



state of new jersey

Acting Governor Richard J. Codey

# PROPERTY TAX CONVENTION TASK FORCE



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1 STATE OF NEW JERSEY

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3 NEW JERSEY PROPERTY :  
4 TRANSCRIPT  
5 TAX CONVENTION TASK FORCE : OF  
6 HEARING

7 -----

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9

10 TRANSCRIPT ORDERED BY:

11 JACK DONNELLY, State of New Jersey, Office of  
12 the Governor, The Statehouse, PO Box 001,  
13 Trenton, New Jersey 08625

14

15 PANEL PARTICIPANTS:

16 (Not introduced/identified for the record)

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- 19 DR. SUSAN COLE
- 20 SENATOR LEONARD LANCE
- 21 TERRENCE MALLOY
- 22 ASSEMBLYMAN KEVIN O'TOOLE
- 23 MAYOR GARY PASSANANTE
- 24 ERNEST C. REOCK, JR., Ph.D.
- 25 MAYOR JO-ANNE B. SCHUBERT
- 26 CY THANNIKARY
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1 (Tape 1, Side A)

2 MR. VAN HORN: Good morning, everyone.

3 Thank you for finding your way to our new meeting

4 location on the Douglas Campus of Rutgers. We --

5 today's agenda is in front of you, members of the

6 task force, and what we're going to do today is

7 proceed with a reporting out from staff on some of

8 the research that was conducted between the last

9 meeting and today. That material was distributed to

10 you, but it was -- you may not have all gotten it

11 because it came out yesterday morning, I think, or

12 the middle of the day. But it is at your seat, and

13 they will briefly summarize that and give people an

14 opportunity to ask any questions they may have of

15 the staff.

16 Then we'll proceed to the announced

17 discussion of the issues that are calendared for

18 today, and then we'll talk about our next meeting

19 next Wednesday.

20 So let's go into the reporting out.

21 We'll begin with Ed McBride, who will begin the

22 conversation about delegate compensation, and then

23 we'll hear the legal analysis from Mr. Kelly.

24 MR. MC BRIDE: Thank you, Mr.

25 Chairman. As Professors Tarr and Williams cannot be

3

1 here today -- I believe because they're teaching,  
2 they both teach a class that meets on Fridays --  
3 but they put together the material, it's the first  
4 material in your -- actually, the second sent of  
5 material in your packet, consisting of an analysis  
6 of the composition of constitutional conventions and  
7 a review of the extent to which, if any, the  
8 composition of the delegates to the convention is  
9 affected by whether the delegates were compensated  
10 or not.

11 And their conclusion is that the  
12 decision about whether to compensate delegates has  
13 not had an effect on the composition, that what  
14 drives the composition is more the system by which  
15 the delegates are selected; in other words, the  
16 election system that's used and everything that goes  
17 into that, rather than the question of whether  
18 people are going to be compensated or not for their  
19 service as delegates.

20 Their conclusions are edged, to some  
21 extent, by the fact that there's limited data on  
22 this. It's not totally a scientific kind of a  
23 process because there is limited information on  
24 which to draw these conclusions. But based on the  
25 information that they looked at, that's the

4

1 conclusion that they reached; that whether or not

2 you choose to compensate delegates does not appear  
3 to have an effect of what the composition of what  
4 the convention will be.

5 MR. VAN HORN: Now, Ms. Winters, do  
6 you want to add anything to that? You also have a  
7 memo in here that comments on delegates to  
8 conventions, and I draw the members attention to  
9 that memo.

10 MS. WINTERS: Of course. I looked at  
11 states' conventions that were after the conventions  
12 that the two professors looked at, between 1970 and  
13 today, and there appeared to be no clear pattern as  
14 to whether they were paid, how they were paid, and  
15 the compensation of delegates.

16 Of course, I would agree with the  
17 professors that the information is kind of  
18 scattered. We don't have clear information for all  
19 these elections. And, in addition, just like the  
20 professors, I kind of had to pull information from  
21 sources that were not really comparing those two  
22 things, which is compiling information, and I guess  
23 we can draw our own conclusions from it.

24 Compensation ranged from no  
25 compensation in some states, to just expenses, all

5

1 the way up to \$1,000 a month in some states. There  
2 was also variety in whether they were reimbursed for  
3 travel and postage, and all sorts of other things.

4 So I mean, it really seems like a hodgepodge. I  
5 really can't find a pattern to help you with.  
6 But what I would suggest is that a lot  
7 of these states, the information is about thirty  
8 years old. So I'm not sure, as well, whether it's  
9 really relevant to New Jersey in 2004. There were  
10 different issues going on, especially in the south  
11 and west in the 1970s, with regard to composition,  
12 possible political reasons why certain groups -- or  
13 I guess social reasons why certain groups may not  
14 have been delegates. And compensation may have been  
15 different back then than it is today.  
16 So I would look upon these results  
17 with caution, but for what they're worth, this is  
18 what I could find, and I'd be happy to answer any  
19 further questions.

20 MR. VAN HORN: Does any member have  
21 any questions on this issue?

22 Okay. Thanks very much. That is as  
23 helpful as it can be, I guess is the way to  
24 summarize that.

25 Mr. Kelly, would you care to summarize

6

1 your work, beginning with the legislator eligibility  
2 question?

3 MR. KELLY: Sure. Good morning,  
4 everybody.

5 Our research indicated that, because

6 the Legislature -- it's well settled that the  
7 Legislature has the power to prohibit dual-office-  
8 holding; that the Legislature could, if it chose,  
9 prohibit legislators or other elected officials from  
10 serving as delegates to a constitutional convention.  
11 With regard to whether members of the  
12 Legislature could receive compensation for their  
13 service as delegates, we believe that that would be  
14 precluded by the state constitution, where  
15 legislators would be ineligible to serve as  
16 delegates, if compensation was paid to delegates  
17 generally, even if legislator-delegates were not  
18 going to receive compensation. It's the payment of  
19 compensation that makes this a position of profit  
20 under the constitution, which is what members of the  
21 Legislature would be prohibited from -- an office  
22 they would be prohibited from holding.  
23 And we also believe that, if  
24 compensation were not paid to delegates, but  
25 expenses -- delegates were merely reimbursed for

7

1 expenses, that that would not preclude members of  
2 the Legislature from serving as delegates.

3 MR. VAN HORN: Okay. So that's a very  
4 succinct summary, and the memo is in your packet.

5 Questions. Assemblyman O'Toole.

6 ASSEMBLYMAN O'TOOLE: Thank you,

7 Chairman. Thank you, Peter, for that very succinct

8 legal analysis.

9 But on Page 6 of your opinion, the

10 last line of the second-to-last paragraph, you kind

11 of insinuate, or I certainly draw an inference that

12 there's potential problem if there is a legal

13 challenge. And your statement is:

14 "None have been challenged on the

15 grounds that such reimbursement renders an

16 uncompensated position one of profit within the

17 meaning of the state constitution."

18 Are you concerned that that issue

19 could, in fact, be challenged and, frankly -- I

20 don't want to serve any more stumbling blocks for

21 this potential state constitution --

22 MR. KELLY: No, I think -- no, I don't

23 think that's what we were trying to convey there. I

24 think the point was there's simply no case law on

25 the subject, other than the more general O'Donald

8

1 decision that I cite before that, which basically

2 says that, you know, the payment of expenses to

3 public officials is not a form of extra

4 compensation. No, that sentence was not intended to

5 cast any doubt on the issue.

6 ASSEMBLYMAN O'TOOLE: I gave you more

7 credit then. Thank you. Thank you, Chair.

8 MR. VAN HORN: Any further questions

9 for Peter on this subject? Okay. Thank you. And

10 we'll proceed as you care to, I guess just down your  
11 list, Peter, and then I guess Mr. Parisi is going to  
12 talk about vote-by-mail, right?

13 MR. PARISI: Yes, thank you very much.

14 I looked at the question of vote-by-mail. My  
15 understanding was you wanted me to discuss the  
16 feasibility of doing so.

17 The bottom line is, it would be  
18 possible to do so in New Jersey, except we have to  
19 think about -- a little bit differently about how  
20 such an election would be conducted. It would be  
21 possible to do it, but you would have to think that  
22 you would need to establish a deadline by which all  
23 ballots would need to be received, and then it would  
24 take a period of a couple of weeks for the  
25 tabulation of those ballots, and then for the

9

1 results to be known.

2 It wouldn't be possible to have it  
3 like a conventional election, where you say, this is  
4 the election day, and have the results all ready by  
5 that particular day, simply because of the fact that  
6 we don't have the manpower or the machinery in place  
7 currently to have that kind of an instant result,  
8 like they have currently in Oregon.

9 As far as the cost of doing something  
10 like that goes, it's not very -- it's not clear how  
11 much something like that would cost. It has been

12 estimated that a special election in New Jersey, a  
13 stand-alone special election, would be approximately  
14 \$5 million.

15 In Oregon, when they had a special  
16 election back in February of this year, it was a  
17 cost of \$2,300,000, or \$1.27 per voter. Now that  
18 has to be kept in mind that they already had the  
19 mechanism in place for how these -- how this  
20 machinery works, and they've been doing it since  
21 1981.

22 So we don't really know what the  
23 effect would be on New Jersey, if we had a special  
24 election.

25 As far as turnout goes, that would

10

1 also be very difficult because we don't know if it  
2 would be a higher turnout if it was a special  
3 election, or if there would be higher turnout if it  
4 was part of another election. Special elections in  
5 New Jersey have not had a particularly high turnout  
6 in the past.

7 Oregon has a reputation for a very  
8 high turnout. That election I noted in February of  
9 2004 had sixty-three percent turnout, which is  
10 excellent. In New Jersey, we tend to have very  
11 short turnout, even for regularly scheduled  
12 elections; and even for some elections, such as  
13 school boards and fire district elections, they're

14 very low. As Dr. Reock points out in his book

15 Unfinished Business, when there was a special

16 election for the convention delegates in 1966, the

17 turnout was only about three percent.

18 MR. VAN HORN: Okay. Thank you.

19 Dr. Reock.

20 DR. REOCK: Mr. Chairman.

21 MR. VAN HORN: Yes.

22 DR. REOCK: One aspect of this that

23 I'm a little puzzled by is the -- at the last

24 meeting, there seemed to be almost a consensus that

25 it would be desirable to elect the delegates at the

11

1 general election in 2005. If we go to a mailed

2 ballot, is the implication that we would have two

3 parallel systems, a mail ballot for the delegates,

4 and a regular election using machines for the -- for

5 the rest of the general election that's held at that

6 date, or are we thinking of going to a mailed ballot

7 for the entire election? I'm not sure just how that

8 factors into the analysis that you made.

9 MR. PARISI: Well, I thought of it in

10 terms of just a separate vote-by-mail for delegates;

11 and, at that time, you could have -- you know,

12 whether or not the decision, you want to actually

13 have a convention at that time. It could be held --

14 it could be done at that particular time, or it

15 could be done at a general election.

16 DR. REOCK: So we actually would be

17 running two electoral systems: One -- one we're

18 familiar with --

19 MR. PARISI: Yes.

20 DR. REOCK: -- where it's vote at the

21 polls, and the other a mail ballot for delegates to

22 the convention.

23 MR. PARISI: That's correct.

24 MR. VAN HORN: Dr. Reock, I would

25 reconstruct the situation this way. I think the

12

1 reason for asking for this analysis was simply to

2 put more evidence into the record as to that option,

3 should the Legislature decide they wanted to go that

4 way.

5 But I don't think my own view would

6 be, if the delegate -- if the Legislature decides to

7 go ahead with this and have the delegates elected at

8 the same time as the general election, then they

9 would most likely use the normal process. But if

10 they were to go another route with a special

11 election, I think there was a great concern about

12 methods for increasing turnout.

13 DR. REOCK: I just wanted to make sure

14 that we weren't planning to run the regular general

15 election by mail.

16 MR. VAN HORN: No, I -- well, I don't

17 know what's -- who's "we," but I would not favor

18 doing that.

19 UNIDENTIFIED: "We" is all of us,

20 Chair.

21 (Laughter)

22 MR. VAN HORN: Assemblyman O'Toole and

23 -- yeah.

24 ASSEMBLYMAN O'TOOLE: Two issues.

25 First of all, I'm somewhat disheartened to see that

13

1 -- it appears to me we have over twenty percent

2 higher turnout on a similar election from Oregon, as

3 opposed to what we're experiencing here in New

4 Jersey. Is that what those numbers suggest?

5 MR. PARISI: Yes.

6 ASSEMBLYMAN O'TOOLE: Sixty-three

7 versus forty-five or forty-six, and I think that's

8 something that should be taken into account.

9 And when you talk about a five-

10 million-dollar additional expenditure, if we are

11 running a stand-alone election, I think what has to

12 go into the analysis and equation is that we will

13 not be able to -- if it's a pure mail-in ballot,

14 will we -- will there be a need for each candidate

15 to have the various -- the hundreds and thousands of

16 board workers and translators, and paying personnel?

17 And, if there's not a need for those members that we

18 would normally pay an reimburse on an election, is

19 there some offset, so to speak? What does it cost

20 for a normal special election? And if this \$5  
21 million is for the mail-in process, what would it  
22 cost to do a regular election, stand-alone, as we  
23 have seen in the past?

24 MR. PARISI: The \$5 million,  
25 Assemblyman, is for a regular election, as we

14

1 conduct them now. I don't know what it would be if  
2 it was a mail-in election because there would be two  
3 factors which would be -- would figure in to the  
4 cost:

5 One would be the cost for -- because

6 of the way ballots would need to be tabulated, it  
7 would either be by an optical scan machine, or it  
8 would have to be by hand counting.

9 Optical scan machines, if they are

10 available -- we may need to be able to rent more, if  
11 we can possibly find more, and there may be an  
12 expense for that, number one.

13 Number two, if those are not -- no

14 more were available, you would need an additional  
15 amount of time for poll workers to run the ballots  
16 through the optical scan machine.

17 In those counties where they count the  
18 ballots by hand, you would need to hire more people  
19 Election Day; poll workers or just county board  
20 workers, to count the ballots, as well. So there  
21 would be an increased labor cost over what you might

22 expect.

23 So that's why I say, it's very

24 difficult to tell. It may be -- it may work out to

25 about the same, but it's impossible to know at this

15

1 point.

2 ASSEMBLYMAN O'TOOLE: Thank you.

3 MR. COLE: Frank, if it's by mail

4 election, why do the ballots have to be returned to

5 the county? If it's only the special election for

6 delegates, why couldn't you have them returned to

7 one central location?

8 MR. PARISI: Well, the --

9 traditionally, the way the absentee ballots -- and I

10 would think you would want to follow the procedure

11 for absentee ballots, is that once it is voted, it

12 is returned to the county, and that they are counted

13 by the County Board of Elections.

14 It would be possible, of course, to

15 provide in the for another jurisdiction or another

16 agency to be counting them, but then, again, you

17 have to consider that the county board has the most

18 experience with counting and tabulating ballots of

19 that kind.

20 MR. VAN HORN: Okay. Thank you very

21 much.

22 Now we'll go back to you, Peter,

23 commenting on -- I believe you prepared work on

24 disclosure by independent groups, or am I --

25 (Participants confer)

16

1 MR. PARISI: That -- you wanted

2 information on public financing for the individuals?

3 Yeah, that's me, as well.

4 MR. VAN HORN: Okay. Sorry.

5 MR. PARISI: My understanding was that

6 there were really three questions:

7 One was on whether or not the law

8 establishing the convention could limit spending.

9 Two, whether or not there could be a

10 public -- a candidate could disavow any independent

11 expenditures in exchange for a campaign benefit, and

12 whether or not there could be a ban imposed on

13 independent expenditures.

14 Let me take each of those in turn.

15 In terms of limiting spending, the

16 answer is yes, absolutely you can limit

17 expenditures; that's one of the hallmarks of the

18 campaign finance laws. You limit -- you can limit

19 expenditures in exchange for public financing,

20 that's the tradeoff; otherwise, you cannot limit

21 expenditures because the spending of money has been

22 seen by the Supreme Court as equal to the expression

23 of free speech and association.

24 Number two, as far as the -- whether

25 or not there can be some kind of an exchange to say

17

1 if you're going get public financing, you have to do

2 certain -- you have to do certain things, certainly.

3 You can make as a condition of increased public

4 financing, and maybe time on New Jersey Network or

5 other kinds of things as a condition of public

6 financing. You certainly can do that. That's

7 provided for under Supreme Court doctrine in Buckley

8 v. Galleo (phonetic).

9 And, third, whether or not there can

10 be any kind of a ban imposed on independent

11 expenditures, absolutely, positively not.

12 Independent expenditures cannot be banned because

13 doing so would be considered to be an infringement

14 on the group's ability to have freedom of speech.

15 MR. VAN HORN: And what about

16 disclosure by independent groups?

17 MR. PARISI: I'm going to turn that

18 over to Gina.

19 MR. VAN HORN: Okay. Thank you.

20 MS. WINTERS: I handled that. Thank

21 you, Chairman.

22 The question that was posed to me by

23 Senator Adler last week, and Senator Lance, was

24 whether we could require groups that make

25 independent expenditures to disclose to ELEC.

18

1 Particularly, the concern was about these five

2 twenty-seven groups.

3 What my research showed was that in

4 the McKean Feingold Act (phonetic) that was just

5 done by the federal government, there was a

6 provision for telling groups that certain types of

7 communications within a certain period of time

8 before an election, that they must disclose their

9 contributors to the federal government. We may be

10 able to do something like that on the state level,

11 but it would have to be within those time

12 restrictions.

13 To go beyond that, which I know the

14 question has been asked of me, well, can we go

15 beyond the parameters the federal government has

16 done. My answer would be that it's unclear. I

17 mean, the Supreme Court in the McConnell case

18 (phonetic) ruled on what Congress had done, so

19 that's what we know is permissible at this point.

20 MR. VAN HORN: Okay. Questions on

21 this. Senator Lance?

22 SENATOR LANCE: Yes. So I understand

23 what's just been said, and I guess to Frank or to

24 Peter. A candidate could run for delegate and spend

25 as much as his or her own money as he or she wanted,

19

1 so long as he or she did not participate in a

2 process that involved partial public funding. Is

3 that correct?

4 MR. PARISI: That's correct.

5 MR. KELLY: Yes.

6 SENATOR LANCE: So, as is true in the

7 race for Governor of New Jersey, candidates can

8 completely eschew any public funding and spend \$100

9 million to run for delegate to a constitutional

10 convention.

11 MR. PARISI: Thank you.

12 MR. COLE: One question. What about

13 independent expenditures, what about a leveling-the-

14 playing-field concept? If a candidate is a target

15 of an independent expenditure, could we provide

16 additional public funds to that candidate? I

17 understand it's independent, but just on the concept

18 of leveling the playing field, so he or she could

19 get their message out.

20 MR. PARISI: Chairman -- Vice Chairman

21 Cole, that certainly could be -- that could

22 certainly happen. That's already provided for in

23 the clean elections legislation, which is in place

24 in Maine and in Arizona, and it is a provision of

25 the Fair and Clean Elections Act, which was passed

20

1 in New Jersey and signed into law recently this

2 summer.

3 MR. COLE: Has anyone challenged any

4 of those types of provisions, do you know -- as far  
5 as you know?

6 MR. PARISI: As far as I know they  
7 have withstood any challenges. I don't know that  
8 they have been challenged, but I know they're still  
9 in force and effect in Arizona and in Maine.

10 MR. COLE: Thank you, Frank.

11 MR. VAN HORN: Yes, Mayor.

12 MAYOR PASSANANTE: Frank, can you  
13 elaborate on how that would -- how that would take  
14 place, a situation like that? Just so I'm clear on  
15 --

16 MR. PARISI: Do you mean as far as  
17 getting an increased amount of money?

18 MAYOR PASSANANTE: Yeah, for the level  
19 and -- yeah.

20 MR. PARISI: Well, the way it works in  
21 the clean elections states is that there is a very  
22 rigorous disclosure requirement for any non -- what  
23 they call a non-certified candidate. If you're a  
24 certified candidate, that means you're one who's  
25 participating in the clean and fair elections

21

1 procedure. If you do that, you have to -- you have  
2 to follow a very strict kind of a procedure as to  
3 what kind of campaign contributions you accept and  
4 when they have to be disclosed, and so forth.

5 If you are not a participating

6 candidate who is somebody who is not part of the  
7 clean elections routine, you have to also disclose,  
8 but you have to do so on a much more regular basis.  
9 And if there is an overseeing agency which is  
10 looking at this, and they find that you are spending  
11 more money by reading through your disclosure  
12 statements, then, as a candidate who is a  
13 participating candidate, they will provide money to  
14 the participating candidate up to a certain amount.  
15 There is a limit, as -- such as there  
16 is under the New Jersey Clean and Fair Elections  
17 Act. The New Jersey Clean and Fair Elections Act,  
18 it's \$50,000; I'm not sure exactly what it is in  
19 Maine and in Arizona, but there is a limit as to how  
20 much they will give you in additional monies, to  
21 kind of try to level the playing field out.

22 MAYOR PASSANANTE: Thank you.

23 MR. VAN HORN: Senator Lance.

24 SENATOR LANCE: Yes. On that very  
25 important point, as I understand the system on the

22

1 experimental basis in New Jersey and the system that  
2 exists in a number of other states, the amount of  
3 money that is given to participating candidates is  
4 quite modest in comparison to what a non-  
5 participating candidate can spend on his or her own.  
6 Would that be an accurate statement?

7 MR. PARISI: That's accurate.

8 SENATOR LANCE: Thank you.

9 MR. VAN HORN: Any other questions of

10 the staff on these issues?

11 MR. COLE: Back to Frank, if I could.

12 MR. VAN HORN: Yes. Mr. Cole.

13 MR. COLE: In your explanation a

14 moment ago, you talked about there being a certified

15 candidate and a non-certified candidate. Could you

16 impose the same leveling concept, though, Frank,

17 against an independent expenditure? Not one made by

18 the candidate, not one tied necessarily to the

19 candidate, but it does attack one candidate, and not

20 -- and not the other; or could even favor the other.

21 But it's independent, it's huge, it's blanket ads,

22 media ads.

23 MR. PARISI: Well --

24 MR. COLE: Could you devise a system

25 that would say, in that -- in that case, the victim

23

1 or the target of those ads is given an additional

2 mailing or an additional TV program, something like

3 that?

4 MR. PARISI: Well, that's how it

5 works. In fact, the victim does -- well, it's --

6 right now, the way it's set up is they get an

7 additional amount of money. You certainly could say

8 that, if the victim of something like that may be

9 entitled to an additional mailing or something like

10 that, as long as you're not in any way infringing on  
11 the independent entity's ability to spend money, I  
12 think you have a lot of leeway.

13 MR. COLE: You'd have to devise, I

14 guess, criteria for discerning whether or not that's  
15 the type of attack ad --

16 MR. PARISI: Yes.

17 MR. COLE: -- that merits additional -

18 -

19 MR. PARISI: And I think that may be

20 very difficult. You would need some kind of an

21 agency that would monitor it very closely, and that

22 could -- that could -- that could be difficult.

23 MR. COLE: Dr. Herman is not here, so

24 we could easily give it to him.

25 (Laughter)

24

1 MR. PARISI: I'm sure he'd appreciate

2 it.

3 MR. VAN HORN: Okay. Let me -- thank

4 you. Oh, I'm sorry. Yes, Mayor.

5 MAYOR SCHUBERT: That's okay. I just

6 have one question. You're talking about the attack

7 ads giving the candidate who's attacked some

8 additional funding. What about like if you have an

9 independent organization that comes out and

10 vigorously supports a candidate; and so, as a

11 result, they get a lot of extra media attention or

12 whatever because of that extra expenditure. There's

13 nothing that would level the playing field for the

14 other candidates with regards to that or --

15 MR. PARISI: There is -- there is

16 nothing currently in the law that I'm aware of.

17 What you're saying is, if somebody is spending a

18 tremendous amount of money in support of a

19 candidate, that the other candidates are being left

20 behind, it seems like.

21 MAYOR SCHUBERT: Right.

22 MR. PARISI: Once again, I think you

23 may be able to provide something like that. But,

24 again, it would -- as long as you are not infringing

25 on the independent entity's ability to spend money.

25

1 MAYOR SCHUBERT: Couldn't that end up

2 being an astronomical amount of money?

3 MR. PARISI: It certainly could, and

4 that's part of the problem. Where do you stop?

5 MAYOR SCHUBERT: Right.

6 MR. VAN HORN: Okay. Well, let me

7 thank the staff for answering our questions so

8 quickly and efficiently, and it was very helpful, I

9 believe.

10 Now I want to turn to -- Senator

11 Adler, for your benefit, we've just gone -- the

12 agenda is fairly -- we just finished old business,

13 and which they were reporting on. You have the

14 memoranda in front of you, and now we're moving to

15 new business.

16 The first question that we posed was

17 the issue of public education following, if there is

18 a convention, and a convention, once it adopts

19 proposals, whether we should recommend an education

20 campaign; and, if so, what kind of education

21 campaign would be recommend to the Legislature.

22 We'd welcome any comments on that particular issue.

23 UNIDENTIFIED: Chair, can you develop

24 exactly what you're --

25 MR. VAN HORN: Well, as was pointed

26

1 out in the testimony of Professor Howard, and also

2 as described in the memorandum for the '47

3 convention and the '66 convention, there were

4 processes to inform the public after the convention,

5 prior to the vote in the -- let's say if this were

6 to occur in the fall of 2006. And there are

7 different mechanisms that people have used;

8 Professor Cornwell testified on that point, as well.

9 So we're jumping ahead to thinking

10 about the end of the process, after there are any --

11 any proposals were adopted, what kind of education

12 campaign should we recommend, if any, to the

13 Legislature.

14 Yes, Mayor.

15 MAYOR PASSANANTE: To the question of

16 whether we should have an educational campaign, I  
17 fully believe that we need to engage the public as  
18 much as possible, in order to get their  
19 participation and cooperation in the election. So I  
20 think that we absolutely need some type of strong  
21 educational campaign.

22 There's a lot of -- even now, there's  
23 a lot of questions from the public as to what we're  
24 doing and why we're doing it and how we're doing it,  
25 and that's not going to end. So we need to make  
  
27

1 sure that the public is real clear on the goals and  
2 objectives of what this convention is.

3 MR. VAN HORN: Yes, Dr. Reock.

4 DR. REOCK: I think one of the

5 difficulties here is, if a public education campaign

6 is authorized in the enabling legislation, how to

7 keep it neutral. Do we want to get into the

8 situation where public money might be used to urge a

9 yes vote on the referendum? And I think that's

10 something that we want to try to avoid, so that the

11 neutrality of the educational campaign becomes

12 essential.

13 Looking back to the '66 convention,

14 yes, there was a public education campaign, and it

15 was authorized by the convention, but it was funded

16 privately, as far as I know. I'm not -- I don't

17 really remember whether they -- there was any public

18 money that was used there. But it definitely was a  
19 vote-yes campaign; it was strongly in favor of  
20 getting approval for what the convention had done.

21 MR. VAN HORN: Other comments on this  
22 issue. Yes, Senator Lance.

23 SENATOR LANCE: Yes. I agree  
24 completely with Dr. Reock. And I know as a matter  
25 of school board law in this state, school boards can

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1 inform the public regarding ballot questions for  
2 school board issues, but cannot take a yes-or-no  
3 position. And there have been many school boards in  
4 New Jersey that have gotten into great difficulty by  
5 overstating that bright-line distinction. School  
6 board members are often enthusiastic in how their  
7 public information material is worded, and there  
8 have been court challenges as a result of that.

9 And I would be very wary of this for  
10 the reasons suggested by Dr. Reock. And, as I  
11 recall also, in 1966, the public education campaign  
12 was privately funded.

13 MR. VAN HORN: Yes, Dr. Cole.

14 DR. COLE: I don't think there's any  
15 question, or there's no question in my mind that  
16 there needs to be a public education campaign of  
17 some sort; the public needs to be informed. There's  
18 also no question that a lot of organizations and  
19 groups are going to pursue educating the public

20 along their own lights (sic), as we have seen, in  
21 terms of the testimony about the -- that's come  
22 before this task force.

23 So it seems to me the question is: Is

24 there any way to provide for position-neutral  
25 education of the public? And I would think that

29

1 that would take some considerable thought as to how  
2 such a component could be built in to the general,  
3 overall politicking around the issues that will  
4 undoubtedly happen. And I think it's worth giving  
5 some thought to, and doing some staff work on it.

6 MR. VAN HORN: Yes.

7 MR. COLE: I don't think the concept

8 is entirely new, not in terms of a public education  
9 campaign. Every time there is a question on the  
10 ballot, there are interpretive statements that have  
11 to issue out of the Secretary of State's Office, I  
12 believe, with the Attorney General.

13 And I know of at least two instances

14 where, because of the particular questions that were  
15 involved -- one I think was the legislative vetoes  
16 of regulation questions, where one side or the other  
17 thought people had overstepped their neutrality  
18 (audio interference) court challenges and court  
19 rewriting of those statements to make them neutral.

20 I think the other one I have in mind was the

21 (inaudible - not recorded) question from, I guess,

22 the early '80s.

23 So it's not an entirely foreign

24 contest because those deal only with the

25 interpretive statement that's mailed to -- that's on

30

1 the ballot and is mailed to the voters. But you

2 could expand on that, I assume.

3 MR. VAN HORN: Yes, Mayor.

4 MAYOR SCHUBERT: I think it's going to

5 be important to have some sort of a neutral body

6 educate the public because, as was stated, you're

7 going to have a lot of special interests on either

8 side, saying vote yes or vote no, and giving their

9 interpretation of what's happening. So, I mean, I

10 think there's got to be a mechanism for an

11 independent body to come forward and just lay out

12 the facts and -- so that the public is aware of a

13 neutral stand on it, and can make an education

14 decision.

15 MR. VAN HORN: Let me ask the staff

16 whether -- just one second, Senator -- ask the staff

17 whether the -- you might go back to some of our

18 advisors on this subject. I know Professor Cornwell

19 talked about; I don't recall exactly what he said.

20 He recommended it as a component. But what --

21 following on the different comments the members have

22 made, if we could get some options for

23 considerations and approaches that have been

24 undertaken that carry out the sentiment of the task

25 force, as expressed.

31

1 Senator Lance, yeah.

2 SENATOR LANCE: Yes, thank you.

3 Certainly, the interpretive statements that exist

4 for public questions could be replicated here. My

5 own belief is that not very many New Jerseyans read

6 those interpretive statements. And whenever I have

7 difficulty sleeping, I just try to read one and --

8 (Laughter)

9 SENATOR LANCE: -- very quickly fall

10 asleep. But I think our concern goes well beyond

11 that, to some sort of public education campaign.

12 My difficulty with that, over and

13 above the interpretive statement, which undoubtedly

14 will appear, is that there would probably be a

15 requirement that there be equal treatment pro and

16 con, and I'm not sure I want to fund either side.

17 It would impress me to be the responsibility of

18 those who are vigorous advocates for the result of

19 any convention; presumably, the delegates and

20 others, and those that may be vigorously opposed to

21 do all of that sort of exhortation. And I think it

22 would be very difficult to be evenly balanced in

23 that type of situation.

24 MR. VAN HORN: Yes, Mr. Thannikary.

25 MR. THANNIKARY: Thank you, Mr.

32

1 Chairman. This is a paper, an analysis of the 1997  
2 convention in New York State, written by Professor  
3 Gerald Benjamin of SUNY, SUNY University in  
4 Purchase. And they said that the 1997 convention  
5 question didn't have a centralized campaign to  
6 educate the public. According to this analysis, at  
7 (indiscernible) University did a survey, and they  
8 said sixty-one percent of the New Yorkers didn't  
9 even know there was a convention to be held. And  
10 they were recommending, and there's this paper  
11 recommending, a convention must dedicate a certain  
12 amount of money for public education of the purpose  
13 of the education, the scope, and all of that detail.  
14 They also recommend that a reasonably  
15 finite (sic) organizational structure outside the  
16 government is essential to generate the political  
17 support that will be needed to call a constitutional  
18 convention.

19 So this may be -- there's a whole page  
20 of it -- I mean, two or three pages, explaining what  
21 happened in 1997. As a matter of fact, that  
22 referendum was defeated in '97 convention. So I  
23 would think we should listen to that, and make some  
24 provision for it.

25 MR. VAN HORN: Okay. You'll make that

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1 available to the staff.

2 MR. THANNIKARY: Sure, sure.

3 MR. VAN HORN: Dr. Reock.

4 DR. REOCK: Just a point of

5 clarification. Are we talking here about an

6 education campaign preceding the vote on whether to

7 have a convention or not --

8 MR. VAN HORN: No.

9 DR. REOCK: -- or are we talking --

10 MR. VAN HORN: Subsequent to.

11 DR. REOCK: -- on terms of the

12 convention's proposals.

13 MR. VAN HORN: Proposals, yeah.

14 DR. REOCK: Okay. Just the latter.

15 MR. VAN HORN: Okay. I've just asked

16 the staff to do some more analysis and present to us

17 some -- and there may not be anything that we find

18 appealing, but I'd like to know more about what some

19 other states have done, with a special emphasis on

20 cost-effective, or minimally costly approaches.

21 The next questions have to do with

22 when and where the convention should be held. I did

23 want to say as we start this conversation that

24 President McCormick has, in fact, offered to host a

25 convention, if there is one, here at Rutgers, and

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1 asked me to make that point, and I certainly favor

2 that, but -- as you can tell. That's why we've had  
3 all these meeting here. But -- and I welcome other  
4 comments on both the timing and the location.

5 MR. COLE: I think Rutgers is a good  
6 choice for location for all of the reasons set forth  
7 in the materials. It is central, it does have a  
8 college -- obviously, a college atmosphere.  
9 And in terms of timing?

10 MR. VAN HORN: Uh-huh.

11 MR. COLE: It would seem that, if  
12 you're going to put the delegates to the vote at the  
13 same time you put the question, there's no reason  
14 you can't start sooner, rather than later. You can  
15 start in February, and they would have at least six  
16 months, if not seven, to do their business, as  
17 opposed to the three that I think had been suggested  
18 in a number of bills.

19 But I think those bills operated under  
20 the assumption that there would be a special  
21 election in March. So if you're going to do it in  
22 November, there's no reason you can't start sooner.

23 MR. VAN HORN: Uh-huh. Yes, Mayor.

24 MAYOR SCHUBERT: I mean, I agree that  
25 Rutgers is a perfect location, and I agree that we

35

1 should start sooner, rather than later. But I would  
2 rather see, if we started in February, I would go  
3 three months from February, so that maybe something

4 could be on the ballot that November, as opposed to  
5 going six months in 2006, and having it not appear  
6 until like, either a special election, or 2007.

7 MR. COLE: I think August is the date  
8 by which they -- the question has to be finalized,  
9 in order to get it on the ballot in November.

10 MAYOR SCHUBERT: So that would give  
11 them enough time then.

12 MR. THANNIKARY: There are certain  
13 dates set for --

14 MR. COLE: So you could --

15 MAYOR SCHUBERT: You could still --  
16 okay.

17 MR. COLE: You could let them go six  
18 months, and you would not be jeopardizing that.

19 MAYOR SCHUBERT: Although I think six  
20 months is a long time. I mean, I just think it's a  
21 long time to drag something out. It would be good  
22 to get it cleared up and start the public education  
23 if we decide on that.

24 ASSEMBLYMAN O'TOOLE: Chairman.

25 MR. VAN HORN: Yes, Assemblyman

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1 O'Toole and --

2 ASSEMBLYMAN O'TOOLE: In terms of the  
3 length, there's been considerable debate about the  
4 ability of the average individual to come to the  
5 convention as a delegate; and, the longer the term,

6 the less likely you're going to have an average  
7 individual, a mother or father working, being able  
8 to come here, put their job to the side, and whether  
9 they're getting a per diem or whatnot. It's very  
10 difficult, in terms of length. If you took it five,  
11 six, seven months, you're going to eliminate a great  
12 deal of people, just in terms of the ability to  
13 serve.

14 So I would advocate, as the Mayor has  
15 indicated, perhaps a three-month, at best a four-  
16 month; I would personally favor a three-month, and  
17 hopefully we can encourage more people and not  
18 eliminate or certainly discourage others from  
19 serving. So that's something that I would advocate.

20 MR. VAN HORN: Yes, Dr. Reock.

21 DR. REOCK: In terms of location, of  
22 course, I would hope for Rutgers.  
23 In terms of the time, I'd like to  
24 correct some misstatements that are in the documents  
25 that (indiscernible) set out. 1966, this statement

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1 says it was held from June to August. Actually, it  
2 was from March to June.  
3 And the '66 convention did not meet an  
4 average of three days a week; it met one day a week  
5 during that period.  
6 And I might as well throw the other  
7 one. In -- there was some statement here about the

8 committee -- you know, subcommittees. Subcommittees  
9 -- the committees of the 1966 convention did not  
10 really agree on anything that was useful to the  
11 convention. They were evenly divided between  
12 Republicans and Democrats, and the votes always  
13 wound up four-to-four or eight-to-eight or six-to-  
14 six. They did serve a purpose as a sounding board  
15 for proposals, but that was the main contribution of  
16 the committees.

17 My own preference would be if the  
18 delegates are elected early in November, I would  
19 like to see them meet before the 1st of December for  
20 an organizational meeting, and possibly one or two  
21 meetings to -- to try to lay out their agenda, so  
22 that they can then pose questions for their staff to  
23 work on when they -- and come back for actual  
24 working sessions beginning early in the year, end of  
25 January or February.

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1 But I think there would be some  
2 advantage to getting them into being (sic), getting  
3 them organized, letting them plan, do some -- a  
4 little bit of planning as to what they want, and  
5 then possibly take a holiday break, and coming back  
6 to actually work.

7 MR. VAN HORN: Other suggestions on  
8 that point? Yes, Mr. Malloy.

9 MR. MALLOY: Mr. Chairman, first I'd

10 have to agree that certainly Rutgers is an ideal  
11 location to hold a convention.  
12 I also would have to agree that I  
13 think as narrow of a time frame for the convention,  
14 whether it's three or four months, does allow a  
15 greater number of people to serve.  
16 And I have to agree with Dr. Reock  
17 that I think the concept of an early start where  
18 there are a couple of meetings of delegates, and  
19 then break, which basically allows them time to  
20 really educate themselves on the issues and confront  
21 them, works well, because the real issue in the case  
22 of delegates, in terms of time, is how often are  
23 they going to have to come down, if it's Rutgers, to  
24 Rutgers. Obviously, if they can meet once or twice  
25 a week, that's much easier than having to meet three

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1 or four times a week.

2 So I think the greater the flexibility  
3 that's afforded to them, once it comes time for an  
4 organizational meeting, the better off the process  
5 is going to be. So, again, the earlier the process  
6 can begin, I think the better off the process will  
7 go in the end.

8 MR. VAN HORN: I'm interested in, just  
9 from the legislators' standpoint, do you have any  
10 view about the practical impact of the timing of  
11 this, in relationship to legislative business;

12 again, whether or not members are delegates.

13 Senator Lance.

14 SENATOR LANCE: Yes, I do.

15 MR. VAN HORN: This wasn't scripted,

16 was it?

17 SENATOR LANCE: The Legislature,

18 obviously, is in session in the spring, goes into

19 "budget break," as it is so quaintly denominated,

20 roughly the 1st of April, and then comes back into

21 session at the end of May. That, of course, is a

22 very difficult and arduous period of time for those

23 who serve in the budget process; no budget break for

24 those who serve in the budget process.

25 My concern regarding a time frame for

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1 convention delegates is that it should be so that

2 average working New Jerseyans can serve, for the

3 reasons Assemblyman O'Toole has suggested.

4 And I believe the convention should

5 meet up to the point at which there is a

6 determination that it cannot meet beyond that point,

7 because it is true, at least in legislative bodies,

8 and I would presume in a convention body, that,

9 unless you set a date-certain, there will be

10 negotiations to that date; and, even if the

11 convention has reached a conclusion, there will be

12 enormous pressure on delegates to reconvene, if they

13 have the ability to reconvene, to revisit issues

14 that presumably are already settled.

15 There was a tremendous amount of

16 research done prior to the 1947 constitutional

17 convention, and I think a potential convention this

18 time is much more similar to 1947 than 1966, in my

19 judgment, at least.

20 And there was a whole body of research

21 based upon the Legislature as being a constitutional

22 convention in 1944, and that having gone to the

23 public in 1944. So there was this whole body of

24 research from which the 1947 delegates were able to

25 draw.

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1 And so, if we were to elect delegates

2 next November, it seems to me there would have to be

3 a period of time, perhaps after an organizational

4 meeting, when significant staff work would have to

5 be done before the delegates themselves came back

6 into session for significant deliberation, and I

7 would suggest the late spring and early summer.

8 Now, if there were to be

9 constitutional change, there are limits in the time

10 frame, I think in early August; I believe Mr. Cole

11 would know, or something like that. And --

12 MR. VAN HORN: I think it's -- excuse

13 me, Senator, I think it's -- and maybe the staff can

14 -- it's sixty or ninety days, I think, before --

15 SENATOR LANCE: It depends, doesn't

16 it?

17 MR. VAN HORN: Perhaps the --

18 MR. KELLY: Under the constitution,

19 the constitutional amendments proposed by the

20 Legislature, were that people (sic) have to be

21 published more than ninety days before the general

22 election.

23 MR. VAN HORN: Right.

24 SENATOR LANCE: Yes.

25 MR. KELLY: Which would be an early

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1 August deadline.

2 SENATOR LANCE: Right.

3 MR. KELLY: Public questions has to be

4 finalized seven days before the general election.

5 MR. VAN HORN: Right.

6 MR. KELLY: But, frankly, we're not

7 sure that either of those would apply in the context

8 of a constitutional convention.

9 SENATOR LANCE: I understand, and

10 that's an arcane issue that we will have to discuss

11 at some point.

12 But my own view is that there ought to

13 be a date beyond which the convention cannot meet,

14 but that the convention should be able to meet up to

15 that date, for the reasons I've suggested.

16 MR. VAN HORN: I guess part of the

17 reason I raised it is I have the concern, the

18 practical concern about the fact that many of the  
19 people who would be drawn upon to support the work  
20 of the delegates are the very same people who will  
21 be part of the budget process; in other words, staff  
22 in the Legislature, Treasurer's staff, and so on, in  
23 this particular case. It's so tied up in the fiscal  
24 policy-making of the state that we have to think  
25 about that as we structure.

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1 And, again, if legislators run and --  
2 or some of them run and, you know, if they're part  
3 of the budgetary process, that would impose another  
4 burden. But just from the staff and analysis  
5 standpoint, it seems to me a late spring, early  
6 summer time frame makes more sense, with a deadline.

7 UNIDENTIFIED: I agree.

8 MR. VAN HORN: You know, and a  
9 deadline -- because certainly, without a deadline,  
10 then, you know, there will be all sorts of  
11 opportunities for reconvening and reconsidering, and  
12 so on.

13 So any other comments on that point?

14 Yes, ma'am.

15 (Dr. Cole not identified for the record)

16 DR. COLE: Yeah. I just would also  
17 like to comment -- and I think that those were valid  
18 points, Senator, as far as the budget process and  
19 the resources that would have to be used, so that

20 should be something we can consider.

21 But I'd also like to suggest that we

22 consider and we think about the time frame when

23 they're going to be meeting, that the delegates

24 could possibly meet in the evenings, rather than

25 during the day, or have some --

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1 (End of Tape No. 1, Side A)

2 (Beginning of Tape No. 1, Side B)

3 DR. COLE: -- point, which is, if we

4 are going to put the time of the -- timing of the

5 convention in the late spring, early summer, I want

6 to emphasize Ernie's point about having a research

7 period --

8 MR. VAN HORN: Yeah.

9 DR. COLE: -- up front, and getting

10 people organized. Because the last thing we want is

11 people rushing to closure on a very complex issue

12 without enough information.

13 MR. VAN HORN: Absolutely. I think

14 that the point -- and it's very wise -- about

15 convening, having an organizational meeting,

16 charging staff with assignments; and, in fact,

17 whether this is anticipated, perhaps adopting rules

18 for the convention. But then a period of study and

19 analysis before they actually convene as a body, and

20 that would allow both goals to be achieved: Careful

21 preparation, but then not having an indefinite

22 period of time for meeting, and also dealing with

23 the practical considerations.

24 Other comments on this subject? Well,

25 let's then go to the -- I'm sorry, Cy. Did you want

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1 to say something?

2 MR. THANNIKARY: Mr. Chairman, I just

3 wanted to follow up with what Senator Lance said.

4 According to the analysis the staff did, any

5 constitutional amendment for publication should be -

6 - should be announced ninety days before the

7 election.

8 MR. VAN HORN: Right.

9 MR. THANNIKARY: So I would think that

10 July 31st is the end date. You have to -- you can't

11 go beyond that, so that -- I just wanted to point

12 that out.

13 MR. VAN HORN: Right. And, again, I

14 think -- I don't -- I mean, my own view is we don't

15 need to get into the acrania because, as a practical

16 matter, we should have a deadline. So that's the --

17 perhaps the more important point.

18 But anyway, let's go on to the issue

19 of convention rules and the issue is whether -- to

20 what extent we're recommending that the Legislature

21 try to outline any such rules, or whether it's

22 something that we feel should be delegated to the

23 delegates; that it should be up to them to adopt

24 their rules.

25 Senator Lance.

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1 SENATOR LANCE: I favor in any

2 enabling legislation the statement that these

3 questions at a convention be decided by simple

4 majority; I would put that in the enabling

5 legislation.

6 And other than that, I would imagine I

7 would leave to the convention itself other -- other

8 matters of this nature.

9 MR. VAN HORN: Yes, Dr. Reock.

10 DR. REOCK: I think it would be

11 desirable for the convention to have the authority

12 over its own rules, but I think the enabling

13 legislation probably should designate someone to

14 prepare a draft set of rules, so that the convention

15 does not just convene on whatever date it is; let's

16 say December 15th or something of that sort, with

17 nothing, and they start from scratch. I would -- it

18 would be well to have a draft set of rules prepared,

19 which the convention then could adopt or modify as

20 they see fit.

21 MR. VAN HORN: Are there any

22 dissenting views on those points, or do we have

23 consensus?

24 DR. REOCK: Actually, I would add that

25 to the idea that there's a lot of preparatory work

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1 that probably should go on before the convention

2 actually comes into session, not only the drafting

3 of rules, but all the physical arrangements and

4 preparation for the convention itself.

5 So I think we should make some

6 recommendation that some standing body have the

7 responsibility for doing the preparation for the

8 convention, before it comes into being, with the

9 drafting of the rule -- with a set of draft rules

10 being one of those things. And I think the

11 Legislative Services Commissions probably is the

12 obvious organization to do that. It was the State

13 House Commission in 1966, but I don't think we had a

14 Legislative Services Commission then.

15 MR. VAN HORN: Okay. Does anyone else

16 want to comment on those issues? I mean, I think

17 they're all making a lot of sense.

18 The question of convention operation.

19 Should delegates decide on -- on the operation of

20 the convention, such as -- well, Senator Lance has

21 already spoken on this -- majority or super-

22 majority, or should we be silent on that? Senator

23 Lance has spoken. Any other points of view on that?

24 MR. COLE: I thought Senator Lance's

25 position was a good one.

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1 MR. VAN HORN: Yeah.

2 MR. COLE: The legislation provides

3 that convention decisions will be made by a majority

4 vote; and, beyond that, I don't think we need to say

5 more.

6 MR. VAN HORN: Okay. Good. Well,

7 then we will embody that in the recommendations.

8 Dr. Reock has talked about the

9 Legislative Services Commission, and perhaps

10 identifying them. Are there any other reactions to

11 that idea, or is that a consensus, that we should

12 name that body in our recommendations? Yes, Mr.

13 Thannikary.

14 MR. THANNIKARY: Mr. Chairman, I need

15 a clarification on the super, super-majority needed.

16 Excuse me. Are we saying that, for the convention

17 question itself, doesn't need -- need a simple

18 majority, whether -- passed the convention

19 recommendations? Is that what we're saying?

20 MR. VAN HORN: No, we're -- we're

21 talking about the conduct of the convention.

22 MR. THANNIKARY: Yeah, I'm saying

23 there -- that --

24 MR. VAN HORN: In other words, the

25 delegates' own rules.

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1 MR. THANNIKARY: Oh, I see.

2 MR. VAN HORN: The idea is that they

3 would --

4 MR. THANNIKARY: Okay.

5 MR. VAN HORN: -- adopt whatever

6 proposals by simple majority, and that we would say

7 such -- we would make such a recommendation

8 ourselves; and, other than that, we would make no

9 recommendations about the conduct of the convention

10 itself. This doesn't have to do with the elections

11 or the legislative behavior.

12 MR. THANNIKARY: Okay. Thank you.

13 MR. VAN HORN: It has to do with the

14 delegate process.

15 Okay. Legislative Services

16 Commission, congratulations, you've been elected.

17 MR. COLE: Unanimously.

18 MR. VAN HORN: Unanimously.

19 Okay. The next question on my list

20 had to do with convention proposals, and the issue

21 of whether the convention should be authorized to

22 propose statutes, as well as amendments; and, of

23 course this is an issue that has been debated and

24 discussed in the legislative bills moving up to this

25 process. I'd welcome any comments on that issue.

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1 (Dr. Cole not identified for the record)

2 DR. COLE: Chairman?

3 MR. VAN HORN: Yes.

4 DR. COLE: Did I understand the

5 advisable (sic) documents, that the convention could

6 not propose statutes, unless there were a change in

7 law permitting that to occur?

8 MR. VAN HORN: Yes. Well, there would

9 have to be a temporary amendment to the constitution

10 to permit the delegates -- the convention to conduct

11 legislative -- legislative business, basically.

12 DR. COLE: Which presumably would have

13 to be put on the ballot --

14 MR. VAN HORN: That's right.

15 DR. COLE: -- at the same time --

16 MR. VAN HORN: Yes.

17 DR. COLE: -- that the question of a

18 convention --

19 MR. VAN HORN: Right.

20 DR. COLE: -- was put on the ballot.

21 MR. VAN HORN: Yes, which is what

22 several of the existing, you know, proposed statutes

23 provide for.

24 MR. COLE: But it's also true, is it

25 not, Mr. Chairman, that the temporary change, unlike

51

1 the calling of the convention, would require a

2 super-majority vote --

3 MR. VAN HORN: That's correct.

4 MR. COLE: -- of both houses in the

5 Legislature?

6 MR. VAN HORN: That's right, yes.

7 MR. COLE: Unless -- or two successive

8 years of majority vote?

9 UNIDENTIFIED: Yes.

10 MR. VAN HORN: Yes, exactly.

11 MR. COLE: Because it's -- so what

12 would happen if we called for enabling the

13 convention to change statutes, but the Legislature

14 could not muster a super-majority vote? Would the

15 question of the convention go forward, nonetheless?

16 MR. VAN HORN: Well, it could. I

17 mean, they're separate votes, right?

18 MR. COLE: Yeah. You could tie them,

19 or not tie them, I guess.

20 MR. VAN HORN: Yes, I think so.

21 Senator Lance.

22 SENATOR LANCE: Thank you. This is a

23 very difficult and complicated question, and I am of

24 mixed emotion about it.

25 Many have argued that -- and perhaps

52

1 persuasively, that if there is a convention dealing

2 with property tax issues, it should have the ability

3 to amend both constitutional law and statutory law.

4 That is one of the reasons I had the staff research,

5 through you, Mr. Chairman, whether this has ever

6 occurred in America. And I believe the analysis of

7 the staff is that it has never occurred in America,

8 except perhaps in Ohio on 1802, before my memory.

9 (Laughter)

10 SENATOR LANCE: So if we recommend to

11 the Legislature that a convention be held that will

12 have the ability to address both constitutional and

13 statutory issues, that will be novel in America.

14 Classically, a convention deals with

15 constitutional questions; and, if this convention

16 has the ability to deal with statutory questions, as

17 perhaps is the better course, it's really not only a

18 convention in my judgment, it is also a parallel

19 legislature, at least for the purposes of a

20 convention of property tax reform. So it's both a

21 convention and a legislature, at least to some

22 extent.

23 There are the legal questions the vice

24 chair raises. You undoubtedly have to have a

25 constitutional amendment to permit the convention to

53

1 address statutory issues because the constitution is

2 crystal-clear on that at the moment, that it's the

3 Legislature and the Legislature exclusively that

4 legislates.

5 Would such a question have to be

6 separate and distinct from the calling of a

7 convention question? I don't know the answer to

8 that. I assume yes, but I don't know the answer to

9 that.

10 Number two, could they be tie-barred?

11 And I defer to Mr. Cole on that issue. I don't know

12 the answer to that, either.

13 Number three, what if the convention

14 call passes, but not the temporary amendment to the

15 constitution to permit the convention to be a

16 legislature, as well? And I am sure there are other

17 questions, but those are the ones that come to my

18 mind.

19 MR. COLE: I guess -- I guess as to

20 the last point, if they can be tie-barred, and they

21 are tie-barred, and the statutory change amendment

22 is defeated, the convention falls, even if it

23 musters a majority vote.

24 SENATOR LANCE: Correct.

25 MR. COLE: And in terms of whether

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1 they can be tie-barred, I don't know. I always

2 thought the tie-bar analysis was -- you know, was

3 the same as the single-object-type analysis; as long

4 as they would pass muster under that, you can tie-

5 bar things. But that doesn't mean I think it's a

6 good idea.

7 SENATOR LANCE: I would be reluctant

8 to tie-bar it, but I'm -- that's certainly something

9 I'd like to hear from experts.

10 MR. VAN HORN: Speaking of which, do

11 we have any opinions from our staff on this subject,

12 or is this something that we need to spend some time

13 looking at further?

14 MR. KELLY: Well, I think there's no

15 doubt that it would have to be two separate

16 vehicles. I mean the temporary constitutional

17 amendment would have to be a concurrent resolution,

18 which would have to be separate from the legislation

19 convening the convention.

20 In terms of whether you could tie-bar

21 them, so that, if one does not pass -- or if the

22 constitutional amendment does not pass, the

23 convention does not go forward, you know, I think

24 you could word that, so that's what would be the

25 result, by language in the public question on

55

1 convening of the convention; that the convention

2 would not proceed, no matter what the voters do,

3 unless the voters also approve the separate

4 constitutional amendment, which would be on the

5 ballot.

6 MR. VAN HORN: But could you do the

7 opposite? You could also do --

8 MR. KELLY: Well, why would you need

9 to?

10 MR. VAN HORN: Well, in other words,

11 you could still have a convention taking away the

12 statutory change authority, if that part -- if that

13 amendment --

14 MR. KELLY: If you want to word the --

15 MR. VAN HORN: Yeah.

16 MR. KELLY: -- enabling legislation

17 for the convention that way, you could do that, yes.

18 MR. VAN HORN: So you -- which is --

19 I'm just saying, you have the flexibility to do

20 either.

21 MR. KELLY: Yes.

22 MR. VAN HORN: You could either -- you

23 could either tie them together, or you could create

24 essentially an option.

25 MR. KELLY: Yeah, you could do that, I

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1 think, with wording in the legislation convening the

2 convention.

3 MR. COLE: Mr. Chairman.

4 MR. VAN HORN: Yes, Dr. Cole.

5 DR. COLE: I'd be interested -- I'd be

6 interested in knowing if there is anyone on the task

7 force who feels that there is any positive benefit

8 to enabling the convention to meddle with statute.

9 MR. VAN HORN: Well, yes, there is.

10 Yes, Assemblyman O'Toole.

11 ASSEMBLYMAN O'TOOLE: I think, to

12 answer that question directly, I think yes is the

13 answer. And I think that -- let's not lose sight of

14 the fact that this is going to be a constitutional

15 convention on property taxes. And I don't think any

16 of us, or even our vaulted experts, can possibly  
17 conceive of any and every scenario in which our  
18 delegates will talk about property tax savings.  
19 And it may be a constitutional  
20 amendment or a constitutional solution, or it may,  
21 in fact, be a state statutory solution, which will  
22 bring about real property tax reform. And I would  
23 not want to go into this convention and -- with --  
24 and tie one hand or one arm on the backs of the  
25 delegates and the back of the convention by limiting

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1 them in any respect.

2 Let them go, do their job. Their

3 mission is to reduce property taxes. If it's a

4 constitutional amendment, so be it; if the state

5 statute needs to be repealed or changed, so be it.

6 MR. VAN HORN: Yes, I -- Senator Adler

7 is suffering from laryngitis today. So to answer

8 your -- he passed me a note, but essentially he

9 endorses many of the sentiments that Assemblyman

10 O'Toole just articulated, having to do -- and that

11 is embodied in his bill that came through his

12 committee, as I recall.

13 And so -- yeah, and I think it is

14 important for us to talk about the substance of

15 this. We talked about the rules and so on, but I

16 think this is an issue that is -- people feel -- as

17 I've said myself, I have mixed emotions about this,

18 also, although I -- I understand the arguments, I

19 think, in both directions.

20 DR. REOCK: Mr. Chairman.

21 MR. VAN HORN: Yes, Dr. Reock.

22 DR. REOCK: I think, if we have a

23 constitutional convention, it's essential that the

24 convention also have the authority to deal with

25 statutes because, if they do not, there's going to

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1 be a very strong tendency to write statutes into the

2 constitution, to get very detailed tax and revenue

3 and spending requirements in the constitution;

4 where, if they're not very good, if a mistake is

5 made, they will be very difficult to adjust in the

6 future. So I think the convention needs that power

7 -- that outlet, really, to write their detailed

8 proposals into statute, and not to be forced to put

9 them into the constitution.

10 But I'd like to -- I'd like to turn

11 the conversation in a little bit different

12 direction. From the first time that I heard about

13 proposals for a constitutional convention, I kept

14 asking a question: What's wrong with the

15 constitution? What is there in the constitution

16 that causes high property taxes? And I never have

17 received any very satisfactory answers. The usual

18 response is, well, the Legislature won't do the job,

19 that's why we need a constitutional convention, to

20 do the job of the Legislature. There seems to be  
21 general agreement that the Legislature could solve  
22 the problem, if it only would.

23 So if we can't identify anything wrong  
24 with the constitution, and if the main reason for  
25 a constitutional convention is to circumvent the

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1 Legislature, why not have a property tax convention  
2 that would do the Legislature's job; that is,  
3 approve of laws to solve the property tax problem?  
4 Why not a convention limited to statutory measures?

5 I think this might solve a lot of our  
6 problems. It's no secret to anyone, I think, that  
7 there's considerable opposition to the idea of a  
8 constitutional convention. A lot of people fear a  
9 constitutional convention, and we've heard from many  
10 of them.

11 The public education community is  
12 opposed because they fear changes in the thorough  
13 and efficient sections of the present constitution.

14 The business community is opposed  
15 because they fear the changes in the uniform  
16 taxation sections of the present constitution would  
17 introduce classification of real property for tax  
18 purposes, leading to higher property taxes on  
19 business and industry.

20 The minority community is opposed  
21 because they fear a threat to the Abbot court

22 decisions that guarantee a high level of school

23 spending for poor, urban children.

24 Beyond this, I've heard of concerns

25 from the charitable community because of fears that

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1 changes will be made in the tax exemption section of

2 the constitution.

3 And I wouldn't be surprised to hear of

4 similar fears from religious and private educational

5 organizations when they realize the potential of a

6 constitutional convention.

7 Moreover, we've heard testimony from a

8 former state treasurer, Dick Leone, accompanied by

9 extensive documentation that a constitutional

10 convention might lead to drastic fiscal limitations

11 that could have devastating effects on New Jersey,

12 as they have in some western states.

13 We've heard testimony from Professor

14 Cornwell that opposition from any significant part

15 of the electorate might lead to a defeat of any

16 recommendations. I think the opposition of any or

17 all of these communities within the state might very

18 well mean the end of any attempt to reach a

19 convention-type solution to the property tax

20 problem.

21 On the other hand, if we were to

22 recommend a property tax convention limited to

23 statutory changes, I think almost all of this

24 opposition would disappear, and we could move ahead

25 with our effort to legislate by convention, in the

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1 absence of action by the Legislature.

2 MR. VAN HORN: Okay.

3 MR. COLE: I guess you could add to

4 that, the school boards are concerned because

5 they're afraid there may be forced regionalization

6 of schools coming out of the convention.

7 And maybe municipalities should be

8 concerned because it may be a concept of regional

9 government and eliminating the municipalities that

10 sort of bump up against one another.

11 I don't know. I've always thought you

12 could have broad principles adopted in the

13 constitution and leave the details -- implementing

14 the details to the Legislature. I guess the

15 convention could say, of the total tax levy from all

16 sources in the State of New Jersey, no more than X

17 percent shall be raised from property taxes, and

18 leave the details of implementing that to the

19 Legislature.

20 I'm not clear -- I've never -- I

21 understand your point, Doctor, that no one has ever

22 said what's wrong with the constitution. No one has

23 ever explained to me, really, how having this

24 constitutional convention, having the ability to

25 legislate as well as adopt law and principles, is an

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1 answer, either. I'm in a parallel universe, I guess

2 in that sense. You haven't heard an answer, and I

3 agree, you haven't to your question. I haven't

4 heard an answer to the second question, either,

5 other than it gives more options, but ...

6 MR. VAN HORN: I certainly, Ernie,

7 find it hard to believe that opposition would

8 disappear, regardless of what process you adopt. I

9 mean, I think that part of your analysis is flawed.

10 The point is that any process that any interest

11 group considers potentially damaging will be opposed

12 and, you know, that is -- and that's the way

13 politics works, at least when I was in school.

14 So, you know, I think that the

15 argument is -- really falls on that point because,

16 you know, people will oppose a convention on -- that

17 just has statutory power because it is -- you know,

18 it will be a different set of people elected in a

19 different means (sic), so they'll oppose that, so --

20 and that's fine. I mean, I have no objection to

21 people exercising their democratic rights, but they

22 will exercise them in any venue where they feel

23 their interests are threatened.

24 Yes, Dr. Cole.

25 DR. COLE: I'm glad we've gotten to

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1 this discussion, and it was -- really, Professor  
2 Reock's comments reflect where my own thinking had  
3 been going. And I don't think that his argument  
4 rise and fall on the issue of opposition or lack of  
5 opposition. The real point, I think, is whether or  
6 not the solutions that are to be found are to be  
7 found in statute or in constitutional change. And I  
8 think there is a tremendous sense that there may --  
9 they may be more relevant to statute than to changes  
10 in the constitution.

11 That takes us then to a place, as  
12 Senator Lance has pointed out, where we are embarked  
13 on doing something that has never been done before,  
14 except in possibly 1802, you said?

15 SENATOR LANCE: That's what the  
16 research would indicate.

17 DR. COLE: Which means that we would  
18 need to give very considerable thought, I think, to  
19 how we would do that, and to the issues that  
20 Professor Reock, I think quite wisely, raises.

21 MR. VAN HORN: Okay. Other comments  
22 on this point. Oh, I'm sorry. Yes, Mr. Thannikary.

23 MR. THANNIKARY: Thank you, Mr.

24 Chairman. I understand Dr. Reock's point, but I  
25 have been traveling around the state doing a lot of

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1 work on promoting meaningful tax reform in New

2 Jersey. And we know that, for the last thirty  
3 years, the legislators tried, but they couldn't come  
4 to a consensus how to deal with this issue.  
5 We know that from 1972 to 1998, seven  
6 commissions studied this issue, came up with 391  
7 recommendations, and the major substantial change,  
8 systemic change the recommendations, they were not  
9 implemented. All they did was a rebate here, a  
10 rebate there. We call it a "Band-Aid," a Band-Aid  
11 solution.

12 In this -- this task force alone,  
13 there has been overwhelming support for a  
14 convention. Former Governor McGreevey obviously  
15 supported it. As he said, the property tax  
16 (indiscernible) reform is the best, and probably the  
17 last hope for fundamental change to our system. At  
18 the opening of this -- the organizational meeting of  
19 this task force, Governor McGreevey said, we no  
20 longer have the process, we need to take the process  
21 out of Trenton and let the people decide on it.

22 Former Governor Brendan Byrne, Jim  
23 Florio also supported the convention.

24 At the public hearing itself of the  
25 task force, three public hearing, I counted every

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1 single one of them. There were organizations like  
2 the League of Municipalities, League of Women  
3 Voters, and (indiscernible). They all supported the

4 constitutional convention.

5 And, in fact, the last year, two

6 hundred and -- over 240 municipalities passed

7 resolutions supporting the convention. In fact,

8 seventy-two mayors stood in front of the State

9 House, and with all the resolution in their hand.

10 And, also, at the hearing, about

11 thirty-three people, thirty-three witnesses

12 mentioned the convention and their testimony, and I

13 counted it. Twenty-five of them supported the

14 convention; only eight of them said there is no need

15 for a convention.

16 Over 400 taxpayers signed a petition

17 last year, 2003, supporting a convention; in fact,

18 supporting two legislation. In fact, the Assembly

19 passed A-540 last year. Eighty-two percent of the -

20 - percent of New Jersey support this convention in a

21 recent Channel 2 survey; eighty-two percent of the

22 people in New Jersey support the convention.

23 Seventy-four percent of the New Jersey surveyed by

24 the Star Ledger and (indiscernible) university in

25 1999 supported a convention, and even supported a

66

1 state income tax increase to make the system more

2 equitable.

3 Eight out of ten citizens in New

4 Jersey support a special property tax reform

5 convention according to Star Ledger/Rutgers poll in

6 2003. I can go on and on in all this list. Folks,  
7 there is a -- there is a tremendous, overwhelming  
8 support in the public, in the newspapers, all of  
9 them are supporting the convention. If we do not do  
10 it, I think we will miss a golden opportunity, a  
11 historic opportunity, what we have on our hand at  
12 this point. There was -- I want to go on record  
13 that I support a constitutional convention.

14 Thank you, Mr. Chairman. In fact, I  
15 have a written statement, if I can -- if I can  
16 distribute it, I would -- I would like to do that.  
17 MR. VAN HORN: Sure, you can give it  
18 to staff, and we'll distribute it afterwards, sure.  
19 Mayor Schubert.

20 MAYOR SCHUBERT: I just -- you know,  
21 I'd like to make a couple of comments here on the  
22 discussion that we've been having about the  
23 statutory changes.

24 My first question is: If the  
25 convention were to have the ability to recommend

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1 statutory changes, they would make the  
2 recommendations, it would go before the voters, and  
3 then the voters would finally decide. So there is a  
4 little bit of a difference from them being a  
5 legislative body, because the legislatures (sic)  
6 basically make the statutory changes, vote on it, it  
7 becomes law. It would actually be in the hands of

8 the public.

9 So, personally, I don't see anything

10 wrong with the public being the legislative body on

11 an issue that is so important to the people of New

12 Jersey. So I strongly support the ability to make

13 the statutory recommendation changes from the

14 convention.

15 So I think that's important to

16 remember, it's not that they're going to make the

17 law; they're going to make the recommendations to

18 the public.

19 And, you know, I also want to just

20 comment on the questions about, you know, would the

21 constitutional changes be enough, or should we just

22 have the property tax commission that you had

23 suggested, Dr. Reock. And I think that it's

24 important to open up all of those options.

25 And, believe me, I am totally in

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1 support of the thorough and efficient education

2 clause, I think that it's really important. But I

3 think it's important for us to remember that the

4 constitution says the state is responsible for

5 providing the thorough and efficient education, and

6 I think that's questionable if you ask the board of

7 educations if that's actually happening.

8 So there may be some opportunities

9 through the constitutional convention and the

10 changes that would be made to the constitution to  
11 maybe clean up some of that and, again, provide some  
12 real property tax reform for the residents of New  
13 Jersey.

14 And, you know, again, I just want to  
15 comment that the income tax was supposed to be the  
16 property tax answer. And, again, I think it would  
17 be questionable to the residents of New Jersey if  
18 the Legislature has actually taken that income tax  
19 and only used it for property tax reform, so --  
20 thank you.

21 MR. VAN HORN: Thank you. Yes, Mayor  
22 Passanante.

23 MAYOR PASSANANTE: Thank you, Chair.

24 I just would like to make a couple of observations.

25 I share Senator Lance and Dr. Cole's

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1 concern about, you know, the statutory side of this.

2 But -- and I think in both situations, the comment

3 was that it hasn't been done since 1802. Well, I

4 think we've had a thirty-year history that what

5 we're trying to do to fix the problem is not

6 working.

7 And I thought that what we were

8 talking about here with this group and with this

9 convention is to think outside the box. And if we

10 constrain our decisions based on history, then

11 history will prevail, and we will continue to have

12 property tax problems.

13 We need to think about doing things

14 differently. We need to think about solving

15 problems differently. And we should not judge based

16 on historical only because, in some cases, we don't

17 have history to rely on; and, therefore, we're going

18 to need to reach out and take a little risk and do

19 what needs to be done to fix the problem.

20 I believe that you need to have the

21 statutory ability in there, or else you hamstring

22 the convention in doing the job that needs to be

23 done, as difficult as it is. And a lot of times

24 what we're hearing -- and I don't say this

25 derogatory, but we're hearing issues and comments

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1 based upon legislative experience, which is great,

2 but also has not led us to any solutions to this

3 problem. So we need to look at things a little

4 differently.

5 So I do support having the statutory

6 ability in there, and I do support having the

7 convention take place.

8 MR. VAN HORN: Other comments on this

9 issue. Yes.

10 (Dr. Cole not identified for the record)

11 DR. COLE: Let me ask another

12 question, if I might. Is there anyone on the task

13 force who feels strongly that statute should not be

14 addressed by such a convention? I asked the other  
15 question earlier, now I'm asking this one. Are  
16 there strong arguments, other than the arguments  
17 that are that we're venturing onto territory that  
18 has not yet been tread, other than that it is a  
19 complex issue that would need to be carefully  
20 considered and addressed? Presumably, we could do  
21 those things. But, beyond those arguments, are  
22 there strong views that we should not be considering  
23 statute?

24 MR. COLE: I'm still -- I guess I'm  
25 still searching for an example of where the

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1 convention would have to change a statute, as  
2 opposed to adopting a broad principle and leaving  
3 the implementing detail to the Legislature. That's  
4 usually what happens.  
5 When we adopted a system of gaming for  
6 Atlantic City, we didn't get into the detail; we  
7 left that to the Legislature. We didn't set the  
8 amount of the tax; we left that for the Legislature.  
9 When we adopted the income tax, which someone  
10 alluded to before was supposed to be part of the  
11 solution, we dedicated it to property tax relief, we  
12 didn't tell the Legislature how they should do that;  
13 we left that to them, with the broad mandate that it  
14 should be dedicated. And we didn't set the rate at  
15 the convention; we left that to the Legislature, to

16 adopt and change from time to time.

17 So I'm still searching for what it is

18 that only the convention can do, that the

19 Legislature can't do at the direction of the

20 convention.

21 MR. VAN HORN: Yes, Senator Lance.

22 SENATOR LANCE: I repeat, I am of

23 mixed emotion about it, and I have never opposed it.

24 I am of mixed emotion about it, Mayor. And

25 legislation under my sponsorship has included both

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1 constitutional and statutory decisions at any such

2 convention, although I don't recall whether my

3 legislation ever was technically accurate to permit

4 a constitutional amendment to permit a convention to

5 discuss statutory changes. I just can't recall.

6 Certainly, that wasn't true several session ago, and

7 I would have to review this year's version of my

8 legislation in that regard. I am of mixed emotion

9 about it, for the reasons I have suggested.

10 I wish, Mayor, that legislators --

11 legislative chambers could enact legislation on

12 their own. They cannot. It requires the signature

13 of the Governor of New Jersey. And I would hope in

14 the future maybe we could do it on our own, but that

15 is not the way the system works.

16 (Laughter)

17 SENATOR LANCE: We have a very

18 powerful governor, and any legislative action by  
19 both houses has to go to him for his consideration;  
20 and, indeed, he has very broad powers in that  
21 regard, changing legislation that comes back to us,  
22 broader powers than any governorship in the nation.  
23 So, as is true of any statutory change  
24 recommended by a convention, it would go to the  
25 people who would, in effect, do what the governor

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1 now does regarding those of us in the Legislature,  
2 in my judgment.

3 For the reasons Mr. Cole suggests, I'm  
4 of mixed emotion. For the reasons Professor Reock  
5 suggests, statutory changes may be essential to any  
6 property tax reform. But it's a very difficult  
7 issue, and we're in uncharted waters.

8 MR. VAN HORN: Yes, Dr. Reock.

9 DR. REOCK: In answer to Mr. Cole's  
10 comment about writing general authority into the  
11 constitution and leaving to the Legislature to enact  
12 the statutes, I think that's very true, in terms of  
13 New Jersey's history. But if you look at other  
14 state constitutions, you will find that many states  
15 do not follow that; many states have written very  
16 detailed provisions into their state constitution.  
17 That's why I argue that, if we have a  
18 constitutional convention, we should -- they should  
19 have the authority to do statutory change also, in

20 order to keep them from writing it into the  
21 constitution, and making it very difficult to  
22 change.

23 MR. VAN HORN: Yes, Mayor.

24 MAYOR PASSANANTE: Yeah, just to  
25 further that point. I guess -- I guess to your

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1 question as to, you know, searching for a reason  
2 why. I think that we're at a point where it's  
3 premature to be able to pinpoint a specific instance  
4 as to why you would need that.

5 So, therefore, my feeling is, why

6 would we want to take the chance of hamstringing the  
7 convention by not allowing that possibility. It may  
8 come out that, when all is said and done, there are  
9 very few, if any, statutory changes required, once  
10 the deliberation goes forward. But if we go in with  
11 eliminating that possibility, and then they cross a  
12 bridge that, therefore, they can't do the job the  
13 way it needs to be done, not having the ability to  
14 do that. I'm not saying that we recommend going in  
15 that they should do that, but I think they need to  
16 have the flexibility, should that bridge need to be  
17 crossed.

18 MR. VAN HORN: Okay.

19 MR. MC BRIDE: Mr. Chairman --

20 MR. VAN HORN: Yes.

21 MR. MC BRIDE: -- just to clarify a

22 point that Senator Lance raised. All of the pending  
23 legislation, including Senator Lance's bill, provide  
24 for a convention to have the ability to adopt -- to  
25 propose to the voters both statutory changes and

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1 convention changes, and all of those -- all of those  
2 bills also provide that the convention can only  
3 happen if the temporary constitutional amendment on  
4 statutory changes is also adopted.

5 And that was true of Senator --

6 although the mechanism was different, Senator  
7 Schluter's original bill also allowed both statutory  
8 and constitutional proposals.

9 MR. VAN HORN: Okay. I'm going to  
10 suggest that we move on. I think we've -- I'm sorry  
11 --

12 MR. COLE: Just to that point, Mr.  
13 Chairman.

14 MR. VAN HORN: Counsel.

15 MR. COLE: They're all tie-barred; so,  
16 therefore, if the Legislature is unable in each  
17 house, by concurring resolution, to muster three-  
18 fifths, you have at least -- even if they get a  
19 majority for the resolution, you've at least delayed  
20 everything by one year. Is that correct?

21 MR. KELLY: Yes, sir.

22 (Senator Lance not identified for the record)

23 SENATOR LANCE: Does everybody on the

24 panel understand that? This is a very sophisticated

25 and complicated matter that perhaps others don't

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1 understand because it's so -- so confusing; it's

2 confusing to me, and I'm supposed to know something

3 about this, that it takes three-fifths of the

4 Legislature to place a constitutional amendment on

5 the ballot.

6 MR. COLE: Or a majority in two

7 consecutive --

8 SENATOR LANCE: In two houses, in two

9 sessions, two years.

10 MR. VAN HORN: Yeah.

11 MR. THANNIKARY: Mr. Chairman?

12 MR. VAN HORN: Yes.

13 MR. THANNIKARY: I just want to follow

14 up on what Ed McBride just said. Just take three

15 legislations, the Adler legislation, the Lance

16 legislation, and also the Assemblyman Roberts.

17 There are fifty-one legislators supporting or co-

18 sponsoring those just three legislations. So there

19 is a tremendous support. But what Ed has said is

20 statutory changes, at least from those three

21 legislations. So I just wanted to point out.

22 MR. VAN HORN: Yes, Ernie.

23 DR. REOCK: In the material that was

24 prepared for us, there is a statement that, in 1947,

25 the public rejected the choice to allow statutes at

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1 that year's convention. I have never heard this,  
2 and I wonder whether anyone can cite the source or  
3 have any comments on that. I don't know where it  
4 came from?

5 (Participants confer)

6 MR. VAN HORN: Yes, Senator.

7 SENATOR LANCE: That's -- the

8 professor is accurate. That clearly was not part of  
9 the mandate of the convention in 1947. It was  
10 purely constitutional, I think, as was true at -- of  
11 the document that was presented to the people in  
12 1944.

13 MR. VAN HORN: Okay. As I said before

14 prematurely, I think we've thoroughly explored this  
15 issue without resolution, but that's okay. But I  
16 think there's -- we've made some progress in  
17 understanding the complexities of this and the  
18 sentiments of the task force.

19 The last issue that we've calendared

20 for today was, you know, a related one, and that is  
21 whether we should lay out in our recommendations or  
22 the enabling legislation should require that  
23 proposals, whether they be amendments or statutory  
24 revisions if those are included, should be voted  
25 together as a block or as separate proposals. And,

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1 again, you know, Senator Lance's legislation does  
2 tie them together, and we've had some testimony on  
3 that. Are there views other than that, that we  
4 should allow them to be separate; or, in the  
5 alternative, should we make no recommendations to  
6 the convention and let them decide, the delegates  
7 decide how to bring forth recommendations.

8 Yes.

9 UNIDENTIFIED: Yeah, I agree with  
10 Senator Lance's position, it should be all.

11 (Participants confer)

12 MR. VAN HORN: Is there any  
13 disagreement on that point?

14 UNIDENTIFIED: I don't have an  
15 opinion.

16 MR. VAN HORN: Okay.

17 SENATOR LANCE: Mr. Chairman, would we  
18 have to research the constitutionality of my opinion  
19 on that?

20 (Laughter)

21 (Participants confer)

22 MR. VAN HORN: Well, we should do that  
23 then.

24 SENATOR LANCE: You understand why I  
25 suggest that.

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1 MR. VAN HORN: Yeah.

2 SENATOR LANCE: I'd like to see a good

3 lawyer's opinion as to whether what I believe is

4 legal.

5 MR. VAN HORN: May we have such an

6 opinion --

7 SENATOR LANCE: Well, on occasion

8 only.

9 MR. KELLY: Senator, could you state

10 the issue you want us to address?

11 MR. COLE: Well, I guess it's sort of

12 -- "single object" is probably not the right term,

13 but it's akin to that concept, where the -- and I

14 think there was just a very recent Supreme Court

15 case within the last five years certainly, as to

16 whether you can put a totally disparate --

17 MR. KELLY: We're talking about the

18 convention's work product, which presumably is going

19 to be both proposed constitutional amendments and

20 proposed statutory changes.

21 SENATOR LANCE: If the convention has

22 the ability to address both constitutional and

23 statutory issues, it would be my judgment that it

24 would come out with recommendations in both regards.

25 MR. KELLY: Right. And then the

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1 question is going to have to be voted on as a single

2 item by the voters, yes or no --

3 SENATOR LANCE: Yes.

4 MR. KELLY: -- one package.

5 MR. VAN HORN: Uh-huh.

6 SENATOR LANCE: Yes.

7 MR. KELLY: Well, it's a

8 constitutional convention; we can probably do

9 anything we want, especially if you wanted to

10 address that in a temporary constitutional amendment

11 (indiscernible) --

12 SENATOR LANCE: Well, that furthers

13 the discussion. Would the question amending the

14 constitution to permit the convention to be a

15 legislature, for the limited purposes, also have to

16 include an amendment to the single-object clause?

17 Is that right, Michael; is that your understanding?

18 MR. COLE: Yes, that's -- that's

19 correct.

20 MR. KELLY: Well, we can research

21 that. I don't know if we're going to be able to

22 come up with a hard and fast answer. It may simply

23 be that it would be prudent to do so.

24 SENATOR LANCE: I guess that's what

25 we're suggesting.

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1 MR. VAN HORN: Yeah. Okay. Any other

2 comments that one wants -- anyone wants to make on

3 business that we've discussed today? If not, we'll

4 talk about where we're headed next, which is a

5 discussion of the scope question and what

6 limitations, if any, should be placed upon the  
7 delegates to a convention.  
8 The staff is working to just prepare  
9 for us, and it will be distributed I hope by Monday  
10 at the latest, a thorough description of the  
11 existing alternative proposals that have been before  
12 the Legislature, so that we can look at those, and  
13 use that as a point of departure for the discussion  
14 on December 8th, which will be held here. We  
15 obviously have heard a great deal of testimony on  
16 that subject already; and, again, the legislative  
17 proposals have reflected various approaches to that.  
18 Also, probably by the end of next  
19 week, the December 10th meeting, the staff will be  
20 presenting back to us sections of the draft report  
21 for our consideration. And just to get us going,  
22 again, we have -- we have right now three more  
23 meetings scheduled. It's possible that we may have  
24 to add meetings. I know that's not what -- not  
25 going to make everyone happy here, but it's possible

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1 we may have to do that. But certainly we need to  
2 start looking at drafts by the -- by the end of next  
3 week; and, at that point, you know, proceeding with  
4 a final report.

5 I -- my intent is to have the draft  
6 material presented and discussed, and then give the  
7 members an opportunity to demure, if they care to,

8 on certain provisions. I mean, I don't -- I think,  
9 in listening to the conversation here, it's probably  
10 not possible to get everyone agreeing to every  
11 single point, but I'm hoping that we can find  
12 consensus as to the overall document that we're  
13 recommending to the Legislature. And then, if  
14 people feel strongly about a particular provision  
15 that they can't sign on to, they'll have the  
16 opportunity to express that, and it should be -- you  
17 know, shall be noted in the report.

18 Are there any other comments before we  
19 adjourn today? Any questions?

20 MAYOR SCHUBERT: Can I just make a  
21 suggestion?

22 MR. VAN HORN: Sure.

23 MAYOR SCHUBERT: Since we do only have  
24 three meetings currently scheduled, we've talked  
25 about adding, maybe we can sort of throw a couple of

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1 dates out here. Because this time of year, I think  
2 gets crazy for everybody. At least, if we can  
3 pencil them into our calendar, it's easy to cancel  
4 them; it's a lot harder to add them on.

5 MR. VAN HORN: Yes. Yeah, we can --  
6 we can certainly -- we'll do a -- why don't we do --  
7 that's a good suggestion. We'll do a polling of  
8 members to see what dates might be available  
9 subsequent -- you know, the week of the 20th, I

10 guess.

11 MAYOR SCHUBERT: Okay. Very good.

12 Thank you.

13 MR. VAN HORN: And I would also like

14 the staff on the issue of scope to look at the

15 particular issue -- we've talked about this before

16 in various conversations, but the -- come back with

17 an analysis of how to guarantee the preservation of

18 the thorough and efficient clause within the context

19 of this discussion, again, without concluding

20 anything. I just would like to see an analysis of

21 that for -- so that we can consider that in the next

22 discussion. So that's going to require, you know,

23 some additional research, perhaps. I know you've

24 had some work on that already, but ...

25 Any other comments or questions?

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1 Well, again, I --

2 MR. COLE: Just one.

3 MR. VAN HORN: Yes.

4 MR. COLE: Out of subject. But the

5 last thing we're taking up is the financing issues.

6 MR. VAN HORN: Uh-huh.

7 MR. COLE: Do we have someone working

8 on --

9 MR. VAN HORN: Yes.

10 MR. COLE: -- the types of figures

11 you'll need?

12 (End of Tape No. 1, Side B)

13 (End of recorded proceedings)

14 (Proceedings adjourned)

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1 C E R T I F I C A T I O N

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3 I, Coleen Rand, do hereby certify that

4 the foregoing transcript of proceedings by the New

5 Jersey Property Tax Relief Task Force, recorded on

6 audiotape on December 3, 2004, is a true and

7 accurate non-compressed transcript of the

8 proceedings to the best of my knowledge and ability.

9

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12 Coleen Rand AD/T 419 Date

13 For Guy J. Renzi & Associates

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