

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

JUDICIAL
Commissioner Schifino, Chair
Commissioner Gamez, Vice Chair

MEETING DATE: Tuesday, October 3, 2017
TIME: 1:00—5:00 p.m.
PLACE: 301 Senate Office Building, Tallahassee, Florida

MEMBERS: Commissioner Schifino, Chair; Commissioner Gamez, Vice Chair; Commissioners Bondi, Cerio, Coxe, Joyner, Lee, Martinez, and Timmann

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1	Presentation on the Florida Clerks of Court		Presented
2	Presentation on Judicial Retirement Age and Years of Service Necessary for Eligibility to Serve as a Judge		Presented
3	Presentation on the Chevron Doctrine by Professor Mark Seidenfeld		Presented



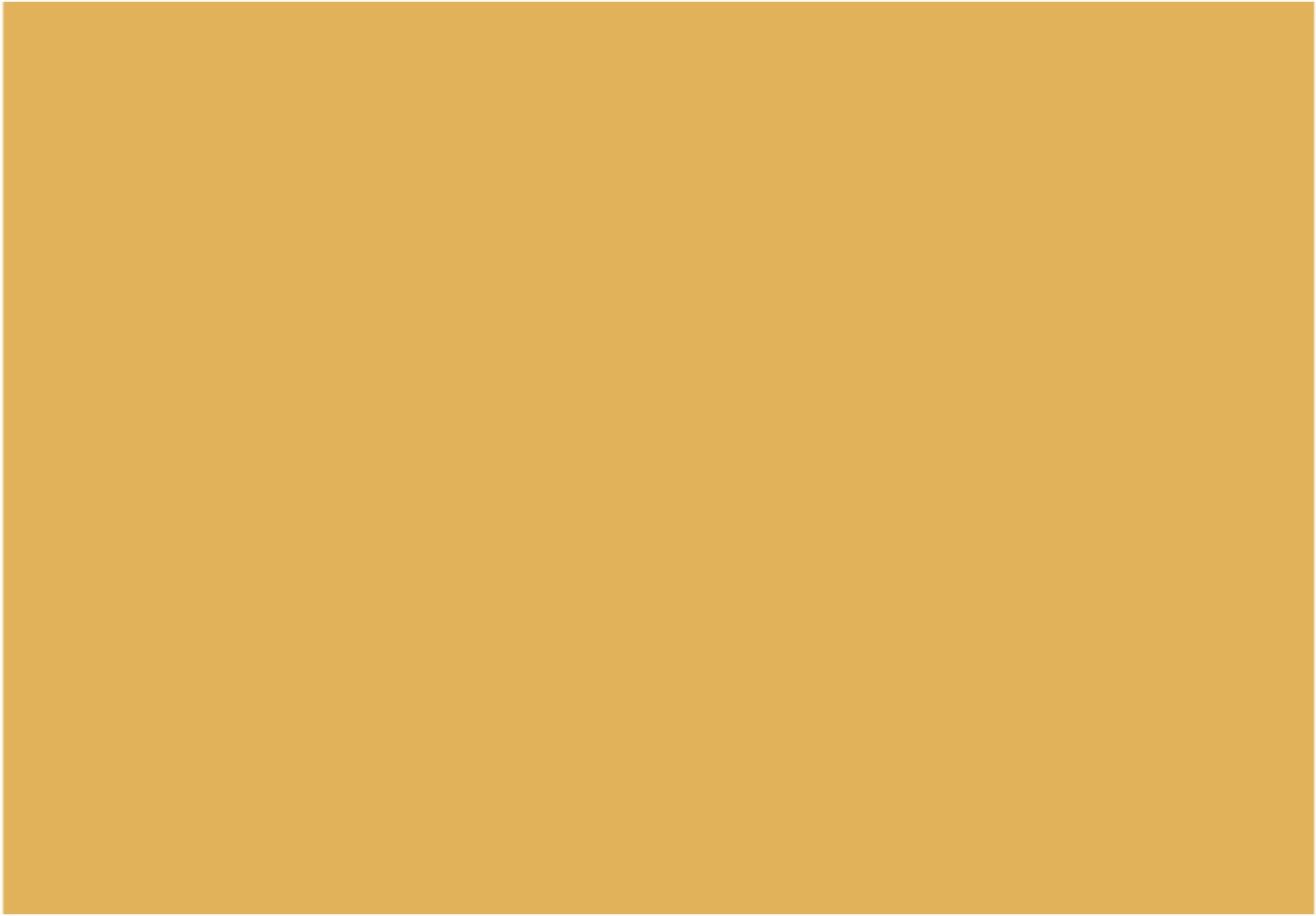


FLORIDA
**COURT CLERKS &
COMPTROLLERS**

Introduction of **Presenters**

5

of



SK'S

of



**The Honorable Ken Burke, CPA
Pinellas County Clerk of Court and Comptroller**

The Constitution and the Clerk
Who We Are
Funding Over Time

of

of



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The Constitution and the Clerk
Who We Are
Funding Over Time

The Honorable Paula S. O'Neil, Ph.D.
Pasco County Clerk of Court and
Comptroller

"The People's House"
The Face of Our Court System
Leaders in Technology

SPK

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Revenues Collected vs. Retained
Challenges
Our Request - Protect Your Clerks

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Q&A with Commissioners



The Constitution & The Clerk

The Constitution & The Clerk

1838: Clerk established as elected public trustee



"There shall be in each county a Clerk of the Circuit Court who shall be selected pursuant to the provisions of Article VIII, Section 1."

- Article V, Section 16

"The Clerk of the Circuit Court shall be Ex-Officio Clerk of the Board of County Commissioners, Auditor, Recorder and Custodian of all county funds."

- Article VIII, Section 1(d)

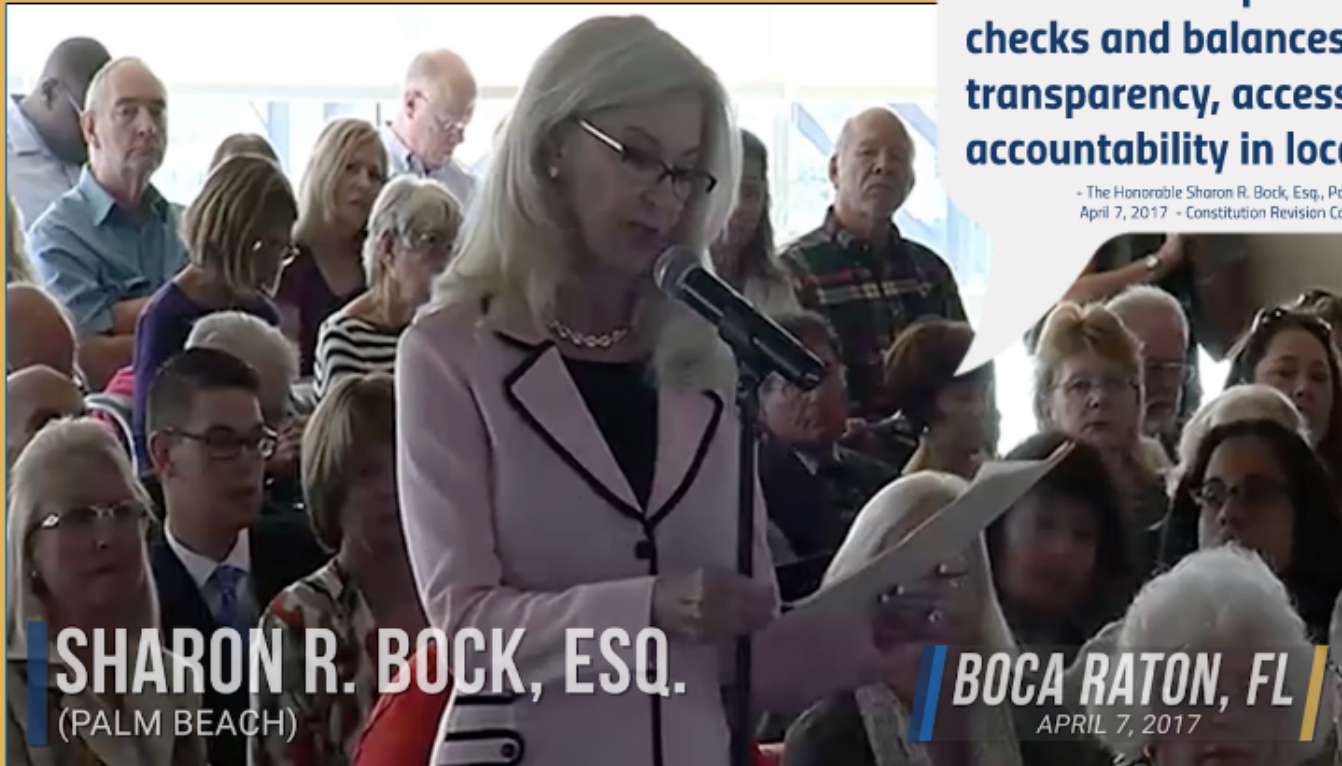
In most Florida counties:

- Clerk of the Circuit Court
- County Treasurer
- Recorder
- Auditor
- Finance Officer
- Ex-Officio Clerk of the County Commission



"Florida's Clerks and Comptrollers are independently elected because our distinct duties provide a system of checks and balances which ensure transparency, access, and accountability in local government."

- The Honorable Sharon R. Bock, Esq., Palm Beach County Clerk of Court & Comptroller
April 7, 2017 - Constitution Revision Commission Meeting



SHARON R. BOCK, ESQ.
(PALM BEACH)

BOCA RATON, FL
APRIL 7, 2017

67

Independently
elected Clerks,
one elected
County
Comptroller

59

Clerks of the
Circuit Court
also serve as
the Comptroller
and Clerk to the
Board of
County
Commissioners



**Only one county's
recording services
not managed by
Clerk of the Circuit
Court or
Comptroller**

926

Constitutional and
statutory
functions/duties
and growing

"A public officer is a public trust. The people have the right to secure and sustain that trust."

- Article I, Section 8, Florida Constitution

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Clerks are held accountable:

- Governed by statutory authority in carrying out the duties and functions of the office
- As auditor and custodian of county funds, subject to state Auditor General rules and regulations
- Subject to annual audits by federal/state entities and independent firms
- Elections held every four years

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"There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court."

- Article VII, Section VIII, Section 1(d)

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- Article VII, Section VIII, Section 1(d)







Funding Over Time



Pre-1998



Clerks funded
through fees,
fines,
forfeitures,
other local
revenue

Pre-1998



The people of Florida vote to pass Revision 7 to Article V of the Florida Constitution, requiring the state to fund the state court system, including funding the court-related functions of the Clerks of Court

Clerks funded through fees, fines, forfeitures, other local revenue



1998

Pre-1998



The people of Florida vote to pass Revision 7 to Article V of the Florida Constitution, requiring the state to fund the state court system, including funding the court-related functions of the Clerks of Court

2004



Clerks funded through fees, fines, forfeitures, other local revenue



1998

Revision 7 to Article V is implemented, requiring the state (transferred from local county funding) to fund the court system, including Clerks of Court

Pre-1998



The people of Florida vote to pass Revision 7 to Article V of the Florida Constitution, requiring the state to fund the state court system, including funding the court-related functions of the Clerks of Court

2004



Clerks funded from money they collect and retain

Clerks funded through fees, fines, forfeitures, other local revenue



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2004-09

Clerks
funded from
money they
collect and
retain



2004-09

2007-09

Clerks
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The recession &
housing crisis
occurs

2004-09

2007-09

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Clerks become
part of state
budget, but
there is no
guaranteed
appropriation



2004-09

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2009-10

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2009-13



2004-09



The recession &
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2009-10



Backfill of
\$150 million
(insufficient
revenue
sources)

09



Clerks become part of state budget, but there is no guaranteed appropriation

2009-13



on & crisis



2009-10

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Clerks removed from State budget

on & crisis



2009-10

Backfill of \$150 million (insufficient revenue sources)



2013



09



Clerks become part of state budget, but there is no guaranteed appropriation

2009-13



Clerks removed from State budget

2013-Present



on & crisis



2009-10

Backfill of \$150 million (insufficient revenue sources)



2013

Insufficient revenue sources, shortfalls grow worse



Funding Over Time

Pre-1998



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Clerks funded from money they collect and retain



2004-09

2007-09



The recession & housing crisis occurs

Clerks became part of state budget, but there is no guaranteed appropriation



2009-10

2009-13



Backfill of \$150 million (insufficient revenue sources)



2013

Clerks removed from State budget

2013-Present



Insufficient revenue sources, shortfalls grow worse

\$66 million decline in revenue

\$66 million decline in revenue



2014

\$444 million

\$66 million decline in revenue



2014

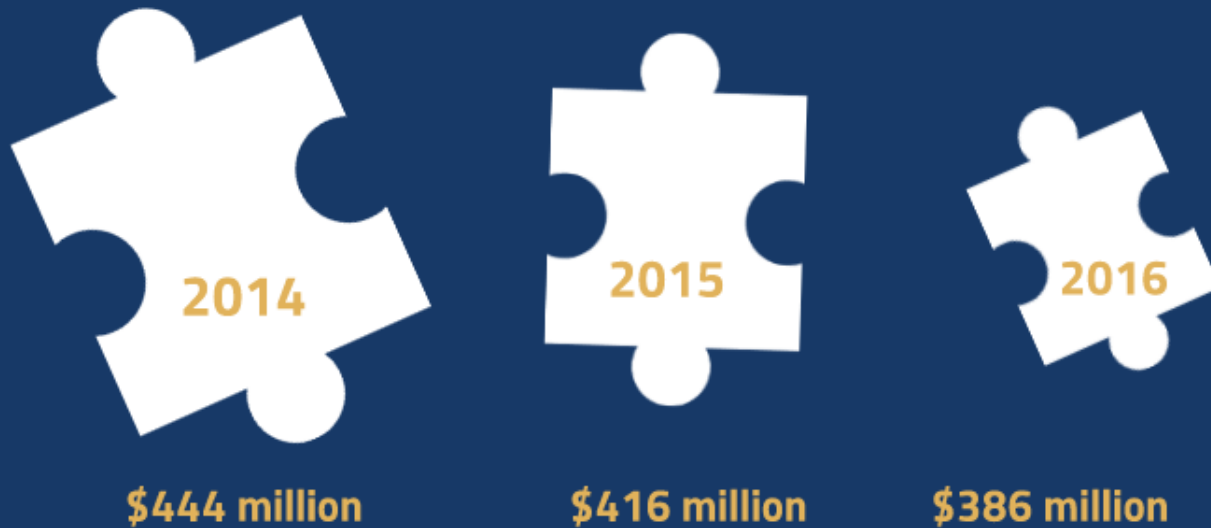
\$444 million



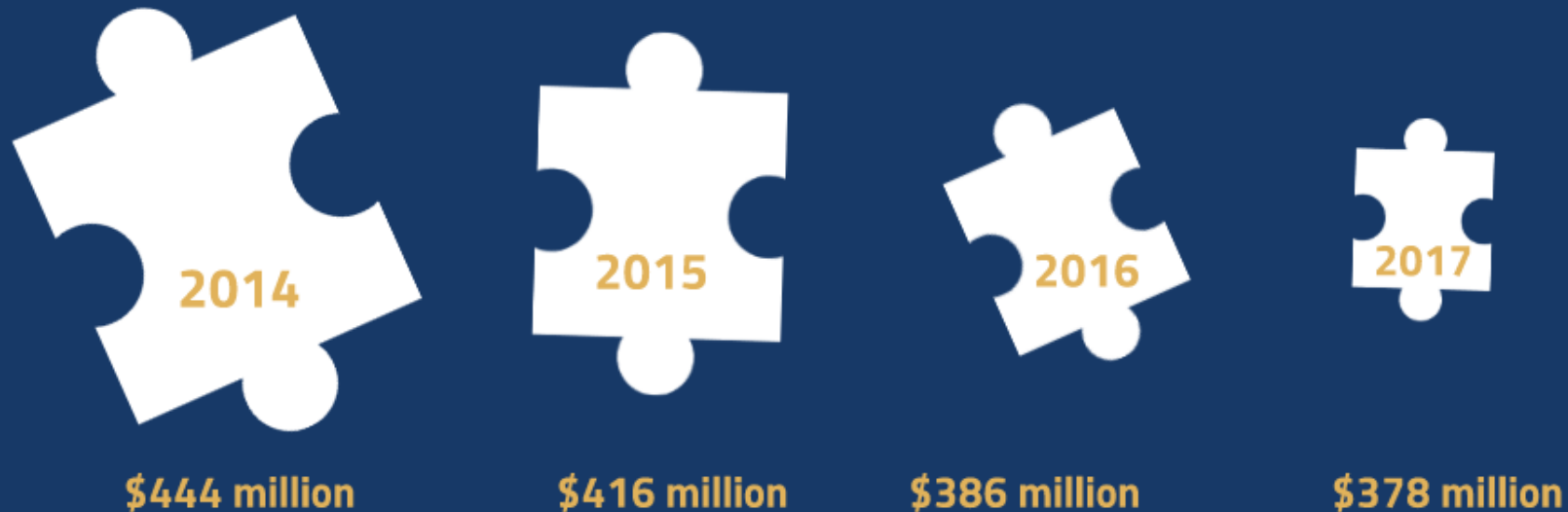
2015

\$416 million

\$66 million decline in revenue

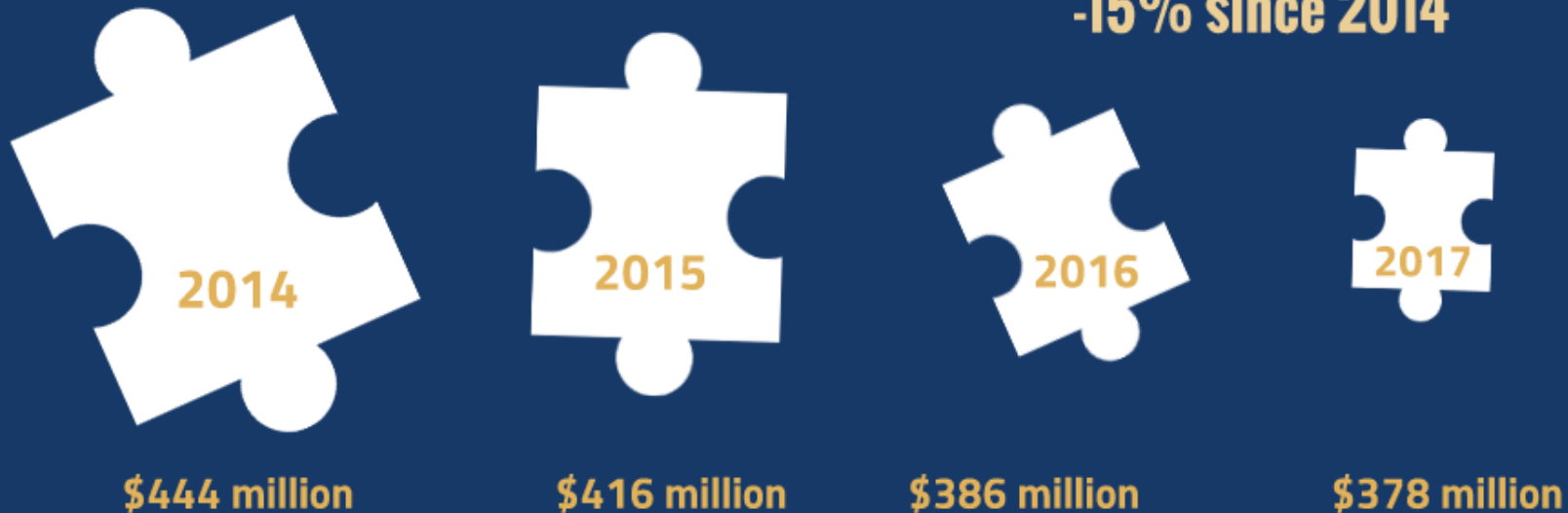


\$66 million decline in revenue



\$66 million decline in revenue

-15% since 2014



Clerk funding is heavily dependent on traffic citations, which are declining sharply due to factors outside of the control of Clerks.

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Population is up.

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Population is up.



Economy is up.

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Population is up.



Economy is up.



More new drivers.

Clerk funding is heavily dependent on traffic citations, which are declining sharply due to factors outside of the control of Clerks.



Population is up.



Economy is up.



More new drivers.



But tickets are down.



The People's House



"As the Florida Clerks of Court and Comptrollers, we stand sentry at the doors of the courthouse. We refer to it as the 'people's house.' It's the people's house where people come to solve a problem that must be solved; a crisis that must be averted; a wrong that must be righted; a threat that must be eliminated; and a good that must be done."

- The Honorable John A. Crawford, Nassau County Clerk of Court & Comptroller
April 27, 2017 - Constitution Revision Commission Meeting



JOHN CRAWFORD
(NASSAU)

JACKSONVILLE, FL
APRIL 27, 2017

The Face of Our Court System

The Face of Our Court System



Serve Floridians with hundreds
of duties ranging from case
processing to revenue collection
and distribution to jury
management

The Face of Our Court System



Serve Floridians with hundreds of duties ranging from case processing to revenue collection and distribution to jury management



Provide assistance to domestic violence survivors, work with sheriffs' offices, judiciary, and local organizations

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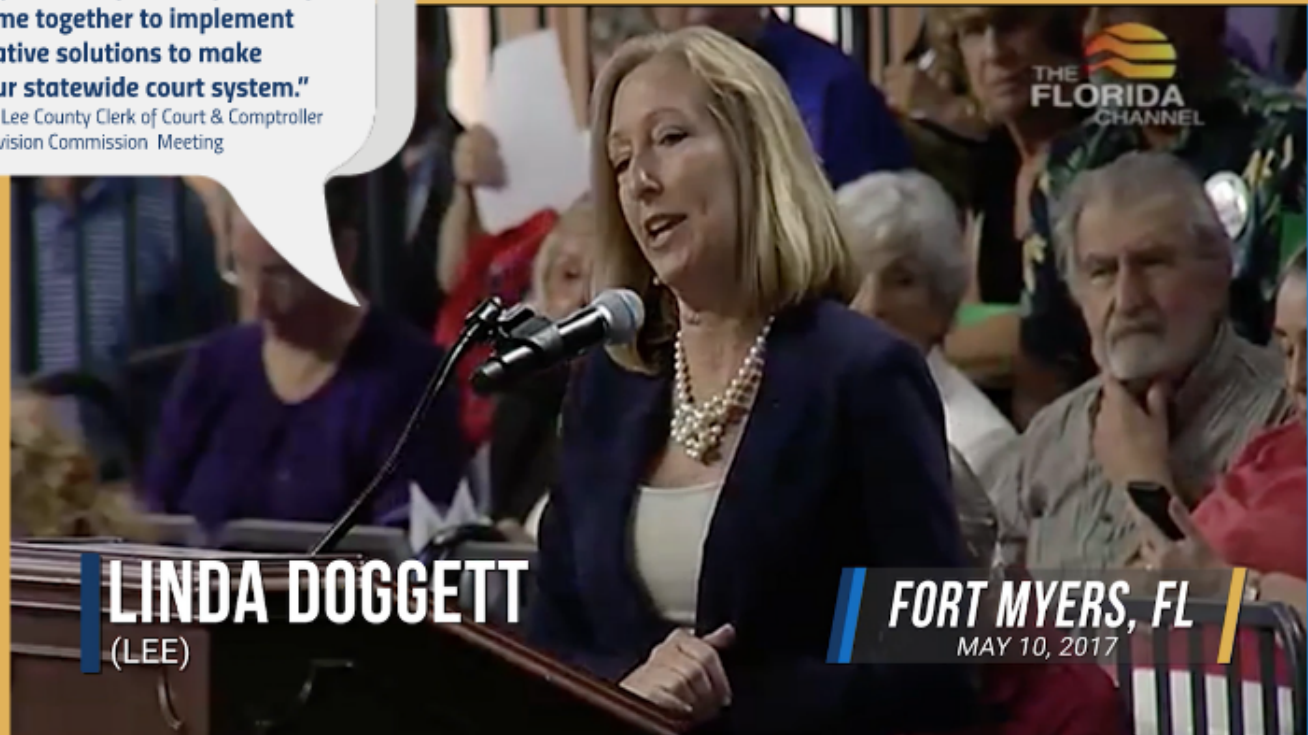
Help self-represented litigants with filings

- Low-cost attorney consultations by appointment
- Legal forms and packets for certain court actions
- On-site notary and copy services
- Public access computers
- Community resource referrals



"Clerks and Comptrollers are the independent keeper and processor of records and money as it flows in and out of county government and the court system...We have been leaders in technology, implementing solutions to meet the local needs of our community, but -- just as importantly -- all of the Florida Clerks have come together to implement resourceful and innovative solutions to make technology work for our statewide court system."

- The Honorable Linda Doggett, Lee County Clerk of Court & Comptroller
May 10, 2017 Constitution Revision Commission Meeting



LINDA DOGGETT
(LEE)

FORT MYERS, FL
MAY 10, 2017

Leaders in Technology

A Clerk is a citizen's portal to the justice system

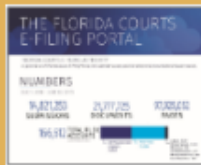
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The Florida Courts E-Filing Portal

Nationally Recognized Leader

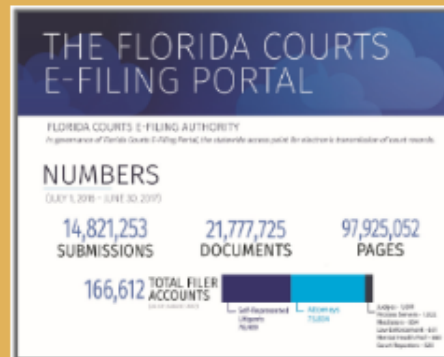
- Seamless access and transmission of court records to and from the courts
- August 2017 peak month to date for submissions, number of documents, and most new cases filed



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THE FLORIDA COURTS E-FILING PORTAL

FLORIDA COURTS E-FILING AUTHORITY

In governance of Florida Courts E-Filing Portal, the statewide access point for electronic transmission of court records.

NUMBERS

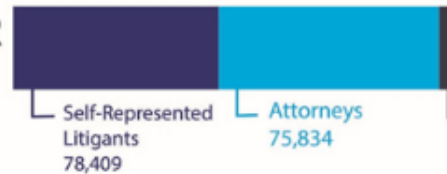
(JULY 1, 2016 - JUNE 30, 2017)

14,821,253
SUBMISSIONS

21,777,725
DOCUMENTS

97,925,052
PAGES

166,612 TOTAL FILER
ACCOUNTS
(AS OF AUGUST 2017)



Judges - 1,091
Process Servers - 1,022
Mediators - 854
Law Enforcement - 651
Mental Health Prof - 660
Court Reporters - 525

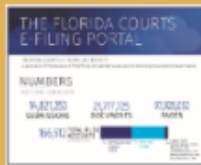
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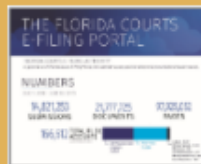
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Comprehensive Case Information System (CCIS)

- Clerk-driven initiative for single statewide system
- Data hub for controlled, real-time access for federal, state, and local government users to Court-managed court case data
- Currently, there are almost 20,000 active users, representing 175 different federal, state, and local government agencies



Comprehensive Case Information System (CCIS)

- Clerk-driven initiative for single statewide system
- Data hub for controlled, real-time access for federal, state, and local government users to Clerk-maintained court case data
- Currently, there are almost 33,000 active users, representing 175 different federal, state, and local government agencies

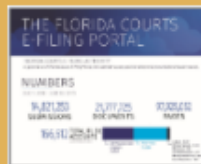
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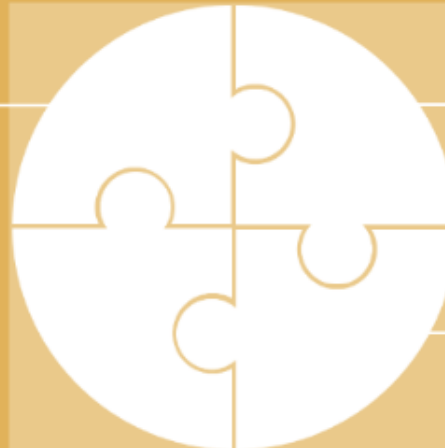
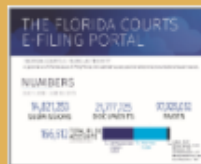
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Clerks' Local Public Access Systems

- Online access governed by the Florida Supreme Court's Security Matrix based on Florida statutes and court rules regarding confidentiality



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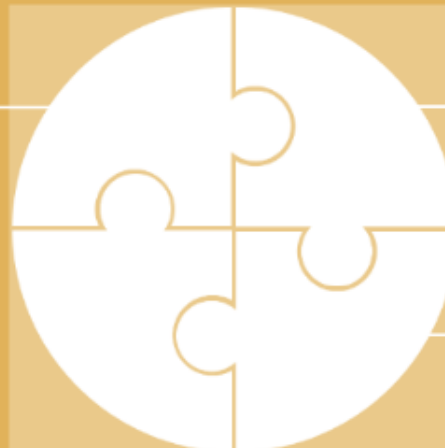
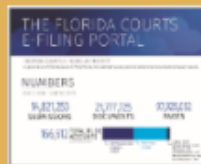
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Revenues Collected vs. Retained

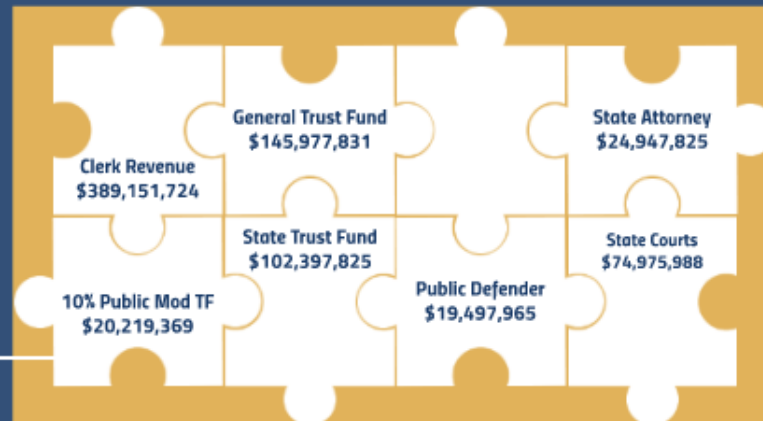
Clerks collect adequate revenues to fund our court-related duties,
but **half** of these monies
are distributed by law to state General Revenue and other trust funds.

Revenues Collected vs. Retained



Revenues Collected vs. Retained

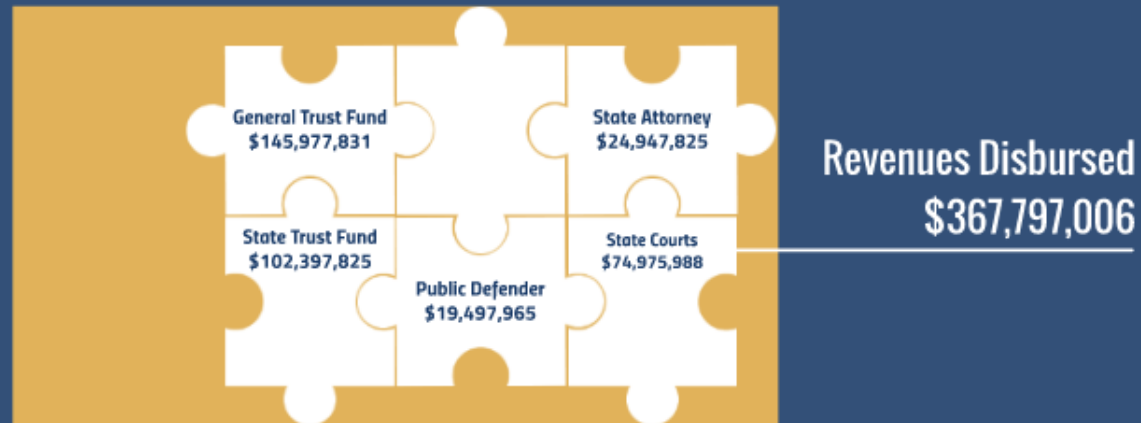
Revenues Collected
\$777,168,099



Revenues Collected vs. Retained



Revenues Collected vs. Retained

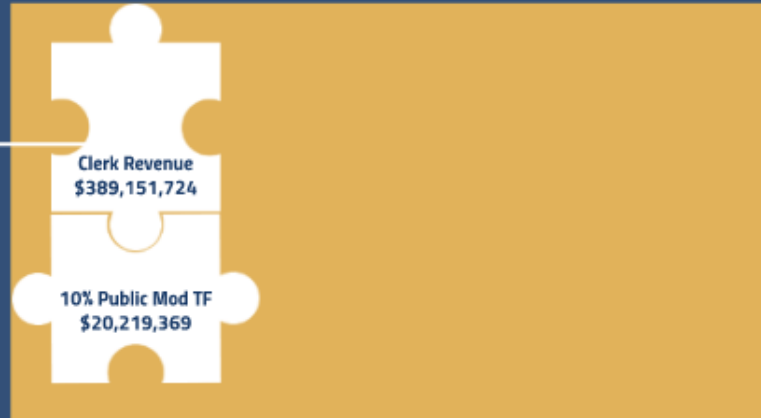


Revenues Collected vs. Retained



Revenues Collected vs. Retained

Revenues Retained
\$409,371,093



Challenges

While workload increases, declining revenues have forced Clerks to implement staff reductions and furloughs which contribute to existing challenges.

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Decreased
productivity
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history, mental
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Decreased productivity related to criminal history, mental health, timely incarceration/release



Delayed access to online court documents

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Large reduction in workforce, office closures, decreased operational hours

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Extensive customer wait times, impeding access to courts

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Extensive customer wait times, impeding access to courts



Fewer court fee and fine collections, resulting in millions of dollars not being distributed to state trust funds

Our Request - Protect Florida's Clerks

- Clerks are proud to be Constitutional Officers who perform nearly 1,000 mandated duties for citizens, attorneys, and the court system.
- We provide a system of checks and balances for transparency, access, and accountability in local government.
- Our technology solutions have established Florida as a national model.
- Because of funding issues, our ability to best serve the citizens of our state is already severely weakened.
- If sustainable funding is not established soon, harm to local court and government operations will be irreparable.

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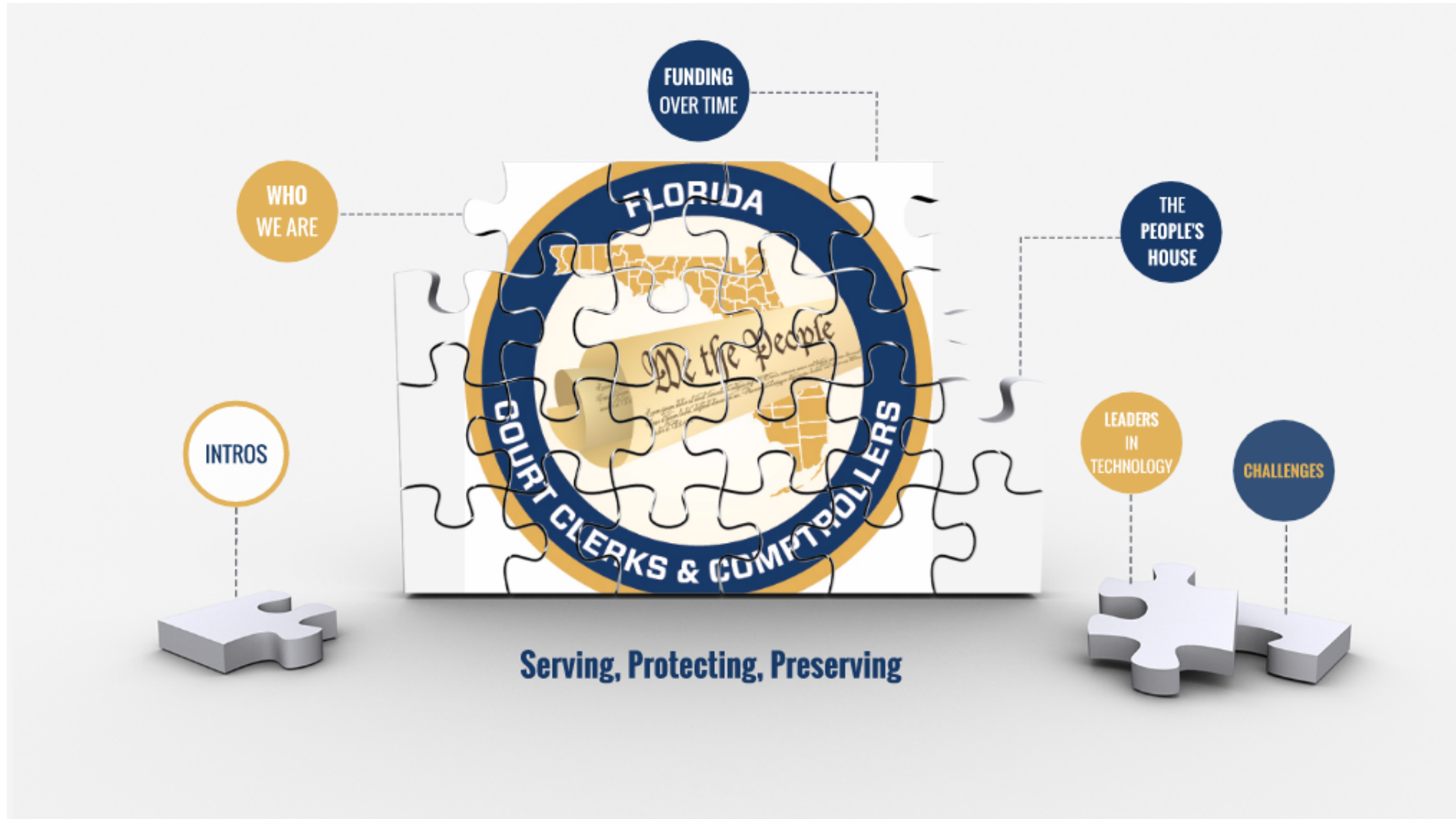
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CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

10/3/18

Meeting Date

Proposal Number (if applicable)

*Topic CLERK OF COURT + COMPTROLLER

Amendment Barcode (if applicable)

*Name KEN BURKE

Address 315 COURT ST 4th FLOOR

Phone 727-414-3341

Street CLEARWATER FL 33756
City State Zip

Email KBURKE@MIAPIWILLIAMS.COM

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? FLORIDA COURT CLERKS + COMPTROLLER

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No PINELLAS CLERK OF COURT + COMPTROLLER

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

10/3/2017

Meeting Date

Proposal Number (if applicable)

*Topic

Clerks & Comptrollers

Amendment Barcode (if applicable)

*Name

Paula S. O'Neill, Ph.D.

Address

7530 Little Rd.

Phone

727 271 5776

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New Port Richey, FL 34667

Email

poneil@pascoclerk.com

City

State

Zip

*Speaking:

For

Against

Information Only

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

Yes

No

If yes, who?

FLorida Courts & Comptrollers

Are you a registered lobbyist?

Yes

No

Are you an elected official or judge?

Yes

No

Pasco Clerk & Comptroller

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

10/3/2017

(Meeting Date)

Proposal Number (if applicable)

*Topic Clerk of Court & Comptroller

Amendment Barcode (if applicable)

*Name Joseph Smith

Address 2300 Virginia Ave, 2nd Floor

Phone (772) 462-2345

Street

Fort Pierce, FL

34950

City

State

Zip

Email jps@stlucieclerk.com

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Florida Court Clerks and Comptrollers

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No Clerk of the Circuit Court

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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Accessible • Fair • Effective • Responsive • Accountable

Mandatory Retirement Age/ Bar Membership Requirements for Justices and Judges

Presentation Overview - Proposal No. 1

- History of the current law
- Past consideration of issue
- Judicial retirement laws in other jurisdictions
- Arguments for and against changes to the law
- Age and separation data

Florida Constitution - 1956

- Art. V., s. 17(a), Fla. Constit., was amended to state: “All justices and judges shall automatically retire at age 70.”
- Became effective on July 1, 1957.
- Did not apply to a justice or judge in office on that date.

Florida Constitution 1972 - Present

Art. V, s. 8, Fla. Constit., states:

“No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served.”

Proposal 1

“No justice or judge shall serve after attaining the age of seventy-five ~~seventy~~ years except upon temporary assignment or to complete a term, one-half of which has been served.”

Past Consideration of Issue

- **1995 Art. V. Task Force (Ch. 94-138, L.O.F.):** Recommended that the age be increased to 72, and second half of term exception be repealed.
- **1997 CRC:**
 - Proposal 9: Repealed the mandatory retirement age.
 - Proposal 62: Implemented the Task Force recommendation.

Past Consideration of Issue

**Florida Legislature (since 2010) –
increased age to 75:**

- SJR 408/HJR 345 (2012)
- SJR 570/747 (2013)

Other Jurisdictions

- There is no mandatory retirement age for federal justices or judges.
- 31 states, in addition to Florida, plus the District of Columbia impose mandatory judicial retirement ages.
- Majority of states use age 70, while others use 72 through 75, or 90.

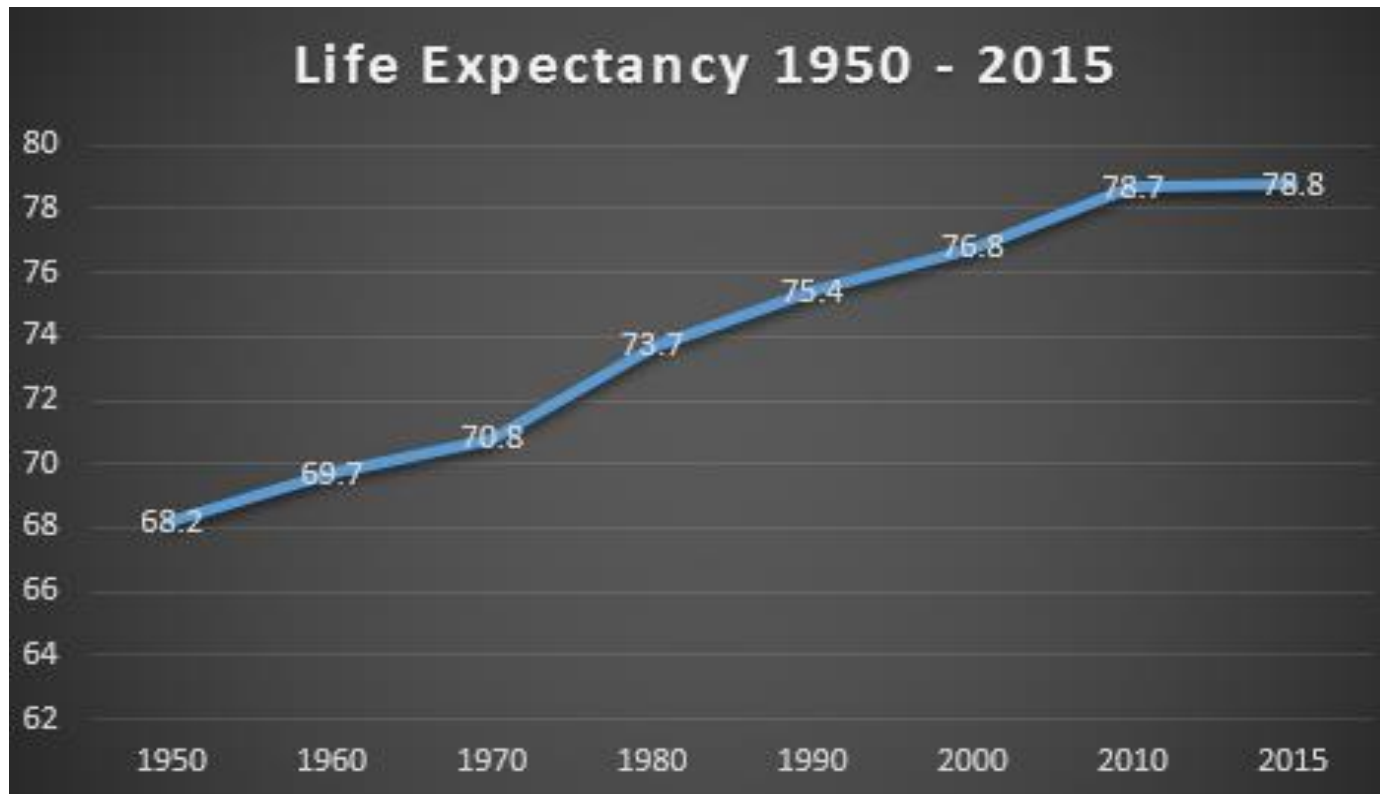
Other State Ballot Initiatives

Between 2011 and 2016:

- Voters in six states rejected amendments to repeal or raise the age.
- The Virginia Legislature approved raising the age from 70 to 73.
- Pennsylvania voters approved raising the age from 70 to 75.

Proponent Arguments

Life expectancies and vitalities have increased.



Source: Centers for Disease Control and Prevention,
<https://www.cdc.gov/nchs/data/hus/hus16.pdf>

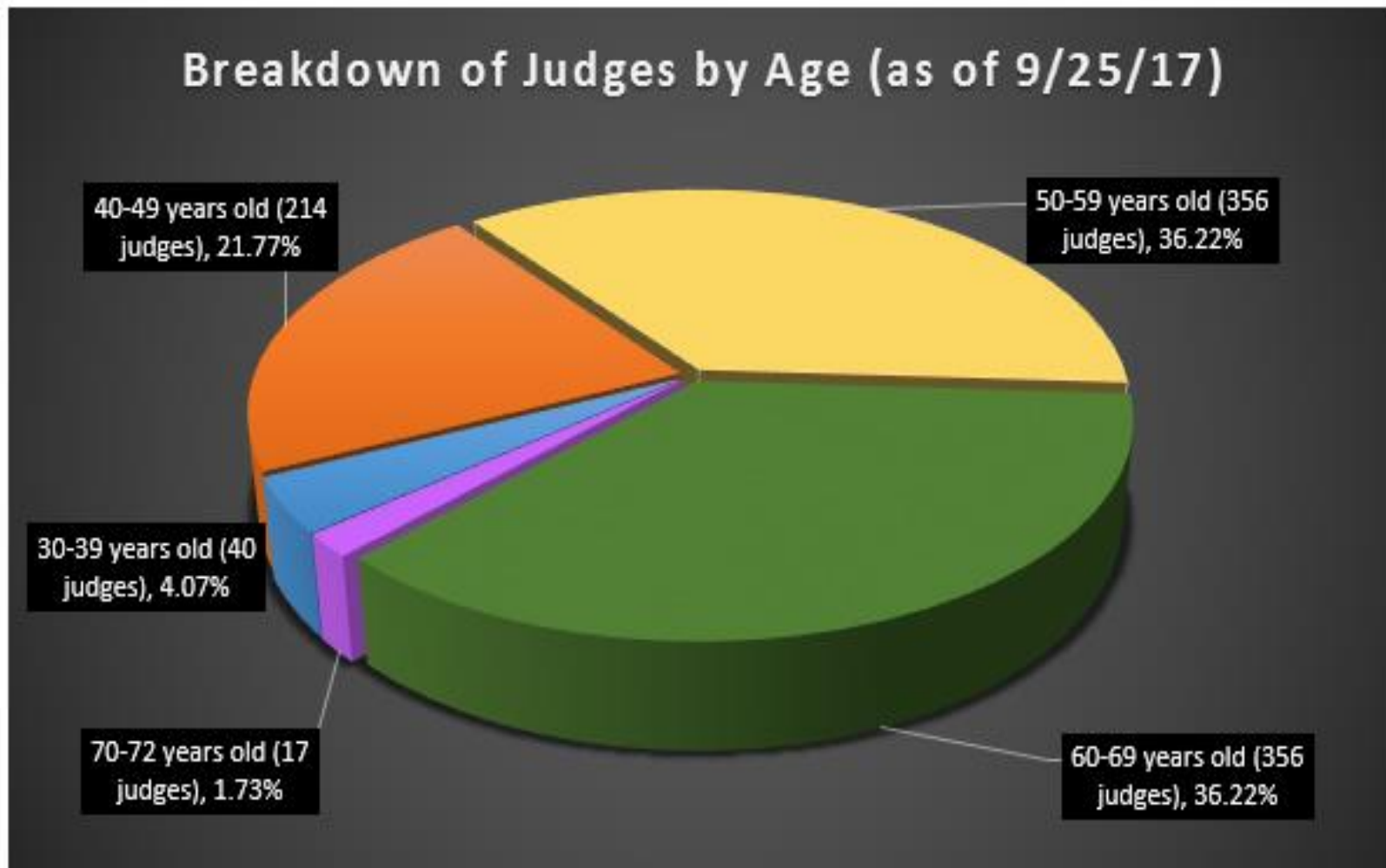
Proponent Arguments

- Retains experience and knowledge.
- Judges who are unable to perform can be removed by judicial conduct and disciplinary commissions or the voters.
- Officials in other branches and federal judges and justices have no mandatory retirement age.

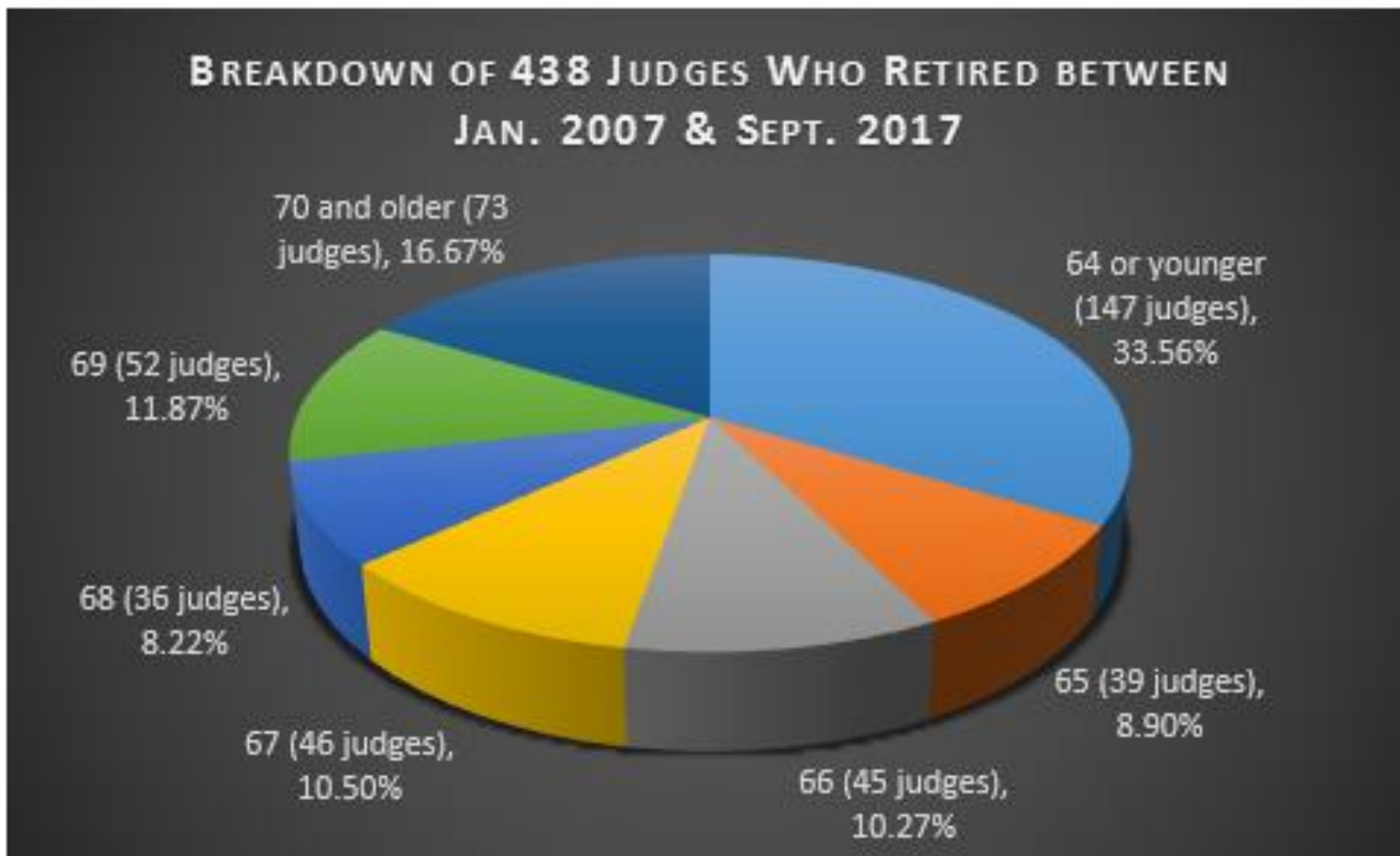
Opponent Arguments

- Injects new ideas and judges.
- Eliminates the need for the removal of older, incompetent judges.
- May avoid certain political and judicial crises that arise due to an older justice's or judge's death or health issues.
- Does not harm the judiciary.

Florida's Judiciary



Florida's Judiciary



Presentation Overview - Bar Membership Requirements

- History of the current law
- Past consideration of issue
- Laws in other jurisdictions
- Age and bar membership data

Florida Constitution - 1885

Required justices and circuit and criminal court judges to be:

- Attorneys; and
- At least 25 years of age.

Florida Constitution 1956 - 1971

Added requirements for each:

- Justice and DCA judge to be a state citizen and a Florida Bar member for 10 years. (1956)
- Circuit and criminal court judge to be a state citizen and a Florida Bar member for five years. (1966)

Florida Constitution 1972 - Present

- Must be an elector and resident of the court's territorial jurisdiction. (1972)
- Continues 10-year and five-year bar membership requirements; adds bar membership requirement for county judges. (1972)
- Increases bar membership requirement for county judges to five years subject to exceptions. (1984)

Past Consideration of Issue

- **1995 Art. V. Task Force (Ch. 94-138, L.O.F.):** Recommended that the bar membership requirements be increased from five to 10 years for both circuit and county court judges.
- **1997 CRC:**
 - Proposal 67: Implemented Task Force recommendation. Failed.

Past Consideration of Issue

- **Florida Legislature (since 2010):**
 - SJR 2696 (2010): Authorized the Legislature to amend bar membership requirements for justices and DCA and circuit judges.
 - SJR 140/HJR 47 (2011): Required circuit and county judges to be bar members for 10 years and repealed county judge exceptions.

Other Jurisdictions

- Federal law does not specify any eligibility requirements.
- Other state appellate court minimum bar membership requirements:
 - 15 states – 10 years
 - 16 states and D.C. – Five to eight years
 - 16 states – bar membership only
 - Two states – no express bar membership requirement

Other Jurisdictions

- Other state minimum bar membership requirements for some or all of lower courts:
 - Five states – at least 10 years
 - 23 states and D.C. – five to eight years
 - 21 states – bar membership only

Florida's Judiciary

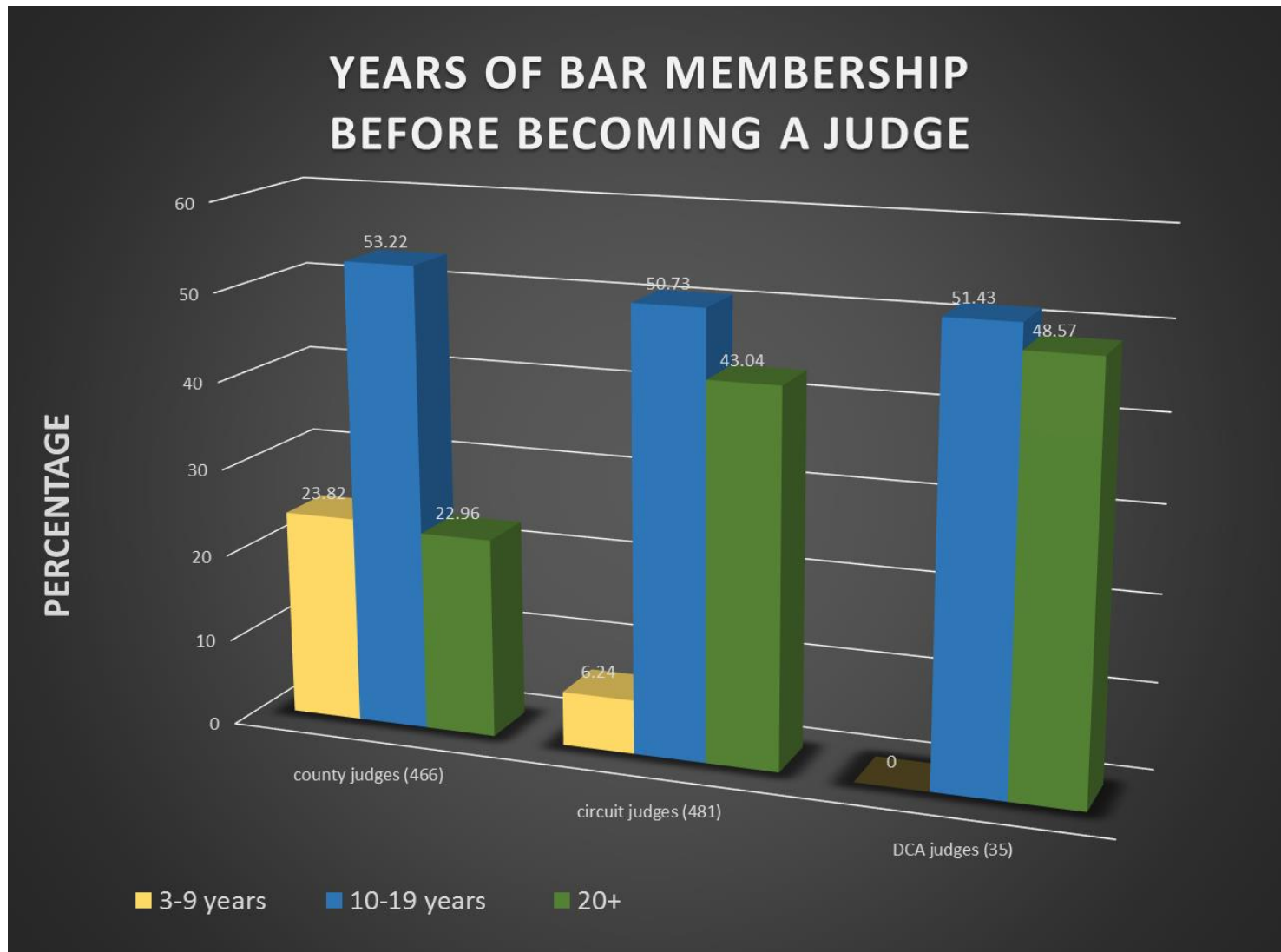
BREAKDOWN OF JUDGES BY AGE & TIER (9/25/17)



Average Years of Bar Membership Before Appointment

- County court judges: 15.3 years
- Circuit court judges: 19.1 years
- DCA judges: 20.1 years

Florida's Judiciary





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Mandatory Retirement Age/ Bar Membership Requirements for Justices and Judges

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

Oct. 3, 2017

Meeting Date

Proposal Number (if applicable)

*Topic Proposal 1 mandatory retirement and min

Amendment Barcode (if applicable)

*Name Brian Teagle

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City

State

Zip

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Office of the State Courts Administrator

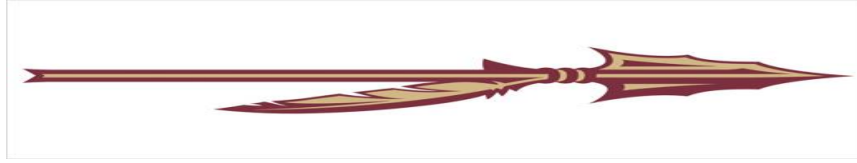
Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

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*Required



THE *CHEVRON* DOCTRINE

Presentation to the Constitutional Revision Commission Judicial
Committee



The Doctrine Described

- Applies when an agency interprets a statute it administers
- Two Step Inquiry
- Is the statute silent or ambiguous with respect to the precise question facing the agency. (If no, the court interprets the statute in accordance with its meaning on this issue)
- If yes, then the court defers to any permissible/reasonable agency interpretation



Questions Under the *Chevron* Doctrine

- How much deference should a court exhibit at step one – what counts as sufficient silence or ambiguity?
- How much deference should a court exhibit at step two – what counts as a reasonable interpretation?
- What, if any, are the exceptions to when Chevron applies?



Activism at Step One

Two Fundamental Approaches

- If a judge is able to decide what she believes is the meaning of a statute, she should vote for that meaning and not defer
- If a judge concludes that reasonable jurists could interpret a statute differently with respect to the issue facing the agency, she should find the statute silent or ambiguous and defer



Activism at Step Two

Three Fundamental Approaches

- Ad hoc determination of bounds of deference – court reverses if it finds that the interpretation falls outside the bounds allowed by the silence or ambiguity. See *AT&T v. Iowa Utilities Bd.*
- Extremely deferential – court evaluates agency interpretive choice at step two, but reverses only if it finds that the agency interpretation “fails the laugh test at the Kennedy School of Government.” See *Rust v. Sullivan*
- Reasoned Decisionmaking – court requires the agency to explain why it chose the interpretation it did. See *Verizon v. FCC*



Major Questions Exception to *Chevron*

- Chevron does not apply at all if the question of interpretation involves a fundamental issue
 - Courts have not specified what constitutes a fundamental issue
- One possible rationale is to have the legislature resolve fundamental issues
 - This makes no sense because the court is faces with a question of interpretation it must resolve, so it is the court not the legislature that resolves the fundamental question
- Another rationale is to preserve the status quo until the legislature clearly acts to change the law on a fundamental issue
 - This would lead to a court interpreting a statute in favor of status quo, or possibly even holding the statute invalid under a non-delegation doctrine

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

10/3/2017

Meeting Date

Proposal Number (if applicable)

*Topic The Chevron Doctrine

Amendment Barcode (if applicable)

*Name Mark Seidenfeld

Address _____

Phone _____

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City

State

Zip

Email _____

*Speaking: For Against Information Only

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? _____

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

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