



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

201 South Rosalind Avenue ■ 3rd Floor
Reply To: Post Office Box 1393
Orlando, FL 32802-1393
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MEMORANDUM

TO: Mayor Jerry L. Demings
and
County Commissioners

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

DATE: September 5, 2019

RE: September 10, 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 September 5, 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, 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

Deputy County Attorney
Joel D. Prinsell

Senior Assistant County Attorneys

Elaine M. Asad

Lila McHenry

Assistant County Attorneys

Roherta Alfonso

Cristina T. Berrios

Whitney E. Evers

Erin E. Hartigan

Georgiana Holmes

Aleas Koos

Katherine W. Latorre

Scott McHenry

Sawsan Mohiuddin

Dylan Schott

Scott Shevenell

Stephanie Stone

Adolphus Thompson

William Turner

Legal Administrative Supervisor

Anna M. Caban

Senior Paralegal
Kimberly Cundiff

Paralegals
Melessia Lofgren
Maria Vargas, ACP
Gail Stanford



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

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MEMORANDUM

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

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

10-03-19A08:09 RCVD

RE: Filing of Transcript for September 10, 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*

DATE: October 3, 2019

On Tuesday, September 10, 2019, pursuant to Section 286.011(8) of the Florida Statutes, a Closed Executive Session was held in the above-referenced matter.

Please be advised that this transcript is a public record since the litigation has concluded. The relevant statute requires that the transcript be filed with the Clerk's office.

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

Deputy County Attorney

Joel D. Prinsell

Senior Assistant County Attorneys

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Assistant County Attorneys

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Gail Stanford



ORANGE COUNTY
BOARD OF COUNTY COMMISSIONERS
CLOSED EXECUTIVE SESSION

Orlando, Florida

September 10, 2019

11:48 a.m.

TRANSCRIPT OF PROCEEDINGS

Marge Raeder Court Reporter, Inc.
999 Douglas Avenue/Suite 3307
Altamonte Springs, FL 32714
407/774-6611

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A P P E A R A N C E S:

COUNTY MAYOR JERRY DEMINGS

COMMISSIONERS:

EMILY BONILLA
MARIBEL GOMEZ-CORDERO
CHRISTINE MOORE
VICTORIA P. SIPLING
MAYRA URIBE

BYRON BROOKS, COUNTY ADMINISTRATOR

JEFFREY J. NEWTON, ESQUIRE
COUNTY ATTORNEY

- - - - -

I N D E X

CERTIFICATE OF REPORTER	39
ERRATA SHEET	40

1 TRANSCRIPT OF PROCEEDINGS held
2 before the Board of County Commissioners
3 on Tuesday, September 10, 2019, beginning
4 at 11:48 a.m., at 201 South Rosalind
5 Avenue, Fifth Floor, Orlando, Florida,
6 and reported by Vicky L. Barwick, Court
7 Reporter, Notary Public, State of Florida
8 at Large.

9 - - - - -

10 MAYOR DEMINGS: We're going to move forward
11 and, just for the record, we have a court reporter
12 present.

13 MR. NEWTON: You have a statement there now.
14 The statement's --

15 MAYOR DEMINGS: I'm going to read the
16 statement here just at the beginning when we
17 start. I think we have everybody, so.

18 Please note that this discussion must be
19 limited to legal strategy concerning the Florida
20 Association for Constitutional Officers,
21 Incorporated versus Orange County, Florida and
22 Bill Cowles, Orange County Supervisor of
23 Elections, the Ninth Judicial Circuit Court Case
24 Number 2016-CA-011202-O.

25 Please also be advised that the transcript

**Marge Raeder Court Reporter, Inc.
999 Douglas Ave/Suite 3307
Altamonte Springs, FL 32714
407/774-6611**

1 will be a verbatim, permanent record of the
2 discussion and that the record will be available
3 to the public under the Public Records Law when
4 the litigation is concluded.

5 Please now identify yourselves so that the
6 court reporter can accurately identify who is
7 speaking and correctly attribute statements to
8 each attendee.

9 I'll begin. Jerry Demings, Orange County
10 Mayor.

11 COMMISSIONER CORDERO: Maribel Gomez-Cordero,
12 Commissioner District 4.

13 COMMISSIONER BONILLA: Emily Bonilla,
14 Commissioner District 5.

15 COMMISSIONER SIPLING: Victoria P. Sipling,
16 Orange County Commissioner District 6.

17 COMMISSIONER MOORE: Okay. Christine Moore,
18 Orange County Commissioner District 2.

19 COMMISSIONER URIBE: Mayra Uribe, Orange
20 County Commissioner District 3.

21 MR. BROOKS: Byron Brooks, County
22 Administrator.

23 MR. NEWTON: And Jeffrey Newton, County
24 Attorney.

25 MAYOR DEMINGS: Okay. We'll proceed at this

1 time with Mr. Newton.

2 MR. NEWTON: Okay. You each have a
3 PowerPoint presentation before you and, as you
4 recall, we had a closed session on this same topic
5 back in June. I don't believe Commissioner Gomez-
6 Cordero was here at that point in time, so she's
7 new to this process.

8 COMMISSIONER GOMEZ-CORDERO: Um-hum.

9 MR. NEWTON: And this is an opportunity for
10 the County Attorney to come forward and discuss
11 with the Board in private a case -- litigation
12 that the County's involved in. And so back in
13 June, we went through a discussion about the
14 Florida Association of -- for Constitutional
15 Officer's litigation.

16 If you turn to Page 4 of your PowerPoint, it
17 just gives you a little bit of background about
18 what this case is about.

19 In November of 2016, voters approved charter
20 amendments that made the constitutional offices,
21 charter offices and those constitutional offices
22 that were made into charter offices, the Clerk of
23 the Courts, Comptroller, Property Appraiser,
24 Sheriff, Supervisor of Elections and the Tax
25 Collector.

1 I'm going to move forward to Page 6 and where
2 we are today in terms of the litigation.

3 Back in August, early August, Circuit Judge
4 Lisa Munyon granted a motion for final summary
5 judgment, which had been filed by the Supervisor
6 of Elections.

7 Just to explain a little bit about the
8 standard for a motion for final summary judgment,
9 what that motion basically is, is a motion that
10 says there's no factual -- factual dispute with
11 respect to the facts of the case and the only
12 issue -- issues are issues of law.

13 And so on a motion for summary judgment, the
14 Court considers -- the Judge considers what the
15 law is to the facts. We're all in agreement and
16 there was no dispute with respect to what the
17 facts are concerning the case that we're talking
18 about.

19 If you turn to Page 8, that kind of gives you
20 what the outcome of the litigation was and Judge
21 Munyon's decision on the motion for final summary
22 judgment. Her order effectively reinstates the
23 constitutional offices of Clerk of Courts,
24 Comptroller, Property Appraiser, Sheriff,
25 Supervisor of Elections and Tax Collector.

1 As I had mentioned before, those offices had
2 been abolished and reconstituted as charter
3 offices. Judge Munyon decided that those offices
4 need to be reinstated as constitutional offices.
5 Also because of the particular provisions of the
6 charter that she struck, the -- it eliminated the
7 term limits that had been associated with those
8 offices.

9 The Charter Review Commission back in 2016
10 had not only put a issue on the ballot that made
11 those constitutional offices, charter offices, but
12 also made those charter offices subject to term
13 limits. Those provisions were stricken.

14 So where we are today is that we have back to
15 sort of square one, we have constitutional
16 officers who are elected on a partisan basis not
17 subject to term limits and that's where we are
18 today.

19 COMMISSIONER BONILLA: So we're back where we
20 began.

21 MR. NEWTON: We're right back where we --
22 where we began five years ago in terms of all the
23 litigation that has taken place since then.

24 Turn to Page 10 and this is the crux of the
25 issue that -- that is involved and the basis for

1 Judge Munyon's ruling and it has to do with
2 Amendment 10 that was passed by the voters in 2018
3 and that amendment basically reads as follows:

4 And it ensured the election of
5 constitutional officers in all counties,
6 prohibited the abolishment of constitutional
7 officers and made it clear that
8 constitutional officers' duties and terms are
9 no longer subject to change by a charter.

10 And the question becomes whether or not
11 that's retroactive. That's -- that's the real
12 crux of the issue. Because if it's retroactive,
13 if that constitutional amendment is retroactive,
14 then it undoes everything that a county has
15 currently in place with respect to its
16 constitutional officers.

17 As you know, some counties have made their
18 constitutional officers subject to non-partisan
19 elections, like we had done. Some counties have
20 made them subject to term limits. Some counties
21 have abolished their offices altogether.

22 For example, in Broward County they don't
23 have a tax collector. It's done through a
24 department of the county. For example, in Volusia
25 County they don't have certain elected

1 constitutional officers. It's done by departments
2 of the county.

3 Even though it's a department of the county,
4 the officers are elected. So it's like an elected
5 county officer, in a sense. So that's the crux of
6 the issue.

7 Right now, there is one case pending. It's a
8 case by Volusia County that is pending before the
9 First Circuit Court of Appeals and it gets at the
10 issue of whether or not this constitutional
11 amendment is retroactive.

12 Well, if you turn to Page 12, this is where
13 I've kind of laid out what our options are at this
14 point or what our strategy could be.

15 We could appeal the summary judgment order
16 that was entered by Judge Munyon and hold it in
17 abeyance.

18 What that holding it in abeyance would do is
19 it would allow us to wait and see what the Court,
20 the First Circuit District Court of Appeals does
21 in the litigation concerning Volusia County and it
22 preserves the issue of term limits and the
23 abolishment of the constitutional offices until a
24 decision on the retroactivity of Amendment 10 is
25 made.

1 Or we could just not appeal. If we don't
2 appeal, we're back to square one.

3 The state of the -- the state of the
4 constitutional officers in Orange County is just
5 that. They're constitutional officers not elected
6 on a -- elected on a partisan basis and not
7 subject to term limits.

8 The approach of not appealing is one where if
9 we just want to not be involved in litigation any
10 longer and if the constitutional -- I should say
11 the Charter Review Commission wants to revisit the
12 issue at some future point in time, they're more
13 than willing to do so and could do so, depending
14 upon what the outcome of the litigation on
15 Amendment 10 is.

16 So that's -- that's where we are and kind of
17 seeking a little bit of direction from the Board
18 in terms of what the thoughts are about whether we
19 just continue with this litigation or file --
20 continue with the litigation by appealing or
21 simply just let lying dogs lie, in a sense, and
22 stop at this point -- at this point in time.

23 MAYOR DEMINGS: Okay. Well, let's see. Then
24 I guess we'll start with Commissioner Moore, Uribe
25 and then --

1 COMMISSIONER URIBE: Okay.

2 MAYOR DEMINGS: -- Bonilla, if that's all
3 right with you all.

4 MR. NEWTON: Um-hum.

5 COMMISSIONER URIBE: Yeah. Two quick
6 questions. So one, when all the -- is there any
7 movement afoot in Tallahassee? Because sort of,
8 to me, they started the ball going because they
9 allowed us to have charter counties, but then they
10 didn't figure out its unintended consequence.

11 Is there any movement to deal with that in
12 Tallahassee? And who -- second question, who
13 actually put that amendment on the ballot?

14 MR. NEWTON: None that I'm aware of. There's
15 no movement at this point in time, that I'm aware
16 of. Maybe perhaps the Mayor might be aware of any
17 movement, but --

18 MAYOR DEMINGS: Well, and with full
19 disclosure, you know, here, I've said this to you
20 all previously --

21 COMMISSIONER URIBE: Um-hum.

22 MAYOR DEMINGS: -- you know, I was the
23 founding member of the Florida Association of
24 Constitutional Officers and was its initial
25 president that engaged in the litigation.

1 Since the charter amendments moved forward
2 here in Orange County, I was part of the
3 opposition, if you will, to the action that the
4 County had taken. Subsequent to that date, the
5 Florida Supreme Court had ruled in this matter and
6 struck down certain things that, you know, counsel
7 has just advised you of.

8 The second thing to happen was, independent
9 movement occurred as a result of the -- every ten
10 years the State of Florida is required by its
11 constitution to have a Constitutional Revision
12 Commission and the Governor and members of the
13 Cabinet on this appoint the individuals.

14 The Florida Constitutional Revision
15 Commission met, decided to move forward an
16 amendment to the Florida Constitution that was put
17 on the ballot in 2016 and that amendment passed.
18 Of course, to amend the State's Constitution, you
19 know, the threshold is better than 60 percent has
20 to vote for it. The electorate of Florida amended
21 its constitution.

22 And so you have the Florida Supreme Court
23 ruling that occurred. You have the amendment that
24 was passed by the voters of Florida that
25 essentially became law. And so the actions that

1 were taken by a prior Board of County Commission
2 to put this initiative on the ballot essentially
3 was somewhat rendered moot because of the two
4 actions that I just talked about.

5 So today, you know, we have two courses of
6 action that our County Attorney has recommended to
7 appeal the final judgment that, again, Judge
8 Munyon, who is a local Circuit Court Judge, has
9 made a ruling now. And then the other is no
10 appeal.

11 But, again, I want you to understand where we
12 are because of those two key things that happened;
13 Florida Supreme Court ruling, constitutional
14 amendment by the State of Florida that now
15 essentially requires counties to have certain
16 constitutional offices, to include offices like my
17 Sheriff, the Tax Collector, the Supervisor of
18 Elections, the Property Appraiser, the Clerk of
19 the Courts, et cetera, and so there's pending
20 litigation.

21 As you know, our counsel has advised you of
22 some counties that are challenging the
23 retroactivity of the new state law. And the
24 Courts, to me, is the appropriate place to make
25 that determination, whether or not there's

1 retroactivity or not.

2 But as it relates to Orange County, we're
3 here to, as a Board of County Commission, to make
4 a decision whether or not we appeal Judge Munyon's
5 ruling or we don't appeal and we essentially -- if
6 we don't appeal, then we are, you know,
7 acquiescent to the Supreme Court ruling, the
8 constitutional amendment that was made. And so
9 that's where we are today.

10 MR. NEWTON: Yeah. Just one -- just to add a
11 little bit to what the Mayor has mentioned. There
12 was the 2014 litigation, as we discussed before,
13 which was the ballot questions that were --
14 questions that were placed on the ballot by the
15 Board of County Commissioners, which initially
16 were to make the constitutional officers subject
17 to term limits and non-partisan -- non-partisan
18 elections and that went all the way up to the
19 Florida Supreme Court.

20 The Florida Supreme Court made one initial
21 decision. Then the composition of the Court
22 changed and it was a subsequent decision that was
23 made. That subsequent decision didn't invalidate
24 the term limits parts of it, but it did invalidate
25 the election on a non-partisan basis and so that's

1 where -- that's where that litigation ended up at
2 the Florida Supreme Court.

3 The subsequent litigation, which is what
4 we're talking about that took place in 2016, is
5 getting at the question -- this litigation is
6 getting at the question of the -- questions that
7 were placed on the ballot by the Charter Review
8 Commission. I just wanted to make that
9 clarification.

10 So it was the Charter Review Commission that
11 then came in and said, okay, we're going to
12 abolish these offices and make them charter
13 offices, as well as have them elected on a
14 non-partisan basis and subject to term limits.

15 Well, in that period of time from 2016 to
16 2018, the voters in Florida passed the
17 constitutional amendment, which some are arguing
18 has the effect of retroactively undoing everything
19 that counties may have done, whether it's abolish
20 offices, whether it's making them non-partisan or
21 whether it's making them subject to term limits.

22 And others are arguing that that amendment is
23 only prospective, that whatever county has
24 currently in place, stays in place and so that's
25 -- that's where we are.

1 Judge Munyon essentially has said, I've wiped
2 out everything and we're back to the way it should
3 be, in her -- in her opinion, in terms of every
4 county within the State of Florida having elected
5 constitutional officers, which are elected on a
6 partisan basis and not subject to the term limits.

7 COMMISSIONER URIBE: Can I ask one more?

8 MAYOR DEMINGS: Yes. Commissioner Uribe.

9 MR. NEWTON: So I hope that --

10 COMMISSIONER URIBE: You did mention a little
11 bit, but I just wanted clarification. So the CRC
12 -- what year was that?

13 MR. NEWTON: 2016.

14 COMMISSIONER URIBE: 2016? And then --

15 MR. NEWTON: They placed their questions on
16 the ballot in 2016.

17 COMMISSIONER URIBE: So the --

18 MR. NEWTON: And understand, the Board has no
19 role in moving those questions to the ballot. It
20 just goes automatically to the ballot.

21 COMMISSIONER URIBE: And are the issues only
22 now regarding the charter constitutional or is
23 non-partisan still in play?

24 MR. NEWTON: Non-partisan is not in play.

25 COMMISSIONER URIBE: So that's done. Okay.

1 And what has it -- what has it cost us so far
2 to --

3 MR. NEWTON: In-house.

4 COMMISSIONER URIBE: -- engage legal -- I
5 mean, but there's still a dollar, you know,
6 hours --

7 MR. NEWTON: It's just time. There's no -- I
8 mean, the costs are minimal in terms of filings in
9 court and costs, you know, but we don't --

10 COMMISSIONER URIBE: And one last thing,
11 Jeff. So the charter you said was 2016 when the
12 CRC --

13 MR. NEWTON: Correct.

14 COMMISSIONER URIBE: -- requested that. And
15 then the constitutional amendment, what year was
16 that?

17 MR. NEWTON: The constitutional amendment was
18 2018.

19 COMMISSIONER URIBE: Got it. Okay.

20 MAYOR DEMINGS: And what I will tell you in
21 terms of costs, Commissioner, there were some
22 indirect costs to the taxpayers of Orange County
23 because the constitutional offices, some of them
24 used outside counsel.

25 COMMISSIONER URIBE: Right.

1 MAYOR DEMINGS: And we fund most of it, but
2 it's -- and so, you know, through the mechanism of
3 the Florida Association of Constitutional
4 Officers, it was deemed that that organization had
5 legal standing to be able to bring forward some of
6 these court actions and so, indirectly, yeah, that
7 was a cost, you know, to the taxpayers of Orange
8 County, consequently.

9 And Commissioner Bonilla?

10 COMMISSIONER BONILLA: Yeah. Well, the way I
11 look at all this is that there is a reason why the
12 Florida Constitution had constitutional officers
13 and it's so that there's oversight on the Board of
14 County Commissioners because when -- you don't
15 want to have the Comptroller being under the
16 County when they're supposed to be auditing the
17 County and so there's a reason why it was
18 separated, the way it was set it the way it was.

19 And for whatever was happening on 2016, that,
20 you know -- you know, gathering or reaching out
21 for this power, that was really a stretch and that
22 would have taken away the separation of the powers
23 and the balance of the powers. And so I am for
24 number two, no appeal, because I think back to
25 where we were before is the right place where we

1 should have been.

2 MAYOR DEMINGS: You know, and keep in mind,
3 this is -- the reason we had to go into Executive
4 Session is to have you have a deliberation and
5 make a decision. Certainly one could argue that
6 because, you know, I was engaged previously in a
7 litigation, both from 2014 and 2016, I now find
8 myself as the County Mayor and, you know, and so
9 it is better than we collectively have that
10 conversation about what this Board today believes
11 is an appropriate course of action to take.

12 MR. NEWTON: Right. And what I'd like to do
13 is just get a sense of where you are, as opposed
14 to, there's really no voting that takes place in
15 this -- in the context of this meeting --

16 COMMISSIONER BONILLA: Yeah. Just kind of
17 feel where we're at and --

18 MR. NEWTON: -- and get a sense of where you
19 are and then basically move forward based upon
20 that sense of where the Board is as a whole.

21 COMMISSIONER SIPLING: Okay. This is
22 Commissioner Sipling. And my question to the
23 attorney is: What -- if number one is chosen,
24 what are your legal arguments before this appeal?

25 That's what I want to know. What legal

1 argument will you present in moving forward if
2 that's the decision or the consensus? But --

3 MR. NEWTON: Well, the main legal argument is
4 that the amendment itself doesn't address the
5 issue of retroactivity.

6 COMMISSIONER SIPLING: Okay.

7 MR. NEWTON: And that typically with
8 amendments, as well as laws that are passed by the
9 legislature, unless there is an expressed
10 indication of it being retroactive, then it is not
11 retroactive.

12 And so with -- concerning all of those
13 counties that have already had their voters decide
14 that this is the form of government that they
15 want, whether it be having a tax collector or not
16 having a tax collector, whether it be having
17 constitutional officers as charter officers or not
18 as charter officers, is a decision that should be
19 respected and not one that should be eliminated or
20 at least constitutionally preempted based upon
21 language which is not clear in terms of whether or
22 not it should be retroactive.

23 That's just -- that's just -- that's the main
24 argument that's being made and it's being made --
25 and one of the arguments -- additional arguments

1 that's being made by Volusia County is that
2 Volusia County is a county that -- whose charter
3 was voted upon by the voters of Volusia County,
4 but was initiated through the Florida Legislature.

5 So how is it that the amendment, which
6 doesn't specifically address retroactivity, now
7 has the effect in Volusia County of undoing
8 everything that they've done with respect to their
9 charter form of government?

10 COMMISSIONER SIPLING: Commissioner Sipling
11 again.

12 MR. NEWTON: Um-hum.

13 COMMISSIONER SIPLING: Now, do we have any
14 legal cases or -- or that we could use to --

15 MR. NEWTON: There's plenty of legal cases
16 about retroactivity.

17 COMMISSIONER SIPLING: Okay.

18 MR. NEWTON: Yeah. There's plenty of --
19 plenty of cases about that.

20 COMMISSIONER SIPLING: Within the state or --

21 MR. NEWTON: Within the State of Florida,
22 yes.

23 COMMISSIONER SIPLING: And what was those --
24 were the outcomes?

25 MR. NEWTON: Well, it -- you don't -- I don't

1 recall any specific case on point regarding
2 retroactivity of a constitutional amendment.

3 COMMISSIONER SIPLING: Right.

4 MR. NEWTON: But typically, any law which you
5 could frame the constitutional amendment as a law
6 is not retroactive unless it specifically states
7 that it's retroactive. There are cases out there
8 that talk about implied retroactivity, but
9 typically, it has to be expressed.

10 COMMISSIONER SIPLING: Hmm. Interesting.

11 MAYOR DEMINGS: Now, again -- Jerry Demings
12 here. I do think that in Orange County, the facts
13 relevant to Orange County may be different --

14 MR. NEWTON: Um-hum.

15 MAYOR DEMINGS: -- to other counties. And
16 the reason I say that is, Orange County is the
17 only county that really had moved forward with
18 first, a charter amendment that was put on the
19 ballot by the Board of County Commissioners in
20 2014 to take certain actions as has been explained
21 to you, number one. We're the only county unique
22 to that.

23 Number two, we were the only county that was
24 unique to going through a charter review process
25 where the action appeared in 2016.

1 So, you know, our -- you know, our
2 deliberations should be about Orange County; okay?

3 MR. NEWTON: Um-hum.

4 MAYOR DEMINGS: Not to perhaps make decisions
5 about litigation that may involve Volusia County
6 because Volusia County is somewhat different. You
7 know, for example, the Sheriff --

8 MR. NEWTON: Um-hum.

9 MAYOR DEMINGS: -- in Volusia County was a
10 charter officer and in the case of the Volusia
11 County Sheriff, the Volusia County Sheriff didn't
12 have -- the employees of the sheriff's office were
13 not really the employees of the Sheriff.

14 They were employees of the county, a real
15 significant distinction there, and Volusia County
16 had gotten to that point in time as a result of
17 its own processes and charter processes to get
18 there.

19 Miami-Dade County, for example, did not have
20 an elected sheriff. Historically, there were
21 times when Miami-Dade had an elected sheriff.
22 Then the voters in Miami decided not to have a
23 sheriff, and then they decided to have a sheriff,
24 and then they decided not to have a sheriff.

25 So Miami-Dade's situation was different, but

1 because of the constitutional amendment that was
2 made to Florida's Constitution, that
3 constitutional amendment that was again passed by
4 60 percent -- better than 60 percent of Florida's
5 electorate made a decision through the regular
6 state's processes with the Constitutional Revision
7 Commission's review every ten years, that they
8 made a decision and the electorates statewide
9 changed the state's constitution to say, no, we
10 want essentially uniformity within all 67 of
11 Florida's counties, that we want you to have these
12 certain positions in there.

13 There were counties that, you know, at
14 different times kind of opposed what the
15 Constitutional Revision Commission was doing at
16 the state level because of some of their past
17 actions that they had taken.

18 But, again, remember, counties are
19 subdivisions of the state and the state does have
20 preemptive authority in some regards to certain
21 issues and, in this case, you now have the Florida
22 Supreme Court that has made some rulings in this
23 case, the highest Court in our state made some
24 rulings and as our General Counsel has said to
25 you, the makeup of that body changed over time.

1 There was a ruling and -- but the last ruling
2 where you received an updated Executive Session,
3 you had -- you were presented with that
4 information and, you know, there were compelling
5 arguments there with the Supreme Court for the
6 reason why they took the action.

7 We don't get to make state law. You know,
8 that is the responsibility of the legislature and
9 then the interpretation of those state laws
10 becomes the responsibility of the Courts. And so
11 the highest Court has done -- presented an
12 interpretation of a ruling, a finding and so this
13 is why we're here.

14 So I don't want -- I think that, focus on
15 Orange County where Orange County's experience is
16 and what decisions that we are making on behalf of
17 Orange County and while it may be germane to hear
18 some of the conversation about what other counties
19 are doing, we are really here to, you know, to
20 opine on Orange County's decision-making.

21 MR. NEWTON: And understand, too,
22 historically, Orange County has been kind of
23 schizophrenic with respect to its constitutional
24 officers. At one point, they were charter
25 officers.

1 COMMISSIONER URIBE: Yeah. I know. That's
2 right.

3 MR. NEWTON: Then back to constitutional,
4 then back to charter. And now, because of the
5 ruling, back to constitutional officers. So it's
6 been an ebb and flow with respect to how the
7 electorate, as well as the Courts, have viewed
8 Orange County.

9 MAYOR DEMINGS: Well, probably, you know,
10 going back to the early '90s with this kind of ebb
11 and flow of Orange County's constitutional
12 offices, this is kind of really the first time,
13 however, that the Supreme Court had some finding
14 that's germane to the conversation and a
15 constitutional amendment that is at play here.
16 That's something new that kind of gives us some
17 guidance, I think, to any actions that we might
18 take here. It gives you some guidance in that
19 process. And now, another Circuit Court, you
20 know, a judge, he has given us a ruling, so.

21 Okay. So I think --

22 COMMISSIONER SIPLING: Commissioner Sipling.
23 I wanted to clarify, I was not saying that we need
24 to compare ourselves to other counties. Every
25 county is unique. I think we all realize that.

1 What I'm saying is that, depending on how we
2 advise procedurally on how to move forward, we
3 need to make sure -- well, I need to understand
4 what basis of argument are we presenting and
5 that's where, you know, the attorney, Attorney
6 Newton, was just making us aware of what Volusia
7 County's and, I guess, their argument.

8 So it wasn't that I was trying to compare
9 Orange County. I just needed to know what our
10 argument is and if that is a -- you know, whatever
11 arguments that --

12 MR. NEWTON: Um-hum.

13 COMMISSIONER SIPLING: -- the County Attorney
14 and his team wants to present, do we feel that's a
15 strong enough argument for us to continue? Or do
16 we just go ahead and see how this plays out and
17 not file the appeal?

18 But I think it's important for us to
19 understand the direction of county -- the County
20 Attorney and staff on what they're going to
21 present and that's what, you know, my question was
22 geared to, was just, you know, like, okay, if we
23 say appeal, like, not only what's the strategy of
24 the appeal, but what are you arguing?

25 Like, what is your basis that you feel that

1 you can present this to, you know, to the Judge?

2 That was --

3 MAYOR DEMINGS: I understand all of that and
4 I'm clear. I don't know --

5 COMMISSIONER URIBE: Can I --

6 MAYOR DEMINGS: -- if there needs to be
7 further clarity from --

8 COMMISSIONER URIBE: Commissioner Uribe here
9 asking. Do you know what the results were of the
10 election when folks wanted it to go to charter?

11 MR. NEWTON: With the Orange County election?

12 COMMISSIONER URIBE: Yeah.

13 MR. NEWTON: I think it was over 70 percent.

14 COMMISSIONER URIBE: 70? And then my other
15 question is: Has the new sheriff joined the
16 lawsuit with the other constitutional offices?

17 MAYOR DEMINGS: Well, I am --

18 MR. NEWTON: Are you talking about with the
19 Florida Association of Constitutional Officers?

20 COMMISSIONER URIBE: Yeah. Like --

21 MR. NEWTON: It was brought by the
22 Association, not by individual entities.

23 COMMISSIONER URIBE: Yeah. But, you know,
24 they've been very supportive together.

25 MR. NEWTON: I've -- well --

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MAYOR DEMINGS: Right. That's --

COMMISSIONER URIBE: I was just curious.

MAYOR DEMINGS: -- again, that would be part of their --

MR. NEWTON: Right.

MAYOR DEMINGS: -- attorney/client privilege information.

COMMISSIONER URIBE: Okay.

MAYOR DEMINGS: You know, since I left that role, I do not participate in conversations or discussions with their General Counsel or with them over this matter. So, you know, I can't answer that and I don't know that Mr. Newton can answer that.

MR. NEWTON: Yeah. I don't know.

COMMISSIONER URIBE: Okay. Just curious. All right.

MAYOR DEMINGS: Yeah. Commissioner Bonilla?

COMMISSIONER BONILLA: Yeah. When it was on the ballot in 2016, there was a -- there was a group out there of people who are putting a lot of money into pushing it to pass. They were marketing it everywhere. I saw signs everywhere about, you know, the yard signs marketing it.

So a lot of money was spent to get that 70

1 percent. They really -- I didn't --

2 COMMISSIONER URIBE: I'm aware of that. I
3 just wanted to know the number.

4 MR. NEWTON: Yeah.

5 COMMISSIONER BONILLA: But also, I felt that
6 the marketing was misleading, too. They weren't
7 signs of --

8 MR. NEWTON: So let's -- let's make sure we
9 stay on strategy and --

10 COMMISSIONER BONILLA: -- explaining
11 everything.

12 MAYOR DEMINGS: We kind of have to stay
13 within this -- the purpose of the Executive
14 Session, you know.

15 COMMISSIONER BONILLA: Well, the purpose of
16 this, I felt that was very misleading to the
17 people when they had put it on the ballot
18 originally.

19 MAYOR DEMINGS: Yeah. I hear your anecdotal
20 information, but -- so --

21 COMMISSIONER BONILLA: Well, that's my reason
22 for going for number two.

23 MAYOR DEMINGS: And, remember, the County
24 Attorney essentially takes his direction from the
25 Board on this matter. The County Attorney would

1 not unilaterally make a decision here. The County
2 Attorney has to hear from you on this matter.

3 I dare say, he should hear from us, you know,
4 to be inclusive here on this matter. And so in
5 terms of strategy, he has to understand what is
6 the will of the Board of County Commissioners in
7 this regard.

8 COMMISSIONER MOORE: Should we go around the
9 room?

10 MAYOR DEMINGS: That might be one way to do
11 it, you know, because --

12 MR. NEWTON: That would be helpful. I think
13 I have a sense -- or sort of have a sense.

14 MAYOR DEMINGS: We have two options.
15 Commissioner Moore, what would your preference be?
16 If you want to.

17 COMMISSIONER MOORE: But I don't like the
18 whole thing. I want to opine on it that when you
19 have a Supreme Court ruling and then -- and a
20 constitutional amendment that went through, I
21 mean, I'm not sure why we should appeal, honestly.
22 So I probably would say no.

23 MAYOR DEMINGS: Commissioner Uribe?

24 COMMISSIONER URIBE: I am going to say that I
25 do not believe that we appeal this issue.

1 MAYOR DEMINGS: Well, I -- you kind of
2 trailed off, so I couldn't really hear what you
3 said.

4 MR. NEWTON: I got it.

5 COMMISSIONER URIBE: I do not want -- I don't
6 believe we need to appeal it.

7 MAYOR DEMINGS: Okay. Commissioner Maribel
8 Gomez-Cordero?

9 COMMISSIONER GOMEZ-CORDERO: Well, hearing
10 everything and just giving it -- I don't think we
11 should appeal.

12 MAYOR DEMINGS: So she's a two as well.
13 Commissioner Bonilla?

14 COMMISSIONER BONILLA: For the third time
15 saying it, number two.

16 MAYOR DEMINGS: Yeah. Number two.
17 Commissioner Sipling?

18 COMMISSIONER SIPLING: Commissioner Sipling
19 here. And, you know, whenever you are placed in a
20 position where you have Supreme Court rulings, you
21 have citizens who have voted on an issue and
22 knowing as those who've been elected to represent
23 the citizens, but also we have a obligation to try
24 to make a decision based on what we feel if we
25 have a strong legal stance, that we need to take

1 that.

2 And my question to the attorney was, I was
3 trying to get a feel of what legal stance, strong
4 legal stance that we have to win this, not for,
5 you know, us as individuals, but as the residents
6 who voted for this amendment.

7 And so with that legal stance and that, you
8 know, Mr. Newton presented, I don't know if that
9 is a strong enough argument, you know, to spend
10 more time fighting something that you can clearly
11 see has been for years.

12 MR. NEWTON: Um-hum.

13 COMMISSIONER SIPLING: And so that's --
14 that's my basis for my decision for not appealing
15 is based on what is our argument and do I feel it
16 is strong enough to go before a judge thinking
17 that we will prevail?

18 MR. NEWTON: Um-hum. Um-hum.

19 COMMISSIONER SIPLING: And I don't think so
20 at this time, so.

21 MR. NEWTON: Um-hum. Um-hum.

22 COMMISSIONER URIBE: Can I say something
23 else?

24 MAYOR DEMINGS: Um-hum.

25 COMMISSIONER URIBE: Commissioner Uribe here.

1 And knowing that the Supreme Court has already
2 rejected this --

3 MR. NEWTON: Well --

4 COMMISSIONER URIBE: -- well, reversed this,
5 I guess, are we -- you know, are we fighting a
6 battle that legally doesn't make sense for --

7 MR. NEWTON: Well, the Supreme Court could
8 have avoided all this if they had initially, when
9 a lawsuit was brought by Broward County and other
10 counties prior to the vote on the question, if the
11 Supreme Court had addressed the issue of
12 retroactivity.

13 But the Supreme Court said at that point in
14 time, prior to the question being voted upon, was
15 that, we'll -- if there's a lawsuit after -- we
16 address issues of retroactivity after the voters
17 have voted.

18 And so that's why we're in this situation
19 because they refused to address the issue of
20 retroactivity during the initial case in 2018 that
21 was filed trying to keep the matter off of the
22 ballot in the first place.

23 And so they didn't address something. That's
24 why you have the litigation now. It hasn't been
25 addressed and some counties will want to know what

1 the definitive answer is. And so that's why it's
2 here before you.

3 The no-appeal option is equally as viable an
4 option as it is to appeal. Because with the
5 no-appeal option, if the Charter Review Commission
6 at some point in time feels based upon the
7 decision that's ultimately made by the -- probably
8 the Florida Supreme Court and not just the First
9 District Court of Appeals, if Volusia moves
10 forward, you know, after getting a decision and
11 it's not a favorable decision, if the Charter
12 Review Commission comes back and says, you know,
13 the Florida Supreme Court finally ruled that it's
14 not retroactive, we need to put back in place what
15 we had in place in terms of the constitutional
16 officers, then they have the ability to do that.

17 If the Florida Supreme Court rules that, no,
18 it was retroactive, then guess what? That ability
19 ceases to exist.

20 COMMISSIONER URIBE: And one more question:
21 There are other counties that are moving forward
22 with appealing?

23 MR. NEWTON: Volusia County is the only
24 county that I know that's challenging it right
25 now.

1 COMMISSIONER URIBE: Okay.

2 MR. NEWTON: Yeah.

3 COMMISSIONER URIBE: I know we're not making
4 a decision on that. I was just --

5 MR. NEWTON: Right.

6 COMMISSIONER URIBE: -- trying to find out if
7 other counties were moving forward on the appeal.
8 So there essentially could be an appeal out there
9 that could --

10 MAYOR DEMINGS: Yes. This Executive Session
11 is --

12 COMMISSIONER URIBE: -- that could affect us
13 one way or another.

14 MAYOR DEMINGS: Yes. There -- yes.

15 COMMISSIONER URIBE: All right.

16 MAYOR DEMINGS: You know, I read that
17 statement in the beginning about this Executive
18 Session is because of strategy --

19 MR. NEWTON: Yeah.

20 MAYOR DEMINGS: -- and that's kind of why I'm
21 trying to focus on Orange about our strategy.

22 MR. NEWTON: So one thing, Mayor, that --

23 MAYOR DEMINGS: Yes.

24 MR. NEWTON: -- as I mentioned before, we
25 really don't make decisions in this kind of --

1 kind of Executive Session. There's one issue I
2 have to look at in terms of whether or not there's
3 a need to come forward to the Board, given the
4 kind of consensus and discussion that we've had
5 here today, to actually place something on the
6 Board's agenda that says no appeal.

7 I'm going to look at that issue and I'll come
8 back and it would be simply a consent item that
9 just, you know, indicates that, based upon
10 discussions with the Board, we've decided not to,
11 you know, that the County Attorney will not be
12 appealing the decision, so.

13 MAYOR DEMINGS: And for me, if it -- there's
14 an item that comes before the Board where there's
15 an actual vote, I may or may not vote. I may
16 abstain just because of, you know, the different
17 positions that I've been in, you know, over time.

18 And so, you know, as transparent as I need to
19 be in these circumstances, but this is where we
20 depend on you all.

21 Okay. I think that you have a sense of
22 direction there and so we will conclude our
23 Executive Session at this time.

24 COMMISSIONER URIBE: Oh, we leave our
25 PowerPoints here; right?

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MAYOR DEMINGS: Yes. Yes.

[Whereupon, the foregoing proceedings were
concluded at 12:27 p.m.]

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C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF SEMINOLE:

I, Vicky L. Barwick, Court Reporter and Notary Public, State of Florida at Large, do hereby certify that I was authorized to and did report the above and foregoing proceedings at the time and place aforesaid, and that the pages numbered 3 through 38, inclusive, constitute a true, complete and accurate excerpt transcript to the best of my skill and ability.

WITNESS MY HAND this 19th day of September 2019.


VICKY L. BARWICK,
Marge Raeder Court Reporter, Inc.
Court Reporter and Notary Public,
State of Florida at Large
Commission Number FF 979351
Expiration April 6, 2020

**Marge Raeder Court Reporter, Inc.
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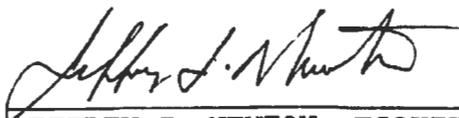
2 I, JEFFREY J. NEWTON, ESQUIRE, have read the
 3 foregoing transcript of proceedings held on
 4 September 10, 2019, in Orlando, Florida, and the
 5 following corrections, if any, should be made in
 6 the transcript:

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION AND</u>	<u>REASON</u>
8	5	23 "Comptroller or" to "Comptroller,"	incorrect word
9	6	15 "due" Delete	incorrect word
10	7	14 "you have" to "we are"	incorrect words
11	8	25 "elective" to "elected"	incorrect word
12	9	19 "would allow us to wait to" to "it would allow us to wait and"	incorrect word
13	14	13 "valid" to ballot"	incorrect word
14	21	15 "casea" to "cases"	incorrect word

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Subject to the above corrections, if any, the proceedings are accepted as provided in the foregoing transcript of proceedings.

SIGNED this 2nd day of ^{October}~~September~~ 2019.



 JEFFREY J. NEWTON, ESQUIRE