bar work very hard on,
15 but we also work very closely with the
16 Governor's Office in doing everything we can to
17 make certain we do have a diverse bench.

18 And what you can look at statistically is
19 there is -- when you compare -- and I've done a
20 lot of the analysis, and I say a lot, I mean a
21 significant amount of analysis, is the positive
22 strides we have made. Are we where we need to
23 be yet? No, there's still work to be done,
24 Commissioner Smith, but I can assure you the
25 Bar and the Governor's Office continue to work

1 very diligently on that. So at the end of the
2 day, I don't believe we are going to do
3 anything that will stifle diversity on the
4 bench.

5 CHAIRMAN BERUFF: Other questions for
6 Commissioner Schifino?

7 Seeing none, we will open for debate.
8 Commissioner Stemberger is recognized.

9 COMMISSIONER STEMBERGER: So we first
10 heard about this proposal in the hearings where
11 some very professional and articulate young
12 people, young professionals, and maybe even
13 some high school students, I forget -- the
14 older you get, it is hard to discern the age of
15 young people, but they were very impressive and
16 they brought this idea up, and I thought, okay,
17 let's -- let me think this through. And the
18 more I thought about it, the more I thought
19 that it does make sense. It is a
20 constitutional issue because this is a matter
21 that's regulated in the Constitution.

22 I did want to say that there is a --
23 there's a strong feeling in the State of
24 Florida and in this body about term limits, and
25 one idea was a term limit of Judges. I think

1 there's a very -- there's a real difference. I
2 think with legislative bodies, you do want to
3 change that bath water every now and then, but
4 I think that the Judges and the common law is
5 like a fine wine, we want to keep it steady,
6 you don't want to radically shake up the common
7 law and Judges. And I think this provides for
8 more consistent common law and a more
9 consistency in the courts and just allows those
10 Judges to serve.

11 Finally, it is important to recognize that
12 this proposal does not affect the current issue
13 that will come before us in January of 2019; in
14 other words, this is only going to come into
15 effect after that. So whatever politics and
16 struggle there is or is not in that crucible,
17 this does not affect that, and so I would
18 encourage your support of this good proposal.

19 CHAIRMAN BERUFF: Thank you.

20 Anyone else? Commissioner Rouson is
21 recognized.

22 COMMISSIONER ROUSON: Thank you very much,
23 Mr. Chair.

24 And I rise in support of this Proposal 47
25 -- 41, I mean, 41. And I accept Commissioner

1 Schifino's word that this will not address --
2 not affect negatively the concern that
3 Commissioner Smith raised, because I share that
4 concern, but as Commissioner Schifino knows, we
5 had quite a hard conversation some years ago
6 about diversity, about the opportunity for
7 African-Americans, Hispanics, and women to sit
8 on the bench, and he worked hard in the 13th
9 Circuit to create more diversity.

10 And that is a concern, it remains a
11 concern, but I think that I have talked to
12 several Judges recently in the 6th Circuit who
13 will benefit by this, and it is good to keep
14 seasoned, matured, knowledgeable Judges on the
15 bench. So I urge your support for this
16 proposal.

17 CHAIRMAN BERUFF: Any further debate on
18 Proposal 41 by Commissioner Schifino?

19 Then if we would -- Commissioner Schifino,
20 would you like to close on your proposal,
21 please?

22 COMMISSIONER SCHIFINO: I will stand on my
23 presentation already made.

24 CHAIRMAN BERUFF: Thank you. The Chair
25 appreciates all the brevity. Outstanding.

1 Secretary, please unlock the board for a
2 vote. Commissioners, please vote.

3 Have all the Commissioners voted?

4 Secretary, please announce the vote.

5 THE SECRETARY: 30 yea's, 3 nay's,
6 Mr. Chairman.

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

10 We will now take up Proposal No. 47.
11 Commissioner Schifino, would you like to
12 introduce your proposal?

13 COMMISSIONER SCHIFINO: Thank you, Chair
14 Beruff. The initial proposal made was to raise
15 the eligibility requirement for our trial court
16 Judges, both being Circuit and County, from
17 five to ten years. That is since I filed an
18 amendment to that that we'll get to in a moment
19 and Commissioner Coxe thereafter amended, or
20 filed a proposal to amend my amendment.

21 The reasons for the proposal we'll get
22 into in a little -- I mean the amendments we'll
23 get into in a few minutes, but they came after
24 consultation with the Florida Bar, the Young
25 Lawyers Division, and different groups to make

1 sure we had a consensus at least from the
2 branch's perspective as best we could, and we
3 accomplished that. And you will hear in a
4 moment that, as amended, the proposal is that
5 we require ten years of experience in the
6 practice of law before one elevates to a
7 Circuit bench, but that we keep at five years
8 the level of experience needed to be a County
9 Judge.

10 This, too, was workshopped in two separate
11 committees. The judicial committee, too, spent
12 a significant amount of time looking at this
13 issue. It passed 9-0 there. It then passed
14 the executive committee, 6-0 there.

15 A little background for the benefit of the
16 group: In 1956 -- and let me back up for a
17 minute. Experience does matter. We noted that
18 when we just addressed the prior amendment.
19 Years of experience are important, and we've
20 recognized that in our Constitution since 1956.
21 This isn't a novel theory we're just tweaking.
22 We're not -- we don't have a whole rewrite
23 here.

24 In 1956 we established in our Constitution
25 that our Appellate and Supreme Court Justices

1 have ten years of experience before elevating
2 to those benches. In 1966, Florida recognized
3 the need for experience for its Circuit Judges
4 and established a five-year requirement there,
5 and then in 1984 established a five-year
6 requirement to be a County Judge.

7 Many of you are familiar with the legal
8 system, I understand that, maybe a few not, but
9 someone gave me this analogy and I think it
10 important just to put it in perspective. The
11 judicial field is much different than, for
12 instance, you look at the medical field. You
13 go to four years of medical school, then what
14 happens? My sister is a doctor. You have a
15 couple of years as an intern, you have a couple
16 of years as a residency, then you're on your
17 way.

18 Let's keep in mind -- and this is in no
19 way a slightest to our young lawyers, because
20 we have terrific young lawyers in our state,
21 but you do graduate after three years of law
22 school, you take the Bar exam, you hang your
23 shingle and you're practicing law.

24 So is it a perfect system? And by that I
25 mean these year requirements. No. I mean, you

1 certainly have ten-year plus practitioners that
2 shouldn't be on the bench, or shouldn't be
3 applying, I should say. Certainly are there
4 exceptions? Are you going to have quality
5 five, six-year lawyers? Certainly you are, but
6 we don't make law for the benefit of those
7 exceptions. We make law for the benefit of the
8 whole.

9 The idea of age limits for experience, it
10 is not, as I have indicated, an exact science,
11 but you see that in the private sector, you
12 should know that. The vast majority of law
13 firms have set time periods of practice before
14 you'll be considered for partnership. Whether
15 that's right or wrong, I believe it happens to
16 use -- serve a very useful purpose. Generally
17 today it's about eight years before first-level
18 partner, ten years plus before you're
19 considered for full-equity partnership.

20 Also -- and I was asked how is it that
21 Circuit Judges -- why would Circuit Judges --
22 why are you suggesting ten years for them and
23 no changes for Appellate or Supreme Court? I
24 want you to keep this in mind when you think
25 about years of experience and also the roles

1 that these three levels of jurists play:
2 Supreme Court, Appellate, and Circuit Judges.
3 A Supreme Court, they act as a body of seven.
4 They have law clerks supporting them.

5 They have cases that come to them, they
6 analyze those cases, they think about those
7 cases, they discuss and debate those cases.
8 Their law clerks research those cases, very
9 important. Same with your Appellate Courts.
10 Most of your Appellate -- your DCAs have ten
11 members. They generally sit in panels of
12 three. They, too, have clerks to support them
13 and guide them and help them with their cases.

14 But the one thing to keep in mind that's
15 critical is the role that our Circuit Judges
16 play and how they act and the support they
17 have. They don't sit with a group of three.
18 They don't get to look to their left or their
19 right and ask questions. Unfortunately, due to
20 funding reasons, they don't have the benefit of
21 clerks as you do in the federal system and at
22 the appellate level and at the Supreme Court
23 level.

24 What do Circuit Judges do? Circuit Judges
25 day to day impact individuals' liberty, they

1 make life-and-death decisions, they deal with
2 domestic violence issues, custody issues, and
3 for all of these reasons, at the end of the
4 day -- and I've filed an amendment. Mr. Coxe
5 will -- or Commissioner Coxe will address his
6 in just a moment. I believe it is in the best
7 interest of the citizens of this state that our
8 Circuit Judges have ten years of experience
9 before -- for our Circuit Judges, that they
10 have ten years of experience before elevating
11 to that position.

12 Thank you, Chairman Beruff.

13 CHAIRMAN BERUFF: Commissioner
14 Kruppenbacher.

15 COMMISSIONER KRUPPENBACHER: Totally
16 support the ten years for Circuit, like it much
17 better. Ten years for County Judges, too,
18 because they're sentencing people to jail,
19 they're ruling on civil cases that impact them.
20 So why the difference between five and ten?

21 CHAIRMAN BERUFF: Commissioner Schifino.

22 COMMISSIONER SCHIFINO: The County Judges
23 -- well, first off, this was a -- a compromise
24 reached after talking to different groups that
25 had a vested interest in this issue,

1 Commissioner Kruppenbacher. Sir, as you know,
2 my initial proposal was ten for each. The
3 issues that County Judges address are not on
4 the same levels as Circuit Judges address.

5 We do have -- you'll see in the amendment,
6 it does state that you need ten years of
7 experience to preside in the Circuit Court; in
8 other words, you can't elevate, as you know --
9 you may know the County Judges many times sit
10 in Circuit. This particular provision, after
11 working with many stakeholders, was modified to
12 try to address that.

13 CHAIRMAN BERUFF: Commissioner Smith is
14 recognized.

15 COMMISSIONER SMITH: Thank you.

16 I just wanted to verify, because a lot of
17 times you use "Bar" and "Florida Bar," you
18 intertwine them. How does this relate to if
19 someone comes from out of state? Do they have
20 to be a member of the Florida Bar for the
21 entire ten years? Could you please address
22 that part?

23 COMMISSIONER SCHIFINO: Yes, sir.

24 CHAIRMAN BERUFF: Commissioner Schifino.

25 COMMISSIONER SCHIFINO: I apologize for

1 jumping ahead, Chairman Beruff.

2 The initial proposal had a requirement of
3 ten years' membership in the Florida Bar. That
4 was modified, amended, at a certain point, and
5 what you will see now is for a County Judge,
6 it's always remained consistent, Commissioner
7 Smith, in that you need five years of Florida
8 Bar practicing in our fine state.

9 Commissioner Coxe's amendment is going --
10 which deals with just that issue, requires ten
11 years of experience in the Florida Bar as a
12 Florida resident. My initial pro- -- my
13 amendment had it at -- you needed ten years of
14 experience, only five of which had to be in
15 Florida.

16 CHAIRMAN BERUFF: Commissioner Cerio is
17 recognized.

18 COMMISSIONER CERIO: Thank you, Mr.
19 Chairman.

20 Commissioner Schifino, not to put you on
21 the spot, but what problem is this remedying?
22 The law's been on the books five years for a
23 long time. What is the problem now with the
24 bench? And I understand that can be, you know,
25 you may have to speak in generalities, but

1 what's going on that we need to raise the
2 limit?

3 CHAIRMAN BERUFF: Commissioner Schifino.

4 COMMISSIONER SCHIFINO: Thank you, Chair
5 Beruff.

6 The -- how best to answer that as
7 delicately as possible. And that's okay, I'm
8 used to being put on the spot.

9 To answer your question, let me turn it
10 around this way. The -- there are two manners
11 by which Judges -- trial Judges make it to the
12 bench. All right. One is the judicial
13 nominating commission process, one are general
14 elections, you can run. Okay. And if you go
15 through the JNC process, you inherently have
16 what? You have a pretty good filter, you do.

17 You have various levels of review
18 analysis, and that goes on and on. You do not
19 have that safeguard in place when you have
20 elections.

21 Just like -- I guess I'd go back to 1966
22 and then in '84, when guidelines were put in
23 place and the question becomes what level of
24 experience is enough. No, I'm not going to sit
25 here and tell you we have horrific events of

1 six-year lawyers on the bench making
2 catastrophic mistakes, because that's not the
3 case, but I can tell you I did describe for you
4 the difference between the JNC process, the
5 election process, and I don't think -- I think
6 if you took -- to answer that question, if any
7 of you called your clients and said "What would
8 you like to see," I think what you're going to
9 find time and time again is experience matters,
10 experience is important.

11 COMMISSIONER CERIO: Thank you.

12 CHAIRMAN BERUFF: Commissioner Keiser is
13 recognized.

14 COMMISSIONER KEISER: Thank you,
15 Mr. Chair, fellow Commissioners, Commissioner
16 Schifino.

17 One of the questions that I wanted to ask
18 you is do you think that this would limit the
19 pull of applicants? And let me also share that
20 along with some other Commissioners in this
21 room, I've served for eight years on the
22 Judicial Nominating Commission, and during that
23 time, I've had the opportunity to speak with
24 candidates of all different ages.

25 And what strikes me -- and again, as an

1 educator, I believe that experience is
2 important; however, when you look at the number
3 of candidates who come before you, they have
4 varying levels of experience in family law, in
5 business matters, in insurance defense. And so
6 I would hesitate to perhaps identify years of
7 experience as opposed to the type of experience
8 in making this decision.

9 And to Commissioner Cerio's question, I'm
10 not sure that we have a challenge that we need
11 to fix. Thank you.

12 CHAIRMAN BERUFF: Commissioner Stemberger
13 is recognized.

14 COMMISSIONER SCHIFNO: I think there was a
15 question I was to answer.

16 CHAIRMAN BERUFF: I'm sorry, I agree with
17 you. I saw it as a comment, but if you would
18 like --

19 COMMISSIONER SCHIFINO: Well, the latter
20 part was a comment, but there was an initial
21 question, right, Commissioner Keiser, I mean,
22 about the pool of applicants? The answer is
23 no, it would not, in my opinion, impact the
24 pool of applicants at all.

25 And the reason for that is, as amended, we

1 have to get to that, Commissioner Keiser.

2 Remember, once again, you've got an applicant
3 process, you've got an election process. There
4 are two different manners by which individuals
5 get to the bench.

6 But, no, as a 10-5, you're not doing
7 anything to eliminate your pool. If you've got
8 a six-year lawyer, five years and one day, it
9 still remains the same. They can submit their
10 application, they can apply to be on the County
11 bench. All this proposal does is say,
12 essentially and effectively, serve five years
13 on the County bench and then elevate to the
14 Circuit bench.

15 CHAIRMAN BERUFF: Commissioner Stemberger
16 is recognized.

17 COMMISSIONER STEMBERGER: Commissioner
18 Schifino, we have currently one Justice on the
19 Florida Supreme Court that went right from
20 being a trial lawyer to being on the Supreme
21 Court. We've had a past Justice, at least one
22 other as well. Why does this proposal just
23 apply to trial courts and the Circuit Court
24 Judge and it does not apply to DCA or Supreme
25 Court Justices?

1 COMMISSIONER SCHIFINO: The -- I believe
2 the Justice that went from -- as a trial court
3 to the bench, I think he had 20 plus years of
4 experience. And I will tell you, Commissioner
5 Stemberger, I thought long and hard about a
6 proposal that would have elevated the Appellate
7 and Supreme Court Justices from the ten years
8 upwards of whether it be 15, 20, whatever that
9 right number was.

10 We haven't looked at that since 1966
11 either. But I think that that one Justice --
12 well, let me back up.

13 That's not the norm. Generally, your
14 Supreme Court Justices are coming from your
15 DCAs in which you effectively have -- it's very
16 difficult, and I looked at that, all of the
17 Justices, their rise. Either they went from a
18 Trial Court Judge to an Appellate Judge to the
19 Supreme Court, they followed these steps. Many
20 go to the County first, and you'll see many --
21 and that generally happens is what happens is
22 they go to the County, they work in the County
23 Court system, they get their legs underneath
24 them, they learn how to be a Judge, how to
25 dispense justice, how to dispense it quickly,

1 and then they elevate there to the Circuit, to
2 the Appellate, and then to the Supreme Court,
3 but I did consider that.

4 CHAIRMAN BERUFF: Commissioner Solari is
5 recognized.

6 COMMISSIONER SOLARI: Thank you, Mr.
7 Chairman.

8 Commissioner Schifino, I believe earlier
9 you said something to the effect that words
10 matter. And as I read this, it says that to be
11 eligible, you have to be a member of the
12 Florida Bar, but speaks nothing about
13 experience. And I'm going to use myself as an
14 example.

15 I've been a member of the Florida Bar for
16 29 years, but I have never practiced law, I
17 have no experience. But as I read this at
18 least, I could still be eligible to be a Judge.
19 So to some effect, I wonder if it actually
20 corrects -- if there is a problem, I am not
21 sure there is, if it actually corrects any
22 problem.

23 COMMISSIONER SCHIFINO: Well, if you'll
24 look back, Commissioner Solari, that's the same
25 language that is used -- has been used in the

1 Constitution since 1966 -- or '56 for our
2 Supreme Court Justices and our Appellate
3 Judges. It talks about membership in the
4 Florida Bar.

5 I think you have noted a particular issue
6 that you could say that there are those. I
7 would suggest to you, you're the anomaly. I'm
8 not quite sure if you used the terms, and I
9 think it would create a real challenge if we
10 were to take years of Bar membership and
11 convert that to actual practicing law. What
12 would that necessarily mean? Would you
13 suffice? Would general counsel suffice?

14 So I think what they found, it's withstood
15 the test of time for these last 60 plus years,
16 utilizing as the benchmark, membership in the
17 Bar.

18 COMMISSIONER SOLARI: Thank you.

19 CHAIRMAN BERUFF: More questions on the
20 Proposal, Commissioner Gainey.

21 COMMISSIONER GAINNEY: Thank you,
22 Mr. Chair.

23 Commissioner Schifino, I, too, had the
24 pleasure of sitting for eight years on a local
25 JNC and had a lot of young Judges come through

1 that did not have the ten-year requirements who
2 elevated to the bench and are doing a fine job.

3 You indicated that a County Judge who
4 don't have ten years' experience wouldn't be
5 able to sit as a Circuit Judge, and that
6 particularly concerns me, particularly in North
7 Florida in some of the circuits and perhaps in
8 some of the southern circuits as well, where it
9 is quite often that a lot of our County Judges
10 are sitting as Circuit Judges.

11 And I'm wondering if you polled any of the
12 circuits to try to understand how that would
13 affect swift justice if those members who don't
14 have ten years now cannot sit as a Circuit
15 Judge to hear those cases where it happens
16 quite frequently.

17 CHAIRMAN BERUFF: Commissioner Schifino.

18 COMMISSIONER SCHIFINO: Yes. The language
19 as -- as proposed would preclude a County Judge
20 without ten years of experience sitting in
21 circuit. What that would do, you would just
22 have the circuit, to the extent they need to
23 pull someone up -- and it does happen, it
24 happens in each of the circuits. They would
25 simply pull someone up that's got ten plus

1 years' experience. I mean, each of the
2 circuits have those County Judges with that
3 level of experience.

4 CHAIRMAN BERUFF: Commissioner Gainey.

5 COMMISSIONER GAINNEY: Just follow up. And
6 I understand. I think my concern is because of
7 the frequent practice that's currently
8 occurring by those County Judges being
9 elevated, have you spoken with any Chief Judges
10 in those circuits to see how that may affect
11 them? Because, otherwise, we're going to have
12 Circuit Judges who've got full caseloads and
13 now County Judges potentially without ten years
14 who can't hear those cases.

15 COMMISSIONER SCHIFINO: Those are my --

16 CHAIRMAN BERUFF: Commissioner Schifino.

17 COMMISSIONER SCHIFINO: Yes, I'm sorry,
18 Chair Beruff.

19 Yes, those are my -- not all 20,
20 Commissioner Gainey, but those in the 6th,
21 those in the 13th, and our surrounding areas.

22 CHAIRMAN BERUFF: Further questions?

23 Commissioner Timmann is recognized.

24 COMMISSIONER TIMMANN: Thank you, Mr.
25 Chairman. Thank you, Commissioner Schifino.

1 I know we talked about this a lot in the
2 judicial committee. And how are the -- do the
3 Young Lawyers Division, does that support your
4 change now with the five years for County, ten
5 for Circuit? Has that addressed their
6 concerns?

7 CHAIRMAN BERUFF: Commissioner Schifino.

8 COMMISSIONER SCHIFINO: Thank you, Chair
9 Beruff.

10 That is part of the reason -- how we ended
11 up with the 10-5. And we had the 10-10, 10
12 Circuit, 10 County, and as working with the
13 Young Lawyers Division, they were concerned
14 with the 10-10 on both, and as an accommodation
15 in working with them, we -- the Florida Bar is
16 now behind the 10-5.

17 COMMISSIONER TIMMANN: Follow-up, Mr. --

18 CHAIRMAN BERUFF: Commissioner Timmann.

19 COMMISSIONER TIMMANN: Thank you.

20 And do you know how many good Judges this
21 would have impacted if they could have not have
22 qualified under your new proposal? You don't
23 have to define what a good Judge is, just how
24 many Judges.

25 COMMISSIONER SCHIFINO: Well, I -- how

1 many.

2 CHAIRMAN BERUFF: Commissioner Schifino.

3 COMMISSIONER SCHIFINO: I will go back
4 and -- yeah, I'll just name them from the 13th
5 Circuit and I will be out of a job, okay. So
6 anyone want to hire me?

7 To answer that, nobody would as amended,
8 nobody, because they could all be County
9 Judges. In other words, that's why we went
10 with the 10-5. Now, it's not -- anyone -- if
11 it was a 10-10, the concern would be what if
12 I'm a six-year lawyer, seven, eight, nine, I
13 understand that, and that was one of the
14 incentives for this compromise is that a lawyer
15 with five years and one day experience has an
16 absolute avenue to join the bench.

17 Have there been occasions over the years,
18 I'm certain, where you've had someone either
19 run for or get appointed to the bench with less
20 than ten years of Circuit? Certainly you have,
21 but that avenue and that lane would now be
22 available to them and continue. It's always
23 been five years at County, and under the
24 proposal as amended, it would remain five
25 years.

1 COMMISSIONER TIMMANN: Thank you.

2 CHAIRMAN BERUFF: Any more questions?

3 Seeing no more questions, we will move on
4 to Commissioner Schifino will explain and
5 introduce Amendment 109314.

6 COMMISSIONER SCHIFINO: The amendment that
7 I filed to my own proposal was just what we've
8 discussed at length, and that was
9 differentiating between the Circuit and the
10 County. My amendment eliminated the County
11 from -- from this particular proposal as
12 elevating from five to ten years, and
13 exclusively focused it on the Circuit bench.
14 So we narrowed that to take into account all of
15 these reasons that we've discussed today.

16 CHAIRMAN BERUFF: Thank you, Commissioner.

17 Are there questions on the Commissioner's
18 Amendment 109314?

19 Seeing no questions, we will move on to
20 introducing Commissioner Coxe -- if you'll
21 introduce 387958.

22 COMMISSIONER COXE: Thank you, Mr. Chair.

23 The specific amendment here, proposal,
24 just modifies the ten-year to require that it
25 be ten years as a member of the Florida Bar.

1 And I want to talk for a moment about the
2 ten years. I think it is important we not lose
3 sight as to what the judicial branch does in
4 the State of Florida and elsewhere. And when I
5 say that, I mean that the Circuit bench, the
6 ones we are talking about having ten years
7 experience, they decide whether another human
8 being dies or doesn't die. They decide whether
9 a family loses their children or doesn't lose
10 their children. They decide whether they do or
11 don't lose their home. That speaks to
12 Commissioner Schifino's point about experience.

13 You want and you need people with that
14 kind of experience making that kind of
15 decision. That is critical to the best
16 interests of the State of Florida.

17 If anyone thinks for a moment that we are
18 running short in the pool in the State of
19 Florida, when I was president of the Florida
20 Bar, we crossed the threshold of 80,000 members
21 of the Bar. I believe with Mr. Schifino, it
22 exceeded 100,000 members of the Florida Bar.
23 So the pool is not lacking in numbers. And
24 time goes by quickly and we will have any
25 number of people qualified for these positions,

1 be it five, ten, you could make it 15, the
2 numbers are enormous of eligible people.

3 Number two, I know Commissioner Cerio
4 raised the question what is the problem you are
5 trying to solve, and that comes, I assume, from
6 the gubernatorial appointment process, the
7 Judicial Nominating Commission, but Florida has
8 steadfastly preserved two ways to get to the
9 bench, and the other is by election. And as
10 someone who has served on the Judicial
11 Qualifications Commission for years and who
12 currently prosecutes for the Judicial
13 Qualifications Commission, I can assure you
14 that the process, the alternative process of
15 electing Judges has such a disproportionate
16 number of problems with judicial positions can
17 come from the elected, but not from the
18 gubernatorial appointment process.

19 So the numbers are there. We're not
20 worried about having applicants who are
21 qualified. We're not worried about -- we are
22 concerned about experience. It is the
23 experience, as I said, to decide whether you
24 die or you live, you keep those children or you
25 don't, you have that home or you don't, you are

1 a Jimmy Ryce offender or you are not.

2 That is the power of the Circuit Judges of
3 the State of Florida, and that is awesome power
4 because they are doing it individually. They
5 don't have the protection that the Appellate
6 Courts have to do things in conference and say
7 "Let's talk about it." They have to make those
8 decisions.

9 Now, with respect to being a member of the
10 Florida Bar as opposed to just having ten
11 years' experience, I can say anecdotally I have
12 been a member of the Virginia Bar for probably
13 35 years. I have never once practiced in the
14 State of Virginia. I maintain what they call
15 an associate membership that I could activate
16 at any moment, pay the right number -- right
17 amount of dollars and head back and practice in
18 Virginia. I have no experience in Virginia
19 law, no knowledge. The worst case is
20 Louisiana, the Napoleonic code, which they
21 still use.

22 Florida law is unique to Florida as other
23 states are unique to them. We're not talking
24 about federal law. We're talking about state
25 law, mortgage, foreclosures, and child care,

1 child support, all those issues that are
2 different here than they are elsewhere because
3 just as we sit in this room, we are changing
4 things all the time for the benefit of Florida,
5 not for the benefit of Georgia or Louisiana or
6 Virginia or anyone else. We're doing it for
7 Florida, and we need people trained in Florida
8 law to hold those positions.

9 So I support and urge you to consider the
10 amendment which requires ten years for a
11 Circuit Judge to be a practicing member of the
12 Florida Bar.

13 Commissioner Solari makes an interesting
14 point, which I answer as saying there are
15 always going to be exceptions. We can nitpick
16 till we're blue in the face in this room and
17 say with every single proposal I can find some
18 exception somewhere that doesn't fit.

19 Personally, I would rather have
20 Commissioner Solari making those decisions
21 right now taking the bench with over ten years
22 as a member of the Bar than I would somebody
23 with six years, or five years. That's the
24 difference in the world we live in because
25 that's the difference in the significance of

1 what they do in this state. So --

2 CHAIRMAN BERUFF: We will open for
3 questions on Commissioner Coxe's amendment.

4 Commissioner Heuchan.

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

7 Commissioner Coxe, so you -- just to
8 understand what is being proposed in the
9 underlying delete-all and what you're seeking
10 to modify is we're now only really talking
11 about the Circuit Court Judges and extending
12 their experience level, which I'll talk about
13 later in terms of age and some causation with
14 experience, but you're talking about changing
15 one of the pieces -- well, let me back up.

16 I will leave that for a statement later.
17 But you're talking about adjusting Commissioner
18 Schifino's strike-all to simply change the five
19 years with regard to the Florida Bar to the ten
20 year?

21 COMMISSIONER SCHIFINO: Uh-huh.

22 COMMISSIONER HEUCHAN: Okay.

23 CHAIRMAN BERUFF: Other questions?

24 Seeing no further questions, we will open
25 the amendment to debate.

1 Commissioner Smith, you are recognized.

2 COMMISSIONER SMITH: Thank you.

3 I think Commissioner Coxe kind of made the
4 argument of why I'm against this amendment.
5 Commissioner Coxe is a very learned individual
6 in the field of law in Florida. He has a
7 tremendous amount of experience as a lawyer and
8 as a counselor in Florida. If Commissioner
9 Coxe was to relocate to Virginia next year, I
10 wouldn't think that Commissioner Coxe would
11 need a whole ten years of practicing under the
12 Virginia Bar to be eligible and to be a good
13 Judge in Virginia.

14 If someone -- in the opposite of that, if
15 someone has practiced law in Virginia for 30
16 years and is a lawyer and is a learned
17 counselor, if they come to Florida, I would
18 think five years as a member of the Florida Bar
19 would be sufficient instead of 10. So that's
20 the problem I would have with this is making it
21 a number of practicing of that Bar association.

22 I mean, again, there are certain states
23 that are different, like you say, with
24 Louisiana with Napoleonic code and things are
25 different. But there are certain -- but being

1 a Judge is being about judgment. And if you've
2 practiced law for many years in another state
3 and you're here, I would hate to say instead of
4 just five years, you need ten years. I don't
5 see a good reasoning for making it a member of
6 the Florida Bar. I can maybe go along with a
7 practicing lawyer, but to membership into the
8 Florida Bar, I would have to vote against that.

9 CHAIRMAN BERUFF: Commissioner Heuchan.

10 COMMISSIONER HEUCHAN: Thank you, Mr.
11 Chairman.

12 I am standing to oppose this amendment
13 also along the same lines as Commissioner
14 Smith. If -- while we're using Commissioner
15 Coxie as an example, he's a wonderful example,
16 if he was a Judge in the State of Virginia and
17 he came to Florida, then you would be impacted
18 by this adversely, negatively. You couldn't be
19 a Judge. You could have been a Judge in the
20 State of Virginia for 30 years. You move to
21 Florida like a lot of people do, you're
22 qualified to serve, and yet you can't. You
23 have to wait this extra time.

24 I -- this proposal I have given
25 considerable thought to. I have talked to

1 Commissioner Schifino on countless occasions
2 about this. I committed to him -- like in life
3 and certainly here, in work and with families,
4 we give deference to people who know things --
5 more about things than you do. This is
6 definitely one of those areas for me.

7 I am not a lawyer. The only times I've
8 been in court were for juries and things that
9 happened when I was younger and I shouldn't
10 have been there.

11 But I long ago had given Commissioner
12 Schifino a commitment to help him out of that
13 deference in spite of my own concern that age
14 is not necessarily an indicator of good
15 judgment, of character, of integrity, of
16 collegiality, all of the things that I know
17 about good Judges have those kinds of personal
18 characteristics and traits.

19 Experience is definitely one of those, and
20 you're probably right, Commissioner Coxe,
21 they're -- by and large the age or length of
22 service or length of, you know, whatever in
23 some Bar association or another is more or
24 less.

25 It is not offensive what Commissioner

1 Schifino is trying to do, but it does bother me
2 that there are younger people who -- who may,
3 in fact, have more of the other good traits of
4 a Judge and less on the experience level.

5 The last point I will make is, again, not
6 being a lawyer, I -- I do know that Florida,
7 like a lot of states, have reciprocity on -- on
8 Bar licenses and tests that you take, and -- is
9 that true? No, okay.

10 A VOICE: No, no, no.

11 COMMISSIONER HEUCHAN: All right. Forget
12 that point. Concentrate on the earlier points.
13 Well, it would have been amazing had it been
14 true, but -- no, but -- but seriously, I guess
15 I'm just kind of struggling with this notion
16 that you take a certain test that's
17 administered by a certain state and you belong
18 to an association that the State of Florida and
19 the laws of the State of Florida give the
20 authority to that association to essentially,
21 for lack of a better word, regulate along with
22 the court the behavior and credentials and the
23 other things that go along with it.

24 And for that, you know, I respect that,
25 and I'm not going to beat a dead horse here,

1 but I thought that the delete-all that
2 Commissioner Schifino proposed in terms of kind
3 of carving out or exempting the people, that
4 was also a big concern. If you were already
5 there, this shouldn't retroactively hurt you.
6 And I also liked the idea that you could come
7 from another state and live up to the
8 attributes that we all would want in our
9 Judges.

10 And so, regrettably, I don't like to
11 disagree with my friend, Commissioner Coxe, but
12 I am going to vote no on this amendment.

13 CHAIRMAN BERUFF: Is there further debate
14 on Commissioner Coxe's amendment?

15 Commissioner Schifino, is this considered
16 a friendly amendment?

17 COMMISSIONER SCHIFINO: Can I consult my
18 lawyer, someone clearly with ten years of
19 experience? I -- the short answer is I do
20 consider it to be a friendly amendment. I was
21 comfortable, Commissioner Heuchan and
22 Commissioner Smith, with my strike-all and --
23 but I believe the citizens of this fine state
24 would best be served with the ten years of
25 experience within the Florida borders and

1 practicing Florida law. Thank you.

2 CHAIRMAN BERUFF: Commissioner Coxe is
3 recognized to -- I don't know what.

4 COMMISSIONER COXE: Mr. Chair, may I ask a
5 question through the Chair to Commissioner
6 Schifino?

7 CHAIRMAN BERUFF: Please feel free.

8 COMMISSIONER COXE: Would it be of any
9 benefit if I were to withdraw 387958 to your
10 cause, which I will do? Which is the Florida
11 Bar requirement of the ten years, that's all it
12 is.

13 CHAIRMAN BERUFF: Commissioner Schifino.

14 COMMISSIONER SCHIFINO: I think that would
15 be a benefit to moving this along.

16 COMMISSIONER COXE: I'll withdraw that,
17 Mr. Chair.

18 CHAIRMAN BERUFF: Okay. So now I got to
19 learn something new. We will show 387958 as
20 withdrawn by Commissioner Coxe. We're good
21 with that, right?

22 Now we will go back to the Schifino
23 amendment, your own amendment. Is it friendly?
24 Let me consult with Mr. Schifino.

25 A VOICE: I just felt it was the right

1 moment.

2 A VOICE: What do you think? I don't
3 know. He may ask you to withdraw your own
4 amendment.

5 CHAIRMAN BERUFF: Okay. We're going to
6 open Amendment No. 47 as amended by
7 Commissioner Schifino for de- -- no, I'm sorry.
8 I'm sorry. Debate on the amendment. Debate on
9 that amendment.

10 Go ahead, Commissioner Newsome.

11 COMMISSIONER NEWSOME: Thank you, Mr.
12 Chairman.

13 I'm a little bit -- I just would like to
14 know what exactly we're debating with so I can
15 speak to it.

16 CHAIRMAN BERUFF: Me, too. Commissioner
17 Schifino.

18 COMMISSIONER SCHIFINO: Thank you. Chair
19 Beruff. Well, that's not my fault. The -- but
20 let me clarify. My -- the amendment that we're
21 going to talk about now was my strike-all,
22 which is a -- would require ten years of Bar
23 membership to be a Circuit Judge, five of which
24 have to be as a Florida Bar member. The County
25 would remain as it always had been, the five

1 years, and we discussed that at length.

2 So the only issue you're looking at now,
3 the only change to the Constitution that you
4 are looking at now would be a change from five
5 to ten for Circuit Court, that's it.

6 CHAIRMAN BERUFF: Commissioner Newsome is
7 recognized.

8 COMMISSIONER NEWSOME: Just keep this
9 short. I'm telling every Commissioner who's
10 never tried a case -- I know some of us,
11 Sprowls and others have -- you want at least
12 ten years on the bench, you just do, and you
13 want at least five years. I just finished a
14 three-week trial. We had an out-of-state guy,
15 30-year lawyer, but didn't know the Florida
16 rules. And we had an amazing Judge who was a
17 young Judge, he had ten years, but I just --
18 for whatever it is worth, this is something we
19 all want, at least those of us who actually are
20 in the courts, whether you're defense,
21 prosecutor, plaintiff, regardless, you want
22 this, my opinion.

23 CHAIRMAN BERUFF: Commissioner Martinez is
24 recognized.

25 COMMISSIONER MARTINEZ: Mr. Chair, I agree

1 with Commissioner Newsome, but I have a
2 question for Commissioner Schifino because --

3 CHAIRMAN BERUFF: We're going back again,
4 okay.

5 COMMISSIONER MARTINEZ: Sorry. The
6 proposal that came out of our judiciary
7 committee had ten years for both Circuit and
8 County, and it didn't matter what member -- or
9 what Bar you were a member of, all right. So
10 this amendment -- I guess we are talking about
11 the amendment now -- the amendment has ten for
12 Circuit and five for County, correct?

13 COMMISSIONER SCHIFINO: Yes, sir.

14 COMMISSIONER NEWSOME: Okay. Is there any
15 Bar requirement, particular Bar requirement,
16 member of any particular Bar? Five for
17 Florida? Five in Florida.

18 COMMISSIONER SCHIFINO: Correct.

19 COMMISSIONER NEWSOME: So that would still
20 exclude, for example, if Benjamin Cardozo, who
21 was one of our best Justices ever, were to come
22 to Florida to be a member of our court, but he
23 wasn't a Florida lawyer for five years, he
24 could not be a Judge. It would exclude
25 Mr. Cardozo, for example. So we still have

1 that -- this ability. Okay.

2 CHAIRMAN BERUFF: Commissioner Schifino.

3 COMMISSIONER SCHIFINO: The question --

4 COMMISSIONER NEWSOME: Is also vetted,
5 yes.

6 COMMISSIONER SCHIFINO: The answer is yes.
7 I think you answered your own question. But
8 the -- if you recall, what came out of our
9 commission -- our committee, judiciary, was a
10 9-0 vote on 10-10, ten for Circuit, ten for
11 County, and there -- and the vote we took was
12 the ten had to be Florida Bar membership for
13 both. But if you recall, Commissioners Lee and
14 Bondi raised the issue as we were leaving
15 towards the end of that, this issue that
16 Commissioner Heuchan and Commissioner Smith
17 addressed, and that is what if I was a
18 practicing lawyer, I think the example was in
19 Pennsylvania, I moved here, and we all as a
20 group -- and I was asked before my next stop,
21 which was, I believe, executive on this issue,
22 would I file an amendment that would deal with
23 this issue permitting five years of Bar
24 membership outside the state, to which I said I
25 would.

1 And so before I went before -- I believe
2 it was executive -- I did amend the initial
3 proposal, the one that we had addressed in
4 judiciary permitting that you needed the ten,
5 but permitting five of those ten to be outside
6 the state. That's how we got through the
7 executive.

8 COMMISSIONER NEWSOME: All right.

9 CHAIRMAN BERUFF: Commissioner Martinez.

10 COMMISSIONER MARTINEZ: But in the
11 judiciary, it was ten and ten, no particular
12 Bar requirement, so --

13 COMMISSIONER SCHIFINO: Correct.

14 COMMISSIONER MARTINEZ: -- one thing I
15 want to point out to the folks here who are not
16 trial lawyers -- I know some of you are
17 lawyers, but not trial lawyers -- the County
18 Court Judges actually handle some very
19 significant cases, very significant cases. So
20 although they may be considered junior Judges,
21 they actually have tremendous authority to
22 affect the lives of all of us, whether we are
23 private people or businesses.

24 So I think that having the original
25 requirement of ten years for both the County

1 and the Circuit Court as it came out of
2 judiciary is something that I would agree with
3 and I would support, and I would be against
4 reducing that requirement.

5 CHAIRMAN BERUFF: Okay. We're still on
6 debate, but we took a question out of order.
7 Commissioner Sprowls. I just want to make sure
8 I'm keeping clear.

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

11 I rise as a nine-year lawyer, so -- so
12 I'll preface it with that. But no comment.

13 But as Commissioner Newsome mentioned, I
14 have had the opportunity to try over 70 cases
15 in front of a jury to verdict, and I've seen a
16 lot of lawyers as the other members who've
17 spoken, both senior lawyers, folks who are just
18 out of law school who are trying their first
19 case, and like anything else in life,
20 experience always matters.

21 And as somebody who has been the
22 beneficiary of a lot of good mentors throughout
23 the way, many of them happen to be older and
24 had more experience than I do.

25 But I oppose -- I oppose this proposal,

1 and here's why: Age is obviously an arbitrary
2 number. We know that. Everything we set with
3 age is an arbitrary number. But I disagree
4 when it said that the current process is a bad
5 filter, right. Many of you have served on a
6 JNC before or know people who are on a JNC, and
7 I think it's a pretty good filter. I think
8 most of the Judges that we have are good
9 Judges, they're competent, they understand the
10 law, and they're committed to justice. I think
11 the Governor's process of selecting Judges has
12 been a good process. And, more importantly, I
13 think that when those Judges -- and they
14 will -- stand before the voters and tell them
15 about their qualifications and their ability to
16 preside over cases, whether it be in County
17 Court or in Circuit Court, the voters are a
18 good filter.

19 But I want to have a little bit of
20 perspective because, you know, I got to try my
21 first murder case when I was not even a
22 two-year lawyer. Maybe that's not a good idea,
23 right. It went well, but maybe it's not a good
24 idea in practice. But experience also comes
25 with experience in addition to age. And what

1 this proposal doesn't do, in my opinion, is
2 account for that. And I want to just give a
3 little bit of perspective.

4 Thomas Jefferson became a lawyer in 1767.
5 He took a seat in the Virginia House of
6 Burgesses the following year. He wouldn't have
7 been able to be on the Circuit Court bench
8 under this proposal, but he took that seat in
9 the House of Burgesses, and as a nine-year
10 lawyer, the new country trusted him to write
11 the Declaration of Independence. But he
12 wouldn't have been able to be a Circuit Court
13 Judge under this proposal.

14 Thurgood Marshall graduated from law
15 school in 1933. He argued *Chambers versus*
16 *Florida* in 1940 in front of the United States
17 Supreme Court. He won a landmark case that
18 came out of this state. Judges in this state
19 allowed a defendant to be repeatedly questioned
20 and coerced by law enforcement into a
21 confession, and Thurgood Marshall didn't think
22 that was right, didn't think it was lawful,
23 thought it violated the United States
24 Constitution.

25 So he took that case all the way to the

1 United States Supreme Court, even though
2 Appellate Courts here in Florida, probably by
3 lawyers who had been practicing ten or more
4 years, said that it was okay, and he won that
5 case at the United States Supreme Court. That
6 very same year, he became the Executive
7 Director of the NAACP Legal Defense Fund, and
8 we all know the rest is history. But even with
9 that history, he wouldn't have been able to be
10 on the Circuit Court bench in the State of
11 Florida under this proposal.

12 A lot of good things come with age,
13 there's no question about that, but I would
14 dare to say that more comes with experience
15 than with age. And this proposal, although
16 well-intended by my friend, Commissioner
17 Schifino, doesn't account for that. I ask you
18 to vote no.

19 CHAIRMAN BERUFF: Commissioner Stemberger
20 is recognized.

21 COMMISSIONER STEMBERGER: From eyeing the
22 vote board, it appears that at least one-third
23 of us have had the knee-knocking experience of
24 going into law school as a 1-L on the first
25 day, and two things happened at least for me

1 instantly. You realize you're not as smart as
2 you thought you were. And there are some
3 really, really brilliant people in law school.

4 That became obvious to me. You think
5 you're hot, and you go in there and you
6 realize, oh, my gosh, she is brilliant, she has
7 a memory that's like a steal trap, and she is
8 able to understand these principles way better
9 than I am.

10 Secondly, you understand that -- all of a
11 sudden, I looked around and I had a NASA
12 engineer as one of my 1-L students, I had a mom
13 who had had five kids and was kind of retired,
14 and you had teachers and doctors, we had a
15 classical musician, many folks who were older
16 in age and had requisite wisdom and temperament
17 and judgment, the kind of qualities you want to
18 see in a Judge.

19 I, too, served for eight years on the JNC,
20 and we had a very active -- I think we met --
21 goodness, we met multiple times a year during
22 those eight years for time I served as
23 Chairman, reviewing hundreds of applications.
24 And I think we agree, Commissioner Schifino,
25 that that is a very good process, and I think

1 the JNC can make the judgments needed with its
2 makeup.

3 And I also agree that there is an issue
4 with the election of Judges. And, actually,
5 Commissioner Coxe and I debated a similar issue
6 about 15 years ago -- 12 years ago, rather,
7 because there is an issue. We pick our
8 Judges -- this is sad, but this is the reality.
9 We pick our Judges when they are elected based
10 upon the color of their yard signs and whether
11 their names sounds American or foreign. That's
12 the way we do it. And the problem is not
13 that -- we don't know who these guys are. See,
14 we in the Bar knew who they are, but the public
15 doesn't know who they are.

16 So I actually filed a lawsuit against the
17 Florida Bar and the Judicial Ethics Advisory
18 Commission to strike down the gag order that
19 prevents Judges from announcing their views on
20 disputed matters of law and policy. Not saying
21 Judges should announce how they're going to
22 vote on a case, but they're saying if you ask a
23 Judge a question, a candidate for a Judge, like
24 is your views more like Justice Lawson or
25 Justice Pariente, they ought to be able to

1 answer that.

2 But the Ethics Advisory Commission tells
3 the candidates, no, don't fill out the survey,
4 don't do -- this is an issue I am very
5 passionate about. Our organization publishes
6 the most extensive judicial voter guide in the
7 state. I am not aware of another group that
8 tries to collect more information on Judges
9 than we do.

10 And so I don't know that this really
11 solves the problem, because the problem is
12 people don't know who these Judges are. And,
13 actually, in response to the lawsuit, which was
14 not successful, the Bar actually went through
15 its own process of coming up with a
16 questionnaire, which I thought was a great
17 idea, but it includes no key issues like which
18 charitable organizations do you support, that
19 was struck down, whether or not you even have
20 military service was struck down, you know, and
21 so some simple questions about judicial
22 philosophy, which clearly is legitimate.

23 In *Republican Party versus White*, Justice
24 Scalia says, look, when you have a Judge that
25 wants to speak and a listener that wants to

1 hear, that is a core First Amendment right.
2 Judicial canons should not be in the way of
3 that.

4 If we really wanted to solve this problem,
5 we should strike down the judicial canons which
6 gag Judges from announcing legitimate views on
7 where they -- we learn about where Judges
8 stand, right, all the time after they rule.
9 Does it serve the interest of a robust
10 democracy for us to know those views before
11 they get elected or after they get elected?
12 That is the problem that needs to be solved, in
13 my opinion, and this proposal, while well
14 intended, and I certainly appreciate the
15 effort, we want experienced Judges, I think
16 that it does not solve the real problem, and in
17 the interest of being minimalist, I oppose it.

18 CHAIRMAN BERUFF: Commissioner Diaz is
19 recognized.

20 COMMISSIONER DIAZ: Just for a point of
21 order, I just want to make sure that we're
22 debating the amendment and not the proposal,
23 because the last two have been about the
24 proposal. So if we can just bring it for a
25 landing on the amendment, I think it would

1 allow us to move quicker through the day.

2 CHAIRMAN BERUFF: Sounds good to me. Is
3 debate -- Commissioner Gaetz.

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

6 The issue as to the amendment is whether
7 or not Circuit Court Judges ought to have ten
8 years of experience. That's the amendment.
9 That's the issue that's before us. And
10 Commissioner Keiser and Commissioner Sprowls
11 have made excellent points that it is not
12 necessarily the years of experience, but it is
13 the kind and depth of experience that ought to
14 count, and I agree with that.

15 And it is also true that Thomas Jefferson
16 and Commissioner Sprowls and a lot of other
17 young people we know and have known through
18 history could have and did do extraordinary
19 things. I was reminded as I came over last
20 night by the youngest member of the freshman
21 class of the United States Congress with -- who
22 occasionally has his feet under my table,
23 that -- that age and experience and depth of
24 understanding are two different things.

25 Having said all that, as a general rule,

1 as a general rule, and that's what we really
2 have to bear in mind in writing a Constitution,
3 as a general rule, do we believe that a depth
4 of understanding and experience adds value?

5 Commissioner Keiser talked about years of
6 experience as not being necessarily the -- the
7 driving force in what makes a good Judge, and
8 she's right. But if you have more years of
9 experience, is there not a greater chance that
10 you have more kinds of experience, more depth
11 of experience, and more skill of experience?

12 And I think as a non-lawyer who has had to
13 stand in front of Judges, not in a criminal
14 sense so far, so far, many times on civil
15 matters, I can tell you that depth of
16 experience means a lot.

17 I was recently involved in a case
18 involving construction law, and my lawyer told
19 me, "Thank goodness we have Judge So-and-so
20 because he's been a lawyer in Florida for a
21 long time, he's been a Judge for a long time,
22 and he understands all the nuances of
23 construction law," which I came to understand
24 in a complicated case are extraordinary and
25 probably are better understood the more times

1 you do it.

2 It's not a perfect analogy, by any
3 stretch, but I had to have a cardiac ablation a
4 couple of times in recent years, and the doctor
5 that I went to, I -- I -- was the doctor who
6 had done more of them than anybody else in the
7 country. And he was a little bit older guy,
8 and I felt pretty good about that and it's
9 worked so far.

10 When -- when I get on an airplane, I don't
11 know about you, but if I had a chance to glance
12 into the cockpit, it's always reassuring to me
13 to see somebody who it appears as though might
14 have done this a bunch of times before, as
15 opposed to somebody who -- who is learning, who
16 is doing well, but maybe hasn't had the years
17 and depth of experience of going through
18 extraordinary difficulties in flight and
19 bringing home everybody safely.

20 I know it's not a perfect analogy, but
21 when you, as a general rule, look at who you
22 want making a decision that may affect life or
23 death, may affect property, may affect your
24 individual rights, it seems to me as a
25 non-lawyer, as a citizen, as somebody who's

1 been in court because I've been in business and
2 been involved in politics, that you want
3 someone with more experience.

4 That is the essence of the amendment. Do
5 we want more experience, more kinds of
6 experience in our Judges on the Circuit Court?
7 If we do, we should vote for the amendment. If
8 we believe that the exceptions don't prove the
9 rule, then we should probably vote against the
10 amendment.

11 But not everybody is Thomas Jefferson, not
12 everybody is Commissioner Sprowls, thank
13 goodness not everyone is Matt Gaetz, but as a
14 general rule, experience matters, experience
15 gives depth, and experience is what we should
16 seek in our judiciary. So I support the
17 amendment.

18 CHAIRMAN BERUFF: Is there any further
19 debate on Amendment 109314?

20 Mr. Schifino, Commissioner Schifino, do
21 you want to close on your amendment or waive?

22 COMMISSIONER SCHIFINO: I can't help it, I
23 got to close. I saw a hedge going no, no, sit
24 down. I'll be very brief, I promise.

25 I want to clarify a few points on this

1 entire issue. One, no one suggested we don't
2 have a good filter in place with the JNC
3 process. Those words didn't come out of my
4 mouth. I didn't hear them come out of
5 anybody's mouth. We have an excellent JNC
6 process. That's why I was very clear in
7 responding to Mr. Cerio's questions, you've got
8 two ways to get on the bench, not just one.

9 I also want to point out, having sat on
10 the JNC, there's an issue you always are asked
11 to consider. It is right in the rule book, and
12 that is life experiences. Take a look and ask
13 yourself when that particular applicant is
14 before you, tell us about what are their life
15 experiences, not just legal, not just legal,
16 that is critical.

17 I do want to point out that the -- and let
18 me jump ahead. I don't need to repeat that.
19 Commissioner Gaetz addressed the Jefferson
20 analogy. I will say he also would not have
21 been able to sit on our Appellate Courts or our
22 Supreme Courts, and we've recognized that since
23 1956.

24 Now, we all agree -- I haven't heard one
25 person say in this room that experience doesn't

1 matter. The only issue that I have heard is a
2 question about, well, aren't -- aren't years
3 arbitrary? No, they're not arbitrary. That's
4 what happens in life. You move through life,
5 you handle cases. The more times you're on the
6 bench, the more cases you handle, the more
7 issues you see, the more times in a trial --
8 okay, if you've tried cases, not just criminal,
9 not just civil, but if you've had a myriad of
10 cases and you've had an exceptional number of
11 cases you've tried, Commissioner Sprowls, but
12 you've also got life experiences that make you
13 a better Judge. They absolutely do.

14 I look at this through one focus, and I
15 know we all do: What's in the best interest of
16 the citizens of the state? What do our clients
17 want? What do we want the citizens of this
18 state to think and know about the judiciary?

19 To close, Supreme Court Justices since
20 1956, you have required -- we have required ten
21 years of experience. I didn't make that up. I
22 wasn't born then. Appellate Judges, ten years,
23 Circuit Judges are five, and County, five.
24 Circuit Judges, that five year was put in in
25 1966. That's forty some odd years ago, right.

1 This amendment simply elevates the years from
2 the five to the ten.

3 Thank you very much.

4 CHAIRMAN BERUFF: Would you please open
5 the board and -- I'm sorry, voice vote on the
6 amendment. All those in favor of the
7 amendment, signify by saying yea.

8 (Chorus of yea's.)

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

11 (Chorus of nay's.)

12 THE COURT: I think the yea's have it.

13 So that said, we will go back to the
14 proposal as amended. Is there any further
15 debate or question? It's been debated pretty
16 well, but Commissioner Cerio will be
17 recognized.

18 COMMISSIONER CERIO: Thank you, Mr. Chair.

19 This is a proposal, and Commissioner
20 Schifino and I have talked about it quite a
21 bit. I didn't support it in committee. I -- I
22 appreciate the effort to sort of -- for
23 Commissioner Schifino's effort and the Bar's
24 effort to work with the Young Lawyers Division,
25 but I just -- I've been in the judicial

1 selection process for a long time basically
2 as -- I've been a member of the JNC for the
3 First District Court of Appeal and I had the
4 privilege of advising the Governor on judicial
5 appointments. And I know that there's been a
6 recognition that we really do in Florida have a
7 good JNC process, and I do think that's
8 accurate.

9 But I will tell you in that process, we
10 have seen -- and I mean folks who've been
11 involved in this -- we see exceedingly capable
12 and qualified lawyers who have between five and
13 ten years' experience, and sometimes they get
14 the appointment. And we have seen -- or we
15 have been exceedingly underwhelmed, I would
16 also say, when we meet other lawyers that may
17 have more experience.

18 It really does come down to an individual
19 decision, and I -- and I agree with
20 Commissioner Gaetz that, yes, generally, more
21 experience is better, and, you know, you have
22 the -- you know, if I had a heart issue, maybe
23 it's only a matter of time, but you would want
24 that -- you would want that -- you would want
25 that -- the best physician possible. Maybe you

1 have a young superstar who's graduated from the
2 finest medical schools, maybe you have a
3 physician who is senior and very
4 well-respected, but they're just not on the
5 cutting edge, they haven't been keeping up with
6 things.

7 That is an individual, one-on-one
8 decision. You can't -- we -- you can -- you
9 can make a personal choice of what your
10 preference is, but at the end -- and you can
11 make great arguments on either side, but at the
12 end of the day, we're going to vote today to
13 limit the potential pool of applicants.

14 And it is really, really difficult in the
15 JNC process. It is not -- you don't always
16 have an abundance or an embarrassment of riches
17 of applicants. A lot of times, the JNCs have
18 to work very, very hard to beat the bushes, to
19 get applicants, to get good, qualified
20 applicants, a great diverse batch of
21 applicants, and it is difficult.

22 And when you find young lawyers who are
23 willing to give public service a chance and go
24 on the bench and they're really qualified and
25 really eager and capable, not just eager, but

1 actually capable and competent and will have
2 the appropriate demeanor for the bench, that is
3 a wonderful find. And I just hate to see a
4 proposal that would go down the path of
5 limiting that.

6 I think -- and it's been alluded to. I
7 think the real problem that we see sometimes,
8 or that's believed to be a problem, is more on
9 the elections side, when young lawyers who
10 really -- maybe they're not terribly
11 well-respected by their peers, they run, and
12 they run a good campaign or they get a good
13 consultant and they beat a more senior and
14 respected member of the Bar, and that's
15 unfortunate when that happens, but I don't
16 think that we should change the system because
17 that does occasionally happen.

18 With that, that is my close, Mr. Chair.
19 Thank you.

20 CHAIRMAN BERUFF: Commissioner Diaz is
21 recognized.

22 COMMISSIONER DIAZ: Thank you, Mr.
23 Chairman. I will be quick.

24 This is not about the substance of the
25 Bill. Commissioner Schifino knows that I had

1 some heartburn when it came through judiciary.
2 I wanted to talk about the process that we are
3 involved in today.

4 At some point in the next few weeks, we're
5 going to have to start whittling down some of
6 these proposals. And I ask myself the same
7 thing that I think that a lot of people should
8 be asking themselves is, how many of these
9 proposals are we going to have on the ballot?
10 And I know that we're all very generous and we
11 all like each other very much, but I remember
12 an election not too long ago where the lines
13 were hours long because there were so many
14 things to vote on. So we are going to have two
15 bites of the apple here and one more time.

16 If we don't whittle down some of these
17 proposals for the next time, we're going to
18 have 30 plus proposals on the ballot, and, to
19 me, that is unconscionable and something that I
20 don't think that the citizens of this state
21 deserve.

22 I did vote for Commissioner Schifino's
23 first proposal. I thought it was worthy of our
24 consideration. I think there's a lot of merit
25 to this proposal, but because I think we need

1 to start whittling some of these down and I
2 think that there are other things that I think
3 rise to the level of this august body, I will
4 be voting this one down. Thank you.

5 CHAIRMAN BERUFF: Commissioner Washington
6 is recognized.

7 COMMISSIONER WASHINGTON: Thank you, and
8 thank you so much, Commissioner Schifino.

9 As you know, you and I spoke and we had a
10 conversation about providing -- giving
11 deference to the other. And I agree
12 fundamentally, as everybody does, that
13 experience matters, but as a young person, and
14 I'm not a lawyer and I don't play one on TV, I
15 really fundamentally can't agree with that you
16 have experience at ten years plus one day.
17 I -- the threshold, I think, is something I
18 really struggle with, being a young person,
19 being -- my capability to be on this body
20 itself might have been precluded if there was
21 some arbitrary age limit.

22 So I think that when, you know,
23 considering -- and, again, I definitely
24 appreciate the fact that Judges need
25 experience, but I think that what somebody

1 mentioned, when you are up for partner, I think
2 that there's an -- there's a time, but there's
3 also the experience, and I think that that's
4 what's missing out of this. There's not any
5 way to qualify whether your experience or your
6 Bar membership is actually of quality, and I am
7 concerned by that as well.

8 And, Commissioner Coxe, who I greatly
9 appreciate, said that he'd rather have somebody
10 who had a membership for 29 years versus
11 somebody who's been practicing for six, and
12 that concerns me as well because I don't want
13 us to be an ageist body. I want us to really
14 consider what the youth and the talent and the
15 quality of experiences that our young people
16 have today.

17 And so for those reasons, Commissioner
18 Schifino, I really appreciate you, but I will
19 not be supporting this Bill.

20 CHAIRMAN BERUFF: Any further debate?
21 Commissioner Gainey.

22 COMMISSIONER GAINNEY: Thank you,
23 Mr. Chair.

24 Just I think it is appropriate to point
25 out current constitutional language in counties

1 with less than 40,000 allow a County Judge with
2 less than five years' experience. And the
3 current check of that, there's 23 such counties
4 in the state where you can be a County Judge
5 without five years' experience.

6 CHAIRMAN BERUFF: Thank you.

7 Is there any further debate on 49 -- 47 as
8 amended? Commissioner Martinez is recognized.

9 COMMISSIONER MARTINEZ: Mr. Chair, let me
10 just reemphasize again that you're right,
11 Commissioner Washington, there is no numerical
12 number that can *per se* become magical as to the
13 age of wisdom, I agree with that. But
14 experience does matter. And the best way as a
15 general proposition to deal with experience is
16 to provide an age limit at which point in time
17 that experience kicks in.

18 I became a prosecutor when I was 28, and I
19 tried cases, putting people in jail for over
20 20, 30 years when I was 28, just out of law
21 school for about two years. But I can tell you
22 that I didn't have the life experiences that I
23 think one needs when one is actually not just
24 prosecuting as an advocate, but actually making
25 a decision on issues that are going to be so

1 life-changing as to put somebody away for many
2 years or take property away. And there's just
3 something about that wisdom that does come with
4 experience, that comes with time
5 chronologically.

6 So although there is no precise way of
7 doing this, there is no precise doing this,
8 Commissioner Washington, I agree with you, and
9 certainly people much younger than I am are
10 much better lawyers, there's just something
11 take comes with the wisdom of experience that
12 allows you to see things in perspective that
13 you can only get with the passage of time.

14 So although this may not be a perfect
15 amendment, I think that this is an amendment
16 that goes a long way to making sure that we
17 have the most qualified people on the bench
18 making these life-threatening -- these life
19 decisions.

20 Thank you.

21 CHAIRMAN BERUFF: Any further debate?

22 Commissioner Coxe is recognized.

23 COMMISSIONER COXE: One very brief point.

24 To me, the most critical issue is whether
25 the citizens of this state, when a decision is

1 made about their lives, have the confidence
2 that it was made by a person with the
3 experience and wisdom to have made that
4 decision.

5 CHAIRMAN BERUFF: Any further debate on
6 47? Commissioner Schifino, you are recognized
7 to close.

8 COMMISSIONER SCHIFINO: Thank you, Chair
9 Beruff. And let me begin by thanking all of
10 you, even those that spoke out against the
11 proposal. I think it is an excellent system of
12 government that we can have these conversations
13 and listen to one another.

14 I would like to just go through very
15 briefly, not re- -- not hit those points again,
16 but, Commissioner Diaz, I do want to point out
17 that when I first looked at 41 and 47, the
18 raising it to 75 and the ten year, I had it
19 drafted in one proposal because it all -- it's
20 the same section.

21 So I would fully expect -- maybe this will
22 give you a little bit of comfort -- that Style
23 and Drafting would bundle these two together if
24 they both make it to the ballot. It deals with
25 Article V, Section 8, under "Eligibility." It

1 is the same paragraph. I would suggest that,
2 okay, break them out for purposes of this
3 discussion. I did so, but I would fully expect
4 that they would come together.

5 I would ask you to think as you ponder
6 this -- and I heard some very good comments,
7 and we all bring different experiences to this,
8 but I do want to suggest to you there are those
9 in here that make an absolute living
10 representing clients day to day for many, many
11 years, and that doesn't diminish those of yours
12 opinions to the -- that don't at all. But I do
13 want you to recognize that, you know,
14 Commissioners Coxe, Martinez, Newsome, myself,
15 and some others, that we come to this with one
16 thought and idea in mind, not what's in the
17 best interest of a six-year lawyer, right, not
18 at all, we know that.

19 But the question you ask, as what
20 Commissioner Coxe pointed out, what is in the
21 best interest of the citizens of this state?
22 What do you want them to think when they walk
23 into a courtroom? What do you want them to
24 know? You want them to know that there is a
25 level of experience. No, it's not as

1 Commissioner Martinez pointed out, it's not a
2 perfect system, because if you were to create
3 that perfect system and you talked about it,
4 well, it's different experiences, and I get
5 that, I agree. My God, we are going to be a
6 filter. That's what the JNCs are for. But
7 that's not the only way we select trial Judges.
8 We have elections.

9 To Commissioner Gainey, that provision
10 still is in place, 40,000, we kept that in
11 place for just the reason you were concerned
12 with, we want to make sure that all rural
13 counties continue to be served.

14 I can't say it enough. Our Circuit Judges
15 make critical decisions day in and day out.
16 This was last looked at in 1966. And when we
17 talk about dates, just remember, it is not
18 going to change. We haven't -- we're not
19 suggesting that, well, let's eliminate a
20 ten-year requirement for Appellate Judges and
21 Supreme Court Judges. Is anyone thinking that?
22 Well, let's just wide open and we have no
23 requirement and why five for County. I mean,
24 if there's no restriction on -- if age -- years
25 of experience doesn't matter, why don't we just

1 say, hey, you graduated law school, you got a
2 ticket, it is wide open. No one's going to
3 suggest that.

4 Thank you very much, Chairman Beruff.

5 CHAIRMAN BERUFF: Thank you. The
6 Secretary will unlock the board.

7 All Commissioners please vote on Proposal
8 47 as amended.

9 Have all Commissioners voted?

10 Secretary, please announce the vote --
11 excuse me, lock and announce the vote.

12 THE SECRETARY: Twelve yea's, 21 nay's,
13 Mr. Chairman.

14 CHAIRMAN BERUFF: So the motion fails,
15 fails to go to special -- to Style and
16 Drafting. Thank you very much.

17 We are now going to take a 30-minute
18 recess, and we will reconvene in exactly 30
19 minutes, 1:35.

20 (Brief recess.)

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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 2 through 163 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 8th day of May, 2018.

CLARA C. ROTRUCK

Notary Public

State of Florida at Large

Commission Expires:

November 13, 2018

Commission NO.: FF 174037