
Committee Meeting

of

JOINT LEGISLATIVE COMMITTEE ON CONSTITUTIONAL REFORM AND CITIZENS PROPERTY TAX CONSTITUTIONAL CONVENTION

*"A presentation by the Office of Legislative Services and testimony from invited speakers
regarding the convening of a Constitutional Convention
to address the issue of property tax reform"*

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: October 19, 2006
10:00 a.m.

MEMBERS OF JOINT COMMITTEE PRESENT:

Senator Bernard F. Kenny Jr., Co-Chair
Assemblyman John J. Burzichelli, Co-Chair
Senator Fred H. Madden Jr.
Senator Leonard Lance
Assemblyman Louis M. Manzo
Assemblyman Richard A. Merkt



ALSO PRESENT:

Catherine Z. Brennan
Philip N. Liloia
*Office of the Legislative Services
Committee Aides*

Timothy P. Lydon
Linda Schwimmer
Senate Majority
Kay Walcott-Henderson
*Assembly Majority
Committee Aides*

John Hutchison
Victoria Brogan
Senate Republican
Mary C. Beaumont
Joseph Glover
*Assembly Republican
Committee Aides*

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ASSEMBLYMAN JOHN J. BURZICHELLI (Co-Chair):

Good morning and welcome.

Today's meeting will be chaired by Senator Bernard Kenny. I'm pleased to pass the gavel to the Senator.

Senator.

SENATOR BERNARD F. KENNY JR. (Co-Chair): Thank you very much, Mr. Chairman.

Today we're going to basically discuss the Joint Committee on Constitutional Reform and Citizens Property Tax Constitutional Convention, and the issues that surround that. And we have seven people, I believe, who want to testify. And the point of this is to have it explained to the public and to us -- what it would take to have a constitutional convention. We're not here to determine whether, in fact, we're going in that direction today, but we're getting to the point where decisions are going to have to be made; so that's the purpose of the hearing -- is to discuss the New Jersey Constitution and its impact on property taxes, and how we would approach that constitutional issue if we chose to do so.

So the first person to testify is Peter Kelly, who is the Principal Counsel for the Office of Legislative Services; and Gina Winters, Associate Research Analyst of OLS.

Good morning, and thank you for joining us. And you can begin your testimony when you're ready.

P E T E R J. K E L L Y: Good morning, Chairman Kenny, Chairman Burzichelli, and members of the Committee.

My name is Peter Kelly. I am an attorney with the nonpartisan Office of Legislative Services. With me this morning is Gina Winters, who

is an Associate Research Analyst with OLS. We are here this morning at the request of the Committee to talk about constitutional conventions. We have a brief presentation we will give, and then we'd be pleased to respond to any questions that the members may have.

The Joint Legislative Committee on Constitutional Reform and Citizens Property Tax Convention is one of the four Joint Committees established by Assembly Concurrent Resolution No. 3 of 2006 to make recommendations to the Legislature regarding proposals to bring about property tax reform. This Committee's specific responsibility is to review and formulate proposals that address property tax reform through amendments to the State Constitution, and to quote from ACR-3, "As well as such other proposals as the Committee deems appropriate."

The Committee is also responsible for determining whether amendments should be recommended to the Legislature for submission directly to the voters, or whether such amendments should be referred to a citizens property tax convention for the purpose of reforming the system of property taxation. In order to help establish a framework for the Committee to consider whether to recommend the holding of a constitutional convention, we're going to talk about the usual method by which the Legislature proposes constitutional amendments for voter approval; the process of convening and conducting a constitutional convention in New Jersey for the purpose of proposing amendments to the Constitution; the concept of a limited convention and the ability to restrict the convention's mandate; and some specific issues that the Committee may want to consider in regard to whether a convention should be convened.

The New Jersey Constitution describes in detail the process by which amendments to the Constitution may be proposed by the Legislature and approved by the electorate. A concurrent resolution proposing a constitutional amendment must be introduced in either House of the Legislature; following a second reading, copies are placed on the desks of the members of each House in open meeting. No action may be taken for at least 20 days. After the second reading and placement on the desks, there must be a public hearing. In order to be placed on the ballot for voter approval, a constitutional amendment has to receive a three-fifths vote in each House of the Legislature, or a majority vote in each House in each of two successive legislative years. And all this must be completed at least three months prior to the general election.

If more than one amendment is to be submitted to the people at the same general election, they must be submitted so that the people can vote separately and distinctly on each one. If a proposed amendment is approved by a majority of the voters voting thereon, it becomes part of the Constitution 30 days thereafter or on a date expressed in the amendment itself. If an amendment is rejected by the voters, neither it nor another amendment that is the same or substantially similar can be submitted to the voters before the third general election thereafter.

A notable feature of the usual method of adopting a constitutional amendment is that the Governor has no role. It is simply a process conducted by the Legislature and the electorate. It's also notable that the New Jersey Constitution, like the constitutions of eight other states, is silent on the subject of constitutional conventions. The authority

for convening and conducting a constitutional convention in these states is therefore implied.

New Jersey has had three constitutional conventions -- in 1884, in 1947, and 1966. That does not include a failed convention in the early 1940s, when the Legislature convened itself as a constitutional convention, and only to have its proposed Constitution rejected by the voters of the general election in 1944.

The New Jersey Constitution of 1776, interestingly enough, was not drafted by a convention, but by a 10-member subcommittee of the State's Revolutionary Provincial Congress, which completed its work in about eight days. And that was not submitted for voter approval, but was adopted by majority vote of the members present at a meeting of that Provincial Congress. It had the dubious distinction of being criticized in the Federalist papers, by both James Madison and Alexander Hamilton, because it failed to adequately provide for the separation of powers.

The convention of 1844 was convened to adopt the Constitution to replace the hastily written and poorly thought-out Constitution of 1776. The 1844 Constitution, substantially amended in the 1870s, lasted until the convention of 1947 drafted, and the voters approved, the current Constitution.

In 1966, a convention was convened for the limited purpose of proposing amendments to redraw legislative districts in conformity with the United States Supreme Court's one man-one vote mandate.

In general terms, the convening of a constitutional convention in New Jersey is a four-step process. The Legislature must pass and the Governor must sign a law putting a question of whether a convention

should be convened on the ballot for voter approval at a statewide election. The voters must be given the opportunity to elect delegates to the convention at either the same election or a subsequent special election. The delegates elected to the convention must convene and agree upon the proposed amendments to the Constitution or a proposed new Constitution, depending upon the terms of the enabling legislation. The proposed amendments must be placed on the ballot at a statewide election for approval or disapproval by the voters. So the process is set in motion by the people's elective representatives, but subject in the beginning and the end to the approval of the people.

It's noteworthy that the 1966 Constitutional Convention was convened without voter approval, most likely because the courts had mandated their unfair system of legislative apportionment be revised.

Statutory changes proposed by a convention: A convention has no authority to propose statutory changes unless the voters also approve, in addition to the convention legislation, a temporary constitutional amendment authorizing the convention to propose amendments to the statutes. That's because the New Jersey Constitution clearly confers the lawmaking responsibility on the Legislature and the Governor. Consequently, if the Legislature determines that it wants a convention to have the ability to propose the amendment, or repeal existing statutes, or the enactment of new statutes it must also place on the ballot for voter approval a temporary amendment to the State Constitution that confers this ability on the convention.

The idea that a State constitutional convention should propose not only amendments to the Constitution but also changes to the statutes is

unique. The only example of this that we could find was Ohio in 1802, when as part of becoming a state, Ohio convened a convention that adopted both a state constitution and state statutes.

The threshold question in regard to the holding of a constitutional convention is whether the convention is a necessary and appropriate method for addressing property tax reform, or whether this purpose would be better served by having the Legislature place specific constitutional amendments directly on the ballot for voter approval. And I think the best way to express this is by asking, what can a convention reasonably be expected to do? The two other important issues: whether the convention should be given the power to propose statutory changes, and what limits should be placed on the convention's authority; which leads us to a discussion of a limited convention.

A perennial question which seems to arise in connection with constitutional conventions is whether a convention can exceed its mandate and propose amendments beyond the scope of the issues delegated to it. There are two responses to that concern of precedented safeguards. We have already had two limited constitutional conventions in New Jersey. The 1947 convention was, by its enabling legislation, prohibited from addressing legislative apportionment. The 1966 convention was limited to addressing only the issue of apportionment. And both conventions acted within their prescribed limits. Thus, precedents suggest that convention delegates will act within the scope of their authority. In addition, legislation proposing the calling of the convention can contain provisions to ensure that the convention will not exceed its mandate, such as requiring a panel of retired judges to review a convention's proposal prior to its

placement on the ballot, and to certify the convention does not exceed its mandate. A legislation-established convention can also provide that any citizen could sue, if they believe that the convention has exceeded its mandate, to enjoin the convention's proposals from being placed on the ballot.

So a little bit about the Property Tax Convention Task Force. P.L.2004, Chapter 85, creating the Property Tax Convention Task Force, was enacted on July 7, 2004. The Task Force consisted of 15 members, including four members of the Legislature, among them Senator Lance. The Task Force was directed to consider and develop recommendations regarding the process of conducting a constitutional convention designed to change the existing property tax system. It conducted a total of 15 public hearings and working sessions, and heard from experts and members of the public. Its recommendations are summarized in its report, which is included in the binder that has been provided to Committee members and staff.

I'll try and briefly summarize its more important recommendations. The Task Force recommended that voters should vote on the question of convening a convention and the election of delegates at the same general election. In regard to delegates, the convention recommended that delegates be elected using the 40 legislative districts, and that there either be 80 elected delegates, along with 10 appointed delegates -- appointed by the Senate President, the Minority Leader of the Senate, Speaker of the Assembly, Minority Leader of the Assembly, and the Governor -- two each; or 120 elected delegates, with no appointed delegates. Elected officials should be eligible to serve, the Task Force said. And the

delegate election should be nonpartisan. The Task Force also recommended that campaign contributions to delegate candidates should be limited to \$500. The Task Force suggested the convention be strictly limited to considering and making recommendations to reform the current system of property taxation, and that certain matters, such as the thorough and efficient education clause and the affordable housing obligation, should be excluded. The Task Force also recommended the convention's proposals should be revenue neutral, that the convention should be authorized to propose full statutory changes in constitutional amendments, that a panel of three retired judges be appointed to certify the convention's proposal does not exceed its mandate, that the convention's proposal be submitted to the voters as a single package, that the convention be authorized to conduct a public education program about its proposals, and that \$3.8 million be appropriated for the convention.

So to summarize, there are two ways to amend the New Jersey Constitution: the usual way, whereby the Legislature places a proposed amendment on the ballot for voter approval, and the less usual way, under which the Legislature and the Governor enact a law to convene a convention, place the question of convening on the ballot for voter approval. The convention meets, comes up with proposed amendments which are then also submitted for voter approval at the next general election. And this committee -- conventions can be limited, and this committee has discretion to recommend whether and by what means the State Constitution ought to be amended.

Two parting thoughts: Constitutional conventions are unusual. There have only been about 15 in the United States since 1970. And the

idea of having a constitutional convention that proposes statutory changes as well as constitutional amendments is unique.

So with that, thank you, and we'll be happy to address any questions.

SENATOR KENNY: Okay.

Gina, do you have anything to add?

G I N A M A R I E W I N T E R S: No, but I'd be happy to answer any questions the Committee has.

SENATOR KENNY: Okay.

The Task Force, when it was charged with its obligations regarding a constitutional convention, did they have an opinion as to whether or not that was the way to go, as opposed to the routine way of amending the Constitution by the Legislature to the people? Did they make that threshold decision, or did they just focus on the nature of a constitutional convention?

MR. KELLY: The legislation creating the Task Force limited the Task Force to considering how a convention would be conducted if a convention were to be called. The legislation did not direct the Task Force to speak to the issue of whether or not there should, in fact, be a convention.

SENATOR KENNY: Thank you.

And the Governor, as you've pointed out, has no official role, in the traditional way, of amending the Constitution, but he does have an official role in whether or not there would be a constitutional convention, correct?

MR. KELLY: Yes, Senator, that's correct.

A constitutional amendment that the Legislature chooses to place on the ballot for voter approval is by a concurrent resolution, which does not involve the Governor. The vehicle for placing a question of convening a convention on the ballot is a bill which would have to be passed by each House by a simple majority and signed by the Governor.

SENATOR KENNY: I said that there were six or seven speakers, but I'm going to ask if any members have questions. And then after the speakers have -- the public has spoken, I'll ask any members if they have any statements that they'd like to make. But in the meantime, questions are in order.

Senator Lance.

SENATOR LANCE: Thank you, Mr. Chairman.

Good morning to you both.

I was, by my own appointment, a member of the Task Force. I dissented in part. It's my fundamental belief that any convention, to be successful, would have to address not only revenue but spending as well. And I certainly don't think that a convention should address spending line item by line item -- that's the responsibility of the Budget Committees each Spring, and the Governor through his review process of the budget document with his extraordinary power of line item veto.

I have suggested, and this is a matter of public record, that any convention that is called deal with spending as it relates to Article VIII of the New Jersey Constitution, which is the Article that deals with taxation and finance issues. In other words, I don't think a convention should discuss social issues like school prayer, abortion, stem cell research, etc., but

I do think a convention, to be successful, would have to have the ability to discuss some aspect of spending and not only revenue.

You indicated, Mr. Kelly, that usually what occurs is that there is a question on the ballot as to whether to hold a convention. Is that your testimony, through the Chairman?

MR. KELLY: That's correct, Senator.

SENATOR LANCE: However, that was not the case in 1966, was it?

MR. KELLY: No, it was not.

SENATOR LANCE: And I think the public has to be made aware fully of what has occurred over our history, Mr. Chairman.

In 1947, there was a question as to whether to call a convention, and that was done simultaneously with the election of delegates, through the Chair. Is that accurate, Mr. Kelly?

MR. KELLY: Yes, it is.

SENATOR LANCE: And so people had the opportunity, and this was in June of 1947 -- I recall from reading of this -- whether or not to call a convention. And then if the vote of the people statewide was in the affirmative, the delegates were elected the same day. If the people had determined not to call a convention, the action in electing delegates would have had no force and effect.

This was preceded in 1944 by the Legislature itself acting as a convention, and a question as to a new Constitution went to the people for their approval in the Autumn of 1944, based upon the Legislature serving as a constitutional convention. Through the Chair, is that accurate, Mr. Kelly?

MR. KELLY: Yes, it is.

SENATOR LANCE: And the people did not vote for the convention proposal on the ballot in 1944, but it largely formed the basis of what occurred in 1947.

Now, in 1966 -- and this I find extraordinary, reading history, because it seems to me to be counterintuitive -- the people were asked to elect delegates sometime in the Spring of 1966, but there was no question as to whether there should be a convention in that regard. And could you explain further that situation to the Committee, Mr. Kelly?

MR. KELLY: I think the explanation for that, Senator, is that basically the Legislature was directed by the courts to convene a constitutional convention to address the issue of legislative apportionment.

SENATOR LANCE: I think that's an overstatement. I would not say the Legislature was directed. There was a suggestion in the Supreme Court decision that this might be one way to proceed, but I would call it an overstatement to say there was a direction from the Supreme Court.

MR. KELLY: Well, yes. That may be overstepping the bounds of separation of power. But there was a court decision, I believe it was the *Jackman* decision--

SENATOR LANCE: Yes. *Jackman v. Bodine*.

MR. KELLY: --which the court indicated that the situation of legislative apportionment needed to be addressed. The court, in that decision, also directed that the delegates to the convention should be elected pursuant to the one man-one vote concept.

SENATOR LANCE: One person-one vote, yes.

And now in the modern era, what is being discussed is a convention that would have both statutory and constitutional authority, and it was I who raised this issue at the Committee that was established two years ago. And I had OLS do research on this issue, and I want to thank OLS.

And Mr. Chairman, this has occurred nowhere in the United States ever, with the possible exception of Ohio in 1802, when it was becoming a state. The constitutional conventions at the state level exclusively deal with constitutional issues. We determined, however, to be successful, it would be better procedure to allow the convention on property tax matters to have statutory power.

And this is where the plot thickens, Mr. Chairman. There was in the Assembly, a constitutional convention proposal that would have permitted the constitutional convention to convene and go through its work, before the Constitution of New Jersey is amended to permit that convention to have statutory power. Am I accurately describing the bill that was discussed in the Assembly, Mr. Kelly?

MR. KELLY: Yes, Senator.

SENATOR LANCE: And I would have litigated that issue, Mr. Chairman, to the Supreme Court if necessary. I think it is irresponsible to have an ex post facto grant of authority to consider statutory matters after a constitutional convention has already existed and put forth its recommendations, both constitutional and statutory.

And if we are to go the route of a constitutional convention -- and let me repeat, I would only favor that if it had some authority related to spending as well as revenue -- it would seem to me essential that the

parameters of the convention be delineated by the people themselves prior to the calling of that convention.

Thank you, Mr. Chairman.

SENATOR KENNY: Thank you, Senator.

Counselor, following up on the Senator's remarks, did the Task Force have an opinion as to whether the convention should have statutory power as a body?

Go ahead. (referring to PA microphone)

MS. WINTERS: A majority of the members of the Task Force did think that the convention should have statutory authority. However, there were several members of the Task Force who did not think that it should. And there was one member of the Task Force -- Professor Ernie Reock at Rutgers University -- who thought it should solely deal with changing the statutes.

SENATOR KENNY: And Senator, I think I understood your position. You favor statutory authority in this case?

SENATOR LANCE: I do, Mr. Chairman, so long as it's done by the authority of the people prior to the calling of the convention. I think that's essential. And number one, only if there is an ability to discuss spending as well as revenue. And let me repeat, not spending in all of its forms, but spending as related to Article VIII, which is that article of the Constitution that I believe is directly on point regarding the whole property tax and related issues of finance.

SENATOR KENNY: Given your expertise on this subject, is it your position that you favor statutory authority because you want to get to the spending issue? Is that the essence of your-- Because otherwise, you, as

stated very clearly -- that traditionally states only deal with constitutional issues. Is that because you want to get to the spending issue? Is that your reason?

SENATOR LANCE: Thank you, Mr. Chairman.

I think to discuss revenue and spending, it would be well to have an ability to have statutory matters discussed. And I think those who favor a convention that does not discuss spending, that only discusses revenue, are probably even greater of the opinion than I that statutory authority should be granted to the convention. Let me say, however, that to the extent that there is a discussion of statutory law at any such convention, it is, in effect, a parallel legislature for the limited purposes of the convention. And it has never been done anywhere in the United States. I reluctantly concluded that we should grant that power. I have been persuaded of that -- but I know I'm repeating myself here, but it's very important to me -- only if that authority is granted prior to the calling of the convention, number one; and number two, only if the convention has the ability to discuss spending as well as revenue matters.

SENATOR KENNY: Let me ask the Senator or the Counselor, if the convention were solely to deal with constitutional issues, is it your position that it could not deal with revenue and spending?

SENATOR LANCE: No. A convention could place in the Constitution various constitutional limits on spending, for example. And Assemblyman Merkt and I, along with Senator Allen, have suggested one way to have a constitutional provision on a spending cap. So to answer your question directly, if the convention were to include only a discussion of constitutional issues, it could discuss spending as well as revenue, so long

as it were not limited in that regard. And the proposal out of the Assembly limits any discussion of spending -- constitutional or statutory.

SENATOR KENNY: Thank you.

Are there any other questions for--

Assemblyman Manzo, then Assemblyman Merkt.

ASSEMBLYMAN MANZO: I'm just going to follow up on your point with, a minute with Senator Lance, who -- I respect his wide knowledge on the convention, the previous convention. And on this point, does it mean, Senator, that if we were to grant a convention statutory power -- or a convention was granted statutory power, that they might not need to make constitutional changes to control spending, but could recommend statutory regulations to control spending?

SENATOR LANCE: Thank you.

And through the Chairmen -- and let me say these are only my opinions and I don't have the expertise of OLS -- but my own opinion is that a convention that is granted both constitutional and statutory power could, of course, ultimately conclude only statutory requirements were necessary, or only constitutional requirements were necessary. There would be no requirement in the call of the convention that it would have to conclude one way, or the other way, or both ways.

I do think it's important that there be only a single vote on the recommendations of the convention. One vote up or down. Because otherwise I fear that the people would approve all of the matters that were easy to approve, and disapprove all of the matters that are more difficult to approve. And so, I am strongly of the belief that there ought to be a single question on the ballot once the convention has deliberated, so that the

people would have to vote it in its entirety either yes or no. And that is clearly what occurred in 1947 in a massive redrafting of our fundamental document. And there were parts of the proposal that some favored and parts that some did not favor, but the people had to vote yes or no on the new Constitution in 1947. It couldn't pick or choose from a Chinese menu. And I clearly believe that that should be what occurs this time as well.

ASSEMBLYMAN MANZO: And to Mr. Kelly, two questions.

Thank you, Senator.

If-- The concurrent proposal that was enacted by the Assembly last year and the proposal that frames what the proposed convention would be about this time -- what is the earliest possible date, that if that process came up with a solution, that the people of New Jersey could expect enactment of that solution, from the time the convention--

MR. KELLY: All the dates in the pending bill are now obsolete, because I think it was the expectation, at the beginning of this year, was that it might be on the ballot this year. So the timetable at this point would be that the earliest the question of convening a convention could occur would be on the general election ballot in 2007; the convention would meet in 2008, and its proposal would be placed on the ballot at the general election in 2008.

ASSEMBLYMAN MANZO: In other words, 2008 would be--

MR. KELLY: The year of the convention and the year-- At that general election in 2008, when the voters would be able to vote on any convention proposal -- or constitutional amendments or statutory changes proposed by the convention.

ASSEMBLYMAN MANZO: So enactment could be conceivably 2009, of what the voters--

MR. KELLY: Well, it could take-- You could provide in -- that it would take effect immediately upon voter approval. November of 2008 would be the earliest point which anything could take effect.

ASSEMBLYMAN MANZO: The other question I have, I guess is something that never happened. I just was wondering what would-- Even if this convention is framed out to tell the delegates they could discuss certain issues, if they went into other areas of the Constitution and they recommended changes and whatever, and then the people of the state approved them, even though it was limited in scope initially by the Legislature or framed out, is that, in fact -- does that then become the will? I mean, the fact that they went beyond their scope and the people voted for it? What's the safeguard here?

MR. KELLY: I don't think that that could happen here because virtually all the convention bills that are pending have a provision providing for a panel of retired judges to sort of be the gatekeepers, and to review the convention's proposal prior to its placement on the ballot to make sure that the convention has not exceeded its mandate.

ASSEMBLYMAN MANZO: But my point is, is that as I see it, they're not a court of law. And if enough delegates in the convention were to say, "We really want to change X, Y and Z outside of the scope of our convention, we recommended it, our -- the entire convention delegation voted for it," and someone decided to take that into a court of law, I assume that that's where that would be resolved, not by that Committee.

MR. KELLY: The legislation could also provide that any citizen would have standing to sue, to raise the issue that you brought up. The convention legislation could also provide that the convention proposal would not be placed on the ballot unless the panel of retired judges certified that they were within their mandate.

ASSEMBLYMAN MANZO: But if I don't find that as something that, when you go along the scope of the convention and how it's been articulated, how it would come about that that would be in good standing. I think at that point someone could take that issue to court. Because I don't see that panel, as well set up as they are, could trump the will of the people in the convention for their purpose.

MS. WINTERS: That may be-- I understand your point, but I think--

ASSEMBLYMAN MANZO: I want to see a-- In other words, I don't think it's a firewall to prevent that.

MS. WINTERS: I would just note that, historically, looking back at conventions since 1970, there have been many examples of limited conventions around the country, as well as two limited conventions here in New Jersey. And we don't have examples of conventions doing what you're describing. That doesn't guarantee that it wouldn't happen, but just looking back to 1970, to all the examples we have, it hasn't happened.

ASSEMBLYMAN MANZO: So your answer is that you have no example of a convention that went outside of its scope and how it was resolved -- how the issue became resolved? It's a question mark.

MR. KELLY: There may be one example of that in Rhode Island, in the 1970s, where -- Rhode Island is one of the states that

periodically places the question of convening of constitutional convention on the ballot -- it's every 10 or 20 years, for the voters to decide whether or not they want a convention. There was a convention in Rhode Island that may have exceeded its mandate in regard to recommending extending the terms of certain officeholders, and the mechanisms by which the Constitution would be amended. And that question went on the ballot and was approved by the -- the convention's proposal was approved by the electorate. And by the time the state Supreme Court was able to hear the matter, it basically said, "The people have spoken. The question is moot." It's a little trickier in Rhode Island, though, because it was questionable whether the provision in the Rhode Island constitution that provides for this periodic convening of a convention, gives the Legislature the authority to limit the convention -- what the convention will consider. The Legislature put limits on this constitutional convention. And arguably, the convention then exceeded those limits. But there were some issues there with respect to whether or not the Legislature in Rhode Island had the authority to limit the convention in the first place.

Anyway, when the matter got before the state Supreme Court, they said it was moot. But in New Jersey, I don't think there's any similar question, because we don't have language in our Constitution about constitutional conventions. The right to convene a convention is implied. And the right to limit the convention is also implied. We've had two limited conventions.

And I think one other factor, to add to what Gina said, is that delegates to a constitutional convention take an oath of office to act within the scope of the legislation creating the convention. So I mean, these

people are under oath to perform their duties within the parameters set by the Legislature. So I think there's a number of factors that weigh in favor of not being overly concerned about a runaway convention: that we can have the safeguard, the gatekeeper precedent in New Jersey; we've had limited conventions; the oath of the delegates; and the fact that anybody -- any citizen can be given standing to contest in court whether or not the convention has complied with its mandate.

ASSEMBLYMAN MANZO: I like what I hear, but this Committee here has the job of, if we're recommending -- if that was one of our choices, a convention -- to make sure that the areas of the Constitution that were not intended for review are protected. And I'm not certain, after hearing this, that if there were a runaway convention, or if they decided to go into areas that the scope didn't limit them to, that this would be resolved anywhere other than the court. And that's something I have a problem with. And I think that if we're going to move towards a convention at some point, that the firewalls that are put up to protect other areas of the Constitution have to be firm and sure. So if a convention were to be a runaway convention, those matters in the Constitution that we hadn't intended for reform are protected.

Thank you.

SENATOR KENNY: Thank you.

Assemblyman Merkt.

ASSEMBLYMAN MERKT: Thank you, Mr. Chairman.

A couple of questions for Mr. Kelly, if I may.

Has there ever been a judicial panel attached to any constitutional convention in New Jersey, previously?

MR. KELLY: Not in New Jersey, no.

ASSEMBLYMAN MERKT: So this would be a new idea as far as New Jersey is concerned?

MR. KELLY: Yes.

ASSEMBLYMAN MERKT: How would these judicial overseers be appointed? Would they be elected?

MR. KELLY: It depends upon which bill you're talking about. I believe the Speaker's bill may provide that they would be appointed by the chief justice. There are other bills that provide -- they would be appointed by the Governor, or by the Governor and legislative leadership.

ASSEMBLYMAN MERKT: My question for you is, in the normal constitutional convention setting, is there any role for the Governor or for the Chief Justice of the Supreme Court of New Jersey?

MR. KELLY: No. But in this case, they would only be making the appointments of the retired judges to this panel.

ASSEMBLYMAN MERKT: I understand that. But they would, in effect, have the ability to act as gatekeepers or overseers, if you will, for convention delegates elected by the people of New Jersey. Correct?

MR. KELLY: Only in the sense if they were appointing the individuals to this panel.

ASSEMBLYMAN MERKT: I have to tell you, that entire concept appalls me. I mean, the idea that the Judiciary would, in effect, have the dead hand over elected representatives of the people in a convention setting is offensive to me.

MR. KELLY: Okay. But it is only in the limited sense of determining whether or not the convention's acted within the parameters established for it.

ASSEMBLYMAN MERKT: That's absolute control, as a practical matter. I mean, because the court decides what the law is. And so this panel could basically bootstrap itself into really completely controlling what the convention is able to come out with. And I find that unacceptable.

Let me go on to a second question, if I may. We were talking before, Senator Lance was discussing it and the Chairman was discussing, the idea that there could be statutory actions taken by a convention. Would those statutory actions be subject to confirmation by the people in an election, or would they stand on their own?

MS. WINTERS: My understanding is they would be put on the ballot for the people's approval, along with any constitutional amendments proposed by the constitutional convention.

ASSEMBLYMAN MERKT: Okay. So then it's not true legislation as such, in the sense that we can pass legislation and it does not go to the people for confirmation and ratification. Correct?

MR. KELLY: It wouldn't be the usual mechanism for enacting a law. But if you temporarily amend the Constitution to authorize this method of lawmaking, yes, you could do it.

ASSEMBLYMAN MERKT: We could do what?

MR. KELLY: You could provide that the convention would propose statutory changes which would be placed on the ballot as part of the convention's proposal for approval by the electorate.

ASSEMBLYMAN MERKT: Okay. Going back to the law that was -- of the bill that was passed by the Assembly, did that provide for that?

MR. KELLY: I believe it did. I have the current bill, which I think was based on that prior bill. Yes.

ASSEMBLYMAN MERKT: Okay. I find some comfort in that, because I do believe that the people should have a chance to take a look not only at any constitutional changes that are proposed, but also at any statutory changes that are proposed by a convention.

I have to say that I share Senator Lance's concern that if we do decide to hold a convention, be it limited or not, spending certainly should be an issue that really has to be discussed. I mean, if we're going to be serious about property taxes, it seems to me that we'd have to look at all aspects of the problems, and spending is certainly one of those. But the larger issue that's troubling me -- and I have to share this with you and with my colleagues -- is, I don't like the idea of creating a parallel legislature. I think that is utterly illogical in a state where all of us -- at least at the lower House -- have to go to the people for election every two years. There are legislative elections in New Jersey every two years. That is the appropriate constitutional remedy for us not doing our job. If the people don't like what we do, if they find what we do is inadequate, they have the right to throw us the hell out. That's the right thing to do, not to set up a parallel government, which is what we're talking about, to do the job that we're paid to do.

And so, I'm willing to listen and I'm happy to listen, but I am deeply troubled at the concept that somehow, because the Legislature doesn't do things that are satisfactory to the people of New Jersey, that we

have to set up, in effect, a new government to do the job for us. I just really find that troubling.

Mr. Chairman, thank you.

SENATOR KENNY: Thank you.

I know Senator Lance has a point, but Senator Madden, you haven't spoken yet. Would you like to say a few words?

SENATOR MADDEN: Thank you, Chairman.

Sir, could you explain to the Committee the purpose of the panel of judges that would be assigned at a Constitution (*sic*), the appointed judges.

MR. KELLY: Yes.

If I could, just to respond briefly to Assemblyman Merkt. We are the nonpartisan staff, and we're not here this morning to advocate for or against a convention, but just to try and help inform the Committee on these issues.

In regard to the panel of judges, the legislation provides that three retired judges or justices would be appointed to a panel, and their job would be to act as gatekeepers to ensure that the convention's proposal, which would be placed on the ballot for voter approval, does not exceed the authority delegated to the convention and the legislation establishing the convention. I think there are other versions of that in different bills that provide that they would act as advisors during the course of the convention. But I think Assemblyman Roberts' bill has them acting solely as gatekeepers.

SENATOR MADDEN: The bill that came out of the Assembly -- I'll call it the leading bill on the Constitution, just kind of identifying it --

it would be that panel of judges that would not have any influence over the delegates. It would be basically there for legal reference in terms of making sure that they were constitutionally sound -- the recommendations that were being put forth -- and that they also fell within the parameters of the scope of which the Constitution was to be carried out.

MR. KELLY: That's correct.

SENATOR MADDEN: Okay. I just wanted to clarify that regarding the judges and over insight.

The other point is, I would -- since everybody seems to be going on record here about their position for the convention, or no convention, I would simply say this: I'm probably the junior legislator sitting on this panel, and I still feel as though I speak for real people, even though I guess everybody feels they represent their people. I heard Assemblyman Merkt saying, hey, every two years I go and get elected, or we all at some point have our name on the ballot to be elected. The reality of it is, is that that always just simply doesn't work and for whatever number of reasons. There are many people sitting in safe legislative districts that almost have no race when they run. And in my race in 2003, an argument could be made that the lion's share of all the financial support statewide went to arguably about six or seven different districts, which arguably you could look at it the opposite way -- there's 30-plus legislators that could be considered almost in a safe district.

The nonresponsiveness of the State Legislature over a long period of time has lent to the people's frustrations to be where they are now. Property taxes are literally through the roof. There's a lot of different positions on how to address this, but there's never a consensus. And there

are those of us who believe that as a Plan *B* -- and I will say what we are looking at right now, our participation in these Committees, is what I would call Plan *A*. We are simply doing what we were elected to do: to sit in a panel, take hearings; and Lord willing, that we will have something on November the 14th -- it will be a true reform measure to put before the people.

With that being said, if we fail in what we are doing here, I believe the people of New Jersey need to have that Plan *B* still out there, so that if we don't get done what we are expected to do here, that the people then will be given the opportunity to speak and to do what we -- almost take a shot at doing what we may not be able to pull off. And quite honestly, I don't like the idea of having a convention, personally; but the reality of it is, having walked the district, knocked on doors, listening to real people, and just all the stories, and the longevity of nothing really being done, there needs to be some push for significant financial changes in terms of real estate taxes.

And that being said, I would like to just be on record that I believe in the Constitution (*sic*), I believe in it as a Plan *B* for tax reform. And it's my hope that between now and November the 15th we make some significant proposals on meaningful reform.

Thank you, Chairman.

SENATOR KENNY: Thank you, Senator Madden.

Senator Lance.

SENATOR LANCE: Thank you, Mr. Chairman.

On several of the points raised by Assemblyman -- various members of the Assembly, all of which I think were excellent points -- to

Assemblyman Manzo and Assemblyman Merkt, the Task Force certainly did consider the problem of a runaway convention. And it would be ridiculous not to consider it. I think it would be irresponsible.

And as a matter of the history of this country, the Constitution of the United States was a runaway convention. (laughter)

ASSEMBLYMAN MERKT: And a good one.

SENATOR LANCE: And those who do not wish to discuss this as in its entirety, do not serve the people well. In 1787, there was an attempt to amend the Articles of Confederation. And in secret, those at that convention threw out the Articles of Confederation and established the Constitution of the United States. So I think it is essential to have a full discussion of the possibility of a runaway convention.

The Task Force concluded -- and I agreed with this -- that we could to the best of our ability to prohibit a runaway convention, and we had suggested the judicial panel. I'm not wedded to that. Perhaps there should be a Supreme Court review early, or perhaps a Supreme Court review after the people vote. I'm not wedded to the judicial panel. But that was an attempt by the Task Force to address the issue. And then I think this is important to the history of the State. In 1966, the limited convention on the apportionment of the Legislature dealt exclusively with that issue in good faith, and was in no way a runaway convention.

And the even greater precedent is 1947, where the delegates could discuss any issue whatever except the apportionment of the State Senate, which was one senator for each of the 21 counties. And even though that convention was by and large -- based upon one person-one vote -- in 1947, there were 81 members -- it was mostly based upon population,

although not exclusively. The convention held true to its massive but not unlimited mandate. So that is the history of this State, and I think that history would be preserved. The Task Force did its best as to how to ensure that, with the panel of judges; and I think those of us who served on the Task Force and others in the Legislature would be open to other ideas in that regard, number one.

Number two, on your extremely valid point that this wouldn't bring about property tax reform and property tax relief, Assemblyman Manzo, in 2009, you're absolutely right. The reason that is so is that, in order to have statutory power, we would have to go to the people to amend the Constitution at a general election. If the convention were to have only constitutional power, we could do it next Spring. It could be accelerated by a year, and perhaps that's a possibility. And that is because we wouldn't have to amend the Constitution in order for the convention to have statutory power. It's very confusing, but that is why it takes yet an additional year.

And finally, let me reiterate, there is nothing that prohibits us as the Legislature of New Jersey to serve as a constitutional convention. And this has not been discussed in detail, Mr. Chairman, but this is precisely what occurred in 1944. The Legislature became the constitutional convention in and of itself, and tried to rewrite our fundamental document.

Thank you.

SENATOR KENNY: Thank you.

Any more questions for Mr. Kelly or Ms. Winters? (no response)

Just on a point that Senator Madden made: I have opinions about the constitutional convention, which I have shared privately in caucus, but I'm open to all possibilities. And I haven't gone on the record being for or against. I think as Chairman, I don't think that's appropriate for me. So I'm open-minded, however, but I share many of the concerns. And also, I understand many of the reasons to move forward with the convention if we can't succeed. But I have not gone on the record.

But thank you. Your testimony was excellent, very helpful -- a complex issue.

ASSEMBLYMAN BURZICHELLI: Very good.

SENATOR KENNY: And you did a wonderful job, both of you.

Thank you.

MR. KELLY: Thank you, Mr. Chairman.

MS. WINTERS: Thank you.

SENATOR KENNY: Normally, I would defer to our former Senate colleague to be the next speaker, but I've been asked to bring up Joyce Powell of the NJEA, because she has a meeting with the Governor's Office.

And Senator, would you defer to that? (nods in audience)

Thank you.

Ms. Powell.

Just for the record, state your name and who you represent.

J O Y C E P O W E L L: I thought I was trying to turn this thing on--

SENATOR KENNY: I'm sorry.

MS. POWELL: --but I don't know that it--

SENATOR KENNY: There you go.

MS. POWELL: Now it's on. Okay, thank you.

Good morning, Senator Kenny, Assemblyman Burzichelli, and members of the Committee.

I'm Joyce Powell. I'm the President of the New Jersey Education Association. I represent 196,000 school employees who serve over 1.4 million children in the State of New Jersey. And certainly I appreciate the opportunity to be here this morning and to offer testimony.

I think that you know that NJEA has long believed that the Legislature is the most appropriate body to deal with issues that address property tax reform, because we believe that you have the resources, you have the authority, and the experience to successfully reform our current system. And we believe that it is your job to do so. And we understand that New Jersey is over-reliant on property taxes to fund public education, and that taxpayers, including our members, need reform now, not in the future -- that they need that immediately, and it should be done in the right way. And that meaningful action by the Legislature will result -- and will help to resolve this problem sooner than a constitutional convention, which as we heard earlier would not be able to provide relief until 2008 or 2009. and we are concerned that a Constitution (*sic*), I think as has also been addressed here, would have some unintended consequences.

Yesterday, we were informed through a letter to the *Asbury Park Press*, by former Senator Bill Schluter, that "the details of tax rates and tax coverage can be put into a law, while guaranteed property tax reduction can be put into the Constitution," and that he believes that "this would provide a balance between flexibility and permanence."

The operative word here, though, is the word *can*. Citizens participating in a constitutional convention could do many things. There would be no requirement that they would have a mastery of taxation and public policy, and they probably would not have those issues at hand. They would not be accountable to the voters in our state, and they would not have to face the consequences of their actions. And there's nothing to prevent them from making some of the same mistakes that we have seen made in other states, such as California, Oregon, Massachusetts, and Arizona.

If the delegates choose to write tax policy, if they chose to do that, what would stop them? Certainly, we understand that these tax policies could affect other taxes than our school taxes -- other municipal taxes, other municipal spending, the taxes also on our county taxes, as well as fire and police taxes that also are into play. So this would not only affect the school tax issue should a constitutional convention be held.

We also know that former State Treasurer Richard Leone warned the Property Tax Task Force of the perils of writing tax policy into the Constitution. And he again pointed to mistakes that were made in those states that I mentioned -- of California, Oregon, and Arizona. After California passed Proposition 13, its public schools went from being the number one and number two or three -- third school in educational achievements, to being 48th, 49th, and 50th in our United States.

Mr. Schluter also contends that voters could decide not to approve the recommendations of the constitutional convention at the next general election. However, if the voters are given the choice between bad tax reform or no tax reform, what choice will voters really have?

The good news that we have is that New Jersey should never have to face the uncertainties of a constitutional convention, since there's nothing in the Constitution which precludes legislators from tackling the issue. New Jersey needs property tax reform now, but not at the expense of our public schools. In the name of reform, we cannot jeopardize our achievements and the progress that our schools continue to make.

There are measures that the Legislature could take right now that would provide property tax reform without penalizing our public schools. And again, I would reiterate that I believe, and we believe, that all taxes would be up for subject of reform -- not just our school taxes -- which we believe would have unintended consequences to our citizens of New Jersey.

For example, we believe that the State share of funding for our public schools should be greater. As of 2003-2004, which is the last year that we have comparative numbers, New Jersey ranked 43rd in the nation in the percentage of school revenue paid by the State, at only 38 percent, compared to 48 percent nationally. In fact, we know that the school funding formula, which is also under review -- it really doesn't matter again what school funding formula is put into place. What matters is how the Legislature determines to fund that, at what percentage. If this had been funded at 50 percent, the property taxes would not have been increasing at the rate that they have been increasing. So it really has been a funding problem, we believe, from the State.

We also think that we can increase the State share through tax reform. And there are already tax reform plans the Legislature should consider. We believe that the SMART Bill, though it is not absolutely

perfect, represents the kind of tax reform that would shift the burden from property taxes to income taxes for school funding. And we believe that that is a much fairer form of taxation.

We also believe that the Legislature should explore changes to the sales tax to meet the needs of today's economy. Forty years ago, when we passed the sales tax, New Jersey was primarily a manufacturing economy. Today, New Jersey is primarily a service economy. There may be services that should be eligible for the sales tax. And again, I would urge this Committee to study that possibility.

In addition, the Federal Government needs to fully fund its obligations and promised commitments, such as the No Child Left Behind Act and the Individuals With Disabilities Education Act. As of 2006, the estimated shortfall for New Jersey, between what the laws authorize and what the government has budgeted, is \$572.3 million for No Child Left Behind, and \$359.5 million for Individuals With Disabilities Education Act. Again, currently, New Jersey ranks last -- last -- in the nation in the amount of money that we receive from the Federal Government for K-12 education. That is simply intolerable and should be unacceptable by every member of the Legislature. These unfunded mandates burden our schools and our communities with requirements without providing the resources that they need to be successful.

Any discussion of property tax reform cannot focus exclusively on cost containment. Maintaining educational quality must be a major component of your deliberations and recommendations for reform. One thing that I would like to clarify in particular is accusations about runaway school funding. They are completely unfounded. New Jersey's average

annual increase in per-pupil spending between 1997 and 2002 was 5.03 percent, while the national average is 5 percent. So we do not have the runaway spending that has been touted about.

Again, New Jersey needs property tax reform now. A constitutional convention will delay reform for years, while potentially jeopardizing the excellent education system in New Jersey -- one that we have worked so very hard to build, and of which I believe we are all so very proud of. I urge you to tackle the tax reform through legislation like the SMART Bill, modifications to the sales tax, and income tax reform so that we can continue to build and maintain our great public schools, while addressing the reduction of our property taxes.

I thank you for your very kind attention, for allowing me to go up on the list here.

SENATOR KENNY: You're welcome.

I don't think there are any questions, so we'll move forward.

Thank you very much for your testimony.

Senator William Schluter.

Good morning, Senator.

SENATOR SCHLUTER: Thank you, Mr. Chairman.

SENATOR KENNY: And just for the record, just identify yourself. We all know who you are, but--

S E N A T O R W I L L I A M E . S C H L U T E R: Yes. Bill Schluter, former Senator.

I am Co-Chair of Citizens for the Public Good, which is one of the participants in the Citizens Convention Coalition, which includes the

League of Municipalities, AARP, New Jersey Future, League of Women Voters, Black Minister's Council, and several others.

I would, before I start, like to do something that I've never done publicly before, and that's correct my good friend Senator Lance, because he is an authority on so many things. But, Senator Lance, you could not have a convention meet in 2007 to work on this issue, because it has to be approved by the people and it has to be approved at a general election. And you have to pass the legislation 70 days before the general election. So with that caveat, I will start off.

There is no better authority on this issue than the one you just heard from, and that is Peter Kelly. He helped in starting, in 1999, in drafting the bill. And he is a wonderful talent and wonderful authority on all of these issues -- many of which we discussed and we resolved with Professor Williams and Professor Tarr of Rutgers, in Camden.

Now, the Citizens Convention Committee, of which I am a member -- and you'll hear more of that from a subsequent speaker -- has a position statement, and that's in my testimony that I presented to you. And we have a number of standards there with respect to property tax reform -- must be fair, it must be a substantial reduction, and it must be sustainable.

All of us in this Coalition reflect exactly what Senator Madden said. And that is, we want the Legislature to do it. But if the Legislature doesn't do it, you've got to have Plan B, and that is the convention, and it's got to be substantial. So I would associate myself with his remarks.

Now, much has been said about a key feature in this legislation, and that is the ability to address statute. This was in the original bill when

it was introduced in 2000. And incidentally, then-Assemblyman Lance sponsored that bill in the Assembly, and it was there. And as he has pointed out, in the Task Force that met, one of the members -- Ernie Reock -- said that he thought that the convention should only do statute. And there is good reason for this. This is to give balance to any recommendations.

Now, the NJEA, which you just heard from, in its original testimony said, do not constitutionalize tax reform. And I agree with them. And they pointed to California, as did former Treasurer Dick Leone. And California is a disaster with respect to its education system and its taxation system. But they did it through constitutional change, not a combination of constitutional and statutory change. There are no overrides to Proposition 13. And this has caused the terrible problem which they have out there.

Now, this matter of being able to address statute is so important that I think there are members of this Coalition who would drop out if a convention was not allowed to do statute as well as constitutional issues. And incidentally, with respect to the implementation of statute, it's clear that once a convention makes its recommendation and the public approves it, that statute would be the same as any other statute. The Legislature could amend it, could change it, could refine it after that. You would have no premise as being untouchable for six months or anything else, as that is written right now.

Now, one very, very important advantage that a convention has, as Senator Lance has indicated, is the fact is you can put the question to the people in a single up or down vote. You have the bitter with the

sweet. You have all of the good elements with all of the more undesirable elements. And you look at the SLERP Commission report, which came out in 1988, and the Cahill Commission report -- they were a series of a number of individual initiatives. And in the SLERP Commission report, perhaps half of them have been approved, but half of them have not. And that's where the failure comes about.

Now, will the delegates to a convention be captives of special interest? We've heard this from members of the education community who say that the business community will take over the convention. We've heard it from the business community who say that the education people will take over the convention. I think the legislation and the work of the Task Force indicates very, very clearly that this will not be the case.

Let me explain how delegates are elected. Delegates cannot run on a partisan basis; they cannot be slated. They have their position on the ballot -- changes with every district, so they do not get-- It's ballot neutral with respect to their position. And in the bill that was advanced by the Assembly, the maximum campaign contribution is \$250, not the 500 as the Task Force recommended, from individuals. So the ability to influence them is, I think, a very, very remote possibility.

There will be 10 at-large delegates to be sure that there is diversity. The legislation which was advanced in the Assembly would not, in my opinion, have received the support of AARP if it allowed legislators to be delegates. So legislators are excluded from being delegates. And one of the reasons was that AARP reasoned that legislators have such great name identification in their districts that it might be a legislative dominated convention.

Now, I think that was a little bit severe, and I recommend -- and I recommend to you, if you're going to advance any kind of recommendation on a convention -- that there be legislators allowed to be convention delegates -- but appointed legislators, in the sense of maybe two legislators from each caucus, making a total of eight, who are appointed. You would avoid the problem of legislators running on a ballot and dominating that ballot, but you would get the legislative experience and abilities at play in a convention, and I think that is a very desirable thing to do.

The other important feature in this legislation which did not come about from the Task Force, but came about from Assemblyman Roberts' amendment, was the matter of sustainability. If you read the Task Force report, and read the dissent, or the comments -- they weren't really a dissent -- comments by Senator Lance. He said, what is in the legislation to be sure that any property tax reductions are sustained over time? Will this be like the sales tax, the income tax, and so on? He's absolutely correct. So legislation was put into the bill which would encourage the delegates to do everything possible to sustain a property tax reduction. And there are a number of examples of what they could do: They could limit property taxes to a certain percent of all State and local revenue, as the Cahill Commission recommended. They could have an income tax circuit breaker. They could limit any future increases to the increase in the Consumer Price Index. They could establish a Homestead Rebate. They could establish a rainy day fund. And I'm saying they can do this both constitutionally and with statute.

If, for example, you have a Homestead exemption of \$150,000 -- I'm not recommending it -- but if you did, maybe you might want to have that in the Constitution to show that there is a guarantee of some reduction, but it could be overridden by a super majority of the Legislature. And you can do that with this process. You could do it, of course, with the Legislature, if you will. So sustainability is in the present legislation, and it's a very important concept, and I think there is the mechanism to carry it out.

There was a lot said before about a judicial gatekeeper panel. And this came about through discussions as far as being sure that the convention would not be runaway, that the agenda could be limited. And it was thought at the time that three people with judicial experience who know law and know the Constitution would be the best people to pick. Now, if people have got a thing against judges, you can pick three retired animal control officers and put them in as gatekeepers. (laughter) But the point is, this is another way to protect against this runaway situation. And it was put in fairly early in the whole process.

Keep in mind, as some people, including Assemblyman Manzo, have said, that the property tax reform should be aimed at owner-occupied residences. That's where the pain is, as well as people who rent. People who have second homes, the commercial property tax base, are not as -- there is not as great a pain. I would recommend again, as I said back in September, that you keep the Uniformity Clause on the table.

Now, this does not mean -- and these remarks are directed to my friend Arty Maurice -- this does not mean that you're going to increase commercial or industrial rateables. But if they're kept the same, that

doesn't change the situation, and if you can reduce property taxes on residences.

The spending side of the ledger is a big issue. And what you're doing now and what the other three task forces are doing is addressing the spending side. I wish you well. I hope you can make a lot of reductions. I hope they are quantifiable to tell you how much property taxes will be reduced. But I don't see it really coming forth with the amount of reduction that is going to really give the people who are feeling the pain enough of a break in their property taxes.

I've got here the quote from Governor Corzine on the 28th of July, when he had the Joint Session. He said, "We are kidding ourselves if we pretend we can fundamentally alter the property tax equation entirely on the spending side." I agree with that.

One of the reasons that spending was shied away from in the initial legislation was another feature which hasn't been talked about here. And that is that the property tax convention legislation has to be approved by the voters before it can become a convention. If you say that, for example, if you say the thorough and efficient, the *Abbott* decision, is in the mix, this is going to change the dynamics of the referendum to approve a property tax convention. And there are a lot of people who think that that might even kill the whole enterprise before it gets started. So you have to be very, very careful when you open the floodgates for all sorts of spending issues.

If, in the wisdom of this group and others, the Legislature-- And if it goes to a convention, if you can limit spending issues to discrete, definable, quantifiable things such as, for example, public employee

pensions, prospectively, then let the convention do it. Because your task forces can't do it, that could be done. And you could do that with other things. But I would suggest, as Senator Lance has said, they have to be, I think, specific and they can't be general, open-ended things which would bring a convention to its knees.

You're going to hear testimony and you're going to hear -- and we hear a lot about the government spends too much, all we have to do is cut down on spending and we're going to solve the property tax problem. I don't think that's possible. Governor Corzine doesn't think that's possible. I think you, with your knowledge of budgets and everything else, really don't think that is possible.

There are five things, in conclusion, that are a paradigm, in my opinion, of a good state tax system; and I bring these to your attention, because this is really the issue is: Four of these were in *The Star-Ledger* last week, in terms of Massachusetts, Delaware, Pennsylvania, and New York as examples, and their whole tax system was spelled out. And you saw that property taxes were a lower share of the total state and local revenues. Income taxes were higher. In one state, all taxes were higher. It showed how those states operate with a lot better balance in how they raise the revenues. And I would recommend that you look at those four states very carefully. They're doing it. Why can't New Jersey do it?

The fifth is the Manzo bill, in my opinion. There is an honest attempt to approach property tax in New Jersey in the right way, where you have to shift the revenue. I don't agree with everything with the Manzo bill. I think it doesn't do enough. Its original version was a lot better, where there was about \$5.5 billion in property taxes-- But I have to give

him credit for being honest and addressing the issue, not solely between -- by savings, but by a shift in revenue.

So these are the different things that are before you. The issue comes down to, maybe, not what has to be done, but how to do it. And again, I think that ultimately the convention is going to be the “how” in doing it, because I don’t know that the Legislature is going to tackle the problem with enough quantifiable savings and reductions in property tax to meet the public’s need.

Thank you very much.

I’m sorry if I went too long on you.

SENATOR KENNY: No, that was fine.

Senator Lance.

Thank you, Senator.

SENATOR LANCE: Is your mike on, Bill? (referring to PA microphone)

Thank you.

There is nobody in New Jersey here that knows more about this issue than Senator Schluter, and I’m pleased that you have permitted him to speak with us today.

On the issue he raised concerning whether we could call a convention a year early if it didn’t deal with statutory matters. The Senator, indeed, may be correct on that, but I am not as convinced that it’s an open-and-closed question, Mr. Chairman. And that is because the Constitution says that public questions have to be determined at a general election. And if the calling of a convention is a public question, then, indeed, the Senator is accurate and it would probably be better procedure,

constitutionally, to have a convention call being considered a public question. However, quite deliberately in 1947, the framers did not place in our Constitution a method for a further convention. And therefore, there are some who believe that if there were an election in the Spring for the call of a convention, with the election of delegates, the work could occur next year. And indeed, the only precedent is 1966, when there was no question to the people regarding whether or not we should have a convention. It's a very arcane point, and the Senator may very well be right. But it is not too clear to me constitutionally whether the call of a convention is a public question, in the way that meat-and-potato public questions exist on the ballot each and every year. I think better practice may be, as the Senator suggests -- which would delay it yet another year. But I would rely on constitutional experts, and I don't think it's precisely clear.

Thank you.

ASSEMBLYMAN MERKT: Mr. Chairman?

SENATOR KENNY: Yes, Assemblyman.

ASSEMBLYMAN MERKT: Thank you, Mr. Chairman.

Senator, it's nice to see you again.

You mentioned during your testimony that perhaps certain discrete items relating to spending might be included in the purview of a limited convention. I think you specifically mentioned the idea of public employee pensions as being one possible topic. Would public employee health benefits, the cost of those, be another possible topic?

SENATOR SCHLUTER: Assemblyman, I used that as an example. You could have many, you could have more. Certain judgments went into the formulation of these four task forces, and it was determined

that one task force would deal with consolidation and shared services and regionalization, one dealt with the public employee benefits, one dealt with the school funding. Those are-- Yes, you could. But you have to-- If you're going to have a convention, you have to realize that you don't want to have the thing open to so many disparate considerations that it loses its effect.

ASSEMBLYMAN MERKT: As a follow-up to that, you were involved in the -- I think it was called the People's Assembly or--

SENATOR SCHLUTER: The Citizens Tax Assembly.

ASSEMBLYMAN MERKT: The Citizens Tax Assembly. When the Citizens Tax Assembly operated, did they limit the discussion to just revenues, or did they also consider possible spending reductions?

SENATOR SCHLUTER: The Citizens Tax Assembly was a two-day affair, in Trenton, where we had 100 delegates selected at random from across the state, representing all groups and interests and demographics. And they came in and they made some general statements about what they thought was fair. And they thought that it was reasonable to change the property tax to a more equitable ability to pay tax. They recommended that this not be done on the backs of education. They recommended that it not hurt our economic engine.

What, specifically, again--

ASSEMBLYMAN MERKT: The question I have is, didn't they also talk about potential spending reductions as another avenue?

SENATOR SCHLUTER: Spending reductions: They said, generally speaking, that there should not be, but there was a lot of comment in those groups. And I know Mr. Meyerle and Mr. Passanante were

delegates -- you might ask them -- to that convention. I think that it was not a recommendation that the convention do spending, but they said spending is a major consideration that has to be looked at.

ASSEMBLYMAN MERKT: Okay. I appreciate your comment on that, because I just wanted to mention the fact that it's been posited that discussing spending reductions would be divisive. And I don't really see that. To me, it seems to be an indispensable part of the overall discussion that needs to be held.

One last comment, if I may. You talk about the financial limitations that would be placed upon candidates for delegate to the special convention, to the limited convention. I agree with you that those limitations would probably handle, to some extent, the financial side of the equation. But as you know, boots-on-the-ground organization matters tremendously in terms of the outcome of elections. And it seems to me that it would be -- no disrespect intended -- naïve to believe that special interests would not organize, and organize seriously, to make sure that their special interests were, as they see it, properly represented in the constitutional convention. So I think the idea that this is going to be somehow a truly open process and that the people of New Jersey are just going to go out and choose this alternative group to represent them, I believe that understates the difficulty of the question politically. I really believe that it's more likely that the usual suspects will show up en masse by virtue of mobilizing their organization. So if they can't do it in money, they'll do it organization.

SENATOR SCHLUTER: In answer to that, Assemblyman, there's nothing -- and the law would not prohibit a Steve Forbes from

spending millions to become-- You cannot restrict expenditures. We restricted on the contribution side.

You have to, I think, have some faith in the good judgment of the people and the good judgments of the media to direct people's attention to good, qualified people. And then you have to -- with no disrespect to everybody up here -- you have to have the understanding of the people. Would they feel better with elected delegates and an opportunity to elect those delegates? Or would their present legislators, who come to Trenton and have to worry about reelection and have to worry about where they get their reelections funds-- And I think it's a lot-- I would stick with the people of New Jersey and say that they have a good shot at it.

SENATOR KENNY: I--

ASSEMBLYMAN MERKT: Well, Senator, I would just--

SENATOR KENNY: I'm sorry. I've just been informed that the Assembly Appropriations Committee is meeting here at 12:00.

ASSEMBLYMAN MERKT: Okay.

SENATOR KENNY: So we really need to move along, because I have a few more people to testify.

ASSEMBLYMAN MERKT: That's fine, Mr. Chairman.

SENATOR KENNY: Okay. Thank you.

Thank you, Senator.

SENATOR SCHLUTER: Thank you, members.

SENATOR KENNY: Arthur Maurice, from NJBIA.

We have four other people on this list -- three others, after Arthur. So--

ARTHUR J. MAURICE: I will move this right along. Thank you.

SENATOR KENNY: Because we need to make this room available within 20 to 25 minutes.

MR. MAURICE: Thank you.

On behalf of the New Jersey Business & Industry Association, we urge you to reject any call for a citizens constitutional convention. Some folks have a romantic notion that a convention will be a citizen-run, town-hall type of meeting. We do not. We believe that it will be a special interest event dominated by those who rely on public spending who will work hard to elect those delegates in a very political process.

Why do I think that? Let's look at the leading legislation that came out of the Assembly: One, delegates would be elected at the April School Board election, when very few people vote. Second, an earlier version of that legislation said that public employees serving as delegates would be paid full salary and benefits for the time they spend at the convention. No citizens, and certainly no employers, could ever receive that type of benefit. And furthermore, the convention itself is a three-month, shortened time frame. That speaks at me to a full time -- a convention -- a full time requirement of the delegates.

Finally, without corporations being able to raise money for the elections of delegates, we feel that again those public employee unions with very coordinated informational networks would be able to have their constituencies energized. What do you have? A convention dominated by public employee unions.

Now, I doubt spending would ever be considered, even if allowed by such a group. However, that leading legislation specifically prohibits it -- spending -- as a topic at the convention. As you know, our issues in property tax reform do not stem from a lack of money, but rather at inefficient use of this money. This convention would be a runaway convention certainly, a runaway tax -- a convention led by the public employee unions. Does that sound like a balanced system? I do not think so.

What kind of taxes are we looking at? The legislation spoke to a locally-imposed income tax and a property tax on intangibles like net worth, stocks, and bonds. You spent sessions looking at the Uniformity Clause, struggling with equity issues, economic issues, job issues, assessment issues. I don't think a citizens group would have the wherewithal to, frankly, look at those issues in the same depth as you have.

Second -- third I should say, tax reform really should be left to you, the State Legislature. Having followed your work and those of the other Committees, we are really struck by the amount of arcane information, tortured history, and difficult decisions that you're faced with. We think that having a citizens group look at these issues and decide the future policy of the state is no more than gambling with the economic future of our state.

Finally, we feel that ceding your legislative prerogative is a huge mistake. We do not think that a citizen convention should have the power to make law.

Thank you.

SENATOR KENNY: Thank you, Arthur.

Next, we have representatives from The Silver Brigade -- Mr. Cantrell, and then Mr. Jackson.

JERRY CANTRELL: Unfortunately, Mr. Jackson couldn't make it this morning. I have handouts for you if--

SENATOR KENNY: Sure.

Can I see the statement, please, just briefly? Okay.

I want to give you the opportunity to -- and you will have it. But what often occurs at these Committee meetings, that those who are at the end of the line get pressured for time. And so we have to sort of move it along. If you can be concise in your remarks, we would appreciate it.

MR. CANTRELL: I'll do my best. I did it in five minutes the other day, so I'll try to duplicate that this morning.

My name is Jerry Cantrell.

SENATOR KENNY: You have to hit your button. You have to hit your red button. (referring to PA microphone)

MR. CANTRELL: Is that it?

SENATOR KENNY: Yes.

SENATOR LANCE: We're a red state.

MR. CANTRELL: Thank you.

Mr. Chairman, members of the Committee, my name is Jerry Cantrell. I'm President of The Silver Brigade, a statewide, nonpartisan, grassroots organization dedicated to achieving major reforms in New Jersey's out-of-control tax mess. For the past few years, the group has undertaken an aggressive campaign to reach across the state to those without a voice in the process. We're a group of concerned citizens who came together in 2000, which preceded my involvement. It was originally a

spin-off of the Denville Senior Group, who was a group of active people who were involved in some of the local politics, etc.

I was invited to join the group in 2004, as President. Since then, we have reached out across the state, and members are disparate in different counties, etc. Our youngest member currently just turned 24. The Silver Brigade was originally, obviously, an image of a group of silver-haired individuals coming down to Trenton to change the world. And we have shifted that to the multicolored, if you will, but we maintain the identification because there had been a history, and I didn't feel the need to change that was paramount.

Our basic position is -- as a group of citizens, if you will -- is that New Jersey does not have a revenue problem, it has a spending problem. I realize I'm not the first person to say that; I suspect I won't be the last person to make that comment either. When I got involved, it's my approach, basically, to operate with goals and agendas, etc. But I felt like, if we were going to be different than many of the other groups who complain about taxes, like many people complain about the weather and so many other things, that we needed to separate ourselves, and therefore put some things in writing and in a plan, if you will, to address the problems as we saw them.

So we came up with a 10-point proposal in November of 2004, which has been distributed to many of you along the way as well. The first of the 10-point proposals is only -- action as far as a constitutional convention. There was a lot of discussion when we put this together. Our position is neutral. If a constitutional convention happens, that's fine. But we expect you folks to do what you were elected to do in the interim.

The second issue is, there was a lot of talk at that time, continues to be-- I know Senator Bucco, from my area, and Speaker Roberts have put together a proposal to move the school elections to November. Three years ago, I was actually a supporter of that, until it dawned on me that you cannot vote on the school budgets if you move that election to November. So the last thing the citizens and taxpayers of this state need is to have another right taken away from them, as far as the right to vote on the school budgets.

The next item is, take away the educational commissioner's right to override thousands of negative votes. This past election, 47 percent of the school budgets failed. One person in the state had the sole authority to negate all those 47 percent of those votes. Hundreds of districts have gone down.

Next one is regionalized and centralized purchasing for government institutions and school districts. As a former school board president in Randolph, I take all of our measures down to the school board level, and I realize, having presented this before, that many people will say these already exist. Yes, they do. But I can tell you, as an anecdotal story in Randolph, I found out the business administrator was buying computers off the State contracts simply because he could note the State contract number on there and buy them. That contract is for anybody who falls under the auspices of a State organization. So anybody can buy one computer at that price. I forced the administrator to go directly to Dell. We saved \$18,000 on a \$80,000 order by making a phone call.

The next one is an expenditure limitation amendment proposal. We would like to see -- we as citizens have to live on budgets, etc. We

would like to see that if you folks decide to raise the budget one cent next year, you would have to get a super majority vote of your peers, if you will.

The next one is to -- an expenditure limitation proposal. If you went beyond the cost of living and you're increasing your State budget, you would have to go out to a referendum to the citizens. We don't get a right to raise our own salaries. We would like to see more fiscal responsibility happening down here.

The joint revenue forecasting: Right now, it's my understanding, in a recent meeting with Speaker Roberts, I guess the Governor determines what the revenue dollars are projected to be each year. We would like to see that more of a bipartisan approach. I know there was a missed mark during your budget negotiations and during that shutdown process, where I guess there were some differences of opinion on what the real revenues were going to be. We would like to see that legitimized in some fashion.

Performance audits of State and local governments: This was done on a very limited basis, as I recall. Back under the Whitman administration, it was eliminated. The reason we would like to see this -- again, I'll share an anecdotal story with you. As the former school board president on my watch in Randolph, it was discovered that a theft had been occurring over a period of six years. In one year, one person at a very, let's say, basic level in the staff stole over \$50,000 by duplicating some invoices and checks, etc. This went unnoticed for at least six years. The response to it was, this was such a small amount compared to the overall budget that it really didn't matter that much. Fifty thousand dollars is a lot of money to anybody, I believe.

We would like to see -- either ban pay to play or manage it. We all know when it happens, because we read it in the paper. You probably see it as it's happening. I think it could be better addressed.

The final thing we would ask for--

SENATOR KENNY: Excuse me? The final point? Okay.

I've just got word that we have to leave.

MR. CANTRELL: Okay. The final thing we would ask for is uniform standards for reporting across the state. Right now, every school budget is formatted in its own unique way, so you can't compare Randolph with Roxbury, with Denville, or any other district. If we're going to look at expenses, we have to be able to compare apples to apples.

Thank you, sir.

SENATOR KENNY: Thank you very much for your cooperation.

Gregg Edwards, President, Center for Policy Research.

Gregg, I know you're going to help us meet our deadline.

G R E G G M. E D W A R D S: I would never want to hold up the Assembly Budget Committee. That would be a bad thing to do, right?

Good morning.

Thank you, Mr. Chairman.

My name is Gregg Edwards. I'm the President of the Center for Policy Research of New Jersey, which is an independent, not-for-profit organization that addresses public policy issues facing New Jersey.

You have my testimony. Let me quickly say that I'm here to offer what I think is a middle-ground position, which I think was expressed nicely by Senator Lance, which is that if we were going to have a

constitutional convention -- I think there are arguments for having one -- it ought to deal with fiscal policy in its totality. That is to say, we should be dealing with tax policy and spending policy at the same time. And I think that any convention that doesn't do that is not likely to succeed in its goal.

Let me say three things that I didn't hear on that point, and I'll try to quickly wrap up. One is that this issue of the runaway convention: I understand these concerns if there are a lot of issues on the table, but there is a check on this process that I haven't heard mentioned. And that is the fact that anything the convention does ultimately has to go to the ballot and has to be approved by the people. And that seems to me to be check enough on the process. There might be some other checks you want to put into the legislation, but I think we can trust the public to do the right thing.

Secondly, I think that if we're going to have a convention, we should try to do it in such a way that broadens support for it, particularly at the ballot box. And I will suggest to you that if you propose a convention that deals only with tax policy, there will be individuals like myself, or organizations, or even maybe legislators like Senator Lance or Assemblyman Merkt, who will feel compelled to have to argue against this proposition, because it just won't do the trick. And I think that would be a shame, because we should be looking at ways to make this a process that many voters can support, and not just a small segment.

And finally, I want to address this issue of sustainability. Because it seems to me that those who believe that the convention ought to be limited to just questions of tax policy, could finally come to the understanding that, "Well, if it's just tax policy, how do we make sure that the property tax relief, as they say, is sustained?" And I would argue that

they can't make it sustained if it's only going to deal with the tax policy. It needs to look at spending because, otherwise, over time, all that relief will get eroded. And if it's just tax policy we're dealing with, I don't see how we can sustain property tax relief unless we put it, in the Constitution, triggers that automatically increase taxes. There's no other way to do it. And I just think that would be a profoundly poor thing to do in New Jersey. It would certainly give up all of your authority to regulate taxes, and I don't think that's the sort of thing that we'd want to find in the Constitution.

Quickly, elections: I think that every election with respect to this constitutional convention proposal needs to be done in November. Now, as a constitutional matter, the constitutional amendment has to be voted on in November. I am particularly concerned by any suggestion that we elect delegates at any time other than November. I think the Legislature, particularly the Assembly, has learned a little from the experience from bills that passed in the previous session. You're now looking, I think rightfully so at proposals to consolidate all elections in November. It would be a mistake to elect delegates at any other time. It does magnify the influence of special interest groups. I think that's a mistake.

I also say -- I have to say I'm a little troubled by the fact that we invest so much time and effort in worrying about campaign disclosure requirements, when we're going to propose to have an election time when nobody votes. I mean, to me, participation is more important than all these secondary and tertiary concerns.

And finally, let me suggest you have a little fun with this. Maybe a little outside of your mandate here, but I get the sense that there's

a lot of concern about this convention. It's new. Maybe we shouldn't have it be so mysterious. As Peter Kelly said during his testimony, and as I know from mine, there are examples of states that have periodically put to their voters whether there should be a constitutional convention. You can just look north to New York state, which every 20 year requires such a thing. Peter mentioned Rhode Island. This, I think, would make it part of the routine. It would give a safety valve, in a sense, to the public so they could look periodically to these issues. And I think it would also put some pressure on legislators to look at issues, particularly if they didn't want to have a convention. I'd note on New York, by the way, that the last three times this question was put on the ballot voters decided not to have a convention. So I think voters can act responsibly when they're asked to.

Mr. Chairman, thank you very much.

I'm sorry if I was rushed, but I was trying to meet your requirements.

SENATOR KENNY: Thank you.

I think Senator Lance has a question.

SENATOR LANCE: Thank you, Mr. Chairman.

And you indicate you believe delegates should be elected in November. That, however, was not true in either 1947 or 1966. Is that accurate?

MR. EDWARDS: That is my-- Yes, I think that is correct.

SENATOR LANCE: And if this were to occur, I suppose it would occur in November 2007?

MR. EDWARDS: Yes.

SENATOR LANCE: That would be the first opportunity?

MR. EDWARDS: Yes, the first opportunity I think we could do that, yes. I'm sorry.

SENATOR LANCE: And there's great debate whether the legislators should be permitted to attend, and I'm of mixed emotion about that. And certainly there are municipal friends of mine who wish to attend, but wish to exclude legislators. (laughter) Is that accurate?

MR. EDWARDS: That's accurate, yes.

I would vote for you, though, Senator Lance, if you were to--
(laughter)

SENATOR LANCE: Well, you are a constituent of mine. However, I raise the point, I think it's inappropriate to run for two offices on the same day. And let me repeat, the history of this State is to have these delegates elected in the Spring. This occurred in both 1947 and 1966. I want as great a participation as possible, but I think it's an issue that if we're going to get involved in it, we have to analyze it thoroughly.

Thank you, Mr. Chairman.

SENATOR KENNY: Thank you, Senator.

Thank you, Mr. Edwards.

MR. EDWARDS: You're welcome.

Thank you, Senator.

SENATOR KENNY: Last speaker, representing the New Jersey League of Municipalities, Mayor Gary Passanante, is it? Passanante? Would you say your name for the record and who you represent?

MAYOR GARY PASSANANTE: Yes. It's Gary Passanante. I'm the Mayor of Somerdale; and also the Chairman for the League of Municipalities, Property Tax Reform Committee. I also served on the Task

Force with Senator Lance in 2004, and chaired the Citizens Convention Coalition.

You have my submitted statement. I know we need to be brief. The real question here today is, should there be consideration, or should there be a constitutional convention and -- in light of your special sessions? And our feeling is this: We have put together about eight points. You see those on my submitted list, and I won't go through those individually. We feel that in the absence of all of these issues being addressed, most importantly reducing the overall reliance on property taxes in the State of New Jersey from 46 percent to the new national average of 30 percent -- in the absence of those things being accomplished in whatever you submit November 15, then we need to have a convention to move forward and get true property tax relief. It is our opinion that it would be just another patch or a failure of the Legislature if they do not accomplish these tasks that we've outlined.

I would like to just say that we've never opposed a special session, as you have been holding here. However, we reject the argument that the Legislature has to act on either a special session or a convention. Passage of the citizens convention bill does not preclude the possibility of the legislation progress on property tax reform. If the Legislature enacts reform that meets the public's approval, then there will be no need for a special convention. If it does not, then we must have one. Passage of this convention bill would, we believe, allow the people of New Jersey to judge the results of a special session.

I ask you, that each of you probably carry a spare tire in your car. We see the convention as a spare tire, as an emergency flare. I'm sure

that in case the convention -- the process here -- your special session fails, then at least we have something to rely on to ensure that there will be true and lasting reform in property taxes.

Six years ago, the convention process was suggested. Had we acted then, we would not be sitting here today discussing how to fix the problem. So, yes, we all say that it's a 2009 fix. You're correct, it is. The reality of the problem is, if you do not do your job now, and by the 15th, then we need to have a backup plan to make sure that at some point in the near future we will. We're rising at 6 to 7 percent a year on our property tax in the past four, five, six years since this has been introduced. We've had tremendous increases. That burden is on our residents and we need to correct it.

Thank you very much for your time.

SENATOR KENNY: Thank you, Mayor.

Thank you, everyone in the public who observed these proceedings today.

So that concludes the hearing for today.

Mr. Chairman.

ASSEMBLYMAN BURZICHELLI: Thank you.

(MEETING CONCLUDED)