

PUBLIC HEARING
before
ASSEMBLY STATE GOVERNMENT, FEDERAL AND INTERSTATE
RELATIONS AND VETERANS AFFAIRS COMMITTEE
on
ACR-117

Held:
June 11, 1980
Assembly Chamber
State House
Trenton, New Jersey

COMMITTEE MEMBERS PRESENT:

Assemblyman Richard J. Codey, Chairman
Assemblyman Gerald Cardinale
Assemblywoman Barbara Curran

ALSO:

Wayne L. Bockelman, Research Associate
Office of Legislative Services
Aide, Assembly State Government, Federal and Interstate Relations
and Veterans Affairs Committee

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[OFFICIAL COPY REPRINT]
ASSEMBLY CONCURRENT RESOLUTION No. 117

STATE OF NEW JERSEY

INTRODUCED APRIL 14, 1980

By Assemblymen BURSTEIN, BAER, STOCKMAN, Assemblywoman
GARVIN, Assemblymen FORTUNATO, THOMPSON, HOLLEN-
BECK, Assemblywoman McCONNELL, Assemblymen GIR-
GENTI, PELLECCCHIA, BATE and RILEY

Referred to Committee on State Government, Federal and
Interstate Relations and Veterans Affairs

A CONCURRENT RESOLUTION proposing to amend Article V,
Section I, paragraph 14, of the Constitution.

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey (the Senate concurring):*

1 1. The following proposed amendment of the Constitution is
2 agreed to:

PROPOSED AMENDMENT

3 Amend Article V, Section I, paragraph 14, to read as follows:
4 14. **[(a)** Every bill which shall have passed both houses shall be
5 presented to the Governor. If he approves he shall sign it, but if
6 not he shall return it, with his objections, to the house in which it
7 shall have originated, which shall enter the objections at large on
8 its journal and proceed to reconsider it. If upon reconsideration,
9 on or after the third day following the return of the bill, two-thirds
10 of all the members of the house of origin shall agree to pass the
11 bill, it shall be sent, together with the objections of the Governor,
12 to the other house, by which it shall be reconsidered and if approved
13 by two-thirds of all the members of that house, it shall become
14 a law; and in all such cases the votes of each house shall be
15 determined by yeas and nays, and the names of the persons voting
16 for and against the bill shall be entered on the journal of each house
17 respectively. If a bill shall not be returned by the Governor, within
18 10 days, Sundays excepted, after it shall have been presented to
19 him, the same shall become a law on the tenth day, unless the house
20 of origin shall on that day be in adjournment. If on the tenth day

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

21 the house of origin shall be in temporary adjournment in the course
 22 of a regular or special session, the bill shall become a law on the day
 23 on which the house of origin shall reconvene, unless the Governor
 24 shall on that day return the bill to that house.

25 (b) If on the tenth day the Legislature is in adjournment sine
 26 die, the bill shall become a law if the Governor shall sign it within
 27 45 days, Sundays excepted, after such adjournment. On the said
 28 forty-fifth day the bill shall become a law, notwithstanding the
 29 failure of the Governor to sign it within the period last stated,
 30 unless at or before noon he shall return it with his objections to
 31 the house of origin:

32 (1) on said forty-fifth day, if the house shall have again
 33 convened in regular or special session of the same 2-year
 34 Legislature and shall be meeting on said day, or

35 (2) on the day upon which the house shall reconvene, if
 36 it is in temporary adjournment in the course of a regular
 37 or special session of the same 2-year Legislature on said
 38 forty-fifth day, or

39 (3) on said forty-fifth day, if the house is in adjournment
 40 sine die on said day, at a special session of the Legislature
 41 which shall convene on that day, without petition or call, for
 42 the sole purpose of acting pursuant to this paragraph upon
 43 bills returned by the Governor. At such special session
 44 a bill may be reconsidered on or after the first day following
 45 return of a bill, in the manner provided in this paragraph
 46 for the reconsideration of bills, and if approved upon recon-
 47 sideration by two-thirds of all the members of each house,
 48 it shall become a law.】

48A (a) *When a bill has finally passed both houses, the house in which*
 48B *final action was taken to complete its passage shall cause it*
 49 *to be presented to the Governor before the close of the calendar*
 50 *day next following the date of the session at which such final action*
 51 *was taken*【; except that if such final action is taken on or after the*
 52 *first Monday in December of a first annual session of a 2-year Leg-*
 53 *islature, the bill shall be presented to the Governor immediately】*.*

54 (b) *A passed bill presented to the Governor shall become law:*

55 (1) *if the Governor approves and signs it within the*
 56 *period allowed for his consideration; or,*

57 (2) *if the Governor does not return it to the house of*
 58 *origin, with a statement of his objections, before the expira-*
 59 *tion of the period allowed for his consideration; or,*

60 (3) *if, upon reconsideration of a bill objected to by the*

61 Governor, two-thirds of all the members of each house agree
62 to pass the bill.

63 (c) The period allowed for the Governor's consideration of a
64 passed bill shall be from the date of presentation until noon of the
65 forty-fifth day next following or, if the house of origin be in
66 temporary adjournment on that day, the first day subsequent upon
67 which the house reconvenes; except that:

68 (1) if on the said forty-fifth day the Legislature is in
69 adjournment sine die, any bill then pending the Governor's
70 approval shall be returned, if he objects to it, at a special
71 session held pursuant to subparagraph (d) of this para-
72 graph;

73 *[(2) any bill passed during the first annual session of a
74 2-year Legislature shall be returned not later than noon of
75 the day next preceding the expiration of the legislative year;

76 (3) No bill may become law unless passed and presented
77 to the Governor so as to allow at least 10 days for his
78 consideration, or unless the Governor signs it within the
78A time so allowed.]*

78B *(2) any bill passed between the forty-fifth day and the
78C tenth day preceding the expiration of the second legislative
78D year shall be returned by the Governor, if he objects to it,
78E not later than noon of the day next preceding the expiration
78F of the second legislative year;

79 (3) any bill passed within 10 days preceding the expira-
79A tion of the second legislative year shall become law only if
79B the Governor signs it prior to such expiration, or the Gov-
79C ernor returns it to the House of origin, with a statement of
79D his objections, and two-thirds of all members of each House
79E agree to pass the bill prior to such expiration.*

80 (d) For the purpose of permitting the return of bills pursuant
81 to this paragraph, a special session of the Legislature shall con-
82 vene, without petition or call, for the sole purpose of acting upon
83 bills returned by the Governor, on the forty-fifth day next follow-
84 ing adjournment sine die of the regular session; or, if the second
85 *annual session]* legislative year^o of a 2-year Legislature will
86 expire before said forty-fifth day, then the day next preceding the
86A expiration of the legislative year.

87 (e) Upon receiving from the Governor a bill returned by him
88 with his objections, the house in which it originated shall enter the
89 objections at large in its journal and proceed to reconsider it. If,
90 upon reconsideration, on or after the third day following its return,

91 *or the first day of a special session convened for the sole purpose*
 92 *of acting on such bills, two-thirds of all the members of the house*
 93 *of origin agree to pass the bill, it shall be sent, together with the*
 94 *objections of the Governor, to the other house; and if, upon recon-*
 95 *sideration, it is approved by two-thirds of all the members of the*
 96 *house, it shall become a law. In all such cases the votes of each*
 97 *house shall be determined by yeas and nays, and the names of the*
 98 *persons voting for and against the bill shall be entered on the*
 99 *journals of the respective houses.*

100 (f) The Governor, in returning with his objections a bill for
 101 reconsideration at any general or special session of the Legislature,
 102 may recommend that an amendment or amendments specified by
 103 him be made in the bill, and in such case the Legislature may amend
 104 and re-enact the bill. If a bill be so amended and re-enacted, it
 105 shall be presented again to the Governor, but shall become a law
 106 only if he shall sign it within 10 days after presentation; and no
 107 bill shall be returned by the Governor a second time. [A special
 108 session of the Legislature shall not be convened pursuant to this
 109 paragraph whenever the forty-fifth day, Sundays excepted, after
 110 adjournment sine die of a regular or special session shall fall on or
 111 after the last day of the legislative year in which the second annual
 112 session was held; in which event any bill not signed by the Governor
 113 within such 45-day period shall not become a law.]

1 2. When this proposed amendment to the Constitution is finally
 2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
 3 it shall be submitted to the people at the next general election
 4 occurring more than 3 months after such final agreement and shall
 5 be published at least once in at least one newspaper of each county
 6 designated by the President of the Senate and the Speaker of the
 7 General Assembly and the Secretary of State, not less than 3
 8 months prior to said general election.

1 3. This proposed amendment to the Constitution shall be sub-
 2 mitted to the people at said election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at such
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 a legend which shall immediately precede the question, as follows:

8 If you favor the proposition printed below make a cross (X),
 9 plus (+) or check (✓) in the square opposite the word "Yes." If
 10 you are opposed thereto make a cross (X), plus (+) or check (✓)
 11 in the square opposite the word "No."

12 b. In every municipality, the following question :

	Yes.	<p style="text-align: center;">CONSTITUTIONAL AMENDMENT: REVISION OF PROVISIONS ON GOVERNOR'S VETO</p> <p>Shall the amendment of Article V, Section 1, paragraph 14, of the Constitution, agreed to by the Legislature, and (1) requiring that all bills passed by the Legislature be presented to the Governor on the same or next day; (2) extending the time allowed for the consideration of such bills to 45 days, with certain exceptions¹, and preventing any bill from becoming law if it is presented to the Governor so as not to allow him at least 10 days for consideration unless he signs it within the time actually allowed²*; and (3) providing for special legislative sessions at the close of each legislative term, so as to ensure that all bills to which the Governor objects*, <i>except for bills passed within the last 10 days of the second legislative year.*</i> shall be subject to reconsideration by the Legislature; be approved?</p>
	No.	



ASSEMBLYMAN RICHARD J. CODEY (CHAIRMAN): I would like to get started please. Today's public hearing is on Assembly Concurrent Resolution #117. Our first witness will be the sponsor, Assemblyman Albert Burstein.

A S S E M B L Y M A N A L B E R T B U R S T E I N: Mr. Chairman and Assemblyman Cardinale, thank you for the opportunity to be here this morning to explain in public what ACR 117 is designed to do and how it goes about achieving that objective.

This is a constitutional amendment, as you know, and this public hearing is held pursuant to the requirement that there be a public hearing with respect to any constitutional proposals, and it amends Article V, Section 1, paragraph 14 of the Constitution. The way in which it does that is to take the present section which calls for the delivery of bills passed by both houses of the Legislature to the Governor and the Governor is then supposed to act upon it within ten days after the delivery of the bills to him. I will discuss in a few moments the way in which the system actually has worked, after I terminate the analysis of what ACR 117 is designed to do. ACR 117 would change that section so as to mandate the delivery of any passed bill, once it gets through both houses of the Legislature, to the Governor on the same day of passage in the second of the two houses or within 24 hours thereafter. The Governor would then have a 45 day period, Sundays excepted, within which to act upon the passed bill. He would either have to sign it, veto it or conditionally veto it. This is consistent with present practice, except for the time frame.

I believe that the ten day period originally contemplated in the 1947 Constitution is now outmoded. Ten days, during that period of time, when legislatures were passing a relatively small number of bills and were in session for a relatively small amount of time during the course of each annual session, has now changed to the extent that a ten day period becomes an anachronism. The bills presented to the Governor these days are far more complex in their substantive aspect and they do require a great deal more study. Further, the number of bills has increased voluminously, as we all know, and because of that increase, again, the Governor has to have the opportunity of having an orderly system whereby he can consider the many bills that come across his desk.

I think the 45 day period, again Sundays excepted, is an adequate period. It is consistent with what many of the other states around the nation are doing and it allows the Governor's review staff to do their job, perform their function in a way that I think makes some sense. As we all know further, when it comes to major pieces of legislation and even less than major pieces of legislation, the Governor's counsel ordinarily has members of their staff in attendance at committee meetings; they track the legislation through to its final conclusion; and they are aware of what the Legislature is doing in those several aspects. So, they have, at least, a beginning of understanding of what a bill may be or may contemplate well in advance of coming through both houses in final passage form and as a consequence of that, they are in a position to have already solicited comments from agencies of government that may well be affected by the particular piece of legislation. So, again, I think the 45 day period is an adequate period and does make sense.

The second aspect of ACR 117 that I would want to address has to do with what has popularly become known as the "pocket veto". This, again, as we all know, is a system whereby, under the present constitutional provision, when an adjournment sine die takes place in the Legislature--it is now out of existence-- the Governor

has the right to consider a bill for a 45 day period subsequent to the termination of the session because the practice has been that we now adjourn only sine die on the last day of the second year of a session. Now, the governor has a 45 day period thereafter within which to deal with legislation that has been adopted. What has occurred is that the Governor has held legislation into that 45 day period acting upon matters that have been addressed by the Legislature and with increasing frequency has acted adversely, that is to say, has vetoed items that have been passed by both houses of the Legislature during this terminal period. That has given rise to an erosion of legislative power and responsibility that I do not believe was contemplated by the 1947 Constitution, but which, in practice, has, in fact, had a debilitating effect upon important pieces of legislation that the House and Senate have acted upon, but which the Governor decides that he does not want to see enacted into law. So, the provision addressing that problem in ACR 117 is designed to vindicate that legislative responsibility of having final say over laws, the proposed laws they have adopted. It will enable them, by the terms of ACR 117, to have that final say and to, in effect, do away with, in major part--there is one small exception which I will mention in a moment--with the practice of pocket veto, which has been increasingly used and it's essential that this vindication of legislative power and authority that ACR 117 is designed for is achieved. It is not directed against the individual incumbent and it is not directed and would not be directed, in any set of circumstances, against any incumbent. It is simply a matter of trying to restore that type of balance in the relationship between the executive and the Legislature that I think deserves to be incorporated in our Constitution and which I don't think, today, exists. That balance has fallen into imbalance, in effect, and I think unless the Legislature acts in this respect, acts favorably on ACR 117 and unless the people sustain the action of adopting the bill, the legislative arm of government will be a less than useful arm among the trilogy of governing authorities, the Judiciary, Executive and Legislative branches of government.

The way in which ACR 117 does this is to require that there be a convening of a special session of the Legislature at the termination of the second annual term so that they have an opportunity, on that last day, devoted solely to the purpose of dealing with measures that the Governor has returned to the Legislature, to override a veto or concur in a conditional veto, should that be the fact, and that, I think, is the single most important part of this bill that is before the Committee and, hopefully, will be before the people.

I said before that there is one small element of continued pocket veto and that is that a bill that is sent to the Governor within the last ten days may be pocket vetoed by him prior to the end of the session. The purpose of that is to allow a certain protective device available to the Governor against the possibility that there would be a flood of legislation, by design, placed on his desk by the Legislature. In other words, there ought to be, at the end of a session, the opportunity on the part of the Governor and his staff to review all pieces of legislation. The reality is that should this provision be adopted, the Legislature can easily accommodate and adjust itself to that ten day period to make sure that they pass legislation prior to it. On the other hand, it is usually the Governor's office dealing with emergent matters, as happened in the last session of the Legislature, who comes in with measures or is asking for measures to be sent to him within that short time frame. So, it is his office, generally speaking, that will be the generator of any bills to be signed during the last ten days of a second year session.

I think, therefore, that the design of ACR 117 is a balanced one that protects the prerogatives of the Governor and yet, at the same time, allows the Legislature to have the basic final say.

I have examined into what other states do and most other states have nothing comparable to the present system in New Jersey. There is, in the Book of States, and I'll make this available to the Committee, an analysis of the time frame within which a governor has to act in other states around the nation. Most of them have a less than ten day period. 31 states have less than ten days in which the governor has to act upon bills and they do not have that business of the governor deciding when to call for a bill as we have. 13 states have a ten day period and only four have more than ten days. So, I think we are acting consistently with the practice of other states and doing it in a way that is fair to both branches of government.

Let me say finally that the kind of system that we have experienced is inadequate and, I think, requires change. This has been recognized almost universally. There have been several other recommendations, however, for change that are somewhat less than a constitutional amendment proposal and I would briefly address those to indicate why I think that the amendment to the Constitution is called for in this set of circumstances rather than doing it by some other mechanism.

It has been suggested, first, that if there be some kind of commitment out of the presiding officers of the respective houses, that when a bill is passed, they would send it to the Governor's office, irrespective of his call, within some stated period of time that that would be a way to handle it rather than going to the Constitution. My answer to that is simply that there ought not be the placement of that kind of authority into the hands of the respective presiding officers, given the fact that very frequently you have presiding officers of the same party as the Governor and the types of pressure that can be placed upon the presiding officers by the Governor's office, I think, is unfair to those presiding officers in putting them in that kind of vulnerable spot with respect to the matter of legislation, so that they would feel that they should not send bills that had passed to the Governor until the Governor has actually called for them. I don't want to make this a matter of personalities. It is simply that, institutionally, I don't believe that that is a good idea.

Another mechanism that has been suggested, and already, in fact, has been considered by the Senate, has been to amend the rules. This House went through the process of attempting to amend its rule in the last session of the Legislature, the 198th session of the Legislature, so as to work out a system whereby there would be certain time periods, expansive in their nature and certainly beyond the ten days called for by the present constitutional provision, to avoid the necessity of going the constitutional route. It did not work out in the sense that the rule was not adopted, not having the acquiescence of both houses and making it difficult for just one house to pass such a rule. But, beyond that, what is certainly within the scope of our knowledge is that rules are adopted every new session of the Legislature and rules are changed and it leaves the matter in an uncertain frame of reference, if you simply do it by means of rule. The Constitution, on the other hand, is our basic document and I think that that is where the change ought to take place and not dealing with a matter of this importance within the scope of rules, which they, themselves, may not comport with the Constitution. I have some doubts about the way in which the Senate has handled that aspect of it.

The Constitution, as I said before, is the basic law of this State. Each and every one of its provisions should be operative. Not one of them should fall into disuse by being ignored. I think that the present Article V, Section 1, paragraph 14 of the Constitution has been ignored. It has not been followed through in either its literal sense or practical sense and what has happened, there has grown up an abuse of the discretion allowed in the Executive Branch and in the Legislative Branch, a kind of harmonious accommodation, one to the other, that conspiratorially, in a sense, avoids the impact of the present constitutional article. I think that that puts all law and all constitutional provisions into disrespect, if we continue to ignore the impact of the law as it is now stated or as it should be amended. What ACR 117 is designed to do is to come face to face with the reality of what happens with respect to bills passed and the veto power of the Governor and I think it does so fairly, with a sense of balance and with a sense of dispassionate concern for what happens among the various branches of our government.

I do thank you, Mr. Chairman and Assemblyman Cardinale for hearing me through and I would be happy to answer any questions if that is your desire.

ASSEMBLYMAN CODEY: Do you have any questions Assemblyman Cardinale?

ASSEMBLYMAN CARDINALE: No questions.

ASSEMBLYMAN CODEY: Thank you very much, Assemblyman Burstein. The next witness is Mr. William Singer of Common Cause.

W I L L I A M S I N G E R: Good day. My name is William S. Singer. I am a National Governing Board member of Common Cause and former chairman of New Jersey Common Cause. It is with great pleasure that I represent New Jersey Common Cause here today.

Assembly Concurrent Resolution #117 contemplates action by this Legislature which Common Cause feels is long overdue. We congratulate Assemblyman Burstein and the co-sponsors of the legislation for introducing and pursuing this much needed reform. In addition, we thank the members of the Assembly State Government Committee for releasing the resolution from committee and holding this hearing today.

The issue under consideration here, gubernatorial review of passed legislation, is of fundamental importance. As Common Cause has documented in the past, the present review process is a disgrace. The Governor has usurped unbridled power over passed legislation. The State Constitution provides that every bill which wins legislative approval shall be presented to the Governor and receive final consideration within ten days. As we also know well, this system has been short-circuited by the failure of the Legislature to present bills for gubernatorial action. Bills are now sent to the Governor only when he asks for them which gives total discretion to the Executive Branch. Common Cause has labeled this practice "gubernatorial courtesy."

The results of this strange quirk of tradition are several. For one, gubernatorial courtesy effectively strips the Legislature of one of its major constitutional powers--the opportunity to override a veto. Thus, if a Governor does not like a bill, he need not veto it and run the risk of a legislative override. He can simply ignore it. The bill then dies naturally by pocket veto after a prescribed time lapse after the Legislature adjourns. To permit the Executive Branch to subvert so easily the Legislature's intent is foolish on the part of the Legislature and abusive on the part of the Governor.

Another discourteous aspect of this courtesy tradition is the pressure felt by a sponsor of an unsigned bill not to antagonize the Governor. Nothing

need be said. A legislator with an important bill at stake is automatically compromised. Thus, the Legislature has put its own members in a position to cripple their ability to work with the Executive Branch on an equal footing.

The third result of this practice is a long delay in the final disposition of a bill attended by public uncertainty as to its status. For example, during the last two years of Governor Cahill's term, the average length of time between final legislative action and gubernatorial approval was 56 days for Assembly bills and 63 days for Senate bills. The record for the first two years of the Byrne Administration is even worse. The Governor waited an average of 88 days--almost three months--to approve Assembly bills and 62 days--over two months--for Senate bills. In some cases the uncertainty may be laughable such as when Governor Byrne took 732 days to sign the bill declaring Catholic School Weeks or 639 days to decide to waive the berthing fees for a World War II submarine. But, what of the Governor pausing from August 6, 1979 until February 29, 1980 to decide to pocket veto a bill providing for the partial public financing of primary elections for the office of Governor? Or the Governor taking 256 days to decide to pocket veto an amendment to the Campaign Contributions and Expenditures Reporting Act to compel lobbyist disclosures? Both of these last-mentioned bills represented important reforms to the political process. In each case, the Legislature overwhelmingly supported the reforms and in each case the Governor nonchalantly pocket vetoed them.

As Common Cause became more aware of this overreaching by one branch of government, we investigated the practice of presentation of bills in other states. The results of our survey in July, 1979, are quite interesting. The results showed that the average number of days allowed to act upon a bill in the 50 states in the United States is 7.7 days. There are only three other states where anything approaching the New Jersey practice exists. They are Georgia, Maryland and Wisconsin. The rest of the states give the governor less than 15 days and that rule is obeyed. Further discussions with officials in Georgia, Maryland and Wisconsin indicate that none of these states suffer with the long delays in the review of passed bills as New Jersey does.

Therefore, the consideration of ACR 117 is extremely important at this time. New Jersey alone suffers from this imbalance between the Legislature and the Governor. With enthusiasm, Common Cause supports this initiative to restore to the Legislature its constitutional power. This resolution, if finally adopted, will establish a common sense and orderly process for the review of passed legislation and will end the abuse of the pocket veto.

Remember, Governor Byrne has become a master of the pocket veto. After the last session of the Legislature, Governor Byrne pocket vetoed 86 bills. After the previous session of the Legislature, he pocket vetoed 83 bills. Whatever the merit of the bills, obviously the Governor did not show much respect for the time and energy spent by the legislators in both houses in working on these bills. ACR 117 guarantees that the Governor will give due regard to the products of the Legislature.

Criticism by the Governor's office that it will not have sufficient time to consider this legislation during the 45 days provided by ACR 117 is preposterous. The Governor's aides and counsels monitor closely actions in the legislative chambers. Their participation in the legislative process is well known and widely reported. If this constitutional amendment should succeed, New Jersey will still have the second longest period of time for a governor to consider legislation. Yet, ACR 117 will establish procedures for ending the problem of bills remaining in limbo for unconscionable lengths of time.

I have spoken on this subject to many people in New Jersey at various times and to people outside the State. Their reaction is always the same; disbelief that the Legislature could allow this practice to continue and anger at the Governor for acting in such a callous manner. Editorial support for changing the present system has been widespread and continuous over the last five years. To my knowledge, among the scores of editorials, not one has supported continuation of this subversion of the State Constitution. It is now time for the Legislature to correct this outrage, unprecedented in any other state. Common Cause has made a significant commitment to this issue. After the last Legislature's failure to deal with the problem, Common Cause, with the help of four brave legislators, initiated action in the Superior Court to win a writ of mandamus to compel presentation. We have lost round one and the issue is on expedited appeal in the Appellate Division. No matter what the result of the litigation, the Legislature is the proper forum for resolving the issue. You have taken that first step.

The New Jersey Law Journal in its editorial on the subject on March 20, 1980, stated that, "a constitutional amendment to resolve the standoff would be easy to draft but its approval by the Legislature would be unexpected." Please prove the Law Journal wrong. Demonstrate to the citizens of this state that the Legislature is not totally submissive to the Governor.

If I may indulge you for one more minute, I also would like to place in the record a statement from Richard Willinger who is the President of The League for Conservation Legislation and that group has taken a stand in favor of this constitutional amendment and I also have a statement from Karen Kotvas who is the Executive Director of LEGAL, Lawyers Encouraging Government And Law, which I would also like to place in the record and they are also in favor of the resolution. Thank you.

ASSEMBLYMAN CODEY: Thank you very much, Mr. Singer. Mr. Daniel O'Hern, Counsel to the Governor.

DANIEL O'HERN: Good morning, Mr. Chairman and Assemblyman Cardinale. You have previously heard testimony from Mr. McManus in connection with this and I take the liberty of incorporating into the record of these proceedings his written remarks or his testimony as it was given and a transcript of it which I have. I have just a couple of things in addition to that.

First, our position is that we are not seeking to protect ourselves or Governor Byrne. As you know, by the time this amendment takes effect, for all practical purposes, it will not have a serious or substantive effect upon this Administration. My concern with respect to the constitutional amendment is a very fundamental one. I believe that a Constitution which has served the people of the State of New Jersey and a provision which has served the people of the State of New Jersey for well over 100 years is worthy of respect and need not be changed except in the most emergent circumstances.

It has been described by one of the witnesses here as overreaching by one branch, restoring to the Legislature its constitutional power. I suggest to you that that is not involved here at all. The power of the Legislature remains now and always to present the bill to the Governor in accordance to the Constitution. The reasons for the courtesy, as it is described, are, I believe, based on sound historical precedent. I happen to have looked at the testimony of several of the governors at the 1948 Constitutional Convention and each of them described experiences

where this practice was useful in the administration of a balanced program between the Legislature and the Executive. If we look back on the history, and I was only here for the last session, certainly, in my experience, the most controversial issue there was the abortion bill which the Governor returned in sufficient time for action if the Legislature wished to do so. The other bill about which there has been discussion is the primary financing bill and on that one the Governor's position was clear from the beginning that he was interested in spending limits on the bill. Had that separate bill been enacted, he would have been in a position to enact the primary financing bill. The bill, as amended, has already passed one house and is awaiting action in your house. What we're saying is that there was not abuse in the last session, as a matter of substance. We have set forth the statistics. You will recall the very--I would call it--hectic pace the last few days of that session when we passed an extraordinary number of bills and all of those, we believe, were acted on in an orderly way. So, essentially, what we're saying is that it is not the Constitution which needs to be amended. We believe that the relations between the Legislature and the Governor can be handled more expeditiously, if that is the pleasure of the Legislature. The Governor is prepared to cooperate in any reasonable program to expedite the disposition of bills and as we have always said to the legislative leadership, we are prepared, upon the presentation of any bill, to act on it. Some are extraordinarily complex and may require greater study and we would ask for that. But, I think it is a problem which can be solved between the two branches of government without fooling around with the Constitution. Thank you.

ASSEMBLYMAN CODEY: Mr. Cardinale?

ASSEMBLYMAN CARDINALE: Do you see anything that is particularly unique about the State of New Jersey that would require us to have--what has occurred, in practice, there seems to be inordinate periods of time between the enactment of legislation and gubernatorial action?

MR. O'HERN: I don't see anything unique about it. I think it is, perhaps, a custom which has grown up over the years. None of us would be shocked if the Legislature and the Administration were to propose more regular review of the bills which are pending action and disposition of them. I can tell you from my own experience--I was only here six months before the end of the session--that there is almost continual discussion on the different bills. I will give you one illustration. The Plain Language Bill, I talked and talked and talked with the sponsor of that bill. We were trying to reconcile our position with the position of the sponsor and it is not that they are ignored. Almost every legislator calls about his bills and we discuss them and we discuss what other things can be done to resolve the problems in the bills. But, I don't see that as either as abuse or a problem of constitutional dimensions.

ASSEMBLYMAN CODEY: Mr. O'Hern, how about a member of the Legislature who has a bill and the Governor says, "This is what I want the Legislature to act on, these bills," and they are acted on rather readily and then he makes his own bills go through the house immediately.

MR. O'HERN: I would say, if there was a total limbo, definitely, that would be a problem. If you could give me a specific--

ASSEMBLYMAN CODEY: Well, I could list my bills.

MR. O'HERN: Give me a specific item. Certainly, we have extended discussions with many of the legislators on any particular bill. Many of the Assemblymen and Senators will call and say, "How is it coming", "When do you think we can do it",

and so forth. The idea that the Legislature is total submissive to the Governor, from the perception of the Governor's office, is a fiction.

ASSEMBLYMAN CODEY: It depends on who you are talking about.

MR. O'HERN: You were an active participant in the last, what I would describe, joint effort at passing legislation. You could hardly describe the attitude of the Legislature as totally submissive. But, I really think that that is a popular misconception, that the Legislature is submissive to the Governor.

ASSEMBLYMAN CODEY: An example is, Mr. O'Hern, is that he can sit on that bill for almost two years. I have to go to him and ask him to sign it.

MR. O'HERN: You don't need to ask him. The Legislature can present the bill to the Governor at any time. You see, what you are telling us is that the problem is not with the Governor, it is with the legislative leadership.

ASSEMBLYMAN CODEY: I shouldn't have to go to anyone. That bill should be acted on upon its merits.

ASSEMBLYMAN CARDINALE: You have indicated that, in fact, you are reviewing these bills in this period, subsequent to the passage, and isn't that, in essence, admitting to really making a sham of our Constitution as it exists today by playing on words almost, the question of the delivery of the bill? It is playing on a technicality of the delivery system. You actually have these bills. You have them before we pass them. You make comments before they are passed. There are departmental recommendations relative to specific pieces of legislation. Why would the Administration continue to take the position now that it needs more time to review this legislation? I haven't heard any substantive argument. You have got them. Our Constitution demands that they be treated within a specific period of time. You are playing on words simply because the legislative leadership has not technically delivered them to you, but you really have them.

MR. O'HERN: The question is, what does the Constitution really mean. The Constitution means that the bill shall be presented to the Governor. Now, many of the bills are either ones in which the Administration has participated--Pinelands bill would be an example of a bill in which the Administration has participated. It would be hypocritical to say that we needed months to review a bill of that type. But, there are other bills in which, I believe, you yourselves know that we could not participate to that great an extent.

ASSEMBLYMAN CODEY: Thank you very much, Mr. O'Hern. Richard Zimmer?

R I C H A R D Z I M M E R: Good morning, Mr. Chairman. I have a brief, prepared statement which I am distributing to you, but I would like to summarize that briefly and address myself to some of the points that Mr. O'Hern raised because I think this goes to the heart of our governmental system, this practice of gubernatorial courtesy.

The Governor's counsel talks about the Constitution and I am sure that you know that the Constitution of New Jersey makes New Jersey's governor one of the most powerful, if not the most powerful, governors in the United States, because of his enormous powers in the area of patronage; he has an item veto and beyond that, he has much greater resources and funding than the Legislature. For the Legislature to permit this extra constitutional power of gubernatorial courtest is to do so at the Legislature's own expense and I think it really unbalances the relationship between the branches.

Mr. O'Hern said that this is a long standing custom. The custom arose when the Governor's counsel didn't have the kind of staff that the Governor has now. There is now reason that that staff cannot expeditiously review bills in a moderate period of time.

The defense was raised that the pocket veto was not used, was not abused in every case where it might have been, but you can't make a case that it hasn't been abused very frequently on many pieces of legislation, major or minor, that did not need months and months of scrutiny. These bills were held hostage as one extra way that the Governor's office has of exerting influence and pressure on individual legislators whose bills are awaiting signature or veto. The primary case of the Primary Campaign Financing Bill was already brought up. The Constitution has a method, an appropriate method for a controversy like that. It is the conditional veto. If the Governor did not want the spending ceilings removed, he could have conditionally vetoed that bill and left it to the Legislature to either override his veto or accept the condition. That is the design of the Constitution and that was subverted by the use of the pocket veto.

So, I believe that the promises that were made this morning should be taken with a grain of salt because promises were made at the outset of the last session of the Legislature and the pocket veto was, in fact, used more in the last session than it was in the session before. So, I urge you and the State Government Committee to pass this legislation to make sure that it is on the ballot this Fall so that we can correct what I consider to be a serious imbalance in the balance of power between the legislative and executive branches. Thank you.

ASSEMBLYMAN CODEY: Thank you, Mr. Zimmer. Ms. Marj Jones from the League of Women Voters.

M A R J J O N E S: Good morning. My name is Marj Jones, Trenton Director of the League. In a concentrated effort not to be redundant, we have kept our testimony very brief, although, as you know we have given you repeated memos on this.

The League of Women Voters of New Jersey supports ACR 117 because we believe this amendment would remedy a serious gubernatorial encroachment on the Legislature's power to legislate. The simple requirement that bills passed by both houses of the Legislature be presented promptly to the Governor and that the Governor in turn be required either to sign the bills into law or return them to the Legislature within a specified time for reconsideration would restore the historic constitutional balance between executive and legislature. It would not deprive the executive branch of its right to veto--only its practice of vetoing without explanation and at a time when the Legislature has no opportunity to reconsider and reshape legislation or to override the veto.

This amendment would end the appalling waste of time that gubernatorial courtesy has brought about--wasted time for legislative committees and their overburdened staff who must attend hearings, weigh testimony, and recommend legislation to the floor; wasted time for Members of the Assembly and Senate who debate and vote on bills and then discover legislation that has passed both houses dies without a ripple in the executive office at the end of a legislative session so that the only alternative is to start the whole lengthy process over again from the beginning in a new Legislature; and by no means least, wasted time for members of the public who care enough about their government to come to Trenton and testify, to lobby their representatives, and then find out that the whole legislative process has been

aborted without explanation in the Governor's office.

ACR 117 can bring New Jersey into line with the other 49 states in the Union. Not one other state tolerates the practice of "gubernatorial courtesy."

We believe that the people of New Jersey deserve a chance to vote on a constitutional amendment protecting the Legislature's fundamental responsibility to legislate as well as the Governor's right to veto and his corresponding obligation to explain his reasons for doing so in sufficient time so that the Legislature may reconsider and, as it sees fit, reconfirm its action.

The League of Women Voters of New Jersey asks this Committee to endorse ACR 117. Thank you.

ASSEMBLYMAN CODEY: Thank you Ms. Jones. Mr. Herbert Mueller, New Jersey Federation of Senior Citizens.

HERBERT MUELLER: I only want to add on this and I am in complete agreement with the League of Women Voters, Common Cause, and especially with the wonderful explanation of Assemblyman Burstein. We are in complete agreement. It is about time that this dictatorial power is eliminated. Thank you very much.

ASSEMBLYWOMAN CURRAN: I have a statement from another member of the Assembly, Jane Burgio and she asks that it be admitted into the record.

ASSEMBLYMAN CODEY: It surely will. That concludes this hearing and this hearing is adjourned. Thank you.

(Hearing Adjourned)

TESTIMONY OF RICHARD A. ZIMMER
before the
ASSEMBLY STATE GOVERNMENT, FEDERAL AND INTERSTATE RELATIONS
AND VETERANS AFFAIRS COMMITTEE

Public Hearing on ACR 117
June 11, 1980

My name is Richard Zimmer. I live in Delaware Township in Hunterdon County and am testifying today as an individual citizen.

I strongly urge this Committee to act favorably on ACR 117. This measure can do much to restore a better balance between the power of the Governor and the power of the Legislature.

Our State Constitution makes New Jersey's Governor one of the strongest in the nation. There is no reason the Legislature should bestow upon him at its own expense the additional sweeping power of "gubernatorial courtesy."

Legislators have often bemoaned the undue influence of the Governor, and with good cause. But, in the case of gubernatorial courtesy, Legislators have no one but themselves to blame for the emasculation of their Constitutional right to override the Governor's veto.

Because of the indulgence of the Legislature, the Governor can--and often does-- delay action on important bills for hundreds of days. Even worse, he can "run out the clock" on controversial measures by refusing to act until the Legislature has ended its two-year term. He can then "pocket veto" them without ever giving the Legislature the chance to override.

In my opinion a Constitutional amendment is preferable to a procedural rule to eliminate gubernatorial courtesy. The same pressures from the "front office" that have for decades kept the Legislature from passing a corrective rule could be used to have such a rule suspended or quietly repealed once the pressure for reform has abated.

Enactment of ACR 117 is the most reliable way to rectify a serious abuse of power that has undercut the legitimate rights of the Legislature and the citizens it is elected to represent.



REPLY TO:
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32 LAFAYETTE STREET
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The League for Conservation Legislation

Box 605, Teaneck, N. J. 07666

STATEMENT OF

RICHARD WILLINGER, PRESIDENT OF LEAGUE FOR CONSERVATION LEGISLATION

PRESENTED TO THE ASSEMBLY STATE GOVERNMENT COMMITTEE

IN REFERENCE TO THE PUBLIC HEARING ON ACR-117

The League for Conservation Legislation is a collaboration of environmental and conservation groups and concerned individuals. We welcome this opportunity today to comment on ACR-117 sponsored by Assemblyman Albert Burstein.

Clearly, the primary focus of LCL is environmental matters before the New Jersey Legislature. However, occasionally an issue outside the environmental field comes along which warrants special attention. The objectives of ACR-117 merit support from LCL. The present system affects all legislation, whether it be environmental or otherwise. By perpetuating the present haphazard approach to passed legislation, the Legislature has surrendered its own power. The consideration of passed bills by the Governor should follow an orderly, respected process; it should not be a mechanism for abuse and coercion.

As citizens interested in the legislative process, LCL requests that this Legislature approve this resolution in order to correct an abuse of the State Constitution. LCL wants to be on record in support of this proposed constitutional amendment.

Thank you.



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STATEMENT OF LEGAL

ACR 117 (POCKET VETO)

PRESENTED TO: ASSEMBLY STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS AFFAIRS COMMITTEE

JUNE 11, 1980

Chairman Codey and members of the Assembly State Government, Federal and Interstate Relations and Veterans' Affairs Committee, LEGAL-Lawyers Encouraging Government and Law is an organization of 900 attorneys dedicated to preserving the private practice of law for the public interest.

Thank you for this opportunity to provide you with our views and concerns relating to state government. We are referring to ACR-117, sponsored by Assemblyman Burstein, which would amend Article 5, Section 1, Paragraph 14 of the 1947 State Constitution. Due to gubernatorial courtesy, legislation which has been passed by 40 Senators and 80 Assemblypersons often dies and does not have the opportunity to return to the legislature for a veto override or the chance to be amended and passed.

We strongly support ACR-117 which would prevent abuse of the "pocket veto". We feel that this is only fair--that it would provide a true balance among the legislative, executive and judicial branches of our state government. All the power would not be concentrated in the executive branch, and the intent of the Consitution would not be circumvented.

Thank you.



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

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586 MOUNTAIN AVENUE
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TESTIMONY by ASSEMBLYWOMAN JANE BURGIO

June 11, 1980

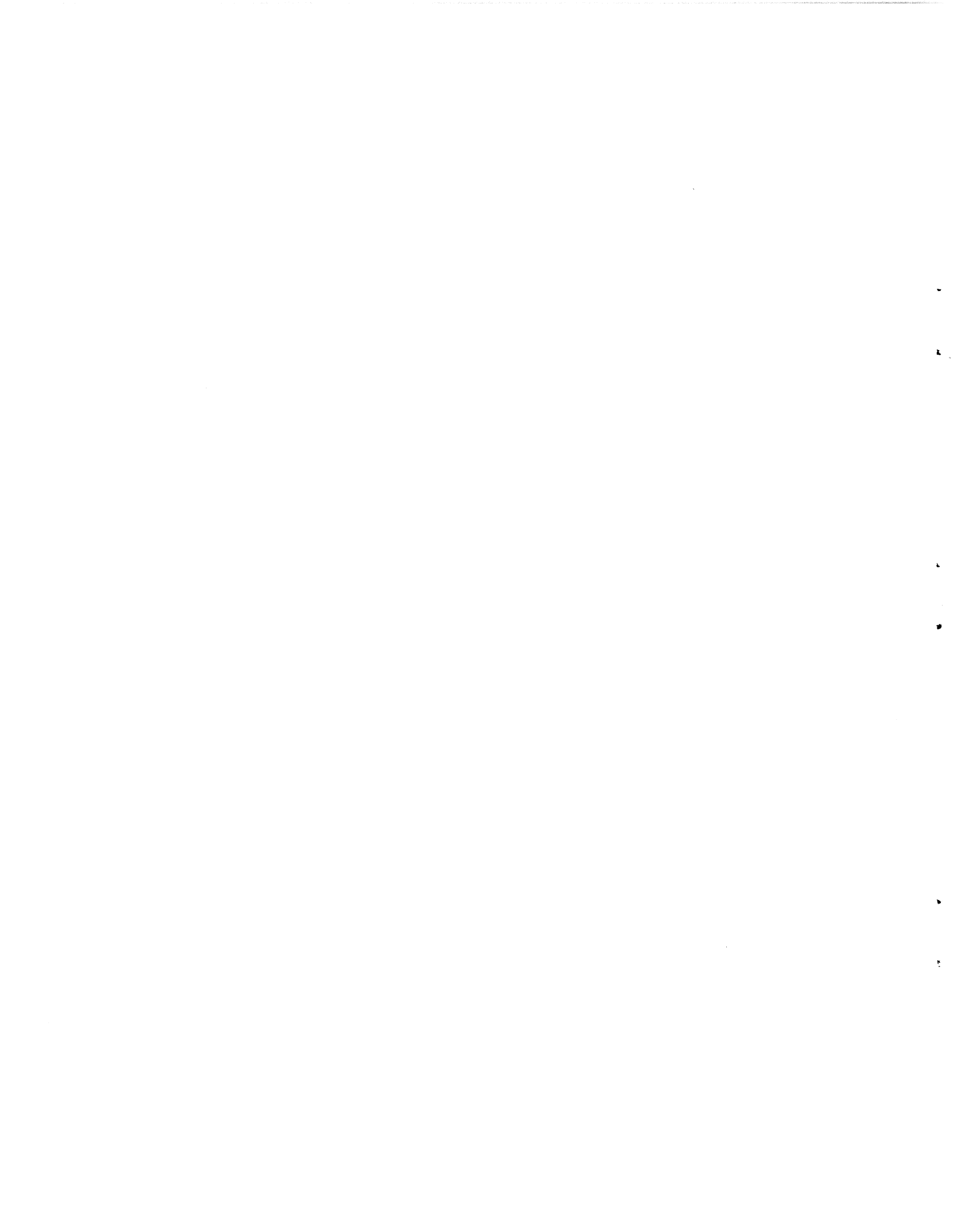
I regret that a previous commitment prevents me from testifying today on ACR-117. I strongly support ACR-117- in fact, in that last session I introduced a similiar measure, which I pre-filed this year, ACR-107. Both bills require that the Governor act on legislation within 45 days of the passage by both houses.

As a member of the rules committee, I tried unsuccessfully to change the house rules to accomplish this measure. I joined Common Cause in a suit, which as you might know, lost in court.

I will not go into the merits of the bill, which I'm sure will be adequately covered by the sponsor and other interested individuals and representatives of concerned organizations. ACR-107 has 30 co-sponsors; ACR-117 has 14, strong support from both majority and minority members. This is definately an idea whose time has not only come- but is long overdue.

Jane Burgio

JB/lw



Testimony of Richard J. McManus, Associate Counsel to the Governor, Before the Assembly Committee on State Government, Federal and Interstate Relations and Veterans Affairs on Assembly Concurrent Resolution No. 117 (Burstein)

My name is Richard J. McManus. I am the Associate Counsel to the Governor. I am testifying in opposition to Assembly Concurrent Resolution No. 117. The Counsel to the Governor, Daniel J. O'Hern, is unable to testify on behalf of the Governor because of a prior commitment.

ACR-117 would amend article V, section I, paragraph 14 of the New Jersey Constitution to change the method by which passed bills are presented to the Governor for his consideration and the circumstances under which such bills become law. According to the statement to the concurrent resolution, the proposed constitutional amendment is "intended to prevent abuse of the so-called 'pocket veto'." We do not believe that the "pocket veto" has been abused by the Governor. But, even assuming that it has, an amendment to the Constitution is not necessary.

The controversy over the "pocket veto" is really concerned with the practice known as "gubernatorial courtesy". The Legislature is free at any time to present a bill to the Governor before the Governor calls for it. "Gubernatorial courtesy" is a system under which the legislature does not present bills to the Governor for his consideration until the Governor requests them. As the name implies, this practice is a matter of courtesy by the Legislature to the Governor. It does not constitute a unilateral action by the Governor. In fact, the Governor has requested the leadership of both houses of the Legislature to present bills to him prior to his calling for them if the leadership believes that such action is in the best interest of the State.

Gubernatorial courtesy is neither an unconstitutional practice nor an innovation of recent years. Article V, section I, paragraph 14(a) of the Constitution of 1948 provides that every bill which shall have passed both houses of the Legislature "shall be presented to the Governor." The Constitution does not specify a time within which a bill must be presented. Under normal circumstances, the Constitution requires the Governor to act on a bill within 10 days, Sundays excepted, after it has been presented to him. In many cases, the Governor and his staff require more than 10 days after passage of a bill to study it in order

to be in a position to act on it in an informed and responsible manner. "Gubernatorial courtesy" permits the Governor to take the necessary time for study before calling for a bill.

A similar constitutional provision was found in the New Jersey Constitution of 1844. Article V, Paragraph 7 of the Constitution of 1844 also required presentation of all passed bills to the Governor, but did not specify a time within which such action must be taken. A similar provision is found in Article I, Section VII, Clause 2 of the Constitution of the United States. These constitutional provisions have been interpreted as permitting a delay between final passage and presentation of passed bills to the Governor or President. Similar constitutional language is found in the constitutions of other states.

The subject of "gubernatorial courtesy" was considered at the 1947 Constitutional Convention. Testimony was taken from several former Governors who indicated that the practice was necessary in order to permit time to study bills and to prevent the Governor from being swamped by the presentation of a large number of bills at one time. See, Minutes of the 1947 Constitutional Convention, Committee on the Executive, Militia, and Civil Officers, Volume V, pp. 22-23 (June 24, 1947), 31 (June 24, 1947), 66 (June 25, 1947), 68-69 (June 29, 1947).

It is clear, therefore, that the practice of "gubernatorial courtesy" is consistent with the intent of the framers of the 1948 Constitution and that it was a well-known practice under the Constitution of 1844.

We do not feel that the system of "gubernatorial courtesy" has been abused by the Governor. During the 1978-1979 session of the Legislature, the Governor signed 688 bills. He filed 21 absolute vetos and 46 conditional vetos. The two most controversial bills to pass the 198th Legislature, the death penalty and the abortion bills, were vetoed by the Governor specifically in order to give the Legislature an opportunity to override his veto. It is true that the Governor "pocket vetoed" 87 bills. However, more than half of them, 47, were passed within 33 days of the expiration of the Legislature. During the same 38-day period, the Governor acted upon 46 bills by signing them into law and 25 bills by vetoing them, for a total of 71 bills.

It is clear that the Governor and his staff could not reasonably have been expected to keep track of each of the 4,627 bills introduced in the Legislature during the 1978-79 Session. The flexibility afforded by the practice of "gubernatorial courtesy" is necessary for the smooth functioning of the Governor's Office and

to allow sufficient time to review legislation passed by the Legislature.

I would like to reemphasize the fact that the Governor has no authority to prevent the Legislature from presenting him with a bill, thereby triggering the 10-day period for action on a bill. The Governor does not and cannot use "gubernatorial courtesy" as a means of depriving the Legislature of an opportunity to override a veto. The exercise of "gubernatorial courtesy" is bilateral and, in fact, the balance of power lies in the hands of the Legislature.

Assuming for the moment that some action is necessary to prevent some possible abuse of "gubernatorial courtesy", it is not necessary for the Legislature to make a radical amendment to the Constitution. All that is necessary is adoption of a rule or resolution requiring presentation of passed bills to the Governor within a specified period of time or upon the call of the House. If there is a problem, it can be solved in this manner. The proposed constitutional amendment could force the Governor to act upon a large number of bills in a very limited period of time. It would destroy the flexibility which was built into the present constitutional scheme.

In addition, the proposed constitutional amendment will not abolish the "pocket veto." During the last 8 days of the 198th legislature, 147 bills were passed. Because the proposed constitutional amendment provides that no bill could become law if the Governor did not have at least 10 days for his consideration, those 147 bills would have been subject to possible "pocket veto." There would have been at least ³⁰ "pocket vetoes" and probably more, since the Governor would have had only 10 days to review 147 bills.

In summary, we request the Committee not to release this concurrent resolution. If the Legislature believes that some action is necessary, we would suggest a joint discussion between the legislature leadership with the Governor's Office. There is no need to take the time and expense of amending a provision of the New Jersey Constitution which has remained essentially unchanged for well over 100 years. We believe that there is no need for change and that the Legislature and the Executive can continue to work together under the present system.

Thank you for this opportunity to present our views on this important matter.

