



COUNTY ATTORNEY'S OFFICE
JEFFREY J. NEWTON, *County Attorney*

201 South Rosalind Avenue ■ 3rd Floor
Reply To: Post Office Box 1393
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MEMORANDUM

TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*
Contact: (407) 836-7320

DATE: May 23, 2019

RE: June 4, 2019, Closed Executive Session Regarding *Florida Association For Constitutional Officers, Inc. v. Orange County, Florida, and Bill Cowles, Orange County Supervisor of Elections, Ninth Judicial Circuit Court Case No. 2016-CA-011202-O*

At the May 21, 2019 Board meeting, I gave notice pursuant to Section 286.011(8) Florida Statutes that the Board will go into a closed Attorney-Client Executive Session so that I might seek the Board's advice concerning *Florida Association For Constitutional Officers, Inc. v. Orange County, Florida, and Bill Cowles, Orange County Supervisor of Elections, Ninth Judicial Circuit Court Case No. 2016-CA-011202-O* lawsuit.

The Executive Session shall be announced in public during the morning business on the Board's agenda. The closed Attorney-Client session will convene as announced by the Mayor and will occur during the morning session in the County Administrator's Executive Conference Room on the 5th Floor of the County Administration Building. In attendance, in addition to the Mayor and Commissioners, will be County Administrator Byron Brooks, Assistant County Attorney William Turner and myself.

The entire session concerning this matter will be recorded by a court reporter. The court reporter's notes will be fully transcribed and provided to the Clerk. Such transcribed notes shall not be subject to public review until conclusion of all legal proceedings (including appeals, if any) in this case.

c: Byron Brooks, County Administrator
William Turner, Assistant County Attorney

Deputy County Attorney
Joel D. Prinsell

Senior Assistant County Attorneys
Elaine M. Asad
Lila McHenry

Assistant County Attorneys
Roberta Alfonso
Cristina T. Berrios
Whitney E. Evers
Erin E. Hartigan
Georgiana Holmes
Aleas Koos
Katherine W. Latorre
Scott McHenry
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Paralegals
Melessia Lofgren
Maria Vargas, ACP
Gail Stanford



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09-27-19P02:26 ARNV

MEMORANDUM

TO: Katie Smith, Manager
Clerk of the Board of County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*

RE: *Florida Association for Constitutional Officers, Inc. v. Orange County, Florida, and Bill Cowles, Orange County Supervisor of Elections, Ninth Judicial Circuit Court Case No. 2016-CA-011202-O*

DATE: September 27, 2019

In accordance with Administrative Regulation 2.17(II)(2), a sealed envelope containing the transcript of the Closed Executive Session held on Tuesday, June 4, 2019, in the above-referenced matter was forwarded to the Clerk of the Board for filing.

Please be advised that litigation in this case is concluded and the transcript may be made part of the public record.

If you have any questions, please contact me at 407-836-7320.

c: Joel Prinsell, Deputy County Attorney

Deputy County Attorney

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Senior Assistant County Attorneys

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Melessia Lofgren

Maria Vargas, ACP

Gail Stanford

1 IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
2 IN AND FOR ORANGE COUNTY, FLORIDA

3 CASE NO.: 2016-CA-011202-O

4 DIVISION: 40

5 FLORIDA ASSOCIATION FOR
6 CONSTITUTIONAL OFFICERS, INC.

7 Plaintiffs,

8 V.

9 ORANGE COUNTY, FLORIDA;
10 AND BILL COWLES, ORANGE
11 COUNTY BCC COUNTY SUPERVISOR
12 OF ELECTIONS,

13 Defendants.

14 _____/
15 Confidential Transcript of Board of County Commissioners
16 Executive Meeting

17 June 4, 2019
18 11:27 a.m. - 12:39 p.m.
19 201 South Rosalind Avenue
20 Fifth Floor
21 Orlando, Florida 32801

22 Stenographically Reported By:
23 Brandy S. Payment, FPR
24 US Legal Support
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APPEARANCES

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JERRY DEMINGS, Orange County Mayor

EMILY BONILLA, Orange County Commissioner District 5

VICTORIA P. SIPLIN, Orange County Commissioner
District 6

BYRON BROOKS, County Administrator

MAYRA URIBE, Orange County Commissioner District 3

CHRISTINE MOORE, Orange County Commissioner District 2

BETSY VANDERLEY, Orange County Commissioner District 1.

1 MR. DEMINGS: Please note this discussion must
2 be limited to legal strategy concerning the Florida
3 Association for Constitutional Officers,
4 Incorporated, versus Orange County Florida and Bill
5 Cowles, Orange County Supervisor of Elections, the
6 Ninth Judicial Circuit case number 2016-CA-011202-O.

7 Please also be advised that the transcript will
8 be a verbatim, permanent record of the discussion,
9 and that record will be available to the public
10 under the public records law when the litigation is
11 concluded.

12 Please now identify yourselves so the court
13 reporter can accurately identify who is speaking and
14 accurately attribute statements to each attendee.
15 I'll begin.

16 Jerry Demings, Orange County Mayor.

17 MS. BONILLA: Emily Bonilla, Orange County
18 Commissioner District 5.

19 MS. SIPLIN: Victoria P. Siplin, Orange County
20 Commissioner District 6.

21 MR. NEWTON: Jeffrey Newton, County Attorney.

22 MR. TURNER: William Turner, Assistant County
23 Attorney.

24 MR. BROOKS: Byron Brooks, County Administrator.

25 MS. URIBE: Mayra Uribe, Orange County

1 Commissioner District 3.

2 MS. MOORE: Christine Moore, Orange County

3 Commissioner District 2.

4 MS. VANDERLEY: Betsy VanderLey, Vice Mayor in
5 Orange County -- District Commissioner for
6 District 1.

7 MR. NEWTON: Good morning, Mayor and
8 Commissioners. You have in front of you a
9 presentation outline. We're going to go through the
10 background, talk about the status of the 2016
11 litigation, some of the issues that are still
12 present as well as strategy and potential solvent as
13 well. I know that each of you received a
14 correspondence from the Orange County Tax Collector
15 yesterday, and that is something we'll discuss a
16 little later on in this presentation as well.

17 MS. URIBE: And the property appraiser, too.

18 MR. NEWTON: Was that a separate letter?

19 MS. VANDERLEY: I didn't receive one.

20 MS. SIPLIN: I didn't receive one.

21 MS. URIBE: Mine was hand-delivered.

22 MR. NEWTON: I think they probably covered the
23 same subject matter. I don't have a property
24 appraiser one, I did get handed something that came
25 in to the mayor's office. It looks like it is the

1 letter from the tax collector, so...

2 MR. DEMINGS: We did have one also
3 hand-delivered from the property appraiser. So we
4 had both the tax collector and the property
5 appraiser.

6 MS. VANDERLEY: Not all of us.

7 MS. URIBE: I did.

8 MS. BONILLA: I did.

9 MR. DEMINGS: The two letters seem to be
10 essentially the same.

11 MS. SIPLIN: Commissioner Victoria P. Siplin
12 has not received either letter, so I'm not sure. It
13 could be in my office, but I have not received it.

14 MR. NEWTON: Okay. And by the way, I have not
15 receive it either. I think, Commissioner Uribe,
16 your aide gave me a copy, and then Commissioner
17 Moore and I had a discussion, and I thought it had
18 come from Commissioner Moore because I was
19 discussing it with her and Mr. Cortez gave it to me.
20 But we are going to talk about that letter from the
21 tax collector, and I suspect the one from the
22 property appraiser covers the same subject matter as
23 well as the issues.

24 So if we start off on Page 4, that concerns
25 itself with the 2016 litigation. But what I want to

1 do before we get into that discussion is give you a
2 kind of refresher. I've already had this discussion
3 with each of you about the 2014 litigation. The
4 2014 litigation was prompted by the Board of County
5 Commissioners placing on the ballot a question as to
6 whether or not constitutional officers should be
7 subject to -- should be elected on a nonpartisan
8 basis as well as subject to term limits.

9 As you know, in January of this year, there was
10 a decision rendered by the Florida Supreme Court.
11 That decision initially upheld the ability of the
12 County through its ordinance as voted on by the
13 citizens in an election to make constitutional
14 officers subject to nonpartisan elections and term
15 limits. That decision, however, that January
16 decision by the Florida Supreme Court was recalled
17 by a new Florida Supreme Court, new in the sense
18 that three members of the Florida Supreme Court had
19 changed. So that decision was recalled in April of
20 this year. And in April of this year, the Florida
21 Supreme Court with its three new members recalled
22 the mandate, which is meaning recalled the decision
23 and issued a different decision which then held that
24 the constitutional officers were not subject to
25 nonpartisan elections but still upheld the provision

1 as it related to term limits for constitutional
2 officers. So it is important to kind of put that in
3 a category by itself. 2014 constitutional officers,
4 nonpartisan elections, term limits.

5 Fast-forward now. 2016 litigation concerns
6 itself with the provision that was placed on the
7 ballot by the Charter Review Commission. That
8 provision abolished the constitutional offices and
9 made them charter offices subject to nonpartisan
10 elections and term limits. That's our starting
11 point for this discussion in this executive closed
12 session is the 2016 litigation.

13 MR. DEMINGS: For me, I'll kind of go on the
14 record in terms of full clarity here. Obviously in
15 2014 I was the sheriff, and so I kind of understood,
16 and some of it was a unique situation because I was
17 a party to the litigation of one of the plaintiffs
18 in 2014. And through various court actions, you
19 know, the plaintiffs of record changed because of
20 some legal-related issues. And -- but I still
21 remain a very active part of the litigation. And
22 also I am the founding member and President of the
23 Florida Association for Constitutional Offices,
24 Incorporated, which I no longer serve in the role as
25 president of that association, but I certainly sat

1 on that side of the litigation and participated
2 actively, which is one of the reasons why, in full
3 disclosure and clarity, I wanted to make certain
4 that as we make decisions now as the Board of County
5 Commissioners on behalf of Orange County residents,
6 and as the mayor and chief executive now for the
7 County, I want to make certain you all are briefed,
8 adequately briefed about the various issues going
9 forward, and the best way we can do that is have a
10 discussion about all of the salient issues that will
11 come before us. So right from the beginning I want
12 you to understand what drove me to say that I
13 believe having an executive session would be
14 appropriate to move forward and get your input in
15 this decision-making process. Okay.

16 MR. NEWTON: And so in November of 2016, voters
17 approved that charter amendment which made the
18 constitutional offices, charter offices, and that is
19 the clerk of the court, comptroller, property
20 appraiser, sheriff, supervisor of elections and tax
21 collector. Turn to Page 5, and we get into some of
22 the allegations in the complaint. And in December
23 of 2016, the complaint was filed seeking a
24 declaratory judgment and injunctive relief. Now,
25 understand this was subsequent to the election which

1 had occurred in November of 2016 when the complaint
2 was filed. It was actually filed not too shortly
3 after Christmas, and ultimately a stay was issued
4 effective January of 2017, and you'll see that on
5 Page 6.

6 After that stay was issued in January of 2017,
7 which effectively stayed the decision, stayed the
8 voters' approval of that amendment and kept them as
9 constitutional officers, partisan elections, not
10 subject -- or I should say subject to term limits,
11 however, even though it stayed, that one in 2014 had
12 been decided that term limits were okay, so that
13 aspect of it remained in place. We then appealed --
14 we at the county attorney's office appealed that
15 January 2017 decision by Judge LeBlanc. And the
16 Fifth Circuit reversed and remanded that order by
17 Judge LeBlanc back to Judge LeBlanc to consider the
18 case from that point forward.

19 So based upon the actions of the Fifth Circuit
20 Court of Appeals, the current status of the case, if
21 you look at Page 8, status of the litigation, is
22 that Orange County's former constitutional offices
23 are now nonpartisan charter offices and are subject
24 to term limits. That is the current status of the
25 case as well as the status of the litigation that

1 exists today.

2 If you turn to Page 10, these are some of the
3 issues that are presented, and there are many more
4 than two but I tried to encapsulate some of the
5 issues in these two questions. Question Number 1,
6 does the Florida Supreme Court decision 2014 case
7 control election of charter officers on a
8 nonpartisan basis.

9 If you've read the letter from the tax
10 collector, basically their position is that that
11 2014 decision -- litigation which was decided by the
12 Florida Supreme Court this past April controls the
13 issue of whether or not our now charter officers are
14 elected on a nonpartisan basis, and they would
15 argue -- the constitutional officers would argue
16 that it controls that issue that charter officers
17 have to be elected on a partisan basis now, still
18 subject to term limits but have to be elected on a
19 partisan basis.

20 You've read -- some of you who have received the
21 letter from the tax collector and property appraiser
22 have read that is their position. I think it is
23 somewhat interesting that that position has changed
24 somewhat, because when the initial determination of
25 the 2014 case came out in January, the position that

1 we were told was that since that case only dealt
2 with constitutional officers, it had no effect upon
3 the charter officer case in 2016.

4 So their position has changed with respect to
5 the effect of the Florida Supreme Court case in
6 2014. I think they also provided you with or made
7 note of an opinion -- at least couched as an
8 opinion -- by the attorney for the Charter Review
9 Commission. I spoke to that attorney, and we
10 discussed his opinion prior to him writing his
11 opinion, and it is really not an opinion. It is
12 just -- as he stated, his belief is that it is more
13 likely than not that if this matter were litigated
14 that the Court would decide that constitutional
15 officers as well as charter officers are not subject
16 to nonpartisan elections.

17 In other words, you would have to elect them on
18 a nonpartisan basis. He says he believes that given
19 the 2014 case and ultimate decision by the Florida
20 Supreme Court that the Court, if it were litigated,
21 would say the charter officers have to be elected on
22 a partisan basis as well.

23 I wanted to read to you what his conclusions
24 were so you can see that they differ somewhat than
25 what was mentioned in the letter from the tax

1 collector.

2 MR. DEMINGS: Pardon me. Whose letter are you
3 reading?

4 MR. NEWTON: This is from the memo from the
5 counsel for the Charter Review Commission that was
6 mentioned in the memorandum, or letter by the Orange
7 County Tax Collector.

8 MR. DEMINGS: Who is that?

9 MR. NEWTON: Cliff Shepard with the law firm of
10 Shepard, Smith, Kohlmyer & Hand. He's the attorney
11 for the Charter Review Commission.

12 MS. BONILLA: When was that written?

13 MR. NEWTON: May 23.

14 MS. BONILLA: Of this year?

15 MR. NEWTON: Correct. It's referred to in the
16 letter.

17 So the point that I want to make is kind of
18 two-fold. What Mr. Shepard says is exactly what
19 I've mentioned to you: That as of now, Orange
20 County's 2016 amendments are active and enforceable.
21 The County's officials carrying out the duties of
22 constitutional officers are currently nonpartisan
23 charter officers and are subject to the charter's
24 term limits.

25 Then he goes on to say: Notwithstanding that,

1 I've spoken with legal counsel for the supervisor of
2 elections as to how that office plans to proceed. I
3 was advised in the absence of a lawsuit or court
4 order, the office has no intention of conducting
5 nonpartisan elections for any of the former
6 constitutional current charter officers because the
7 office believes 2019 Florida Supreme Court pending
8 stands for the proposition that counties are
9 preempted on all issues regarding the election of
10 these positions, including the partisan question,
11 and that, number one, it makes no difference whether
12 the positions are constitutional or charter offices;
13 and two, any issue of charter versus constitutional
14 was removed by the passage of Amendment 10 to the
15 Florida Constitution in 2018.

16 We're going to talk about Amendment 10 in a
17 little while.

18 Then he goes on to say: While we would disagree
19 that the opinion is saying it's conclusive on the
20 matter, we do agree that a lawsuit challenging the
21 2016 amendment as preempted would likely result in
22 the holding that charter officers must be elected on
23 a partisan basis. We similarly disagree that
24 Amendment 10's effect is conclusive but agree that
25 the likely end result will be a requirement to

1 reestablish county constitutional offices by
2 January 5, 2021, because of the holding in saying
3 the reestablishment of constitutional offices but
4 automatically being partisan elections beginning in
5 2020.

6 Now, it has been couched as being an opinion,
7 but it is more what I like to refer to as sort of a
8 "more likely than not" scenario as opposed to our
9 opinion is this. And it is because there's a
10 standard for issuing a legal opinion. And that
11 standard is, with respect to the particular legal
12 issue -- legal question at issue, that no court,
13 whether a circuit court or appellate court, could
14 reasonably differ with the conclusion you've reached
15 in your opinion.

16 So what you see here is not him saying, my
17 opinion is that, or we have opined that. He says,
18 we believe it is more likely than not, which means
19 it's not 100 percent certainty that a court or an
20 appellate court could reasonably differ with the
21 conclusion.

22 I will say on the record that I happen to agree
23 with what he said in terms of more likely than not
24 that charter officers would have to be elected on a
25 partisan basis, given the decision in the 2014 case,

1 which was decided in January of this year.

2 However, as you know, the Charter Review
3 Commission 2016 litigation concerns itself with just
4 that, whether charter officers should -- whether
5 constitutional officers that were changed to charter
6 officers should be elected on a partisan or
7 nonpartisan basis. Term limits is not an issue at
8 all. So that's just one of the issues that exists
9 in terms of whether or not -- how we go about
10 potentially resolving litigation, if there is an
11 avenue to resolve it at all, and we'll talk about
12 that in a minute.

13 One of the things that's mentioned in here is
14 also Amendment 10, and the second question there is
15 Amendment 10. If you recall, Amendment 10 had a
16 number of different components to it. So we really
17 don't know, despite what is mentioned in the letter
18 from the tax collector. We really don't know why
19 voters passed it. It was four different things
20 log-rolled into Amendment 10. There was the
21 establishment of, if I recall correctly, a
22 Department of Veterans Affairs. There was the
23 establishment of an office dealing with terrorism.
24 There were some changes to the time frame for
25 legislative session to begin. And, of course, also

1 the changes to the Florida Constitution, Article 8
2 of the Florida Constitution.

3 So there's an assertion in this letter that the
4 voters overwhelmingly supported Amendment 10, which
5 means that, you know -- and Orange County voters
6 also supported it, which means that they don't --
7 they recognize that constitutional officers should
8 be elected as constitutional officers and on a
9 partisan basis. I disagree with that conclusion
10 based upon the election related to Article 10.
11 So -- I should say Amendment 10.

12 There is also litigation pending with respect to
13 Amendment 10. Volusia County has challenged
14 Amendment 10 on the grounds that it is not
15 retroactive.

16 Understand that Volusia County is a county whose
17 charter came about as a result of a legislative
18 enactment by the Florida State Legislature back in
19 1970. So its charter is essentially incorporated
20 within the Florida legislative enactments called
21 Law of Florida. It was not done -- although voted
22 on by the voters, it was not done pursuant to what
23 we call Home Rule powers in the constitution. So
24 Volusia County is saying, wait a minute. We have a
25 government structure such that our property

1 appraiser is a department, our tax collector doesn't
2 exist, it is just, you know, under the title of, I
3 think, the finance division. Our sheriff doesn't
4 exist, it is really a public safety and a department
5 director, but it is a department director that is
6 elected, so is a property appraiser elected. And
7 so, you know, if Amendment 10 is retroactive, it
8 will undo all of what we already have in place,
9 which is in place pursuant to Florida legislative
10 enactment as opposed to Home Rule authority, which
11 is what -- the County did its changes in -- CRC
12 based its changes to the role of the constitutional
13 officers in terms of abolishing them and making them
14 charter officers. So that is an outstanding issue
15 in terms of whether or not Amendment 10 is
16 retroactive.

17 There was a Leon Circuit Court judge that
18 decided that it was, in fact, retroactive, and
19 Volusia County has now appealed that decision to the
20 appellate courts. So that is an unknown answer at
21 this point in time.

22 And so I think its kind of premature to say
23 definitively, as was mentioned in the letter from
24 the tax collector, that it's not retroactive. Even
25 if -- and so the reason why that is important is

1 because the actions of the Charter Review Commission
2 in 2016 preceded the approval by the voters of
3 Amendment 10. So if it is not -- if Amendment 10 is
4 not retroactive and only prospective, you know, they
5 are just that, charter officers are subject to
6 potentially nonpartisan elections, although I think,
7 as I said before, they will have to be elected on a
8 partisan basis. The only thing that does, however,
9 is buy us a little bit of time, because it may be
10 that given what Amendment 10 also said with respect
11 to Broward County and Miami-Dade County that these
12 charter officers would ultimately have to be legally
13 or lawfully converted back to -- not by any charter
14 amendments or anything else, but converted back to
15 constitutional officers and subject to partisan
16 elections. It is a very complicated and complex
17 situation which exists, which leads me to the next
18 page.

19 MR. DEMINGS: Before you go to that, can you
20 speak to every ten years in Florida, the Florida
21 Constitution required that there be a Florida
22 Constitutional Revision Commission --

23 MR. NEWTON: Correct.

24 MR. DEMINGS: -- that would be appointed. Speak
25 to, you know, there was public meetings and hearings

1 throughout the state of Florida, and there is
2 commentary about the intent of what they were
3 putting forward on the ballot. And it is my
4 understanding and belief that part of their intent
5 was to ensure that with all 67 of Florida's
6 counties, that there would be certain offices that
7 each county would be required to elect consistent
8 with if the amendment passed, such as the sheriff,
9 the property appraiser, the tax collector, the clerk
10 of court, the supervisor of elections, those five
11 were expressly included in the amendment.

12 MR. NEWTON: Yes.

13 MR. DEMINGS: What the amendment did not include
14 was, in our case, we still stand alone as the only
15 county with an elected comptroller. Did not speak
16 to the comptroller. But given that, there are
17 counties now in Florida -- Miami-Dade, for example,
18 was the only county in Florida that did not have an
19 elected sheriff and some other officers. But
20 they're beginning to make provisions that in 2020
21 there will be an election in Miami-Dade for a
22 sheriff, because I believe their opinion is based
23 on, I would assume, their attorneys, is that in
24 order to be consistent with the amendment that
25 passed that they must elect.

1 MR. NEWTON: Miami-Dade, Broward County, were
2 specifically mentioned in that provision to
3 Amendment 10 in that they would have to have
4 elected -- those offices elected by a certain time
5 period. I think it may have been 2021. 2020 date,
6 there is also a 2021 date.

7 You'll recall also that Broward County along
8 with Miami-Dade and also Volusia County sued prior
9 to the question being placed on the ballot trying to
10 get the question, you know, not to go before the
11 voters. And in that decision, which was ultimately
12 rendered by the Florida Supreme Court, the issue of
13 retroactivity was addressed.

14 In other words, Volusia, Miami-Dade and Broward
15 said, wait a minute. Is this amendment retroactive
16 such that we have to undo what we have with respect
17 to those offices that are not elected? And the
18 Court punted on the issue of retroactivity. The
19 Court said, whether it is with respect to an issue
20 of whether it's retroactive, we will decide that --
21 if a court case comes forward, we'll decide that
22 after. We don't decide those types of issues before
23 the actual election on the ballot question, we
24 decide it after. So that is why Volusia County has
25 now moved forward with its litigation challenging

1 the amendment again based upon whether it is
2 retroactive, such that it will undo what they have
3 in terms of their form of government where they have
4 certain departments that are still headed by -- for
5 example, their public safety is still headed by a
6 law enforcement person, but it is a department of
7 the County and the person is actually elected. So
8 that part of it fulfills the requirements of the
9 Amendment 10.

10 However, as I mentioned, they have a tax
11 collector that has been abolished. That office
12 doesn't exist. With respect to that, their
13 challenge is if Amendment 10 is retroactive, it
14 means that we have to reestablish the office of tax
15 collector and ensure that tax collector is an
16 elected official.

17 So that's where -- and the question still exists
18 and is still alive in terms of whether or not it is
19 retroactive. Now, the Leon Circuit Court judge
20 basically said that given what the language of
21 Amendment 10 indicated in terms of Broward County
22 and Miami-Dade County that we think it's a foregone
23 conclusion that the Florida Supreme Court would say
24 no, they have to be elected and you have to elect
25 them by this certain date. So it is a question. It

1 is one that the Florida Supreme Court is going to
2 have to address. How quickly they get to address
3 it -- you know, what I should say is if Volusia
4 County continues with their litigation after they
5 get a decision from the appropriate court of appeals
6 it is in front of now and they decide to appeal to
7 the Florida Supreme Court, it is a question that
8 will be addressed by the Florida Supreme Court.

9 The position Orange County finds itself in is
10 that all of our former constitutional officers are
11 elected. So the mandate in Amendment 10 that your
12 constitutional offices be elected has already been
13 met. It's the part about nonpartisan that is still
14 questionable. But as Mr. Shepard has concluded and
15 as the tax collector has indicated, it is probably
16 more likely than not that nonpartisan elections for
17 the newly-constituted charter officers is also
18 something that the Court will say is not viable at
19 this time.

20 I say that because, you know, when we go back --
21 let's talk about 2014 for a moment. The initial
22 decision by the circuit court judge was that they're
23 only elections for -- only nonpartisan elections for
24 judges and school board members. There is language
25 in the Florida Supreme Court decision in the 2014

1 litigation which suggests that they hold that same
2 view, that nonpartisan elections for offices is
3 limited to judges and school board members, despite
4 the fact there are other offices mentioned in
5 legislative enactments that are enacted on a
6 nonpartisan basis. And it has wide-ranging
7 ramifications because all of you are elected on a
8 nonpartisan basis.

9 So depending upon how the litigation turns out,
10 we may have a significant issue here in Orange
11 County in terms of how each particular district
12 commissioner as well as the mayor is elected and
13 whether it continues to be on a nonpartisan basis or
14 partisan basis. So if you buy into the argument or
15 accept the argument that charter officers have to be
16 elected on a partisan basis, as it relates to now
17 the charter office of the property appraiser, tax
18 collector, sheriff, then it's not that far a leap
19 basically to say that the county commissioners as
20 well as the mayor must be elected on a partisan
21 basis.

22 And I say that despite the fact that what the
23 charter contains is a 1992 amendment to the charter
24 which said, in essence -- and the ballot in 1992
25 said: Any office which subsequent to this date,

1 1992, November 1992, becomes a charter office shall
2 be elected on a nonpartisan basis.

3 So that has been in place since 1992. So that's
4 just another issue where the voters have said what
5 they want to have in existence for their county
6 government here in Orange County that depending upon
7 the outcome of the Amendment 10 litigation and the
8 outcome of this 2016 litigation may invalidate that
9 1992 provision in our county charter as well.

10 MR. DEMINGS: Can you speak also to the 2014
11 supreme court case ruling that came out just a few
12 months ago in January in which the supreme court
13 very vociferously indicated that there was nothing
14 in Florida law that gave credence to local
15 governments to have the ability to determine
16 nonpartisan elections.

17 Would you speak to that portion of the supreme
18 court's ruling.

19 MR. NEWTON: Right. That part of the supreme
20 court's ruling -- and there is a little bit of a
21 conflict there. What you have is the election code,
22 Florida Election Code, and the Florida Election Code
23 makes no mention of whether or not constitutional
24 officers have to be elected on a partisan basis.
25 There's no express mention of that in legislative

1 enactments anywhere.

2 However, there is a system and process of
3 election for constitutional officers which lends
4 itself to interpretation that yes, indeed they need
5 to be elected on a partisan basis because of various
6 provisions that could be interpreted to mean that
7 they're partisan elections.

8 One of the bridges that was pointed to was the
9 fact that it says constitutional officers have to be
10 elected at the general election. And quite frankly,
11 the language with respect to county commissioners
12 says the same thing, have to be elected at a general
13 election.

14 So one of the issues that existed that the Court
15 ended up saying the County is preempted on is the
16 fact that our charter amendment, that same one I
17 referred to that existed in 1992, mentions the
18 process for electing charter officers. And that
19 process set forth a scenario whereby the potential
20 exists for a charter officer to be elected at the
21 time of the primary.

22 So despite the fact that they're elected at the
23 time of the primary, when you look at the Florida
24 Election Code, in the nonpartisan section it says --
25 and the language is not very clear in the sense that

1 it would imply, as I mentioned before -- at least
2 the circuit court said it only applies to school
3 board members and judges in terms of the nonpartisan
4 provisions. That section says basically that if you
5 were to prevail at a primary election, you are
6 deemed to have been elected at the general election
7 because you would essentially vote for yourself in
8 the general election. You would hope the person
9 would vote for themselves.

10 So that's where the conflict comes about with
11 respect to whether or not there's a steadfast,
12 express requirement that they be elected on a
13 partisan basis. But the Florida Supreme Court has
14 spoken and said constitutional officers must be
15 elected on a partisan basis. And so if our
16 constitutional officers continue to be
17 constitutional officers, there is no question
18 whatsoever that we would have to have a process
19 which elected them on a partisan basis.

20 However, the question is whether or not that
21 also applies to charter officers as well, elected
22 members on a partisan basis. Mr. Shepard said more
23 likely than not. The tax collector was more
24 definitive than that. And I'm kind of with
25 Mr. Shepard that it is more like ly than not,

1 despite what we've had in our charter since 1992.

2 MS. URIBE: May I ask a question? So the
3 Volusia County litigation that is going on, they're
4 going back to the 2014, correct, provision or 2016?

5 MR. NEWTON: They're looking strictly at their
6 own charter.

7 MS. URIBE: If this is granted, would it allow
8 it to go all the way back to 1992 in the county?

9 MR. NEWTON: Let me separate out the two for a
10 minute. Volusia's charter stems from a legislative
11 enactment in 1970. So it is not really -- even
12 those voters voted upon it, it was a ballot question
13 that was put on by the Florida legislature. It is
14 not a Home Rule issue. It is not a Home Rule issue
15 at all.

16 For Orange County, the 2014 ballot question was
17 by the Board of County Commissioners, a Home Rule
18 authority when they put this question on the ballot
19 and asked folks whether or not constitutional
20 officers should be elected upon a nonpartisan basis
21 and subject to term limits.

22 That was the only question -- there were more
23 questions, but that was the question that was
24 subject of the litigation in 2014.

25 As a measure, I think as belt and suspenders for

1 that 2014 ballot question and the litigation and
2 suit afterwards, the Charter Review Commission said,
3 okay, let's make these constitutional officers
4 charter officers and subject to term limits because
5 we believe that if we make them charter officers we
6 can control their destiny, to make certain they're
7 elected on a nonpartisan basis as well as subject to
8 term limits.

9 Now, Amendment 10 may, depending upon how it is
10 interpreted, undo all of that, especially since you
11 already have the 2014 case which was decided this
12 past January and ultimately decided again in April.
13 That basically said constitutional officers have to
14 be elected on a partisan basis. And the position of
15 the, I would think, supervisor of elections, counsel
16 for the supervisor of elections, that case in 2014
17 which was decided ultimately in April of this year
18 is definitive on the question of whether or not
19 charter officers are elected on a nonpartisan or
20 partisan basis such that when he qualifies people
21 for the charter office of tax collector --

22 MS. URIBE: They're all partisan.

23 MR. NEWTON: -- they are qualified on a partisan
24 basis. So that will be a decision point for this
25 board as to whether or not we challenge that

1 determination by the supervisor of elections.
2 Remember, not only has Mr. Shepard said but I've
3 said it, that the current status of the litigation
4 and the law as it relates to that are constitutional
5 officers are now charter officers, so they have
6 nonpartisan elections and term limits.

7 MS. MOORE: So if we're going to throw out
8 potentially the commissioners and now say they have
9 to be -- would they move them to constitutional too,
10 even though they gave us legislative authority to
11 have Home Rule and charter government with that
12 legislative enactment?

13 MR. NEWTON: No. That is part of the Florida
14 Constitution, Article 8, Section 1C and 1D, which
15 basically enables you to establish a form of
16 government along with provisions in Chapter 125 of
17 the Florida Statutes which enables you -- which is
18 the enactment provisions which they use to establish
19 to look at the county manager, the county
20 administrator, in terms of the form of government
21 that you want through a charter. Not all counties
22 are charter counties, as you know.

23 MS. MOORE: Right.

24 MR. NEWTON: So the whole issue of -- Volusia is
25 a little bit different, as I mentioned before,

1 because that was established basically through the
2 enactment of the Florida legislature as opposed to
3 Home Rule authority which is exercised by the county
4 pursuant to constitution or a legislative enabling
5 provision that allows the County to do it as opposed
6 to the legislature itself deciding that you're going
7 to be a charter county. The legislature doesn't say
8 you're going to be a charter county like it did with
9 Volusia. It just said, Counties, you have the
10 ability to on your own decide whether or not you
11 want to be a charter county.

12 MS. MOORE: So is that going to be a conundrum
13 between you're a charter county but we can tell you
14 if you're partisan or nonpartisan?

15 MR. NEWTON: Not really. I think the -- Chip,
16 jump in if you like. It got quiet. The provisions
17 in Florida Statute and its provision 100.041 that
18 would ultimately be interpreted in this situation
19 require that county commissioners be elected at the
20 general election, much like it says for the
21 constitutional officers.

22 So the concern that I have is that we still have
23 a provision which -- in our charter which basically
24 says this is what the primary process should be, and
25 the commissioners could be elected and the mayor

1 could be elected at the primary stage, which is
2 problematic. If it was problematic for
3 constitutional officers, which the provision said
4 you have to be elected at the general election, it
5 is also problematic for county commissioners because
6 it says you have to be elected in the general
7 election. So it is not some -- I guess you could
8 call it a conundrum from that standpoint, but it's
9 really more of a dilemma in terms of what do we do
10 for the future. And at this juncture, it is an open
11 question that I think will be answered, not just by
12 the litigation related to Amendment 10 but also this
13 current 2016 litigation, if we can get to a decision
14 point by the Court. Because the real crux of the
15 issue here is you have a charter amendment that was
16 voted upon and passed by the voters that the
17 argument could be that if this board were to make
18 some decision from a settlement standpoint that the
19 board would kind of be disenfranchising the voters.
20 So my -- that's my main concern is to protect this
21 board from the wrath of the voters, if you will, by
22 basically saying we need to continue with the
23 litigation or even hold it in abatement until we get
24 some greater clarification on the Amendment 10 issue
25 from Volusia County. I don't know.

1 Chip, is there anything that you --

2 MR. TURNER: I don't think we can assume there
3 will be an abatement.

4 MR. NEWTON: I don't think it will be abatement.

5 MR. TURNER: The plaintiff in the lawsuit has
6 indicated they are going to wait and see what
7 happens out of this session, which may or may not be
8 public information.

9 If nothing tends toward settlement as a result
10 of this, their intention is to accelerate the
11 litigation and try to get a ruling from the Court.

12 MR. DEMINGS: Which was going to be my next
13 question. In terms of if we actively defend the
14 lawsuit for a judicial decision, there will be costs
15 involved in that.

16 Now, for us just to speak to the potential cost,
17 if we use outside counsel, are we going to use
18 internal counsel? But even with the
19 constitutionals, if they pursue it, there are still
20 costs. And that cost is going to be burdened by the
21 taxpayers. In terms of -- you know, in my view, you
22 know -- you made a statement about the wrath of --
23 this board wouldn't want to perhaps, you know, deal
24 with the wrath of the electorate.

25 I'll buffer that a bit by saying that the voters

1 still have the responsibility to be informed about
2 what the law says. And if the voters -- if it is
3 clear to the electorate what the law says, it
4 influences whether they vote in a certain manner or
5 not vote in a certain manner. Those are some
6 unknowns that I think are out there.

7 MR. NEWTON: Right. If I could issue an opinion
8 which said that the 2014 litigation which the
9 Florida Supreme Court has definitively said that
10 charter officers need to be elected on a partisan
11 basis, I would do that. There would be no question
12 whatsoever.

13 We are not at that point where we can meet that
14 legal standard which I talked about, because if we
15 could meet that legal standard, I'd do it in a
16 heartbeat to get us out of this litigation. So long
17 as we're still in the mode of "more likely than
18 not," there's always a chance that somebody may
19 reasonably differ with the determination or opinion
20 that has been given.

21 So it's one of those unfortunate, awkward
22 situations that we happen to be in at this point
23 where it is not just the wrath of the voters, but it
24 is the -- part of the obligation that I have as the
25 county attorney to, in a sense, look after the

1 interests of the County. And the voters have spoken
2 and said, this is the way we want our county
3 government to be. Certainly unless there was
4 something definitive from the Florida Supreme Court
5 would be, at least in my humble opinion, contrary to
6 what my duty and obligation is to this board and
7 this county to issue an opinion which said something
8 other than what the Court has passed judgment on.

9 And what the Court has passed judgment on is the
10 issue of whether or not constitutional officers can
11 be elected on a nonpartisan basis. They have not
12 passed judgment on whether or not charter officers
13 can be elected on a nonpartisan basis, despite the
14 fact that I believe also that it is more likely than
15 not that charter officers will have to be elected on
16 a partisan basis.

17 MR. TURNER: In terms of costs, Mayor, the cost
18 of litigation, if we continue to do it in-house are
19 not that significant.

20 MR. NEWTON: They're gonna mold for us, because
21 we have handled everything in-house. The 2014
22 litigation, we handled everything in-house until we
23 got to the Florida Supreme Court, and that was
24 handled by outside counsel. And just that appeal to
25 the Florida Supreme Court cost us -- well, we had

1 capped it at 75,000, and the additional bill over
2 and above that 75,000 for about --

3 MR. TURNER: I believe \$89,000 was the total
4 bill.

5 MR. NEWTON: That was the total just for the
6 appeal to the Florida Supreme Court. My suspicion
7 is that the constitutional officers -- that is board
8 funds -- have spent much more than that in terms of
9 the full breadth of the litigation from 2014. Don't
10 have any idea what they may have spent thus far with
11 respect to 2016 litigation.

12 MR. TURNER: Now, I will also say, as a lawyer
13 who has been arguing this in court, I think it is
14 very unlikely that an Orange County trial judge
15 would side with the enforcement of the 2016
16 constitutional amendments.

17 I think ultimately an Orange County trial court
18 judge will find that the constitutional amendment at
19 state level is valid, that all counties who have
20 charters that have abolished these officers need to
21 reinstate them, and that the 2014 decision -- the
22 Demings decision 2014 would then govern.

23 That is my read of how an Orange County judge
24 would ultimately rule. So that should impact your
25 decision on what -- to how we want to go forward

1 from here.

2 MR. DEMINGS: I think there are a couple
3 commissioners who have questions.

4 Commissioner Bonilla indicated she has a
5 question. I don't know. I saw Commissioner Uribe
6 move, but I'm not sure.

7 MS. BONILLA: I don't think this is important to
8 our conversation here, but to me it seems like
9 Amendment 10 was just verifying or clarifying that
10 constitutional officers were already officers of the
11 constitution, therefore we are preempted -- charter
12 counties are preempted from, you know, controlling
13 them in any way. Like, you know, turning them into
14 charter officers or whatever.

15 So was that the intention of Amendment 10 was to
16 clarify that constitutional officers are under the
17 constitution, therefore -- what Orange County was
18 doing was something that should not -- it was
19 already preempted.

20 MR. NEWTON: I think the whole issue of
21 preemption of the County goes more so to the
22 election process. I think Amendment 10's sole --
23 well, one of the goals of Amendment 10 or intent was
24 to ensure that constitutional officers are elected
25 in all counties, in that there is no ability on

1 behalf of the County to abolish those constitutional
2 officers.

3 The only issue, in my perspective, is whether or
4 not that election requirement for constitutional
5 officers and that inability to abolish the offices
6 is retroactive such that it undoes what already
7 exists, typically with respect to legislation.
8 There is a requirement that if something is going to
9 be retroactive it needs to be expressed as being
10 retroactive.

11 As I mentioned earlier, the Court punted on the
12 issue of retroactivity with respect to Amendment 10.
13 So we just don't know. I can't definitively say
14 that it is retroactive to undo what Orange County
15 had done in terms of abolishing the offices and
16 recreating them as charter officers. If I could say
17 that, I would say it in a heartbeat and get us out
18 of this litigation, but I can't render that opinion.

19 MR. DEMINGS: I will tell you, with the Florida
20 Constitutional Revision Commission, obviously I was
21 very active from a statewide perspective because on
22 my role while in preparation for the meeting of the
23 commission, I have been the president also of the
24 Florida Sheriffs Association, which was actively
25 involved in the advocacy before the commission, and

1 obviously, as I stated, was the president of the
2 Florida Association of the Constitutional Officers
3 that, you know, did things like essentially moving
4 forward to provide testimony before the
5 Constitutional Revision Commission.

6 And so it provided some -- I think to the entire
7 commission that was created -- you know, again,
8 created every ten years. They met, they got public
9 input. I monitored that public input and
10 conversation and dialogue throughout the state of
11 Florida.

12 And so there's a whole body of information that
13 is out there about what the intent of the commission
14 was, and it was exactly what, you know, Attorney
15 Newton has opined on regarding it, you know, his
16 opinion about what was the intent.

17 As he also indicated, you have a legal issue now
18 that is in challenge before the courts, and I think
19 it won't be clarified until the courts provide a
20 ruling one way or the other, whether it is through
21 our action here or through Volusia or some other
22 county that are engaged in litigation over these
23 issues. So, you know, that is where we are as a
24 county.

25 So, you know, the purpose of this executive

1 session is to give the county attorney some
2 direction in how to proceed further, you know, on
3 behalf of Orange County.

4 MS. BONILLA: So these are our options?

5 MR. NEWTON: Not really options.

6 MR. DEMINGS: It is a process.

7 MR. NEWTON: More like a process in terms of
8 what we -- I think it would be beneficial to get to
9 a decision at the circuit court level as quickly as
10 we possibly can.

11 So that first bullet is there to actively defend
12 a lawsuit to prompt judicial decision. That doesn't
13 mean that we don't have discussions with counsel for
14 the tax collector and property appraiser on what
15 they may view as a settlement. They can come
16 forward and give us some ideas of what they believe
17 a settlement might be, and we will assess that and
18 report back to the mayor and the board in terms of
19 what we think about any creative ideas they have
20 come up with that might have potential.

21 But I will tell you I don't see a mechanism of
22 being able to do that at this juncture. Of course
23 continuing to monitor what Volusia County is doing.
24 Dan Eckert is the county attorney in Volusia County.
25 I will probably see him next week after the Florida

1 Association of County Attorneys meeting and have
2 some more discussion with him about what is going on
3 with the Volusia County challenge to Amendment 10.

4 So we'll continue to monitor that and hope that
5 it will get through the court processes as quickly
6 as possible, and then keep the board apprised of
7 what is going on.

8 MR. DEMINGS: I'm deliberately being careful
9 here so that there's no conflict that someone can
10 perhaps argue for me in this because obviously going
11 up to the litigation, going to the Florida Supreme
12 Court, I was actively involved in strategy,
13 confidential meetings, briefings, et cetera, from
14 the plaintiffs and County.

15 At this point, I'm on the opposite side, so I
16 find myself in a situation where my ultimate goal is
17 to avoid even the appearance of a conflict. So, you
18 know, I've had discussions with the county attorney
19 about these matters, and I want to be clear here
20 that after leaving my role as sheriff, I have not
21 had any conversations with any of our constitutional
22 officers about their strategies going forward now
23 that the January Florida Supreme Court ruling came
24 out. I have not have any communications with them
25 about what they're planning to do or not do. But,

1 you know, it is very difficult for me to not have
2 heard what I've heard and, you know, getting up to
3 this point.

4 So in fairness to the process, you know, I
5 haven't made a decision whether I will declare
6 conflict and not vote on the matter or not. But,
7 you know, we -- because of Sunshine Laws, et cetera,
8 we don't -- I don't get a chance to talk to you
9 other than in these kinds of settings about it, and
10 because it does involve litigation, I think you
11 deserve to be fully briefed on it and participate in
12 giving direction to the county attorney.

13 MS. VANDERLEY: If I could, Jeff, it seems to
14 me, based on everything you said fully, some people
15 took everything we talk about going forward is the
16 validity of whether this is retroactive or not, so
17 that is central to the entire thing.

18 MR. NEWTON: Uh-huh.

19 MS. VANDERLEY: I would also say I'm a little
20 bit frustrated in that the voters in 2014 asked for
21 a nonpartisan term limited for constitutional
22 officers and then reaffirmed that in 2016. And I
23 wonder on Amendment 10, since the way many of these
24 amendments were framed were it was you may be voting
25 for establishing of veteran affairs but not

1 necessarily the other. So you didn't have a clear
2 choice on each issue standing alone.

3 I wonder, given the vote in 2014 and then
4 reaffirmed in 2016 whether the voter intent was then
5 to deal with the constitutional officers in here or
6 that just got to ride along on the coattails of some
7 other issue that was wrapped in it.

8 MR. NEWTON: Right, right. And that argument
9 because there were four different things that were
10 wrapped up in the Amendment 10, and they call it
11 "log-rolling." They had significant discussions
12 this past legislative session about the ability of
13 the Charter Revision Commission to do that.

14 As you know, that same issue came up with
15 respect to what the Board of County Commissioners
16 did in 2014 in terms of combining the issue of
17 nonpartisan with term limits. It wasn't divergent
18 subject matters, it all had to do with the election
19 of constitutional officers.

20 MS. VANDERLEY: At least they were related
21 issues, though.

22 MR. NEWTON: It wasn't Department of Veterans
23 Affairs and terrorism and then change -- make sure
24 you elect your constitutional officers.

25 MS. VANDERLEY: Yeah.

1 MR. NEWTON: It was a very different situation,
2 yet still challenged on the basis that you combined
3 different subject matters under one ballot question
4 basically.

5 MS. VANDERLEY: So since it appears that
6 retroactivity is central to the entire conversation,
7 I'm just curious. I don't know if you're an
8 odds-making man, but what do you think in terms of
9 do they come back and say this is retroactive,
10 because the frustration I have is, then if this is
11 retroactive, then anything we do, nothing is
12 grandfathered in, then that's -- everything is on
13 the table.

14 If this is retroactive, then what else is on the
15 table.

16 MR. DEMINGS: You mean related to charter? Not
17 anything. That's broad.

18 MS. VANDERLEY: But you see the concern I have
19 on the precedent. If this is retroactive, what else
20 do we put on the table?

21 MR. DEMINGS: 2016, arguably three things. Vote
22 on the charter, post term limits and make race --

23 MS. VANDERLEY: They were at least related to
24 each other. So my point being is they are items so
25 disparate, they have no relation to each other.

1 MR. DEMINGS: If any one of the other is not, if
2 they stand alone would have passed.

3 MS. VANDERLEY: Back to the issue of
4 retroactivity, if this becomes retroactive, then
5 what else have we passed in our constitution that
6 becomes --

7 MR. NEWTON: I don't know the answer to that.

8 MS. VANDERLEY: I guess -- and this is from a
9 layperson, I'm not an attorney. I'm just wondering
10 what you feel the odds are of the retroactivity
11 piece being decided.

12 MR. NEWTON: I think that given the manner in
13 which they have specified what needs to happen in
14 Broward County and Miami-Dade County, that the
15 chances of it being retroactive are significant.

16 However, I think it may be retroactive but not
17 as it relates to Volusia County. Volusia County is
18 very different, it is not a Home Rule enactment. It
19 is a legislative enactment. So I think it's a
20 little quirky and a little nuanced in terms of the
21 arguments that Volusia County has with respect to
22 it, such that they may basically say Volusia County,
23 since it was a general law enactment of the
24 legislature, that we're going to leave that alone.

25 MS. VANDERLEY: Does that not give us any more

1 clarity?

2 MR. NEWTON: It doesn't necessarily give us any
3 clarity because we're not specifically mentioning
4 that amendment. But that's the only kind of quirky
5 decision I see might come out of the Florida Supreme
6 Court.

7 But as I said before, I think it is more likely
8 than not it is going to be retroactive and will undo
9 what -- not just what Broward County and Miami-Dade
10 have in place but what we have in place as well.

11 MR. TURNER: And I also tend to not view it as a
12 retroactive question because the amendment is not
13 going to go back and undo everything that happened
14 before historically. It is void historically. I
15 view it as more of a prospective amendment that
16 says, from this point forward all charters have to
17 have these things in them, and it is not undoing
18 what happened before. But from this time point
19 forward, this is what it needs to say.

20 MS. VANDERLEY: Okay.

21 MR. NEWTON: Yeah, but it is effectively undoing
22 what you have in place.

23 MR. TURNER: But it's not retroactive in the
24 sense it would unauthorize an arrest made by the
25 sheriff in the years past.

1 MR. NEWTON: That's the argument.

2 MS. BONILLA: It's not like undoing. It's more
3 like upgrading, if you look at it that way, too.

4 MR. NEWTON: There's a number of ways to look at
5 it. It's retroactive in the sense you had something
6 in place, and now what you have in place is not --
7 there's no charter amendment related to what it is
8 you had in place. It's telling you, you can't do
9 that anymore. You've already met the requirement of
10 having these folks elected. The only thing you've
11 done that now you can't do, if that's the case
12 prospectively, is abolish the office. So if you've
13 already abolished the office, guess what? You
14 should be okay not having retroactive effect of
15 undoing it.

16 MR. DEMINGS: This will happen in the land we
17 live in. Our laws change, from the United States
18 Supreme Court, to the state, to the local. None of
19 these laws remain exactly the same in perpetuity.
20 That is the system of laws we have.

21 MS. BONILLA: I wanted to mention something
22 about that, too. You're definitely right. And as a
23 board, we can't be afraid to create laws based on
24 what Tallahassee is going to do or DC. We have to
25 do what we have to do. And if they change laws, we

1 have to adapt.

2 MS. VANDERLEY: Perhaps I'm not being clear.
3 What I'm trying to ask is, if you're right and the
4 remedy is Broward and Dade have to do this and
5 Volusia is left alone, does that then give us any
6 more clarity? We're waiting for some of this
7 Amendment 10 challenge to go through to give us some
8 direction. Does it give us any?

9 MR. NEWTON: Maybe not. But I think what will
10 give us direction is that if the position of the
11 supervisor of elections is that the charter officers
12 will be elected on a partisan basis, I think there
13 is a decision point for this board to say whether or
14 not there is a lawsuit brought against the
15 supervisor of elections to answer the question from
16 a circuit court judge as to whether or not charter
17 officers should be elected on a partisan or
18 nonpartisan basis. Because right now status of the
19 law is, in terms of the status of the litigation,
20 not just me saying it but also the CRC lawyer,
21 Charter Review Commission lawyer, status right now
22 in the court case is that charter officers are
23 elected on a nonpartisan basis subject to term
24 limits. That is what the status is right now.

25 So the supervisor of elections says, at least

1 according to the memo from Attorney Shepard, he
2 indicated that the supervisor of election's attorney
3 indicated they were going to move forward in the
4 election in 2020 for charter officers to be on a
5 partisan basis with respect to those former
6 constitutional offices.

7 MR. DEMINGS: It appears that the supervisor of
8 elections is trying to advance the issue to get a
9 decision made. And that appropriate decision is
10 within the courts itself.

11 So if I were going to vote, I would vote to
12 continue with the litigation and let the courts make
13 the decision. That's the only way for our local
14 government to get some kind of formality.

15 MS. VANDERLEY: In fairness of what the voters
16 have asked, I think we do have to go ahead and push
17 through the litigation in order to make sure that
18 we're defending what their will is and then push for
19 the Court to make a decision.

20 MR. DEMINGS: I'm not sure the electorate can
21 opine on this about this is what their will is
22 regarding this. I think that's a board decision as
23 the elected representatives of our constituency,
24 that is the decision you have got to make. So I
25 wouldn't go any further in terms of comments about

1 it.

2 I know Commissioner Uribe has been trying to
3 jump in, but the question might have been answered.

4 MS. URIBE: Yes.

5 MR. DEMINGS: It has been answered? Okay.

6 What do you need?

7 MR. NEWTON: Based upon the comments, I think I
8 have what I need. We don't vote in this type of
9 setting or -- I've listened to the questions and
10 comments. We'll continue to do what we've been
11 doing and try to get toward a resolution of this.
12 At some point in time, I suspect I will come back to
13 you and say it is definitive that -- and I won't be
14 able to do in a closed session because there won't
15 be any litigation at that point in time, but it will
16 be a discussion with the mayor and with each of the
17 board members. Because if there is follow-through
18 by the supervisor of elections to basically
19 determine that they're going with the elections
20 coming up in 2020 of any charter officers and those
21 former constitutional officer positions, they're
22 going to go forward on a partisan basis, then the
23 board will have to make a decision as to whether or
24 not that should be challenged, that determination by
25 the supervisor of elections should be challenged.

1 MR. DEMINGS: I think that -- understand that
2 the challenge is to have a decision, get to the
3 decision, not whether you believe one way or the
4 other.

5 MR. NEWTON: You need clarity.

6 MR. DEMINGS: You need clarity regarding the
7 decision.

8 MR. NEWTON: Right. As I mentioned before, that
9 clarity could come from me in the sense that I
10 believe that no court could reasonably differ with
11 the opinion that I would give then I would give it,
12 but I'm not there. I don't think Mr. Shepard is
13 there because the wording he has used is "more
14 likely than not," not as definitive as the tax
15 collector is in his letter to you-all with respect
16 to that.

17 I think that is a legal question mark that
18 exists, and I am more certain of the fact it is a
19 legal question mark that exists because, as I
20 mentioned before, when the decision came out in
21 January in favor of the County, I was being told it
22 didn't apply to the 2016 case because 2014 dealt
23 with constitutional officers and not charter
24 officers and now that position has changed, so...

25 MR. DEMINGS: You mentioned you read from

1 something that counsel --

2 MR. NEWTON: Mr. Shepard.

3 MR. DEMINGS: Can you get a copy?

4 MR. NEWTON: I will get a final version.

5 MR. DEMINGS: And I believe that the
6 commissioners already have a copy of the supreme
7 court ruling, right?

8 MR. NEWTON: Yes. What I don't have, if
9 somebody could provide to me, is a copy -- I have --
10 you provided me a copy of the letter from the tax
11 collector.

12 MS. URIBE: I can get that.

13 MR. DEMINGS: I sent both.

14 MR. NEWTON: You sent both?

15 MR. DEMINGS: You should have both.

16 MR. BROOKS: It was this morning.

17 MR. DEMINGS: One from the property appraiser
18 and from the tax collector.

19 MR. NEWTON: Maybe it is in this one. I think I
20 do have it.

21 MR. DEMINGS: They look similar, but --

22 MS. URIBE: I read it twice, I thought.

23 MR. NEWTON: What I'll do is make certain you
24 get a copy of the memorandum from Mr. Shepard who is
25 counsel for the Charter Review Commission.

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MR. DEMINGS: I don't have to read anything to go off the record?

MR. NEWTON: No, you're fine. We're done.

MR. DEMINGS: This concludes our meeting.

(This meeting was concluded at 12:39 p.m.)



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July 18, 2019

Orange County Attorney's Office
Attn: Jeffrey Newton, Esquire
201 South Rosalind Avenue
Third Floor
Orlando, FL 32801-4328

Case: **In re: Board of County Commissioners Executive Meeting**
Witness: **Board of County Commissioners Executive Meeting**
Date Taken: **06/04/2019**
Ref. No: **1941212**

With regard to the deposition transcript referenced above, please be advised that the following circumstance applies, as indicated:

The attached errata sheet was received by our office and should be included in the above-referenced deposition transcript at the appropriate page number.

The witness did not appear for reading and signing of the deposition transcript, and no returned signature page and/or errata sheet has been otherwise received by our office as of the date of this correspondence.

Other: _____



Kanisha N. Raynor on behalf of Brandy Payment

CC:

ERRATA SHEET

DO NOT WRITE ON THE TRANSCRIPT ~ ENTER CHANGES ON THIS PAGE

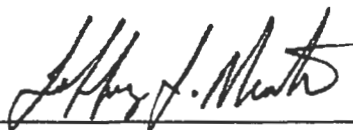
Case: 2016-CA-011202-O; Florida Association for Constitutional Officers, Inc. v. Orange County, Florida; and Bill Cowles, Orange County BCC County Supervisor of Elections
 Closed Executive Session
 Date Taken: June 4, 2019

Page	Line	Change	Reason
4	12	"solvent" to "settlement"	incorrect word
7	21	"remain" to "remained"	incorrect word
8	23	"seek" "ing" to "seeking"	spacing
11	18	"nonpartisan" to "partisan"	incorrect word
25	8	"bridges" to "provisions"	incorrect word
26	1	"imply" to "apply"	incorrect word
26	25	"like" "ly" to "likely"	spacing
29	4	"are" to "our"	incorrect word
34	20	"gonna" "mold" to "nominal"	incorrect words
35	7	"is" to "this"	incorrect word
37	3	"in" to "from"	incorrect word
39	25	"after" to "at"	incorrect word
42	13	"Charter" to "Constitutional"	incorrect word
45	3	"mentioning" to "mentioned in"	incorrect word
45	14	"historically. It is void historically." to "historically, to void acts that have already happened."	incorrect words

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

6/24/19

Date



Jeffrey J. Newton, County Attorney

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, Brandy S. Payment, Florida Professional Reporter and Notary Public, do hereby certify that I was authorized to and did report stenographically and electronically, the foregoing proceedings and evidence in the captioned case and that the foregoing pages constitute a true and complete transcription of my recordings thereof.

In witness whereof, I have hereunto affixed my hand this 14th day of June, 2019, at Orange County, Florida.

Brandy Payment

Brandy S. Payment, FPR
US Legal Support

<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$89,000 35:3</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 4:6 10:5 10 10:2 13:14,16 15:14,15,20 16:4,10,11, 13,14 17:7,15 18:3,10 20:3 21:9,13,21 22:11 24:7 28:9 31:12,24 36:9,15,23 37:12 40:3 41:23 42:10 47:7 10's 13:24 36:22 100 14:19 100.041 30:17 125 29:16 12:39 52:5 1970 16:19 27:11 1992 23:23,24 24:1,3,9 25:17 27:1,8 1C 29:14 1D 29:14</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 4:3 2014 6:3,4 7:3,15,18 9:11 10:6,11, 25 11:6,19 14:25 22:21, 25 24:10 27:4,16,24 28:1,11,16 33:8 34:21</p>	<p>35:9,21,22 41:20 42:3,16 50:22 2016 4:10 5:25 7:5,12 8:16,23 9:1 11:3 12:20 13:21 15:3 18:2 24:8 27:4 31:13 35:11,15 41:22 42:4 43:21 50:22 2017 9:4,6,15 2018 13:15 2019 13:7 2020 14:5 19:20 20:5 48:4 49:20 2021 14:2 20:5,6 23 12:13</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 4:1</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 5:24</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 8:21 14:2</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 9:5 67 19:5</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>75,000 35:1,2</p>	<hr/> <p style="text-align: center;">8</p> <hr/> <p>8 9:21 16:1 29:14</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>abatement 31:23 32:3,4 ability 6:11 24:15 30:10 36:25 42:12 able 39:22 49:14 abolish 37:1, 5 46:12 abolished 7:8 21:11 35:20 46:13 abolishing 17:13 37:15 about 4:10 5:20 6:3 8:8, 10 13:16 15:9,11 16:17 19:2 22:13,21 26:10 32:22 33:1,14 35:2 38:13,16 39:19 40:2, 19,22,25 41:9,15 42:12 46:22 48:21, 25 above 35:2 absence 13:3 accelerate 32:10 accept 23:15 according 48:1 action 38:21 actions 7:18 9:19 18:1 active 7:21 12:20 37:21</p>	<p>actively 8:2 32:13 37:24 39:11 40:12 actual 20:23 actually 9:2 21:7 adapt 47:1 additional 35:1 address 22:2 addressed 20:13 22:8 adequately 8:8 administrator 29:20 advance 48:8 advised 13:3 advocacy 37:25 affairs 15:22 41:25 42:23 afraid 46:23 after 9:3,6 20:22,24 22:4 33:25 39:25 40:20 afterwards 28:2 again 21:1 28:12 38:7 against 47:14 ago 24:12 agree 13:20, 24 14:22 ahead 48:16 aide 5:16 alive 21:18 all 5:6 8:7, 10 13:9 15:8, 11 17:8 19:5 22:10 23:7 27:8,15 28:10,22 29:21 35:19 36:25 42:18 45:16</p>
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