



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 : TRANSCRIPT

4 TAX CONVENTION TASK FORCE : OF

5 ----- HEARING

6

7 Date: December 8, 2004

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9 TRANSCRIPT ORDERED BY:

10 JACK DONNELLY, State of New Jersey, Office of

11 the Governor, The Statehouse, PO Box 001,

12 Trenton, New Jersey 08625

13 PANEL PARTICIPANTS:

14 (Not introduced/identified for the record)

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16 SUSAN COLE

SENATOR LEONARD LANCE

17 TERRENCE MALLOY

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19 ASSEMBLYMAN JOSEPH J. ROBERTS, JR.

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1 (Tape 1, Side A)

2 MR. VAN HORN: Let me just recognize

3 and welcome the staff that are here to help us

4 today, if you could just introduce yourself for the

5 task force's benefit.

6 MR. MC BRIDE: Ed McBride, Deputy

7 Chief, Office of Management and Operations of the

8 Office of the Governor.

9 MR. KELLY: Peter Kelly of the Office

10 of Legislative Services.

11 MS. HESPY: Cindy Hespny (phonetic)

12 from the Office of Legislative Services.

13 DR. ROSEN: David Rosen (phonetic)

14 from the Office of (not recorded).

15 MR. VAN HORN: Okay. Welcome to you

16 all, and thank you for coming.

17 We are today convened principally to

18 talk about the matters of the scope that a

19 convention might -- might undertake, and distributed

20 in advance of this meeting were the questions, and

21 we'll get to those in a minute.

22 I do, however, want to just make a

23 couple of other announcements. The audio recordings

24 of our meetings are available on line, and the

25 transcripts are available up through the middle of

3

1 November; however, the meeting of the 23rd is not
2 yet available, but it -- I just checked this
3 morning, but it will be very soon.
4 I, for one, found it useful. I've
5 gone back and looked at those, and realized how
6 inarticulate I am when I read myself in transcripts.
7 But, anyway, if you want to check on testimony, you
8 can -- you can do that through looking at the --
9 and, of course, they're available to the public.
10 We are meeting here on -- I'm sorry,
11 not here. We're meeting on the Rutgers Campus on
12 Winants Hall on the -- no, I'm sorry. Yeah, that's
13 right, Winants. We're meeting at Winants on Friday
14 morning at 9:30; and, at that meeting, we will be
15 discussing the issues that were still unresolved
16 from the discussions on the 23rd of November and the
17 3rd of December. And a list of those is in front of
18 you, I think, or will be distributed soon.
19 Obviously, if there are disagreements about that,
20 you're welcome to bring up other issues on Friday,
21 but that is my recollection and the staff's
22 recollection of the unresolved issues.
23 We will be also, at Friday's meeting,
24 discussing the last set of calendar questions; that
25 has to do with the recommending on the cost of

4

1 conducting a convention. And I've had the staff
2 working on analysis of that, and they're going to
3 present a line item budget to us in categories. It
4 won't be terribly detailed, but it will -- that will
5 be distributed probably, hopefully by Friday before
6 the meeting; or, if not, at the meeting.

7 And then, moving forward, on the 17th;

8 that is, Friday the 17th, we will be meeting back
9 here again to review a draft report. And the staff
10 is working on that, of course filling in areas where
11 we have consensus, and also identifying areas where
12 we don't have consensus at this point. And they
13 will be endeavoring to distribute that early next
14 week. So you'll have sufficient time to review it
15 before -- before Friday's meeting.

16 And then, on the 21st of December, we
17 have added an additional meeting, and the staff
18 informs me that all fifteen members have indicated
19 their ability to be there. I know that that
20 probably means giving up a holiday party somewhere
21 along the line, but I appreciate your all adding
22 that extra meeting.

23 So that is just a road map of the --
24 of where we're headed forward.

25 Also, I think in your packet is

5

1 materials requested from the staff at the oh four
2 meeting. Ed, is there anything you want to tell us
3 about that, or is that self-explanatory?

4 MR. MC BRIDE: I think that the
5 material that's included in the general package is a
6 background paper from Professors Williams and Tarr;
7 and then, separately, I think Peter has distributed
8 the OLS opinion --

9 MR. VAN HORN: Okay.

10 MR. MC BRIDE: -- on Senator Lance's
11 question about the single object clause that was
12 raised last week.

13 MR. VAN HORN: Okay. Do you want to
14 say anything about that, Peter, before we go on to
15 new business?

16 MR. KELLY: Sure. I'll just briefly
17 summarize the bottom line and then handle any
18 questions anybody might have.
19 The bottom line is that we think, if
20 you have a constitutional convention that, as most
21 of you in the past, just considered proposed
22 constitutional amendments, that there's no problem
23 with that being placed on the ballot for a single
24 yes-or-no vote by the electorate.

25 With regard to a constitutional

6

1 convention that is also authorized to propose

2 statutory changes -- and the only one like that that
3 we are aware of to have ever taken place was in Ohio
4 in 1802, and that was part of the process of Ohio
5 becoming a state. In that case, where the
6 convention would be proposing constitutional
7 amendments and statutory changes, we still think
8 that you could place that on the ballot as a single
9 public question for a yes or no vote by the
10 electorate, but that if you wanted to be absolute
11 sure to resolve any doubt about this, that is
12 something that could be addressed in a temporary
13 constitutional amendment that authorizes the
14 convention to propose statutory changes, so that
15 that would basically authorize the convention to
16 propose statutory changes and authorize the
17 convention to place its entire proposal, amendments
18 and statutes, on the ballot as a single public
19 question, and that that type of temporary
20 constitutional amendment itself would not, by the
21 way, be the single object or separate vote
22 provisions in the constitution.

23 MR. VAN HORN: Yes, Senator.

24 SENATOR LANCE: Yes. Thank you. I

25 want to thank Mr. Kelly for his excellent research

7

1 and his letter to me dated December 8th, which I

2 believe has now been shared --

3 MR. VAN HORN: Yes, it has. Yes.

4 SENATOR LANCE: -- with all members of

5 the task force, and I hope with the public, as well.

6 And it's very, very helpful. And I know, for

7 example, that this has been a concern of Senator

8 Schluter's.

9 And the bottom line is that we can

10 have one question go to the people for their

11 approval, even if it includes statutory, as well as

12 constitutional change.

13 MR. KELLY: That's correct.

14 SENATOR LANCE: Thank you. Very

15 helpful to the task force.

16 MR. VAN HORN: Yes. All members do

17 have this, Senator Lance. Thank you, Peter.

18 DR. REOCK: Mr. Chairman.

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

20 DR. REOCK: Question. This letter,

21 Peter, does not deal with the question of the

22 enabling legislation to create the convention. My

23 understanding was that that would have to be two

24 questions: One, a temporary constitutional

25 amendment, which would be enacted by the -- with --

8

1 the enabling act would have to pass the Legislature

2 by a three-fifths vote, plus the enabling act for

3 the convention itself, which would be a simple

4 majority. Is that -- that was my understanding. Is

5 that still the case?

6 MR. KELLY: Yes, that's -- in order to

7 do what's been proposed, to have a convention that

8 is authorized to propose both constitutional

9 amendments and statutory changes, you would need

10 that temporary constitutional amendment, as well as

11 the implementing legislation to convene the

12 convention.

13 And you need the temporary

14 constitution amendment because, as I think Senator

15 Lance pointed out at the last meeting, the

16 constitution vests the lawmaking power in the

17 Legislature, and we would be in this instance giving

18 that authority to the convention for a limited

19 period of time. So you need those two vehicles: A

20 temporary constitutional amendment, and legislation

21 approved by the voters to convene the convention.

22 DR. REOCK: And you would need a

23 three-fifths vote for the constitutional amendment.

24 MR. KELLY: In the Legislature to get

25 that on the ballot, yes.

9

1 DR. REOCK: Yeah, okay.

2 MR. VAN HORN: Unless you did it at

3 successive sessions.

4 MR. KELLY: That's correct, yeah.

5 MR. VAN HORN: Any other questions for
6 Peter? Okay. Thank you.
7 Now we turn to the main agenda item,
8 having to do with the scope of the convention. And
9 the first question that was framed was: What issues
10 affecting property taxes may be discussed at the
11 convention? And that is essentially the, what is
12 the affirmative charge to the delegates; and,
13 therefore put on the ballot for the voters, I should
14 say, to approve; and then, if approved, go to the
15 delegates.
16 I have presented or asked the staff to
17 present to you the wording of the bills that are --
18 that have made it through various stages of the
19 legislative process, and obviously there are
20 important differences between them. And it's our
21 task here to try to find a consensus around this
22 question.
23 So let us begin that discussion. And
24 who would like to start that?
25 A very popular topic.

10

1 DR. REOCK: I'll --

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

3 DR. REOCK: If no one else will start,

4 I will.

5 MR. VAN HORN: Go ahead.

6 DR. REOCK: I like the wording of A-
7 1786, which is the first paragraph listed here, with
8 one change, and that is -- the reason I suggest a
9 change is that I think that the overall level of
10 property tax may not be the big problem in New
11 Jersey. The main problem I think may very well be
12 the inequitable distribution of the property taxes.
13 Just to repeat a quotation that I have
14 used quite a number of times from someone else; that
15 is: We don't have a property tax in New Jersey; we
16 have 566 property taxes. Some of them are high, and
17 some of them are not so high.
18 There's language in here which
19 indicates that the convention must propose -- make
20 proposals to reduce property taxes as a share -- as
21 a share of overall public revenue. I am not
22 completely convinced that that is necessary or
23 desirable, and I would like to leave the charge to
24 the convention as open as possible, so that the
25 delegates can draw their own conclusions from the

11

1 data and from their own study, in terms of what they
2 do with the property tax. The way it's worded right
3 now, it would seem to me that they would be required
4 to reduce property tax as a share of overall public
5 revenue, and that may or may not be the appropriate
6 thing for the State of New Jersey.

7 So I would suggest that we adopt this
8 statement, but with this change. Go down to the
9 fourth line, after the word "taxes," comma, I would
10 eliminate the next two phrases there and substitute
11 instead the words "reduce excessive property taxes,"
12 so that the wording then would read:
13 "The convention shall recommend
14 amendments to the New Jersey Constitution and
15 revisions to the statutes, which, while revenue-
16 neutral in their overall impact, eliminate
17 inequities in the current system of property
18 taxation, ensure a greater uniformity in the
19 application of property taxes, reduce excessive
20 property taxes, and provide alternative means,
21 including possible increases in other taxes in
22 funding local government services."
23 And I have typed this up and have that
24 wording. I can pass copies around, Mr. Chair.
25 MR. VAN HORN: Right. Thank you.

12

1 Yes, Assemblyman O'Toole.
2 ASSEMBLYMAN O'TOOLE: Thank you,
3 Chair. Respectfully, I couldn't disagree more with
4 my -- Mr. Reock. I think property taxes are exactly
5 the problem, and that's precisely why we're here is
6 high property taxes. I don't know a single business
7 or a homeowner who's telling me that they're paying

8 too little in terms of property taxes; to the
9 contrary, throughout my travels throughout this
10 state, in the business community, in urban areas,
11 suburban areas, throughout my district, other
12 counties, by far the number one issue that people
13 have complained -- and this year more so than any
14 other -- has been property taxes.

15 And we talk about reducing property
16 taxes. I think the obvious extension of that is we
17 have to talk about reducing government spending.
18 And I think, when you talk about the scope, and
19 we're talking about the reduction of property taxes,
20 because it is really at an epidemic level, we have
21 to talk in broad terms on how we can reduce
22 government spending.

23 I think we should provide some
24 examples or guidelines to the Assembly and Senate as
25 they are crafting language for this convention that

13

1 we really have to look at ways that we can reduce
2 the property taxes, reduce the cost of government,
3 and not simply transfer the cost of government from
4 one tax to another. I don't think that would -- I
5 don't think raising any individual tax or creating
6 another tax, while marginally reducing the property
7 tax is the solution; I think that would just be a
8 colossal failure. I think we need to talk about

9 read reduction.

10 And I just have -- and it's not a

11 perfect solution, but I think this -- ten examples

12 comes to mind that we can talk about or list as

13 suggestions for language, to talk about reducing

14 cost in the government:

15 One, talk about the thorough and

16 efficient clause, about the formula, about how it is

17 ineffective, and that we should think about crafting

18 a constitutional amendment that talks about

19 providing a quality education for our children,

20 regardless of where they live. But to simply say

21 that the class of children in the Abbot districts

22 receive an income based on some arbitrary increase

23 in some other suburban district, and we have

24 children who are not getting a quality education

25 despite the fact the cost per pupil is exceeding

14

1 fifteen, sixteen, \$17,000 per child.

2 And the -- some of the examples we

3 have heard from the Vice President of the Newark

4 School Board in testimony at the budget committee,

5 it has been a waste of money. She deemed it as

6 being criminal that we have not -- we have

7 shortchanged our children.

8 So I think we should talk about

9 creating a constitutional amendment and

10 reformulating the Abbot, and think about going from,
11 as opposed to the I and J, maybe to all the non-
12 Abbot district, which we have heard much debate
13 about. I think we have to think outside the box.
14 Now I could be criticized, rightly or
15 wrongly. I think we have to talk about, you know,
16 spending less. I think we should look at, either
17 creating a commission, talk about phasing out county
18 government over three, four, five years. I think we
19 have to talk about where there's an overlap in
20 services from the state or the local; and, if the
21 county is doing something that's repetitive or
22 duplicative, we should really think about, for the
23 first time, phasing out county government on a
24 gradual scale.

25 I think we should talk about capping

15

1 all government spending at the CPI: State, county,
2 local.

3 I think that we should talk about

4 things that should be within the purview of the

5 legislative body; we should talk about real pension

6 reform. We've heard these horror stories of state

7 employees; not one or two, but many, who have taken

8 advantage of certain privileges with pension, by

9 stacking, tacking, or otherwise. And we're looking

10 at an unfunded mandate that we have, in terms of

11 pension costs, going up, I think it's over \$2
12 billion next year they're projecting.
13 I think we should talk about a sharing
14 of medical costs with state employees; all public
15 employees, to be determined -- to be determined by
16 some authority, whether the State Treasurer or some
17 mechanism. At some point in time, with skyrocketing
18 insurance costs and medical costs, the public
19 employees, and some of us around this table are --
20 constitute some of those employees, have to assume
21 some -- absorb some of these costs, as opposed to it
22 being passed on.
23 I think we should talk about
24 establishing a tax credit, in terms of the scope,
25 for those people, for those moms and dads that home

16

1 school or send the kids to private schools, in an
2 effort to stop the overburdening level of schools
3 and public schools. To encourage either -- not to
4 have a crisis of too many kids, perhaps we should
5 have some incentive for children to -- that are
6 being home schooled or put in private schools.
7 I think, ultimately, the goal should
8 be in real estate property taxes, if we can get to a
9 system, which I think is fair, if we can target a
10 one percent value, real estate value on homes; if
11 your home is worth 500,000, your property taxes in

12 my estimation should be capped at 5,000; if it's a
13 million, it's 10,000.

14 We have some working recognition that,
15 just because your property values have gone up,
16 whether you're a senior citizen or whether you're a
17 working couple, if you have a value of 500,000
18 arbitrarily, because of some of these services, you
19 could be paying taxes of fifteen, 20,000. It is
20 really pricing people out of our state.

21 I think we should talk about having a
22 constitutional amendment where there's absolutely no
23 bonding without state approval, regardless of the
24 authority, regardless of the reason; whether
25 Republicans or Democrats have done it.

17

1 I think we should look at -- my final
2 point, and I apologize for taking so much time,
3 Chairman, is talking about merger of services for
4 towns that have less than 5,000 people. We should
5 really look, whether it's a financial incentive for
6 -- that's offered or a mandate, that in these
7 smaller communities -- we have 566 communities. It
8 seems to me that we can have some type of
9 regionalization, consolidation to save money,
10 ultimately.

11 So this is not an exhaustive list, but
12 it's just a list of some ideas that I've heard from

13 some of the testimony throughout the last couple of
14 months. I've talked to constituents, I've polled
15 constituents. I think we have to talk about really
16 reducing the role the government plays in our lives,
17 and we have to lower the threshold, what it's
18 costing us day to day. And, short of that, we're
19 not going to get real property tax reform. So thank
20 you, Chairman.

21 MR. VAN HORN: Yes. Senator Van
22 Wagner.

23 SENATOR VAN WAGNER: Mr. Chairman,
24 I've been listening carefully to what Assemblyman
25 O'Toole has said and what Dr. Reock has proposed,

18

1 and tried to read through all of the information
2 that's been disseminated. And I guess I'm trying to
3 get in my own mind what exactly we want to propose
4 to the Legislature.

5 Because most of what Assemblyman
6 O'Toole recommended, I believe the Legislature could
7 accomplish if it wished to, without the need of a
8 convention. You know, we could agree to disagree on
9 any number of topics, but I think most of the topics
10 that you have suggested could, in fact, be addressed
11 by the Legislature now.

12 What's interesting, I think, is the
13 point raised by Dr. Reock, in terms of how the

14 property taxes are distributed. For example, there
15 are communities, not so -- not necessarily urban
16 communities, but many communities throughout our
17 state that have a number of properties within their
18 boundaries that are not taxed, that are exempt from
19 taxation. So I think perhaps, along with some of
20 the scope that's been discussed, we might want to
21 discuss what kinds of property should be allowed to
22 be exempt from taxation.

23 I mean, more and more, we find those
24 organizations that were heretofore considered
25 sacrosanct, in terms of not being taxable, have

19

1 gotten involved in the everyday business of
2 government, and have raised their shoes, conducted
3 activities in their areas that are governmental in
4 nature; in some cases serve the community. Perhaps
5 we have to start to look at whether or not some
6 small levy should be placed on those properties.

7 There are communities that have primarily certain
8 types of properties in their districts, in their
9 areas that -- that are taxed at different levels.

10 So I agree to a large extent with Dr.

11 Reock, that I think that the basic thrust, as much
12 as I can agree with everything Assemblyman O'Toole
13 said, the basic thrust I think of our charge is to
14 recommend that which should be done, in terms of

15 making a property tax more equitable, and making it
16 more serviceable to the people it's supposed to
17 serve. And that's my reading of our charge. I
18 don't know whether we -- you know, it's beyond that
19 or not.

20 MR. VAN HORN: Other comments.

21 Well, let me -- let me weigh in on
22 this. I'd like to -- I wanted to ask Professor
23 Williams to come up to the microphone. I didn't
24 warn you of this, but I want to ask you a question
25 because it gets to the issue of -- thank you. This

20

1 is Professor Williams from Camden for the record.
2 You've written some analyses about the
3 issue of spending. And one of the concerns that I
4 have -- and this gets to the question that you've
5 raised, Assemblyman, and the whole issue of whether
6 spending should be part of this convention's scope
7 or not -- is that a number of people testified, and
8 I've certainly heard from a number of individuals,
9 as well, that if spending was part of the scope of
10 the convention, that it would be impossible,
11 thereafter, after having said that, to constrain
12 movements into all kinds of spending issues that we
13 normally associate with the budgetary process.
14 So, for example, if groups decided --
15 if the convention decided they didn't think there

16 should be spending on reproductive procedures, or on
17 -- or on stem cell research, or on, you know,
18 whatever fill-in-the-blank, you know, whatever list
19 you want. And it was my impression from reading
20 your work that you -- you couldn't figure out a way
21 to forbid such activity, once you open up that
22 avenue of discussion.

23 And so, therefore -- I mean, and I
24 want -- I want an answer, but my concern really has
25 to do with the broader picture of how much can we

21

1 achieve with this particular convention. And if --
2 if we -- I don't think it's a complete failure to
3 say that the convention's primary responsibility
4 would be to address the equity side of this issue,
5 of an inequitable and poorly administered and
6 punishing property tax system, while leaving the
7 spending issues to the Legislature, which is where
8 it is now. In other words, that is its proper
9 function, to handle the budgetary process, to decide
10 on levels and purposes of spending.

11 So -- and I believe -- and I guess my
12 concern is, if we go in that direction, these list
13 of horrors (sic) will multiply because we have no
14 way of avoiding and assuring people that this will
15 not occur; and, therefore, there will be very little
16 public support for what otherwise could be a very

17 successful enterprise. So I've given you my
18 thoughts, and I just -- I'm curious as to your
19 analysis on that point, Bob.

20 PROFESSOR WILLIAMS: Thank you. I do
21 think, initially, there's a substantial political
22 question about whether to include spending in the
23 scope of a proposed convention, and I don't take a
24 position on that at all. I don't think the task
25 force would care what my position was on that.

22

1 But legally then, once it -- once the
2 spending side were to be included in the affirmative
3 mandate of the convention -- and, actually, this
4 idea of this convention is a hybrid of what we've
5 had in New Jersey in the past. In New Jersey, we've
6 had one convention that was quite unlimited, but for
7 one --

8 (Recording malfunction)

9 PROFESSOR WILLIAMS: -- particularly
10 if the spending side is included.

11 And we have thought of one possible
12 way to avoid this parade of horrors, which would
13 appeal to both conservatives and liberals, it seems
14 to me, because there would also be likely a proposal
15 no money could be spent on the death penalty, for
16 example.

17 One way to address that, if spending

18 were to be --

19 (Recording malfunction)

20 PROFESSOR WILLIAMS: -- and then you'd

21 have a debate there, and then it might get into the

22 courts, what -- has the limitation that's been

23 placed on the convention been transgressed or not.

24 So -- and the same is true with the thorough and

25 efficient clause, the Mount Laurel things. All of

23

1 those things seem to flow from including the

2 spending side, from the idea that one might include

3 the spending side in the mandate of the convention.

4 And, of course, if one didn't include

5 the spending side in the mandate of the convention,

6 a lot of those problems go away; but, yet, people

7 who believe that the spending side should be

8 included in the convention won't be satisfied by

9 that, I don't think.

10 We could certainly work a bit more,

11 and we will, if you want us to, on trying to figure

12 out a way to formulate these kinds of restrictions

13 because these hot button issues that you mentioned,

14 and a couple of which I've just mentioned, are the

15 kinds of things that fuel the convention-phobia

16 business; a convention is too dangerous, it might do

17 this, it might do that.

18 And I think members of the Legislature

19 and members of the public would want some assurance
20 about those things. Of course, only some members of
21 the public, because some members of the public would
22 want to limit spending in each of these ways we've
23 described. But it's a very important and crucial
24 issue, both I think in the legislative branch and as
25 this gets into the public discussion of whether we

24

1 should have a convention or not.

2 I don't claim that's a totally

3 satisfactory answer, but a partway approach is to

4 just -- is to say, purposes of spending can't be

5 dealt with in the convention if spending is

6 included.

7 MR. VAN HORN: Okay. Yes, Assemblyman

8 Roberts.

9 ASSEMBLY ROBERTS: That's, Professor,

10 very informative, and very, very confusing, as well.

11 PROFESSOR WILLIAMS: Sorry.

12 ASSEMBLYMAN ROBERTS: Not at all.

13 But I guess my question directly would

14 be: If the purposes of spending were off limits,

15 but the levels were, wouldn't it -- wouldn't you

16 lose the distinction by the following set of

17 circumstances:

18 You couldn't eliminate state spending

19 for the death penalty, but you could limit it to

20 \$100 per year, let's say. So, effectively, you've
21 addressed whether or not that's an appropriate area
22 for the state to spend any money by virtue of
23 limitation.

24 PROFESSOR WILLIAMS: I would say
25 that's -- that will clearly be violative of the

25

1 spirit, not being able to deal with purposes of
2 spending. I see where you're -- and that will be
3 proposed. This is the problem. There will be all
4 kinds of attempts, I expect, to do this.
5 But, to me, your example, I see that
6 as not as hard as one might think. That's really
7 about the purposes of spending. But I see you could
8 make an argument that it's not.

9 ASSEMBLYMAN ROBERTS: Sure. I think
10 clearly it could be -- it could be extreme.
11 We have to, I think, look at the
12 opportunities for, if you will, mischief-making
13 within the context of the convention, and also the
14 expectation or the fear on the part of the public
15 that that might occur before they authorize the
16 convention to be convened in the first place.

17 PROFESSOR WILLIAMS: Both of those,
18 right.

19 ASSEMBLYMAN ROBERTS: Yeah. I think
20 you've suggested that there are a number of areas

21 that ought to give us pause, so thank you.

22 PROFESSOR WILLIAMS: May I just add,

23 there's one -- there's one other way to deal with

24 this that's not perfect. But it seems to me -- I

25 don't think you all can control this, and I'm not

26

1 sure the Legislature can control it, but the

2 convention could provide for a point of order that

3 would be ruled on by the presiding officer, by the

4 chair of the convention, that a certain proposal

5 exceeds, either the mandate or the limitations of

6 the convention. And some of this could be handled

7 internally in the convention before it got out of

8 hand, it seems to me. But, of course, that's always

9 -- the role of the chair (sic) is always appealable

10 to the full body.

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

12 DR. COLE: I think I -- Assemblyman

13 Roberts's question suggested to me that I may have

14 misunderstood you when you were speaking. I thought

15 that you were proposing as a possible scenario that

16 the overall level of spending might be limited

17 constitutionally with the convention unable to

18 address, than the priorities and purposes of

19 spending. That would then go into the hands of the

20 Legislature, where it properly belongs, in each

21 budgetary session to set what the purposes and

22 priorities of that spending will be, given the
23 constraints of the overall level of spending for the
24 state.

25 PROFESSOR WILLIAMS: That's a much

27

1 better way of putting it than I put it. But it's --

2 that's --

3 DR. COLE: It's because I'm not a

4 lawyer.

5 PROFESSOR WILLIAMS: I'm sorry?

6 (Laughter)

7 PROFESSOR WILLIAMS: It's that view

8 that led me to think that Assemblyman Roberts's

9 hypothetical might not be so hard to rule out of

10 order, because it really did deal with level --

11 specific levels, priorities and purposes of

12 spending, rather than overall. That's a very good

13 way to put it, maybe "overall versus specific levels

14 and priorities."

15 MR. VAN HORN: Vice Chairman Cole.

16 MR. COLE: Just a point of

17 clarification. Dr. Cole, did I understand you

18 correctly? You were saying that, perhaps you could

19 in the constitution say, no state or local budget,

20 however -- however we define "local," I assume we

21 define it to include authorities, as well -- shall

22 be adopted which exceeds 105 percent of the prior

23 year's spending plan. Is that the idea, something

24 like that?

25 DR. COLE: Something like that, yes.

28

1 MR. COLE: And then --

2 DR. COLE: Without being -- then the

3 authority has to set the --

4 MR. COLE: Within that -- within that

5 overall --

6 DR. COLE: Within that overall

7 constraint.

8 MR. COLE: That seems to avoid,

9 Professor, some of the -- some of the problems that

10 we've been talking about. It just seems, if you are

11 going to look at property taxes and you eliminate

12 potential savings as a possible means -- I'm not

13 sure that you would find any, but if you -- if you

14 eliminate them as a possible means of alleviating

15 the burden, you've left something on the table.

16 MR. VAN HORN: Yes, Senator Van

17 Wagner.

18 SENATOR VAN WAGNER: What you're

19 talking about, if I understand it, is a

20 constitutionally imposed cap on spending, both

21 locally and state. Is that correct?

22 DR. COLE: Yes. I'm not proposing it,

23 I'm just --

24 SENATOR VAN WAGNER: I'm saying as a -

25 - as a means of --

29

1 DR. COLE: I'm just suggesting that it

2 is a solution to --

3 SENATOR VAN WAGNER: I think you're

4 right. I think that --

5 MR. VAN HORN: Leaving higher

6 education out, of course, whatever cap idea --

7 (Laughter)

8 SENATOR VAN WAGNER: I think that, and

9 agree --

10 DR. COLE: We'd have to reach so low

11 to find the cap that --

12 MR. VAN HORN: That's right.

13 (Laughter)

14 SENATOR VAN WAGNER: Yeah, I don't

15 think you ever had that problem, did you?

16 MR. VAN HORN: No, not yet.

17 SENATOR VAN WAGNER: That may be a way

18 of approaching it, is in an overall capping, so to

19 speak, rather than trying to be specific.

20 (Participants confer)

21 SENATOR VAN WAGNER: I agree with you,

22 Mr. Chairman. I think there's a great opportunity

23 if we leave it open, for people to cherry-pick what

24 they don't like, for whatever reason they don't like

25 it.

30

1 And I'm not so sure, I think it was

2 you or someone, one of the scholars we had in here,

3 mentioned, I think Rhode Island as a case where they

4 went beyond the scope of what they were supposed to,

5 and the Court said, well, you know, the people all

6 agreed it was okay, so we're not going to change it.

7 PROFESSOR WILLIAMS: Yes, sir, that's

8 quite right. And the whole tenor of the case was

9 that the litigation was too late, that it --

10 SENATOR VAN WAGNER: Right.

11 PROFESSOR WILLIAMS: -- had not come

12 up prior to the election, to the referendum, but

13 rather afterwards, and that the public was,

14 according to the view of Rhode Island -- of course,

15 one of the leading cases on the fact that you can

16 limit the scope of a constitutional convention also

17 comes out of Rhode Island in 1935, and that -- but

18 that was a case not where the -- where the

19 litigation to enforce the limit was filed in a

20 timely way. So it's a little more complicated than

21 the way it was presented, but -- based on this

22 timing point.

23 MR. VAN HORN: And we're -- yeah, and

24 we're going --

25 PROFESSOR WILLIAMS: But it's a very

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1 important point.

2 MR. VAN HORN: I'm sorry. I'm sorry,

3 Bob. We're going to come back to that point later.

4 As usual, Senator, you're ahead of the game, but

5 we're going to come back to the point about

6 reviewing the product of the convention a little bit

7 later.

8 Sticking back to the -- on the scope

9 point, Dr. Reock, and the -- what's the charge to

10 the voters --

11 DR. REOCK: I --

12 MR. VAN HORN: -- and what's in and

13 what's not in.

14 DR. REOCK: I think it would be

15 unfortunate if the discussion we just had and are

16 having left the impression that we are in favor of

17 tax and budget limitations. As a matter of fact, I

18 was planning to suggest another change in language

19 when we got to the next page, which deals with

20 limitations on the convention, and that was to

21 insert a limitation that any budget or tax

22 limitations proposes and submitted to the vote of

23 the people shall be made by statute only, rather

24 than by amendment to the New Jersey Constitution.

25 I think it would be too easy for a

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1 convention operating with a very short time frame to
2 say we've got to have an overall limit on budgets,
3 an overall limit on taxes, and write it into the
4 constitution, where it would be very difficult to
5 adjust in the future, if an adjustment were
6 necessary.

7 So I do propose that that language be
8 placed in the enabling act as a limitation on the
9 convention; that any budget or tax limitations
10 proposed and submitted to the vote of the people
11 shall be made by statute only, rather than by
12 amendment to the New Jersey Constitution.

13 MR. VAN HORN: Any reaction to that
14 point?

15 MR. MALLOY: Mr. Chairman.

16 MR. VAN HORN: Yes, Mr. Malloy.

17 MR. MALLOY: Well, I think I'd have to
18 agree that any kind of expenditure cap should be
19 done through statute. I know locally, in Bayonne,
20 we've been dealing with various different municipal
21 cap laws for twenty years now. Basically, when the
22 cap numbers are too low, legislative action is
23 taken, do more exceptions; when the cap number is
24 too high and doesn't control expenditures, and when
25 the cap number is just about right, mostly

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1 institutional effort comes on managing the cap, as
2 opposed to providing services efficiently.
3 I certainly recognize that perhaps
4 working through various caps on general expenditure
5 controls might be the fair compromise to move
6 everything forward. But doing it through statute, I
7 think, would have to be the way to do it, so there
8 would be flexibility, if that number is wrong as
9 it's selected by the convention.

10 (Mr. Cole not identified for the record)

11 MR. COLE: Of course, the convention
12 could propose that the Legislature adopt a system of
13 limiting spending, both at the state and local
14 level, and leave it to the Legislature to come up
15 with the scheme.

16 (Senator Van Wagner not identified for the record)

17 SENATOR VAN WAGNER: But they already
18 have. Part of the complaint of the public,
19 basically, since we first imposed caps back in 1976
20 or '77, was that we -- they were too loose, that
21 they were -- the Legislature adjusted them for
22 whatever lobbying effort was made on behalf of
23 whatever municipality or group came and said, you
24 know, you need to relax the caps on this. And I
25 think, from the public's perspective, that's been

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1 one of the problems with caps, as they are not

2 strong enough.

3 MR. COLE: Yeah, which would argue

4 against making the change through a convention

5 statute, because the Legislature can then loosen it

6 up again the next day.

7 SENATOR VAN WAGNER: Exactly.

8 MR. COLE: The day after the Board of

9 Canvassers meets, as I understand it.

10 SENATOR VAN WAGNER: I think it always

11 go back -- I hate to keep saying this, but it --

12 most of what we're talking here and recommending is

13 well within the purview of the Legislature right now

14 to do. And I know it's a question of they won't,

15 but they should; they have to at some point,

16 regardless of what kind of language we put into what

17 kind of charge we send back to you. You've got to

18 face the music, one way or the other.

19 MR. VAN HORN: Dr. Cole, did you want

20 to make --

21 DR. COLE: For what it may be worth,

22 in terms of thinking of the overall charge to a

23 convention and the list of tasks that would be

24 included within the convention, I think that there

25 is one point which was mentioned, I think by

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1 Assemblyman O'Toole, which may have a reasonable

2 place on the list, and that is to find or to adopt

3 such provisions as encourage or provide incentives
4 for effecting efficiencies in the expenditure of
5 tax-levied revenues. I think that, if we are going
6 to look at things like uniformity in other issues,
7 providing genuine incentives to efficiency in the
8 expenditure of revenues might be worth thinking
9 about.

10 MR. VAN HORN: Senator Adler.

11 SENATOR ADLER: On that point, we're
12 blessed with participation on this task force of
13 probably the two foremost legislative experts on
14 efforts to encourage through incentives, the
15 consolidation of services at the municipal or the
16 school level: Both the Assembly Majority Leader and
17 the Senate Minority Leader have, for a number of
18 years, really been the champions on this issue.
19 And when there's some money available;
20 and, right now, for the last several years, there
21 has not been, when there's some money available, a
22 couple of towns and a couple of fire districts on
23 occasion take incentive and run with it and are
24 always better off when they've done so. And I think
25 the few examples we've had of mergers of services

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1 have been wonderful success stories for efficiency
2 and for taxpayers and for the equality in services
3 that are provided to a bigger region.

4 Unfortunately, we're not at a time
5 where we have money that can be the incentive; and,
6 other than praise and photo opportunities, there
7 aren't a lot of other incentives that government can
8 provide to lower levels of government to actually
9 make that happen.
10 The other possibility is to have a
11 non-incentive merger approach, which is to require
12 the merger of services, consolidation of services
13 for smaller communities and smaller school
14 districts. I think probably I'm the foremost expert
15 on that, and I can tell you there are zero bills
16 that have passed, that -- and that's maybe a mark of
17 the power of the author of those bills. But the
18 reality is there is not yet a stomach (sic) within
19 the Legislature to require a merger of services, a
20 regionalization of services, or even a
21 consolidation, a forced consolidation of
22 governmental entities from 566 and 613 down to some
23 smaller number of municipalities and school
24 districts.
25 So I'm not optimistic, whether it's

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1 the convention or the Legislature handling this
2 matter, that that, as well intentioned as that
3 suggestion was, Doctor and Assemblyman O'Toole, I
4 don't think that's going to move us forward, in

5 terms of how we're, in the short term, finding ways

6 to shift the burden away from property taxpayers.

7 MR. VAN HORN: Okay. We've made a lot

8 of progress here and (not recorded).

9 (Laughter)

10 MR. VAN HORN: Let me -- let me turn

11 to the -- just get another noncontroversial issue on

12 the table. We have -- we heard a great deal of

13 testimony about -- from various groups about either

14 including or excluding the thorough and efficient

15 clause of the constitution from any charge that we

16 might give to the voters; and, subsequently, to the

17 delegates. And we have legislation that includes

18 that and legislation that excludes that.

19 I think it's important for the -- our

20 deliberations to take a position on that, and to

21 make a recommendation on that subject to the

22 Legislature. And I'd be welcoming views on that at

23 this time.

24 Oh, Senator Adler. Yes.

25 SENATOR ADLER: I'm struck by the

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1 brilliance and the compassion contained in the

2 wording of A-1786 by Assemblyman Roberts. The

3 Majority Leader, once again, really strikes the

4 right balance for society.

5 We have an ongoing obligation, a moral

6 and I -- I'm proud to say, constitutional obligation
7 to provide every child a thorough and efficient
8 education. And I think anything that takes our
9 focus away from that vital mission takes our focus
10 away from building one common society that's good
11 for all New Jersey residents.

12 I am cognizant of Assemblyman --

13 Deputy Republic Leader O'Toole's position that the
14 funding formula maybe leaves one big block of
15 communities and children out, and that's something
16 we should cure at some time. But I'm concerned
17 that, if we do anything that, in this convention
18 process, tampers with our thorough and efficient
19 education system and the model that's been
20 articulated by our courts, that we will not be
21 helping the districts that Assemblyman O'Toole is
22 talking about; but, instead, deeply hurt the
23 children in the districts that are benefiting over
24 the last number of years from the Abbot decisions.
25 And while progress has been slow in many of these

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1 districts, the progress is demonstrable and
2 encouraging and really in some ways uplifting. So I
3 would not want us to, in any way, get off that vital
4 moral and social mission that helps all children,
5 and I think ultimately helps all New Jersey
6 residents.

7 Similarly, I'm delighted that the
8 Majority Leader in the Assembly decided to carve out
9 affordable housing. I think we have a proud
10 tradition in our state of trying to find, in all our
11 communities in New Jersey, affordable housing for
12 all citizens of different economic levels.
13 And while we have a spotty record of
14 success throughout the state, I think the philosophy
15 espoused by those decisions is something that makes
16 New Jersey a proud model in a lot of ways.
17 Implementation is lacking from time to time, but I
18 think we have to not turn away from that vital
19 mission. I think that's one thing that is a real
20 attempt to bring us together as one society. And
21 while there are still growing pains in some
22 communities based on that requirement, I think it's
23 a profoundly good requirement that we have to hold
24 on to.
25 So those are my two comments. And,

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1 once again, I tip my hat to the Majority Leader for
2 his wisdom.

3 MR. VAN HORN: Thank you.

4 Other comments on these particular
5 limitations? Yes, Dr. Cole.

6 DR. COLE: I am not concerned; indeed,

7 I agree with Senator Adler about what is protected.

8 I'm worried about what is not protected. And I
9 would point to Article I of the Constitution, and
10 all of the rights that are incorporated therein. I
11 would not like to see them subject to change through
12 a constitutional convention.

13 And, after -- Richard, after your
14 comments, I think we might want to look at Article
15 XIII, Section 1, Paragraph (2), and protect it, as
16 well, the --

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

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

19 DR. COLE: -- think that we need to
20 consider, if we want to protect -- and, obviously,
21 what we protect is more than probably half the story
22 of what we put into the charge of the convention. I
23 think we need to consider whether or not we want the
24 convention to be able to agree upon, propose, or
25 submit to the people amendments to the constitution

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1 that detract from any of the rights or privileges
2 that are currently part of the constitution.

3 MR. VAN HORN: Yes, Vice Chairman

4 Cole.

5 MR. COLE: I guess you could
6 accomplish that by restricting the convention to
7 considering matters in Article XIII, which would
8 still leave the need to deal, if you wanted to, with

9 protecting the thorough and efficient principles,
10 but would probably eliminate any need to deal with
11 the Mount Laurel principles, because those are all
12 found in Article I. And then you'd have a
13 convention that's limited to taxation and spending,
14 essentially; that's what Article XIII deals with.
15 In terms of Dr. Cole's comment about
16 property of state colleges, I think it ought to be
17 open to the convention --

18 UNIDENTIFIED: Absolutely.

19 MR. COLE: -- to say, maybe the state
20 ought to pay full boat on property taxes for all
21 state properties. A number of communities have a
22 substantial percentage of their property is really
23 exempt from taxation, except for some pilot
24 obligations. And I don't know what's happened to
25 pilot recently, but it used to be essentially in one

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1 account, and it was never enough. It was, you know,
2 ten percent, twenty percent of the property tax.
3 So maybe that's something that should
4 be looked at. Why should, you know, certain
5 communities subsidize the public, generally? I'm
6 not suggesting we go into it; I'm suggesting it
7 maybe go on -- go on the general fund, but --
8 DR. COLE: I'm going to leave this
9 room (indiscernible) --

10 MR. COLE: But, otherwise, I thought
11 the suggestion of keeping people away from Article
12 I, restricting to Article XIII is a good one, and
13 one which eliminates a lot of the problems.

14 MR. VAN HORN: Senator Lance.

15 SENATOR LANCE: I am sympathetic to
16 that, and I think this is also in line with what
17 Assemblyman O'Toole has said. And there was an
18 editorial in the Ledger on Sunday, November 21st,
19 regarding that, and it suggested that such a
20 convention be limited to Article XIII.

21 MR. VAN HORN: Right.

22 SENATOR LANCE: It went on to suggest
23 that it should not be further limited; that it
24 should be limited to Article XIII, but that there
25 should be no absolute limitation to any of the

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1 provisions of Article XIII. I am paraphrasing, and
2 certainly the editorial should be distributed to
3 every member of the task force.
4 That would permit a discussion of
5 educational funding to whatever extent it is
6 contained in Article XIII, which is the clause of
7 the constitution, the article that deals with
8 taxation and spending, which presumably is the
9 subject of a property tax convention. And I am
10 sympathetic to those concerns.

11 I would not further limit it, and this
12 would mean that all of the matters contained in
13 Article XIII could be discussed by the convention.
14 And I have faith in delegates elected
15 to a convention, and I think demonstrably in our
16 history they have served well, with the interest of
17 the entire state at heart. And I would imagine
18 delegates elected to such a convention this time
19 would also look at the state as a whole, and prove
20 to be statesmen, stateswomen to the extent that
21 their predecessors were in the various conventions
22 we've had in New Jersey.

23 SENATOR VAN WAGNER: Mr. Chairman.

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

25 DR. REOCK: I'd like to endorse

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1 Senator Adler's statement fully, with the -- and
2 referring to Mr. Cole's suggestion that the
3 convention be limited to Article XIII, I think that
4 might be a way to take care of the affordable
5 housing aspect.

6 But I would say it would be
7 appropriate to limit the convention to Article XIII,
8 with the exclusion of the T and E clause from
9 Article XIII, so far as consideration by the
10 convention.

11 SENATOR VAN WAGNER: Mr. Chairman.

12 MR. VAN HORN: Yes, Senator Van

13 Wagner.

14 SENATOR VAN WAGNER: I absolutely

15 agree that the limitation of the discussion to

16 Article XIII in its entirety would make sense, in

17 terms of what we recommend to the Legislature.

18 I think part of what the problem is,

19 which can be addressed, I think -- and I'm going to

20 ask Mr. Cole if I'm on the right track with this --

21 also the manner in which we assess property in this

22 state. I don't know if that's contained within that

23 article.

24 MR. COLE: Yeah, I believe that's

25 Article XIII, yes.

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1 SENATOR VAN WAGNER: I believe it is,

2 yeah. I think that's a very important aspect of

3 what the convention would be considering. So I

4 would endorse that.

5 MR. COLE: You're referring to the

6 uniformity clause.

7 SENATOR VAN WAGNER: Uniformity

8 clause.

9 And I would also agree with Senator

10 Adler, that we should exclude Article I from

11 consideration.

12 MR. VAN HORN: Well, if we said only

13 Article XIII, then we would be excluding Article I.

14 Right, that was the --

15 SENATOR LANCE: True, true.

16 (Participants confer)

17 MR. VAN HORN: Yes, Mayor Passanante.

18 MAYOR PASSANANTE: I don't -- I don't

19 want to act totally ignorant here, but I think for

20 some of our benefits, maybe it would be beneficial

21 if we can get some kind of a summary statement of

22 Article XIII and what it includes, so that those of

23 us who may not know the total aspects of Article

24 XIII -- I wouldn't want to weigh in on this until I

25 had a chance to read it, and that's something I

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1 don't do in my spare time. So I'd like to see that

2 in writing, so I know what we're looking at.

3 But I will say that the T and E issue,

4 I am concerned about that, as well, and I believe

5 that, you know, we have a responsibility to make

6 sure that we do provide a thorough and efficient

7 education for all of our children. So I would

8 support that.

9 I'd also like to say that, as much as

10 I know we're looking at limitations, I have a

11 concern that, if we go too overboard with

12 limitations, then we are going to tie the hands of

13 this group to be able to do what they need to do to

14 have an effective result. So we have to have some
15 faith, as Senator Lance has said, in the people that
16 will be participating in this, to be able to have
17 good judgment and to be able to move forward with a
18 recommendation that the public will be able to act
19 on; and, the further we limit it, the less likely
20 that will happen.

21 MR. VAN HORN: Senator Lance.

22 SENATOR LANCE: Yes. I agree that we
23 certainly -- and not today, but at a subsequent
24 meeting -- should review Article XIII. And I
25 couldn't, Mayor, name all of the provisions in

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1 Article XIII, either. And I think we need a full
2 analysis from our staff through you, Mr. Chairman,
3 regarding that article.
4 My own view is that there should be no
5 limitation whatever on what can be discussed at the
6 convention, either constitutionally or statutorily
7 regarding Article XIII.

8 (Professor Williams not identified for the record)

9 PROFESSOR WILLIAMS: Mr. Chairman,
10 excuse me. We're fortunate to have with us today
11 Dave Rosen, who's the legislative budget finance
12 officer, and Chief of OLS's Revenue Section. David
13 could give a brief summary now of Article XIII.

14 MR. VAN HORN: Yes, that would be in

15 order, yeah. Dr. Rosen.

16 DR. ROSEN: (Inaudible - not recorded)

17 didn't come prepared to do this, so it's sort of off

18 the cuff.

19 MR. VAN HORN: It's all right.

20 DR. ROSEN: I mean, in terms of your

21 considerations, I think some of the things that are

22 in Article XIII that might conceivably be

23 problematic are the current constitutional

24 dedications of certain revenues; for instance,

25 gasoline tax revenues and some of the other revenues

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1 that we have historically dedicated. If you were to

2 leave that open, that might be a matter of some

3 debate and some consideration.

4 The areas of assessment, income tax in

5 Article XIII, the maintenance and support of free

6 public schools, from which Abbot derives, is in

7 there.

8 The tax exemptions that exist in the

9 state, in the constitution, reside in Article XIII.

10 The veterans and widows, again, those issues might

11 be problematic, in terms of public acceptance, if

12 that was explicitly on the table; senior citizen,

13 handicap exemptions, under various areas of our

14 taxes. The basis of the Homestead Rebate derives

15 from the Section XIII power.

16 (Participants confer)

17 DR. ROSEN: Cindy points out the

18 unfunded mandate provision. So there are a number

19 of areas which, if you defined them as being in

20 play; and they might not serious be in play, but may

21 be problematic, in terms of the discussion you've

22 been having.

23 (Senator Van Wagner not identified for the record)

24 SENATOR VAN WAGNER: Through you, Mr.

25 Chairman. From your perspective of the discussion

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1 of public school funding in Article XIII, does that

2 in any way endanger any of the concerns raised over

3 the T and E portion of the constitution.

4 (Participants speaking simultaneously)

5 DR. ROSEN: That's where it resides.

6 So the Abbot decision comes out of this section of

7 the constitution.

8 SENATOR ADLER: Chairman, if I could

9 just clarify.

10 MR. VAN HORN: Yes, Senator.

11 SENATOR ADLER: I've been given credit

12 today for Dr. Cole's suggestion we eliminate Article

13 I and just focus on Article XIII. I didn't refer to

14 the articles at all in my comments; my comments were

15 on Assemblyman Roberts's language in his A-1786,

16 which talks specifically about thorough and

17 efficient education and affordable housing. So I

18 don't want to be given credit or receive any blame

19 for --

20 (Laughter)

21 SENATOR ADLER: -- constitutional

22 scholarship I've never undertaken. I didn't know

23 there were eight articles until now.

24 (Laughter)

25 SENATOR ADLER: So this is fascinating

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1 to learn all this stuff. But -- so I -- I --

2 (Participants confer)

3 SENATOR ADLER: -- Article I, I want

4 to exclude Abbot, I want to exclude thorough and

5 efficient. I don't care whether it's in I or XIII.

6 I now know it's in XIII; I actually didn't know that

7 before that.

8 UNIDENTIFIED: I didn't know it,

9 either.

10 SENATOR ADLER: But I don't want to

11 refer to the articles; I personally want to refer to

12 the language, to the actual doctrines, to the

13 concepts. Because I think -- I think, as great as

14 majority rule is, I think thorough and efficient

15 might be in jeopardy. I think one of the times the

16 majority rule doesn't work great is when it

17 oppresses minorities. And that's -- this is one of

18 the places I think we, as a task force, and then the
19 Legislature should step in, so as great as democracy
20 is, as great as the constitutional process is, I
21 think this is one area where it's necessary for us
22 to constrain debate, so that a majority does not
23 trample upon the well recognized rights of the
24 minority.

25 So I don't care whether it's I or

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1 XIII; it is in XIII, but I want to exclude thorough
2 and efficient --

3 SENATOR VAN WAGNER: Right. Okay.

4 SENATOR ADLER: -- specifically with
5 words, not by saying, don't touch I, but only touch
6 XIII. I think, as Dr. Rosen suggests, if we leave
7 it to XIII, we are putting in jeopardy thorough and
8 efficient. And my intent is to not have any --

9 SENATOR VAN WAGNER: Well, that's why
10 I raise this question, because I wasn't sure where
11 it was myself.

12 MR. VAN HORN: Yeah. On that point, I
13 mean I certainly am persuaded that thorough and
14 efficient needs to be protected because of all of
15 the reasons that we heard in our testimony. I mean,
16 there are significant cross-sections of our state
17 that would feel injured and aggrieved if we were to
18 address that. And I think that, you know, a lot of

19 -- there's both the reality and the perception. I
20 think we are putting both in jeopardy.
21 I think that, having said that, that
22 doesn't mean that I associate myself with the
23 position that thorough and efficient's
24 implementation has worked out perfectly. So I think
25 you can separate those two.

52

1 And I think that, again, I go back to
2 what I said before. I think there are matters that
3 need to be addressed in school funding; there are
4 certainly plenty that need to be addressed in the
5 administration of education and the use or misuse of
6 funds in educational institutions. I don't think
7 that that is something that necessarily -- or I
8 think it's something that should not be addressed
9 through this process. I mean, that's the
10 distinction I'm making.

11 And I think that, again, affordable
12 housing, I understand why you say that, Senator, and
13 why that's in this bill. And I -- it's one that I
14 find harder to understand exactly the nexus;
15 although I understand the political genesis of it,
16 but the intellectual connection is a bit harder for
17 me to make.

18 The one that's in -- the statewide
19 equalized school property tax issue, on the other

20 hand, is one that I don't favor putting in. It
21 seems to me that that's -- again, without taking a
22 position on whether that is or isn't a good remedy,
23 it seems to me that that is something that we ought
24 to leave to the delegates.
25 I mean, there's an example where it's

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1 not -- it's not a fundamental constitutional
2 principle. In my view, that's a methodology. And
3 if the convention -- you know, if you take that and
4 other things off the table, you start saying, you
5 can't do this or this or that, I think that's a
6 mistake.

7 But on the other -- the other points,
8 I'm in support of keeping those limitations. And I
9 -- yes, Mayor.

10 MAYOR SCHUBERT: I guess -- I
11 understand and I do agree that we need to protect
12 the concept of the thorough and efficient education.
13 I just want to be sure that we're going to -- that
14 doesn't mean that we're going to pull education
15 funding totally off the table as something that
16 should be discussed at the convention.
17 I mean, when we look at our property
18 tax bills, we all know that the vast majority of it
19 is spent on the education in our communities. So I
20 think, you know, we have to be careful about the way

21 we word whatever it is we put into this document
22 because, if we aren't real careful, I think we could
23 end up with the perception that then, okay, anything
24 that deals with public education is totally off the
25 table, and now the delegates are going to be looking

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1 at other things, and not that.

2 So I do agree that we have to protect

3 the thorough and efficient education. I believe --

4 again, I don't -- that's not my nighttime reading,

5 but I did read through the book that we had got --

6 received in the beginning of this. And I do recall

7 that -- if I'm correct or if I'm not correct,

8 somebody correct me. I believe the constitution

9 says that the thorough and efficient education

10 responsibility lies in the state, the funding for

11 that. So -- and I think that's questionable at

12 times. So I think that we need to be careful about

13 the way we word that.

14 UNIDENTIFIED: I think it actually

15 says the state provides for the maintenance --

16 MR. VAN HORN: And support, right.

17 UNIDENTIFIED: -- and support of a

18 thorough and efficient (Inaudible - not recorded.)

19 So far (Inaudible - not recorded) provide for

20 (inaudible - not recorded). So that is a provision.

21 So you're right, we can take it off the table, we

22 can take any discussion of that off the table.

23 MR. COLE: I don't think that was the

24 intention. I think your intention, Senator, was

25 more confined, the Abbot -- the Abbot cases and

55

1 doctrine, as opposed to education generally.

2 SENATOR ADLER: Yeah. Chairman, I'd

3 ask the Mayor if she could review the language from

4 Assemblyman Roberts's bill, and see whether that

5 addresses the concern that Senator Van Wagner and I

6 have raised, that Dr. Cole has raised, and others,

7 about preserving thorough and efficient, while still

8 providing the flexibility that you desire to have a

9 shift in the way we fund education statewide, for

10 your community and all the communities in the state.

11 So if you could look at Joe's language, and see if

12 that language actually meets both the need that some

13 of us have talked about, and the need you just

14 raised.

15 MR. COLE: And, Senator, as I

16 understood your language, you were saying preserve

17 the constitutional obligation to provide for a

18 system for support and maintenance of thorough and

19 efficient education. You weren't saying there can

20 be no discussion of how that system is implemented

21 or funded or anything.

22 SENATOR ADLER: That's exactly right.

23 And I think, as we just read from Peter Kelly's memo
24 earlier today about single question, multiple
25 questions, when you don't say -- when you don't set

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1 a limitation, it means you can do beyond the
2 limitation. So I think all we're limiting here is,
3 you can't tinker with Abbot, you can't tinker with
4 thorough and efficient. But how you fund schools
5 going forward is up to the convention to discuss.

6 SENATOR VAN WAGNER: Can I ask a
7 question?

8 MR. VAN HORN: Yes, Senator Van
9 Wagner.

10 SENATOR VAN WAGNER: When we first
11 addressed this issue in the Legislature, we were
12 addressing Robinson v. Cahill.

13 (Participants confer)

14 SENATOR VAN WAGNER: I'm going to try
15 to understand this in my own mind. When we
16 addressed Robinson v. Cahill, as I recall, that case
17 was founded on the fact that the Court decided, or
18 that the educational system in this state was flawed
19 and violated the thorough and efficient clause
20 because the quality of the education received by the
21 child was based on where he lived or she lived. Is
22 that correct? Primarily.

23 MR. COLE: I think that's the concept.

24 SENATOR VAN WAGNER: It's a broad -- I

25 man --

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1 MR. COLE: When you go back to

2 Robinson, Robinson started out as, my recollection,

3 anyway, an equal protection case --

4 SENATOR VAN WAGNER: Right.

5 MR. COLE: -- and actually was decided

6 on federal constitutional grounds below.

7 SENATOR VAN WAGNER: Right.

8 MR. COLE: And it was not until it

9 reached the New Jersey Supreme Court -- and,

10 coincidentally, there was a United States Supreme

11 Court decision saying the equal protection clause

12 did not apply to how a state funded its school

13 system -- that the thorough and efficient clause

14 came into play.

15 SENATOR VAN WAGNER: But, as I recall,

16 that was the basis of it, was that this young man --

17 MR. COLE: Right. The basis was that

18 reliance on local property taxes to fund education -

19 -

20 SENATOR VAN WAGNER: Favored those

21 communities.

22 MR. COLE: -- educational was

23 inappropriate.

24 SENATOR VAN WAGNER: And that those

25 students who lived in a certain community were able

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1 to access a higher quality of education. And then

2 the Legislature attempted to address it with the

3 formula that they did.

4 Now Abbot kind of raised the ante on

5 that. Is that correct? Saying that the Abbot

6 districts -- or the districts, the urban aid

7 districts or the T and E districts or Abbot

8 districts, whatever they're called, had to receive

9 the same level of funding that was given to the

10 other districts. Is that correct?

11 MR. COLE: Not --

12 MR. VAN HORN: To the highest --

13 MR. COLE: To the highest.

14 MR. VAN HORN: -- spending districts.

15 MR. COLE: To the highest districts.

16 SENATOR VAN WAGNER: In the highest

17 districts.

18 MAYOR SCHUBERT: Level of funding or

19 level of spending? They have to have the ability to

20 spend --

21 MR. VAN HORN: Per pupil.

22 MR. COLE: Per pupil.

23 MAYOR SCHUBERT: -- at the same level.

24 Not level of funding because I believe they receive

25 a higher level of funding.

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1 (Participants confer)

2 SENATOR VAN WAGNER: Level of

3 spending. I'm sorry. Okay.

4 Because I agree with the chairman. I

5 think we should perhaps preserve that thorough and

6 efficient doctrine, but at the same time allow for

7 the discussion of the methodology by which we

8 achieve that. And there seems to be a difference

9 between the two cases that were brought, in terms of

10 how the Court came down.

11 MR. VAN HORN: Any other comments on

12 these limitation issues? There's one other issue

13 kind of in the same vein.

14 DR. COLE: Excuse me, Mr. Chair.

15 MR. VAN HORN: Yeah. Sorry.

16 DR. COLE: But we are going to get a

17 thorough analysis of Article XIII?

18 MR. VAN HORN: Yes. I think the staff

19 can present that to us. I think David has taken us

20 down that road generally, but we can -- I'll ask Ed,

21 and David perhaps can collaborate on helping us -- I

22 don't think we can get it by Friday, but certainly

23 early next week. Just -- I mean, one could read it,

24 it's all -- it's on the Governor's web page. But,

25 you know, we can also get you just a summary of it.

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1 And I think David's recitation was

2 very helpful, because it shows how many things have

3 been jammed into there over time. A number --

4 (Participants speaking simultaneously)

5 DR. ROSEN: One that I omitted was the

6 debt limitation clause, which is of interest to some

7 of your members.

8 MR. VAN HORN: Yes.

9 MR. COLE: And the appropriations --

10 and the appropriations clause.

11 MR. VAN HORN: Right. I mean, my

12 initial read, Dr. Cole, of it was -- and I think I

13 did know what was in Article XIII, and David added

14 to my knowledge in refreshing my memory. I find it

15 problematic because of all of the things that he

16 mentioned, that I think the better way to go is to

17 use the language and then talk about things that are

18 accepted.

19 And I'm certainly open to being

20 persuaded that it may be necessary to identify

21 Article I because of the -- again, the same issues I

22 raised before about -- we want to try to, I think,

23 focus people on property tax fiscal policy and

24 equity issues, and not get into all this other

25 stuff. And the more that people perceive the

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1 convention incorrectly -- I mean, and I'm talking
2 about in the election. I'm -- you know, at the
3 convention itself, I'm less concerned once it's get
4 underway. But we'll never get there if it's
5 perceived as an attack on all these fundamental
6 rights, and that's the thing that I'm concerned
7 about. Once we get there, I believe that -- and
8 there, again, we want to have a process, so that the
9 delegates know exactly what they've been elected to
10 do. But, again, I think the way we define that will
11 have a great deal to do with, A, who decides to run;
12 and, B, whether it ever happens, so ...
13 But, anyway, on that point, we will
14 look forward to, you know, a recitation of what's in
15 Article XIII.

16 I just wanted to move to the bills
17 that -- I think all of the bills include the phrase
18 "revenue-neutrality." And I think that makes sense.
19 I wondered if there's anyone who has a different
20 view on that that we need to discuss; and, if
21 there's not, I just wanted to introduce the point
22 into the record that, on the issue of revenue-
23 neutrality, it seems to me that it's important that
24 the convention delegates have at their disposal a
25 score-keeping mechanics for revenue-neutrality; in

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1 other words, that -- just in the same way that the

2 Congressional Budget Office scores proposals before
3 the Congress -- I actually used to work in, you
4 know, a different part of my life in some of that
5 work in Congress -- it seems to me that the
6 Legislative Services Commission would need to do
7 that, as well.

8 And, David, since you're here, I
9 wondered if you could just comment on the
10 feasibility of my idea. In other words, in real
11 time, would you be able to -- I think the answer is
12 yes, but I'm seeking assurance that, in real time,
13 that you, as a staff person presumably to that
14 process, could advise the convention as they proceed
15 on whether their proposals were, in fact, revenue-
16 neutral.

17 DR. ROSEN: I suppose we could take a
18 shot. I mean, it's -- I mean, revenue-neutrality is
19 an easy concept.

20 MR. VAN HORN: Yeah.

21 DR. ROSEN: It's very, very difficult
22 in a whole series of dimensions. One is the time
23 frames you're talking about. I mean, almost any
24 major tax change you would implement would not bring
25 in a smooth amount of revenue. We do --

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1 MR. VAN HORN: Right.

2 DR. ROSEN: Say the income increase

3 this year produces more money the first year than it
4 does the second year. So I'm not sure what the time
5 frames are because of the timing and retroactivity.
6 I don't know -- I don't know what the time frames
7 are for your comparison; I don't know exactly what
8 that standard is.

9 MR. VAN HORN: Well, I think --

10 DR. ROSEN: Also --

11 MR. VAN HORN: I think -- and I

12 totally agree with you. I think that that would be
13 something that you would advise them as to the
14 feasibility of going beyond a certain time frame.
15 Obviously, as industries restructure and as the
16 economy changes, and so on and so forth, it's very
17 difficult to say beyond a couple of years --

18 DR. ROSEN: Right.

19 MR. VAN HORN: -- what is going to
20 happen with respect to --

21 DR. ROSEN: That's a much more

22 sophisticated problem than I'm talking about.

23 MR. VAN HORN: Right.

24 DR. ROSEN: I mean, there are earlier
25 problems in getting decent numbers. And, I mean,

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1 we'd obviously do the best we could. But there's a
2 fairly large error margin, depending on the nature
3 of the change. If you're doing a simple tax rate

4 change, we can usually get that pretty well -- but
5 if you start doing more sophisticated things, if you
6 start doing major -- say you're going to statewide
7 property tax. We'd need a fair amount of lead time
8 to get databases ready --

9 MR. VAN HORN: Yeah.

10 DR. ROSEN: -- to try to deal with
11 some of these options.

12 MR. VAN HORN: On that point, David --

13 and you weren't benefitted -- weren't around to
14 benefit -- did not benefit from having heard our
15 previous conversation. But I think that the -- Dr.
16 Reock proposed, and I think there was broad
17 consensus that we would -- the convention would
18 convene, if approved, immediately after the election
19 of '05 for an organizational meeting, and then staff
20 work would begin to evaluate a number of different
21 options. So it's not like you wouldn't have any
22 lead time.

23 And then the convention would convene
24 in the late spring, early summer of '06. So there
25 would be a period of time to prepare different

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1 options.

2 My point was that I think there needs
3 to be an accepted source for determining within the
4 limitations of the science and art of fiscal policy

5 analysis the different proposals that people are
6 considering, so that we avoid mindless and/or
7 egregious errors, is really what I'm concerned
8 about.

9 DR. ROSEN: Well, I mean, under the
10 current constitutional scheme, that's a
11 gubernatorial responsibility of certifying revenues.

12 MR. VAN HORN: yes.

13 DR. ROSEN: In terms of where -- where
14 there are some folks who sort of know how to do it,
15 the places are within the administration,
16 specifically within the Department of the Treasury
17 and within OLS. And you have to make some
18 determination of how you would, you know, tap into
19 that expertise. And we'd certainly be fully willing
20 to cooperate under any scheme. But that's probably
21 where the people are --

22 MR. VAN HORN: Yeah.

23 DR. ROSEN: -- who could do that kind
24 of scoring for you on a big basis.

25 MR. VAN HORN: Well, I don't wish to

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1 bore people with this conversation. Does anyone
2 else want to add into it? Yes, Mayor.

3 MAYOR SCHUBERT: I just have one quick
4 question, and maybe it's the time of year or
5 something, and I'm just not grasping. But if we

6 talk about revenue-neutrality, that means that we're
7 going to have the same amount of dollars to spend,
8 which sort of gets rid of the spending -- cutting
9 spending side because, if you're still spending the
10 same amount of money, unless you plan on building up
11 a big surplus somewhere -- am I making my point? I
12 mean, do you understand what I'm trying to say?
13 (Mr. Cole not identified for the record)

14 MR. COLE: I don't think it does
15 because you may be building a rebate pot, a property
16 tax rebate pot on the side, or you may be just
17 making some allowance for future growth, which you
18 know are going to be government services.

19 MAYOR SCHUBERT: So in that -- and
20 with that idea, then I would hope that we would
21 address that in our recommendations, that any -- if
22 there were spending cuts and it was revenue-neutral,
23 any additional funding would be set aside for
24 specifically rebates or property tax back to the
25 municipality, school boards, whatever.

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1 MR. VAN HORN: Well, again, I think
2 this comes down to the issue that there are plenty
3 of examples in American fiscal policy history of
4 states that have promised revenue-neutrality without
5 -- you know, again, without achieving, or not even
6 thought about that, and then found themselves

7 significantly short to meet the obligations they've

8 articulated.

9 So I think the concept here is to --

10 insofar as possible, to have the delegates making

11 decisions about -- that their decisions would, at

12 least insofar as we can know, raise the same

13 aggregate amount of money. Because, again, it's

14 about shifting responsibilities for paying for

15 public services. You know, and that's -- but you

16 don't want them to provide a false promise, which is

17 that we've come up with a free lunch; that, here we

18 have a new strategy, but, in fact, it's producing

19 twenty or thirty percent less than we need to

20 maintain current services.

21 Oh, Senator Lance. Yes.

22 SENATOR LANCE: Yes. Thank you. On

23 this issue, if the convention has the ability to

24 discuss both revenue and spending, and that's a

25 debate; and certainly that will not be decided

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1 today, I think that the proposals that have existed

2 in the Legislature on the revenue side have all

3 suggested revenue-neutrality. I believe that's

4 accurate.

5 UNIDENTIFIED: Yes.

6 SENATOR LANCE: And then, more

7 recently, there have been proposals in the

8 Legislature that have suggested the convention
9 discuss spending, as well as revenue, which is
10 different from merely discussing revenue. And --
11 and a recent iteration of this is a bill I have put
12 in the hopper that would permit the convention to
13 discuss revenue and spending, making sure it's
14 revenue-neutral, and permitting the convention to
15 discuss possible spending reductions. And I would
16 hope we would have an opportunity to review that, as
17 well.

18 I am not interested in having the
19 convention discuss spending increases, quite
20 frankly. I'm interested in revenue-neutrality on
21 the revenue half of the ledger; and, on the spending
22 half of the ledger, if there is a decision that the
23 convention should have spending, as well as revenue
24 authority, to analyze possible spending reductions.
25 And that is a recent iteration of -- of my views on

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1 this in a statute that I placed in the hopper
2 earlier this year.

3 MR. VAN HORN: Okay. The last item
4 that we had scheduled for discussion today was the
5 various bills that provide for review and advice or
6 certification on the consistency with the scope of
7 the convention. And the language in the bills is, I
8 think, identical from the various bills that have

9 already been proposed. We've had various testimony
10 about this from our constitutional scholars and
11 others. What are your views on this subject?

12 Vice Chairman Cole.

13 MR. COLE: We have a distinctly

14 minority view, but in my judgment there's only one
15 ultimate arbiter of whether you're within the scope
16 or without the scope, and that's the Supreme Court.

17 And all of these other mechanisms may guide you
18 along the way, but they're not really the

19 gatekeeper. The gatekeeper is the Court. And the
20 Court has, in the past, I think, shown its ability
21 to address questions quickly.

22 So I question whether we -- why we

23 need retired judges when we have sitting judges who
24 are open -- open for business, so to speak, and will
25 be the ones that decide it anyway. So submitting it

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1 to a panel doesn't -- to me, doesn't advance
2 anything, doesn't advance the ultimate resolution.

3 MR. VAN HORN: Senator Lance.

4 SENATOR LANCE: Yes. Even though it

5 may be at variance with a clause in the statute I
6 may have introduced, I agree completely with what
7 Mr. Cole has said, and I think that's the way we
8 should proceed.

9 MR. VAN HORN: Assemblyman Roberts or

10 Senator Adler, you obviously have gone down the road
11 with this issue. Do you want to comment on this,
12 either of you?

13 ASSEMBLYMAN ROBERTS: Let me -- I
14 actually agree with the original proposal that
15 Senator Adler and Senator Lance and I introduced,
16 and haven't changed my mind.
17 I think, as I understand it, the
18 review of consistency with the mission would occur
19 prior to the question going on the ballot.

20 MR. VAN HORN: That's the idea.

21 ASSEMBLYMAN ROBERTS: There would be -
22 - there would be a determination/certification.

23 MR. VAN HORN: Right.

24 ASSEMBLYMAN ROBERTS: That seemed like
25 a good idea at that time; it still does. I wonder

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1 about the practicality on having the Supreme Court
2 rule on whether or not the mission has been
3 addressed prior to the ballot question. Is that
4 achievable?

5 MR. COLE: Oh, I think it's
6 achievable. I think you can probably yourself
7 recall a number of cases over the last decade or so
8 where the Court has been able to address these
9 questions promptly. Frankly, you're going to want -
10 - you're going to want Supreme Court review before

11 the vote, it would seem to me. You're not going to
12 want to wait and see what happens, and then see if
13 something gets overturned later.

14 ASSEMBLYMAN ROBERTS: Yeah, I think

15 that's -- I agree. I think my original thinking was
16 that the three-judge panel would provide that in a
17 review mechanism in a more timely fashion. If
18 that's not an issue, perhaps it's something we can
19 rethink.

20 MR. COLE: But all that is, is a

21 nonjudicial review, if you're using three retired
22 judges acting as -- as --

23 ASSEMBLYMAN ROBERTS: That's right.

24 MR. COLE: It's a nonjudicial review.

25 It has to be reviewed again. And we might give some

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1 thought to putting in the statute some kind of
2 language that called for the Supreme Court to
3 provide a prompt and expeditious judicial review.

4 MR. VAN HORN: Yes. Senator Adler,

5 and then Dr. Reock. Yes.

6 SENATOR ADLER: Thank you, Chairman.

7 There's enough novelty about a sufficient number of
8 aspects of this convention process that, any time we
9 can establish greater public legitimacy for some
10 aspect of it, I would welcome that and embrace that.

11 My initial thinking, to the extent I

12 had any thinking at all, was that the 1977 enabling
13 act, about the Secretary of State, was not as
14 credible in a public context today as a three-judge
15 retired judge panel appointed by the Chief Justice.
16 Having heard Mr. Cole and Assemblyman
17 Lance's comments, I think having the Supreme Court
18 take direct certification of this question before
19 it's put on the ballot provides even greater public
20 legitimacy of the question and enhances the prospect
21 that the process will succeed, and that people will
22 choose to vote for this or to vote against this.
23 But I think it provides that additional legitimacy,
24 which we should always seek in this process, given
25 the number of novel questions that we've discussed

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1 with Mr. Kelly's memo and with a lot of the
2 discussions that have been had here over the last
3 several weeks.

4 So I was wrong before; I believe I'm
5 right now in saying that Vice Chairman Cole's
6 position is a correct position on this one.

7 MR. COLE: We haven't heard from Peter
8 yet.

9 MR. VAN HORN: Oh, yes, Mr. Kelly.

10 MR. KELLY: Can we tell the Supreme
11 Court what to do?

12 MR. VAN HORN: No. No.

13 (Participants speaking simultaneously)

14 MR. KELLY: Isn't this an advisory

15 opinion that our Court does not issue, and there has

16 to be an actual case in --

17 MR. COLE: It's not an advisory

18 opinion.

19 MR. KELLY: It would have to be an

20 actual case or controversy.

21 MR. COLE: Well, yeah, there would be.

22 Someone would bring it. Someone would challenge

23 something that has been done --

24 MR. VAN HORN: And if they don't, they

25 don't.

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1 MR. COLE: -- as beyond.

2 MR. KELLY: So we would not in the

3 legislation be directing the Supreme Court to render

4 an advisory opinion --

5 MR. COLE: No.

6 MR. VAN HORN: No, no.

7 MR. KELLY: -- like this three-judge

8 review board does.

9 MR. COLE: No, no, no.

10 MR. KELLY: Okay.

11 MR. COLE: We'd be asking the Court to

12 provide a prompt and expeditious --

13 (Participants confer)

14 SENATOR ADLER: Go over that again. I

15 don't think I agree with that.

16 DR. COLE: No, I don't either.

17 UNIDENTIFIED: Well, I don't think --

18 DR. COLE: Doesn't it require

19 certification prior to going on the ballot.

20 SENATOR ADLER: By somebody?

21 MR. COLE: Well, somebody would bring

22 a law --

23 DR. COLE: Isn't that what we're

24 talking about.

25 MR. COLE: Someone would bring a

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1 lawsuit; and, while that case was pending, they

2 would seek review of that case by the Supreme Court.

3 DR. COLE: My understanding was that -

4 -

5 MR. VAN HORN: There are two separate

6 issues here.

7 DR. COLE: -- part of the process

8 would be that the -- it would have to be certified

9 before going on the ballot; not pursuant to a

10 lawsuit, but just a certification process that it

11 was consistent with the --

12 UNIDENTIFIED: No. My -- my proposal

13 was that there would be a litigated resolution of

14 the issues before -- before the question was

15 presented to the voters.

16 MR. VAN HORN: Well, let's separate.

17 There's two different points here. One is: Do we

18 need a certification process, which is absent an

19 action taken by an aggrieved party, right?

20 DR. COLE: Right.

21 MR. VAN HORN: And then the second is:

22 If there is a suit filed to challenge the scope,

23 then how would that take place?

24 On the -- as to the certification, you

25 know, that's a question, you know, do we need a

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1 certification process, either members have been

2 through this or our panel of geniuses, do we need a

3 certification process. Let's just start with that

4 point. Do we have to certify this? We may want to,

5 but I'm saying, do we have to have a certification

6 process, assuming -- you know, let's say no one

7 challenges this, although I think they will, but

8 let's just say that no one does. Do we have to have

9 that affirmative step?

10 UNIDENTIFIED: I defer somewhat to

11 Professor Williams on that subject, but I don't

12 think there would be any requirement that the --

13 that somehow, between the step of the convention's

14 delegates approving a proposal and the proposal

15 going on the ballot, that somebody outside of the

16 convention would have to determine that it is
17 consistent with the scope. But, again, I would
18 defer a little bit to Professor Williams on that
19 front.

20 (Participants confer)

21 PROFESSOR WILLIAMS: (Inaudible - not
22 recorded.)

23 MR. VAN HORN: Okay.

24 (Laughter)

25 MR. VAN HORN: So then the question

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1 turns on whether folks believe it's desirable to
2 have such an additional certification.

3 Now the question that -- the second --
4 do you want to comment on that?

5 (Participants speaking simultaneously)

6 (Dr. Reock not identified for the record)

7 DR. REOCK: Yeah. It may not be
8 required in a legal sense, but I think it may be
9 required to give the whole convention credibility.

10 MR. VAN HORN: Yeah. Yeah, okay. So
11 that's a different --

12 DR. REOCK: And I had thought that the
13 Supreme Court was a logical agency to do that, as an
14 automatic process right after the convention, unless
15 there's some constitutional or legal obstacle to
16 that.

17 MR. VAN HORN: Assemblyman Roberts.

18 ASSEMBLYMAN ROBERTS: I think whether

19 it's the three-judge retired judge panel or whether

20 it's the Supreme Court, the certification is

21 desirable.

22 One of the fears that was articulated

23 when this process began was that of a runaway

24 convention, whereby the end product would be

25 something that was not anticipated. And we have to

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1 think through how that could be undone and

2 repudiated. But I think this was designed to build

3 public support for the process being -- ending up

4 being what it was proposed to be.

5 And I'm certainly open to whether it

6 should be the three-judge panel, or whether there

7 could be some mechanism for the Supreme Court to do

8 it in a timely fashion that is not dependent upon

9 action being brought, but I think it's essential

10 that it be reviewed.

11 MR. COLE: I think it would be

12 dependent on action being brought, thought.

13 MR. VAN HORN: Yeah, that's the

14 problem. I think then that -- because they --

15 they're not -- they're not going to take it up

16 without someone bringing a case.

17 DR. REOCK: Well, if it's written into

18 the constitution -- no, it wouldn't be, right?

19 MR. VAN HORN: No, it wouldn't be.

20 DR. REOCK: Not yet.

21 MR. VAN HORN: Not yet.

22 DR. REOCK: Not yet.

23 (Senator Van Wagner not identified for the record)

24 SENATOR VAN WAGNER: Does it really

25 matter? I mean, whoever -- if we have a three-judge

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1 or an eight-judge, or a twenty-nine-judge panel

2 certifying this, whatever goes forth from this

3 convention is going to be challenged by litigants,

4 either being outside the scope or not within the

5 scope --

6 MR. VAN HORN: Well, again, I'm

7 parsing the questions. I think -- I believe that

8 that's true.

9 SENATOR VAN WAGNER: I don't think it

10 matters, really.

11 MR. VAN HORN: But that doesn't mean

12 that you wouldn't necessarily want to have a

13 certification process. I mean, you can have both.

14 You can have, in other words, the certification by -

15 - and I think it's not going to be the Supreme

16 Court; it's going to be somebody else. And then --

17 and I do believe that people will likely challenge,

18 and then it's going to go to the Supreme Court.

19 And what Michael was suggesting is

20 just to put in language urging --

21 MR. COLE: The Court to resolve it.

22 MR. VAN HORN: -- an expeditious

23 review. Right.

24 Mayor Passanante.

25 MAYOR PASSANANTE: Yeah. I'm in

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1 agreement with a certification process. I'm

2 concerned about, we formulate something that says,

3 we need litigation in order to have this reviewed by

4 the -- I know we have legal problems. But that

5 immediately implies there's a problem, and it's a

6 negative aspect to what's coming out. And we don't

7 want to start off with having --

8 MR. COLE: I think --

9 MAYOR PASSANANTE: You know, we're

10 calling for litigation --

11 MR. VAN HORN: No.

12 MAYOR PASSANANTE: -- to make sure

13 that what we did is correct. I mean, it's just not

14 the right way to start that thing off.

15 MR. COLE: No. I think what I was --

16 what I was saying -- and you may or may not disagree

17 -- there will be litigation. Unless the convention

18 does nothing, there will be litigation. It's the

19 nature of what we do. And whatever certification

20 panel you have, that decision will not carry the day

21 because it becomes ultimately a judicial decision.

22 MR. VAN HORN: Yes, Senator Adler.

23 SENATOR ADLER: Chairman, Mr. Kelly

24 reminded me by showing me a letter he wrote to me a

25 couple of years ago that my thinking on this issue

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1 was wrong a couple of years ago, and it's probably

2 still wrong today. I'd urge him to circulate copies

3 of the letter from a couple of years ago, which will

4 take us fifteen minutes to actually read through and

5 understand.

6 But I think both the proposal that I

7 have, S-263, is probably wrong, as was a proposal I

8 had a couple of years ago, which was somewhat

9 different, but which was also defective

10 constitutionally.

11 I think the one on Page 4 on our scope

12 outline is probably also defective for the reasons

13 Mr. Kelly pointed out to me in his memo two years

14 ago. I didn't read the memo closely enough two

15 years ago; I've read it even more cursorily just

16 now, but I think I was wrong then, and I'm wrong

17 now.

18 And I think that this discussion, we

19 might be chasing our tails, all due respect to all

20 the members here. We should probably look at his

21 memo and think it through because we may not be
22 getting this right.

23 MR. KELLY: Senator, I think the idea
24 of having a panel of three retired judges or
25 justices is not constitutionally offensive. The --

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1 MR. ADLER: But she doesn't have to
2 take it. She can say no. She can say --

3 MR. KELLY: Well, yeah. But I think
4 there are other statutes that say the Chief Justice
5 will appoint a member to some advisory body, and the
6 Chief Justice has done that, I guess perhaps as a
7 matter of courtesy to the other branches.

8 But the letter that I wrote for your
9 two years ago addressed the issue of whether or not
10 we could require the Chief Justice to certify that
11 the proposals made by the convention were consistent
12 with its mandate. And we pointed to a New Jersey
13 Supreme Court decision from 2002, In Re: Camden,
14 which said that the State Supreme Court will not
15 render advisory opinions or function in the
16 abstract.

17 So I think that we might have a
18 problem if we were to direct the Court to render a
19 decision as to whether or not the convention was
20 consistent with its mandate, or if we were to just
21 direct the Chief Justice to do that. But it

22 probably would not be a problem like asking the

23 Chief Justice to appoint members to a panel, where

24 the panel is, you know --

25 UNIDENTIFIED: Can we, by statute,

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1 mandate that she do that?

2 MR. KELLY: Well, we can look at that

3 issue again.

4 UNIDENTIFIED: Okay.

5 MR. KELLY: I don't think that that's

6 as big a problem.

7 UNIDENTIFIED: Okay.

8 MR. KELLY: And that there are, I

9 think, other examples of that in the statutes, where

10 the Chief Justice makes an appointment to a panel.

11 SENATOR ADLER: Because I guess my

12 thinking has now evolved backwards fifty-some years,

13 and maybe we got it right the first time in '47. It

14 was just put on the ballot, Secretary of State. As

15 Michael says, there's going to be litigation. Let

16 somebody go to court and save us the trouble of

17 having the Chief Justice appoint a panel, just have

18 the Supreme Court make the political decision

19 promptly.

20 MR. VAN HORN: Senator Lance.

21 SENATOR LANCE: Yes. I think that the

22 difference is that, in 1947, the convention had

23 plenary power, with the exception of the composition
24 of the State Senate. And, since the state senate
25 composition was not changed at the convention,

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1 whatever the convention decided went directly to the
2 people.

3 I don't think it is a similar

4 situation here because this convention will

5 undoubtedly in some way be limited, dramatically

6 limited.

7 MR. VAN HORN: Well, I think it would

8 be helpful, Mr. Kelly, if you could make that

9 available, that memo, to us.

10 MR. KELLY: Certainly.

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

12 (Beginning of Tape No. 2, Side A)

13 DR. COLE: -- so we could have -- I'm

14 just -- theoretically, we could have a certification

15 process that involved this panel; and then, of

16 course, if there were any real litigation about it,

17 it would go to the Court.

18 MR. VAN HORN: Yeah.

19 DR. COLE: So you could -- we could

20 address it in that way.

21 MR. COLE: And I guess the Court would

22 have to -- I think what Mr. Kelly was alluding to,

23 when the Legislature or the Governor trespasses on

24 judicial power, courts usually accept it as a matter

25 of accommodation to other branches.

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1 In this case, I don't know. I guess

2 one of the things you'd have to think about is

3 whether the Chief Justice would want to appoint

4 retired judges, and then essentially look anew at

5 their work without giving their opinion the type of

6 deference she would normally give to a lower court

7 opinion. So, you know, that's something else to

8 consider.

9 MR. VAN HORN: Yes, Ernie.

10 DR. REOCK: Since this is still up in

11 the air, let me throw another question is, and that

12 is: If this committee, whatever it is, comes to the

13 conclusion that the convention has exceeded its

14 authority, what happens?

15 MR. COLE: Litigation.

16 DR. REOCK: Is -- but I mean, does the

17 convention have another chance, or does it all go

18 down the drain if the answer is negative?

19 MR. COLE: I assume there would be

20 litigation challenging -- by somebody, challenging

21 the decision of that certification panel --

22 DR. REOCK: Yes.

23 MR. COLE: -- as being arbitrary.

24 DR. REOCK: Okay. But should there be

25 something in the enabling act permitting the

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1 convention, after an initial negative ruling of a

2 panel, to come back into -- into --

3 MR. VAN HORN: Yeah. See, that's --

4 DR. REOCK: -- being and patch up its

5 work.

6 MR. VAN HORN: Right. You've raised

7 that question before, Ernie. And I think that is

8 the problem, that's where the certification process

9 creates more problems than it solves. Because if

10 you have -- in other words, the value of it

11 supposedly (indiscernible) court, but if they say,

12 well, it exceeds it, then you would have a conflict

13 between this appointed panel and the delegates who

14 have been elected to do their business.

15 DR. REOCK: Right, right.

16 MR. VAN HORN: And so that's why I

17 think -- I want to think about this some more -- I'm

18 in favor of a more simple mechanical kind of

19 certification process that -- you know, something

20 like the Secretary of State or whatever. And then,

21 if litigation happens, it happens, and then it goes

22 to the Supreme Court. Because interposing some

23 other body in between there, it seems to me, is very

24 problematic.

25 MR. COLE: You could have an opinion

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1 from counsel to the convention.

2 MR. VAN HORN: Yeah. Right, right.

3 Counsel to the convention or something, which is
4 advisory.

5 MR. COLE: You know, much like

6 corporate lawyers render opinions --

7 MR. VAN HORN: Right.

8 MR. COLE: -- all the time as to

9 whether something is or without the --

10 (Participants confer)

11 MR. VAN HORN: Yeah. They'd be the

12 benefit of legal advice of their lawyer (sic).

13 Right, exactly.

14 (Participants conferring simultaneously, affecting

15 quality of recording)

16 DR. REOCK: As a matter of fact, if

17 you follow the 1966 provision, one of the standing

18 committees committees of the convention was on scope

19 of -- scope of the convention.

20 MR. VAN HORN: Yeah.

21 DR. REOCK: So that issues were

22 referred to that committee, which never made a

23 decision, again, because it was evenly balanced

24 between Republicans and Democrats.

25 (Participants confer)

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1 MR. VAN HORN: Okay. We've beat this

2 one to death, as well, and that's what we're here to

3 do.

4 (Laughter)

5 MR. VAN HORN: Let me just then recap

6 where we're headed next. On Friday, at 9:30,

7 breakfast served at Winants Hall, which is where --

8 UNIDENTIFIED: Breakfast?

9 MR. VAN HORN: Breakfast, absolutely,

10 yeah. No, Winants Hall. It's back to our old --

11 DR. COLE: I wondered, Mr. Chair, what

12 it is that we do then. On some days, we get the

13 muffins, and some days we don't.

14 (Laughter)

15 DR. COLE: Is it a product of the

16 quality of our argument in the proceeding, meeting?

17 MR. VAN HORN: Well, let me put it

18 this way.

19 DR. REOCK: It's all the budget and

20 the time of the --

21 SENATOR LANCE: And I want that

22 question certified.

23 (Laughter)

24 MR. VAN HORN: Let me put it this way,

25 Dr. Cole. From thenceforth, there shall be muffins

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1 at all meetings. I direct the staff to do that, no
2 matter when we meet.
3 So we're meeting next Friday -- this
4 Friday at 9:30, and we're going to take up some of
5 the unresolved issues that -- coming from previous
6 meetings, and the list is in front of you. It's:
7 Elected officials, including
8 legislators permitted to run or not.
9 The payment of salaries, per diems, et
10 cetera.
11 Two delegates, how many should be
12 elected per district.
13 Should there be extra delegates or
14 not.
15 The contribution limits to the
16 campaigns, and whether public financing should be
17 provided.
18 And, finally, the -- whether the
19 convention should be authorized to propose statutes,
20 as well as amendments.
21 Now those seven questions were the
22 ones from the previous discussion that I felt were
23 matters that are very much not in consensus, where
24 we still need discussion.
25 And, in addition, we will also have at
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1 that meeting a budget proposal. The staff has --

2 and is working on an analysis of the cost of
3 conducting the elections, the convention, and the
4 postelection process -- post-convention process.

5 And then, hopefully, by the early part
6 of the week of the 13th -- I hope I've got that
7 right -- we will have a draft report circulating,
8 and we'll be discussing that on the 17th. Okay?

9 So any other comments before we
10 adjourn today, besides the need for muffins?

11 DR. REOCK: The meeting on -- you
12 announced another meeting on the 21st. What are the
13 details of --

14 MR. VAN HORN: That I've already
15 calendared, yes. I'm sorry. We are definitely
16 meeting -- unless we --

17 DR. REOCK: Okay.

18 MR. VAN HORN: -- somehow agree on
19 everything on the 17th --

20 DR. REOCK: Time and place?

21 MR. VAN HORN: The time and place was
22 announced already.

23 UNIDENTIFIED: Winants.

24 DR. REOCK: Winants?

25 MR. VAN HORN: Winants at?

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1 UNIDENTIFIED: 9:30.

2 UNIDENTIFIED: Jack?

3 MR. DONNELLY: Oh, Winants at 9:30.

4 MR. VAN HORN: Winants at 9:30. Okay?

5 MR. DONNELLY: I'll send an e-mail,

6 Chair.

7 MR. VAN HORN: Yes. Thank you. Okay.

8 We stand adjourned. Thank you very much.

9 (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 8, 2004, is a true and
7 accurate non-compressed transcript of the
8 proceedings to the best of my knowledge and ability.

9

10

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12 Coleen Rand AD/T 419

13 For Guy J. Renzi & Associates

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