ALBANY, NEW YORK

April 28, 1993

1:45 p.m.

REGULAR SESSION

SENATOR NICHOLAS A. SPANO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT SPANO: The Senate will come to order.

All please rise for the Pledge of Allegiance.

(Whereupon the Senate joined in the Pledge of Allegiance to the Flag.)

In the absence of clergy, let us please bow our heads for a moment of silence.

(Whereupon there was a moment of silence.)

Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, April 27. The Senate met pursuant to adjournment. Senator Mega in the chair upon designation of the Temporary President. The Journal of Monday, April 26, was read and approved. On motion, Senate adjourned.

Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Secretary will read. Don't want to read it yet? Okay.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Secretary will read.

Senator Padavan.

SENATOR PADAVAN: Mr. President, on page 24, I offer the following amendments to Calendar 429, Senate Print Number 116, and request that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT SPANO: Without objection.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: How are you, sir?

ACTING PRESIDENT SPANO: Fine, sir.

SENATOR GOLD: Good. Mr.

President. On behalf of Senator Halperin, who is right now engaged in other important matters of state, yes, I move to discharge the following bill from its respective committee and ask that it be recommitted to that committee with instructions to strike the enacting clause:

Senate Print 3967.

ACTING PRESIDENT SPANO: Without objection.

Senator Maltese.

SENATOR MALTESE: On behalf of Senator Holland, please star Calendar Number 441, Senate Print 464.

ACTING PRESIDENT SPANO: The bill is starred at the request of the sponsor.

Senator Kuhl.

SENATOR KUHL: Yes. Calendar Number 395, Mr. President, which is on the starred calendar, I would like to remove the sponsor star.

ACTING PRESIDENT SPANO: Remove the sponsor star on Calendar 395, so moved.

Any other motions and

resolutions?

Secretary will read.

THE SECRETARY: On page 13 of today's calendar, Senator Daly moves to discharge the Committee on Environmental Conservation from Assembly Bill Number 583 and substitute it for the identical Calendar Number 577.

ACTING PRESIDENT SPANO: Substitution ordered.

Senator Present, we're ready to begin the calendar.

SENATOR PRESENT: Mr. President, let's take up the non-controversial calendar.

ACTING PRESIDENT SPANO: Secretary will read.

THE SECRETARY: On page 26, Calendar Number 462, by Senator Volker, Senate Bill Number 3907, Criminal Procedure Law and the Penal Law -

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT SPANO: Lay it

aside for the day.

THE SECRETARY: Calendar Number 465, by Senator Hannon, Senate Bill Number 643, Administrative Code of the city.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: 466, by Senator Bruno, Senate Bill Number 3021.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Senate Bill - Calendar Number 467, by Senator Hannon, Senate Bill Number 3169, Real Property Law, in relation to the sale of mobile homes.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 468, by Senator Hannon, Senate Bill Number 3170, Real Property Law.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 469, by Senator Hannon, Senate Bill Number 3173, Real Property Law and the Private Housing Finance Law.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 472, by Senator Goodman, Senate Bill Number 2801, Education Law, in relation to providing state aid.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 473, by Senator Marino.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

(Whereupon, Senator Marino entered the chamber.)

THE SECRETARY: Senator Marino's bill.

SENATOR GOLD: Will the record note that I'm only doing my job, and it was other people who asked me just in case Senator Marino hears about this.

THE SECRETARY: Calendar Number 474, by Senator LaValle, Senate Bill 3970, an act to amend the Education Law.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT SPANO: The bill

is passed.

THE SECRETARY: Calendar Number 477, by Senator Spano, Senate Bill Number 3382, Mental Hygiene Law.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 478, by Senator Spano.

SENATOR SMITH: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside for the day.

THE SECRETARY: Calendar Number 479, by Senator Seward, Senate Bill Number 3670, an act to amend the Mental Hygiene Law.

ACTING PRESIDENT SPANO: Local

fiscal impact note is at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 485, by Senator Larkin.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: On behalf of Senator Oppenheimer, who has discussed this with Assemblywoman Nolan, can we lay this aside temporarily.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 498, by Senator Marino, Senate Bill Number 4595,

proposing an amendment to the constitution.

SENATOR GOLD: On behalf of everybody but me lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 558, by Senator Marino, Senate Bill Number 4596.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 570, by the Senate Committee on Rules, Senate Bill Number 4651, an act to amend Chapter 79 of the Laws of 1989 amending the Correction Law.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Mr. President, is there a message of n ecessity at the desk?

ACTING PRESIDENT SPANO: Yes, there is.

SENATOR PRESENT: I move we accept the message.

ACTING PRESIDENT SPANO: On the

motion. All those in favor, signify by saying aye.

((Response of "Aye.")

Those opposed, nay.

(There was no response.)

The motion is accepted.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present, that completes the non-controversial calendar.

SENATOR PRESENT: Mr. President. Would you call up Calendar 485, have the last section read, and take a roll call for a couple members who would like to leave.

ACTING PRESIDENT SPANO: Calendar 485. The Secretary will read.

THE SECRETARY: Calendar Number 485, by Senator Larkin, Senate Bill Number 4597, an act to amend the Real Property Tax Law and the Transportation Law.

ACTING PRESIDENT SPANO: Read the last section.

SENATOR PRESENT: Mr. President, would you recognize Senator Maltese first.

THE SECRETARY: Section 2. This act shall take effect immediately.

SENATOR MALTESE: Aye.

ACTING PRESIDENT SPANO: Senator Tully.

SENATOR TULLY: Aue, Mr. President.

ACTING PRESIDENT SPANO: Senator Seward.

SENATOR SEWARD: I vote aye.

ACTING PRESIDENT SPANO: Withdraw the roll call. Lay the bill aside.

Senator Present.

SENATOR PRESENT: Now go back to the controversial calendar.

ACTING PRESIDENT SPANO: Senator Jones.

SENATOR JONES: Yes. I would like unanimous consent to be recorded as a no on 474, please.

ACTING PRESIDENT SPANO: Calendar 474, the record will so indicate.

Senator Kuhl?

(There was no response.)

Secretary will read controversial.

SENATOR PRESENT: Would you call up 498, please. I'm sorry.

ACTING PRESIDENT SPANO: Calendar 498. The Secretary will read.

THE SECRETARY: Calendar Number 498, by Senator Marino, Senate Bill Number 4595, proposing an amendment to the constitution.

SENATOR GOLD: Hold on. I understand that Senator Connor has an amendment on this bill, and I'm trying to get him to the chamber.

SENATOR PRESENT: Mr. President,

will you lay that bill aside temporarily.

And I think Senator Kuhl has a privileged resolution.

ACTING PRESIDENT SPANO: Lay aside 498.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Is there a privileged resolution at the desk sponsored by Senator Sears?

ACTING PRESIDENT SPANO: Yes, there is, Senator.

SENATOR KUHL: If there is, I would like to move its adoption and ask the clerk to read the title of the resolution.

ACTING PRESIDENT SPANO: Secretary will read the title of the resolution.

THE SECRETARY: Legislative Resolution, by Senator Sears, paying tribute to Gail Wolanin Young upon the occasion of her designation for special honor as Town Clerk of the Year by New York State Town Clerks Association, Incorporated.

ACTING PRESIDENT SPANO: On the

resolution. All those in favor, aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yes. Perhaps we could take care of another piece of business, too. Senator Oppenheimer has a resolution; and if I could yield to Senator Oppenheimer, perhaps we could do that.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Would you recognize Senator Oppenheimer.

ACTING PRESIDENT SPANO: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you very much. We have -- the title of the resolution, I believe, is "Take Our Daughters To Work" resolution. I would appreciate if you

would read 1040.

ACTING PRESIDENT SPANO: The resolution is at the desk, Senator Oppenheimer. Secretary will read the title of the resolution.

SENATOR OPPENHEIMER: Thank you. Read the title, and then if you would be good enough to read the rest of it.

THE SECRETARY: Legislative Resolution, by Senator Oppenheimer, Resolution Number 1040, recognizing and celebrating the first annual "Take Our Daughters To Work Day" in the State of New York.

ACTING PRESIDENT SPANO: On the resolution. All those -

SENATOR OPPENHEIMER: If you would be good enough to read it.

ACTING PRESIDENT SPANO: You would like it to be read in total?

SENATOR OPPENHEIMER: Please.

ACTING PRESIDENT SPANO: Yes, Senator. Secretary will read the entire resolution.

THE SECRETARY: Whereas, April

28, 1993, marks the occasion of a nationwide endeavor to "Take Our Daughters To Work," a program designed to enhance the self-worth of girls today and acquaint employers with the work force of tomorrow.

Girls from all over New York have come to the State Legislature in Albany to participate in "Take Our Daughters To Work" with Senators, Assembly members and legislative staff, an effort designed to help young women envision their role as government policy makers of the future.

New research commissioned by the American Association of University Women shows that at the age of 9 most girls are confident, assertive, and feel positive about themselves, but fewer than a third of the girls will maintain a self-assured attitude through high school.

The Ms. Foundation for Women has demonstrated the insight and determination to actively respond to this disconcerting data by founding an annual "Take Our Daughters To Work"

program as part of their National Girls Initiative.

Education and career opportunities for girls have expanded over the years, but girls and women still receive mixed messages about their role in modern society and continue to be subjected to gender bias in the classroom and the workplace.

By the year 2000, it is estimated that women will fill two of every three positions available in the workplace, and it is therefore beneficial to both employers and future employees that we begin to prepare young girls for the prominent roles they will assume.

Women are drastically under represented in elective government. The Legislature's participation in "Take Our Daughters To Work" will help to expose girls to the full range of opportunities available to them as they consider career choices.

In 1992, a record number of women were elected to the United States Congress and the New York State Legislature, providing girls

with more women role models in political careers than ever before in our nation's history. The young participants in "Take Our Daughters To Work" represent the next generation of leaders who will take us even further in our efforts to perfect representative democracy in this country by increasing the number of women in government to reflect the 51 percent of the population which is female.

Now, therefore be it resolved, that this legislative body pause in its deliberation to recognize and celebrate the first annual "Take Our Daughters To Work Day" to encourage girls to recognize their self-worth and inspire them to live up to the highest standards of personal achievement and public involvement.

ACTING PRESIDENT SPANO: Senator Oppenheimer.

SENATOR OPPENHEIMER: Mr. President. I just very briefly want to welcome all the young women, the young ladies that have come to the New York State Legislature to

participate in "Take Our Daughters To Work Day".

It is a very exciting day for those of us in the Legislature, and I hope it will be for all of you. We had an extraordinary number of young people come and join us today. We actually had almost a mob scene, and it was absolutely delightful to see all these young women interested in government, asking questions about government and participating with us.

And we want these young women to know that we look forward to them considering government as one of their many options as they look around at the work world and the work force that they will be a part of in the next decade or fifteen years, and that we hope they will consider government as an option. It is an exciting field and we need women's voices in government just as surely as we need men's voices. And so we are not looking to exclude men merely to add women and to have a population in this chamber that is representative, after all, of what the population of the real world

is.

We encourage you in your endeavors and look forward to listening to you, hearing what you think, hearing what you feel, so that we can act upon those issues that are important to you and that eventually you will want to join us in this arena.

We thank you all for coming. It's been a very exciting day for us.

ACTING PRESIDENT SPANO: Senator Mendez.

SENATOR MENDEZ: Mr. President. I feel very, very happy with the project today that we are all celebrating through the resolution that has been introduced. I was not blessed with having any children, daughters, but I was blessed in having two staff members of mine that they have two wonderful girls that they have been participating today.

I really must acknowledge the graciousness of Senator Libous when I took my two girls today to a committee meeting, Mara Teresos stand up and Risa Clark, stand up. They

went to the committee meeting. They asked questions on two bills, all my colleagues there celebrated their enthusiasm in doing some work today in our government.

So I am very pleased and most appreciative. Among all these wonderful girls here we might end up, who knows, some day having a woman President. And at least I know of one little girl who told me that she wants to be a Senator which she never thought that she would want to be ever, and one other girl said that, yes, it wouldn't be bad to be President some day.

So this is a wonderful activity, and we are all celebrating it, and we thank the girls for participating and taking this whole day with great seriousness.

Thank you, Mr. President.

ACTING PRESIDENT SPANO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. Thank you.

On this day that we take our

daughters to work, I'm proud to recognize my daughter who is in the chamber who I brought to work today. She will die of embarrassment when I say it, but she's the young lady up there with the blond hair.

(Laughter)

I guess there are many of them up there with blond hair. She's the one, Senator Gold, with the extremely red face in the front row.

And, Mr. President, I think the message to my daughter and I hope to every one's daughter that's in this chamber today is that I want you all to think of a day in the year 2018, 25 years from now, when we'll be celebrating the 25th anniversary of the "Take Your Daughter To Work," and it's my hope that all of the young women here today will be able to bring their daughters back to this chamber.

Because I want all of you to know that there is a seat down here, there is a seat in government, there is a part of government that the people of your generation will need

your insight and your abilities. It's my hope that you will all take a seat down here; that our community and our state will again be a leader in the movement to make women more a part of our political community.

And I have only one concluding thought for my daughter. Please, Maureen, don't primary your father for the seat.

ACTING PRESIDENT SPANO: Senator Jones.

SENATOR JONES: I would just like to say I didn't bring my own daughter today because they are already grown and in the work force, but I'm very proud that I did bring a very dear friend from home, and I'm also lucky enough to have a young lady from Albany.

I probably more than anyone here represents a generation that those opportunities were not available for young women, and it's quite unusual at this age in life I did get this opportunity. So I am very thrilled to be here today and take part for this the first time and see so many young people that know today that

those doors are open for them, and it's theirs for the asking.

So I'm thrilled to be here and I'm very happy to see so many young girls hopefully looking toward a career to be here in the years to come.

ACTING PRESIDENT SPANO: Senator Hoffmann.

SENATOR HOFFMANN: Like many of the other parents in this chamber, I take a singular pleasure in knowing that on this one day we are sharing our work experience with young people and letting you know what it is that we do on a regular basis. But we want you to understand that it is not always easy, and those of you who have parents who work outside of the home, be they mothers or fathers, this is a good opportunity for you to start assessing how you will manage these two sometimes competing plans in your future.

I'm a mother and I'm proud of being a mother, and that's the most meaningful job that I have, but I'm also extremely proud to

represent 297,000 people in the 48th Senate District. The message for each one of you is that you can be both of those roles if you decide to be some time in the future, and you should be equally happy doing each of them, and our job is to help make it meaningful and stimulating and supportive as a society for you to be successful in each of those capacities.

ACTING PRESIDENT SPANO: On the resolution.

Senator Marchi.

SENATOR MARCHI: Mr. President, I was sorely tempted to vote against this resolution as it was being read because it proscribed or it rooted itself to prescriptive mandates tied into statistical norms, and I don't think you should do that when you are talking about human beings.

But all of the comments that were made after in a by those who got up and testified and spoke to the issue of an open society and the availability to all of our people to realize their potential, I thought

this was a highly redemptive factor.

So I'm voting for your remarks, Suzi -- Senator. I'm voting for the remarks that placed everything that was contained in the resolution itself in perspective but not necessarily every single i and t that was dotted and crossed in the resolution itself.

ACTING PRESIDENT SPANO: On the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

I might add on behalf of all of the Senators and on behalf of Senator Marino, the Majority Leader, we would like to welcome all of our guests here today, especially all of the young women who took part in the "Take Your Daughter To Work" program.

Welcome to the state capitol, and we hope you enjoyed your experience.

(Applause.)

Senator Tully.

SENATOR TULLY: Yes. Mr. President. On page 21, I offer the following amendments to Calendar Number 287, Senate Print Number 724A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT SPANO: Without objection.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President. Just as a point of clarification, 474 was voted on and approved?

ACTING PRESIDENT SPANO: 474 was passed previously today.

SENATOR DOLLINGER: Can I have unanimous consent to be recorded in the negative on that bill, Mr. President?

ACTING PRESIDENT SPANO: Without objection.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: May we take up

Calendar 498, please?

ACTING PRESIDENT SPANO: Secretary will read Calendar 498.

THE SECRETARY: On page 29, Calendar Number 498, by Senator Marino, Senate Bill Number 4595, proposing amendment to the constitution.

ACTING PRESIDENT SPANO: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. I call up my amendment, waive its reading and ask to explain it.

I think the best way to approach this is to first point out what the proposed Constitutional Amendment by the Majority would do and how it would operate and then to show the difference in the way -

SENATOR SKELOS: Senator Connor, will you yield for a second?

SENATOR CONNOR: Certainly.

ACTING PRESIDENT SPANO: Senator Skelos.

SENATOR SKELOS: I realize that

this is Senator Marino's bill and I'm not Senator Marino. He has asked me to perhaps explain what's before the Senate today. If you would like to explain your amendment, that's fine. But I think as to the concurrent resolution, I think it would be more appropriate, on behalf of Senator Marino, if I explain it.

SENATOR CONNOR: I will contrast it is what I want to do.

SENATOR SKELOS: Well, I haven't explained it yet, so it's difficult -

SENATOR CONNOR: How about if I withdraw my amendment and ask for an explanation of the bill, and thin offer my amendment.

SENATOR SKELOS: That would be fine. That would be fine. Thank you very much, Senator Connor.

Mr. President, this is a concurrent resolution amending Section 1 of Article V of the State Constitution, in relation to filling a vacancy in the office of Comptroller and/or the Attorney General.

The three main components of this proposal are that prior to April 1 of the last year of the term, the Governor must within ten days of the vacancy make proclamation of a special election to be held not less than 30 days nor more than 40 days from the date of the proclamation. After April 1, the Legislature by concurrent resolution would appoint a person to fill such office for the remainder of the term of that office. That's by concurrent resolutions of the two houses.

If a vacancy should occur at any time other than after April 1 of the last year of such unexpired term and a special election would fall within 60 days of the next general election, the election to fill the vacancy for such unexpired term will be held at the time of that general election.

Now, two occurrences have occurred in the past six months or so which have documented the need for Senator Marino's concurrent resolution.

Number 1, we have the immediate

resignation of Ned Regan as Comptroller and, number 2, we had a situation where last November if Bob Abrams had been successful in his election bid for the United States Senate against Senator D'Amato, there would have been a vacancy there also.

At the present time, the State Constitution does not allow for direct input by the public in the replacement of a state Comptroller or Attorney General when a vacancy occurs. In place of a vote of the people, the current provisions call for the creation of a legislative superhouse consisting of 211 state legislators to fill such vacancy.

In behalf of the Majority and Senator Marino, it's our position that this vacancy would be better filled by a vote of the people of the State of New York.

SENATOR CONNOR: Thank you. Mr. President.

(Whereupon Senator Libous was in the chair.)

ACTING PRESIDENT LIBOUS: Senator

Connor.

SENATOR CONNOR: I now call up my amendment, waive its reading and ask to explain it.

ACTING PRESIDENT LIBOUS: Okay. Senator Connor on the amendment.

SENATOR CONNOR: Thank you, Mr. President.

I think Senator Skelos fairly described what this amendment would do as far as it goes, but I think it's important to look at the practical way it would operate. And let me say, I got here initially through a special election. I know the special election process, and there have been a variety of suggestions over the years to change it as it applies to members of Congress or legislators.

The one overriding policy consideration with respect to those bodies to have a quick election, 30 to 40 days from proclamation, is of course that if you don't fill a legislative representative seat the people of that district lose their input in

government. They lose their voice and vote.

In the case of the Comptroller or the Attorney General, we are dealing with people who don't have that same representative function. No discrete section of the state loses its voice if the vacancy persists for a couple months or is filled on an interim basis.

I applaud the idea of the people choosing their representatives. Indeed, as I was preparing to come to Albany on Sunday night, my wife said to me, "What are your next two weeks like in Albany?" I said, "I think they'll be preoccupied with this Comptroller's race." There are hearings the Democrats are having this week. She said, "Hearings? Since when do candidates go to hearings? When is the election?"

Now, I should point out that one of the candidates is a near neighbor and a near lifetime friend of ours, and my wife was certainly well aware of all the people who put their names forward, several of them being personal friends.

I thought, "Gee." She said, "You mean the people don't get to vote? Just you folks in the Legislature?" And that quite disturbed her. I understand why.

Now, look. For the present go around, the constitution is the constitution. We certainly can't change it on short notice. It takes the vote of the people after two successive Legislatures have spoken.

And I don't think the fact that we have this constitution in any way impugns the legitimacy of whomever gets elected. One of the greatest Attorney Generals in my opinion in the state of New York, Louie Lefkowitz, was elected through this process and subsequently won numerous other elections.

But this resolution the Majority has brought out does point out there is probably a better way, but I think my amendment shows an even better way, a way that gives voice to all of the people.

What's wrong with a special election on 30 to 40 days' notice? Well, how do

you select the candidates? Well, the five political parties, Democrat, Republican, Liberal, Conservative, Right to Life Party, all get to put a candidate on the ballot through their party rules; in other words, their party leaders sit down in a room and decide here's the candidate that gets on the ballot.

I call to mind the horse trading involved in that within a major party and perhaps for the minor party lines. That's politics. You can't take politics out of the process when you set it up and empower the party bosses and the party leaders to pick the candidates.

What are the alternatives? Can there be an independent candidate who petitions to get on the ballot? Well, think about it. You are proclaiming the election on a 40- to 60-day basis. The Election Law provisions would give an independent candidate somewhere between eight and ten days to get all the signatures around the state. Remember, a hundred from half of the counties around the state? I think we

have lowered it to 10,000, perhaps 15,000 now signatures -- 10,000 signatures. But in a special election it's usually even a greater task.

And, frankly, I have been involved in campaigns, many campaigns that had to petition statewide, either for a primary or as independent candidates. It is a mammoth undertaking. It cannot be done in eight to ten days. You can't do it physically. It would never work.

So the Majority's proposal says we'll have a special election, and the only candidates on the ballot are the ones the party bosses pick. And while theoretically an independent could run, it's physically impossible to get enough signatures to survive our draconian, archaic Election Law, which was only in minor ways made easier by the so-called "reform legislation" of 1992.

So that what you are saying here is we shouldn't let the 211 elected representatives of the people pick. We should

let the party bosses put forth anywhere from two to five names, and then have a hurry-up statewide special election.

Now, Mr. President, I have seen special elections for virtually every office from Assembly to Congress. They are messy affairs in the sense that they are hurry-up affairs. They are three-week, four-week campaigns. It's difficult to get a message out. It's expensive to get a message out. And if you are talking about a statewide campaign, incredibly expensive.

And what's the result of all the efforts? I have seen tens of thousands of dollars, in excess of hundreds of thousands of dollars spent to try and get a political message out in a special election and encourage voters to turn out. And what happens? Oh, you get turnouts of anywhere from 10 to 15 to 20 percent of the voters if you're lucky.

I'm not ashamed to say because I won, but I won this seat initially with 2500 votes, and that was five times the number of

votes my only opponent, the Republican, got. Three thousand people out of the then 278,000 or 282,000 people in my district voted in a special election and I campaigned and my opponent campaigned.

The fact of the matter is -- and we have all seen special elections. Turnout is low. Who knows they are supposed to come out in the snow in February to vote on a Tuesday or a Thursday? In my own case, it was Valentine's Day. Who knew they were supposed to go vote then? Who cared? Voters have to focus on orderly elections to get a turnout. It has to be an anticipated date. Everybody knows some time in November there is an election. They don't know there could be one in April or January or December or July. This proposal could well result in a special election in mid summer some time. When people are away on vacations, who's focusing on elections.

And it's all a hurry-up. It could be as short as 30 days, 30 days, barely enough time for the political bosses to meet in

the smoke-filled rooms to pick the candidates. No time for independent voices to come forward. No time for people unbeholding to the political system to get their name on the ballot and make their case to the voters. They'll never make their case to the voters because I can't imagine anybody making the ballot statewide in eight to ten days. It cannot be done under our present Election Law, I assure you.

But a good idea to let the voters have a voice. Not just a good idea, a wonderful idea. A true democratic with a small "d" idea.

What does my amendment do? My amendment says, Look, vacancies get created. People die, people resign, people get removed from office. You can't predict when that will happen. You cannot predict it. You do have to fill the vacancies without a doubt.

Now, what's my amendment say? Let's do it in an orderly way which gives true voice to the public. Let's have primaries for the political parties. Left the rank and file turn out and vote after the case has been made

by the parties' aspirants and pick the parties' candidates. And then let's have an election on election day, in November, that Tuesday in November when people are accustomed to voting, when people turn out, when in many places it's a holiday. People have off from work. They have time to vote. The campaign gets in high gear in September and October when people are finished with the frivolities and relaxation of summer and can focus on the issues. That's the better way. That's how you get four or five million New Yorkers out to vote, or more, hopefully, if we do the right thing about voter registration and making it easier for people to participate in the process. You have a statewide special election and you are going to find out that 500,000 to a million people may vote. Why the loser last time for Comptroller got over two million votes.

So the fact of the matter is my amendment says the following. When there is a vacancy that occurs in a timely fashion to have a primary -- and the courts and the Election Law

deal with that. It would be a vacancy that occurred before the end of the regular petition process, a vacancy that occurred as of some time in July. You would have primaries in the parties if you had more than one candidate. Under our statewide system, you have a party convention that could put someone on the ballot for the primary, put more than one person on the ballot -- anyone who got more than 25 percent on any ballot, as we know. That's worked. That's put a lot of people, at least in the Democratic Party. It's produced four-way primaries because of the desire to let the rank and file, the public, vote. Anyone who didn't like the party convention can go out and petition and get on the ballot for the primary. They'd have time to do it. Anyone who didn't like the parties and said, "Phew on your parties; I don't want anything to do with you; I'm an independent voice," would have time to go out during the regular accustomed independent petition process. They would have several weeks to get those signatures from all over the state. The

100 ballot signatures from half of the Congressional districts, to get that petition effort coordinated, get in the petitions, do what you have to do with it, make sure the information is complete and file them. There would be time for that for independent candidates, for party candidates to challenge the party leadership, all of these people would have a right to get on the primary or the general election ballot, and the people would decide and as many voters as we can expect to turn out would decide. Not some flukey 12 percent turnout in a snowstorm in January, but at least, hopefully, the kind of turnouts we've been seeing, which abysmal though they are in the 60 percent range, are certainly better than 12 percent.

That's why I am against the principal amendment because it's a step in the wrong direction. It won't encourage voter participation. My amendment will. Now, what do you do in the meantime? Of necessity, the Majority's proposal and my amendment recognizes

that vacancies sometimes occur at inconvenient times. We have all seen regrettable unfortunate incidents of candidates dying on election day or the day before or whatever. These things happen. We can't predict this, and we do have to have government go on in an orderly fashion before we can have time to schedule the appropriate elections.

The Majority says, Well, let's - you know, in the meantime until we can get this special election going, let's have a resolution from each house agree on a candidate.

Now, I understand well the frustrations of being in the Minority. I have dealt with that for fifteen years. And under this presently constituted Legislature with the super legislature that Senator Skelos rightly points out is the body our constitution says is supposed to fill the vacancy -- I agree totally with that -- the Majority in this house is in the Minority, and it's frustrating. Believe me, it's frustrating. But that's the system today.

To say, well, what we should do

is treat it like it's a bill and it has to have the concurrence -- the person to be elected must have the concurrence of each house separately is not practical when there is divided government. What do you do then? Negotiate over who is going to be Attorney General or Comptroller for months and months and months? Treat it like the budget? Treat it like the budget, who knows what deadlines will be missed if history is any precedent. That's not practical.

The one thing that any constitutional scholar or government, political science scholar will say about elections, about filling vacancies, about continuity in government, is that you want a process that has a certainty of result. There is a premium on that. You want a result. You might not like the result. But having a result is far better than having no government, the office unfilled, drift, chaos, destruction of morale in whatever executive branch you're dealing with.

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT LIBOUS: Senator

Nozzolio, why do you rise?

SENATOR NOZZOLIO: Mr. President, will the Senator yield?

ACTING PRESIDENT LIBOUS: Senator Connor, will you yield?

SENATOR CONNOR: Certainly, Mr. President.

ACTING PRESIDENT LIBOUS: He will yield.

SENATOR NOZZOLIO: Senator Connor, does your amendment impact the election that's taking place, the selection that's taking place now for the Comptroller?

SENATOR CONNOR: No, no, absolutely not.

SENATOR NOZZOLIO: As I understand it, Senator, then your measure has nothing whatsoever to do with the current selection of the Comptroller?

SENATOR CONNOR: Correct. Just as the Majority proposal -

SENATOR NOZZOLIO: Thank you, Mr. President.

SENATOR CONNOR: -- has nothing to do with the current selection.

SENATOR NOZZOLIO: Thank you, Mr. President.

SENATOR CONNOR: I think what both the Minority and the Majority in this house is seeing is that we're not satisfied in the modern day with the way the existing constitutional formula operates. So the Majority has a proposal to change it. I have what I think is a better proposal to change it that will enfranchise more voters, that won't just buck the real -- the real decision to party bosses. I don't think that's a step in the right direction. That's a step in the wrong direction for all the faults and flaws, for all the imperfections of the present system, at least 211 known democratically, with a small "d", elected representatives will make the choice, will answer for it to the voters.

Under the Majority proposal, not so well-known party leaders will, in effect, make the choice. Oh, there will be a special

election, and there will probably be two contenders, but each of them will have arrived there through a closed process and any independent voice would be shut out.

Under the present system, we hear from everybody. Whether an independent who wanted to run, we could hear from that person. They could state their case. So I'm not defending the present system. I'm just saying it's, in some ways, better than what you are proposing.

But my amendment is the best way to go. Let's have a system where these vacancies are filled decisively by a joint session of the Legislature. Why? The compelling argument for that is, when you have divided government between the houses, you get a result that way. You don't get month after month of horse trading, jockeying, and indecision and missed deadlines and vacuum in whatever office you are talking about. You get a decisive result, but it's only for the short-term because that person only fills the office

until the next primary and general election cycle. Then the people speak and the people decide.

So I say, in sum, to characterize the difference between the amendment and the Majority's proposal is, this amendment lets the people decide, not the party bosses. The Majority would enfranchise the political back room. That's the practical effect of it. Therefore, Mr. President, I urge the amendment.

ACTING PRESIDENT LIBOUS: Voice vote on the amendment.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT LIBOUS: Senator Gold.

SENATOR GOLD: Do you want to speak, sir?

ACTING PRESIDENT LIBOUS: Senator Skelos.

SENATOR SKELOS: Go ahead, Senator Gold.

ACTING PRESIDENT LIBOUS: Senator Gold, you have the floor.

SENATOR GOLD: It seems to me that this is something that we have already been through, Senator Connor. Do you remember, Senator Connor, back in I think it was 1957 when the Assembly was controlled by Democrats, Senator Connor, and the Senate was controlled by Democrats, and this issue came up with the Attorney General, and the Republicans offered these and the majority Democrats in both houses voted this down and elected the Democrat Louie Lefkowitz. Do you remember that?

Oh, I apologize. I apologize. It wasn't Democrats. It was Republicans. Of course. Now I remember.

Senator Skelos, I admire you. I admire Senator Marino. But this is absurd. You know it's absurd. When you had the dice in your hand and you had control of both houses, there weren't these amendments being offered. You didn't give one care about what the people of the state of New York thought. You couldn't have cared less. Your party -

I won't yield right now. Your

party stood up here. You met in your caucuses and you elected Louie Lefkowitz.

ACTING PRESIDENT LIBOUS: Senator Skelos, why do you rise?

SENATOR SKELOS: Mr. President. Is it correct that under rule 6, section 9 (c) of the rules of the Senate that no constitutional amendment may be amended when advanced to third reading.

ACTING PRESIDENT LIBOUS: That is correct, Senator Skelos.

SENATOR SKELOS: Thank you very much.

ACTING PRESIDENT LIBOUS: Senator Gold.

SENATOR GOLD: In 1957, when a fellow who I really do think is terrific, Louie Lefkowitz, was elected, there was no screaming. I mean let's put it where it's at. You know, you had both houses, you had the Governor, and you couldn't care what the people said. As a matter of fact, I remember when I first came to the Senate from my 18-month stint in the

Assembly, and I started to read all of our powers, and I said, my God, this is a wonderful, we're like the United States Senate; we get to rule on confirmations by the Governor just like the U. S. Senate does with the President; that's exciting. And then we got to the first confirmation, and the thing went -- it was the fastest thing you had ever seen. Nobody paid any attention to anything. And I raised the issue. I said, Gentlemen, ladies, why don't we take this seriously? The constitution gives us this power. But, of course, when I came here, the Republicans controlled the Senate and a fellow by the name of Nelson Rockefeller was the Governor, and you weren't too concerned.

Then I guess a year or so went by, and the people decided that it ought to be -- Hugh Carey was the Governor. I remember somebody on that side -- and I won't embarrass the person -- came over, put their arm around my shoulder and said, "Do you something, Manny, do you know that idea you had about us really taking seriously the confirmation process?

We're going to do that."

And it's fascinating. Didn't bother you who Republican governors sent up. Now, we got Democratic governors, you are going to put a microscope to it, and I think that's right. By the way, I think that's right.

But let's call it what it is today. There is a process. I have a statement here from a man I admire, Senator Ralph J. Marino. But I mean, come on, will you? I mean this is a statement -- I assume you want the press to read it. Is there anybody in the press corps that doesn't know that the reason this statement came out is because you can't win in a joint session? Is there anybody here who forgets so quickly that Warren Anmderson, I believe it was, wanted to go to court over the Regents because, when you put the two houses together, all of a sudden the Majority in this house felt that it had lost its dignity because you felt you were going to lose the vote? The one thing you can do is count. I admire that. But that's all we're talking about here.

If there is any degrading of the system, what it is, it is the failure of the Republican Party in the Assembly and the Senate to just own up to the fact that you can't win the vote. That's all. You can't do it.

There was an agreement to hold these hearings. All of a sudden, I'm reading here now that the Democrats have concluded their hearings. Those were hearings that were agreed upon by all four legislative leaders, and then Assemblyman Rappleyea decided he wanted to pick up his marbles and go home. So then Senator Marino said, well, if Rappleyea isn't going to be there, then it ought to be just the Majority. This is chicken, whatever. This is silly stuff. It really is.

We have to select a Comptroller. I didn't tell Regan to leave. I didn't tell him to leave. Obviously, you didn't tell him to leave, but he is leaving. And we have to fill the position, and the way we're going to do it is very simple. It's the way that has been set out by the constitution which your party never

sought to amend.

SENATOR DALY: Mr. President.

ACTING PRESIDENT LIBOUS: Senator Daly, why do you rise?

SENATOR DALY: Senator Gold yield?

ACTING PRESIDENT LIBOUS: Senator Gold, do you yield to Senator Daly?

SENATOR GOLD: Be a pleasure, I hope.

ACTING PRESIDENT LIBOUS: He said it would be a pleasure.

SENATOR DALY: Mr. President. Will the Senator tell me, does he -- does he - I should say is he talking about this particular selection of a Comptroller because this bill does not refer to that particular selection of a Comptroller. It refers to a future selection of a Comptroller.

ACTING PRESIDENT LIBOUS: Senator Gold, do you care to respond to that question?

SENATOR GOLD: Yes. If you have remember the question you could put it with the

answer. I understand what you are doing, Senator Daly. This is all part of a process to try to convince the public that in some way that will happen, perhaps next week or whatever, is in some way devious, is in some way not considering their opinions, et cetera, et cetera. Senator Marino says in this statement here that until there is a vote of the people expressing their choice, et cetera. Well, is he talking about this one, Senator Daly? I'll ask you. There is no process for us to go to the people. We have laws. And the interesting thing is until a couple days ago, I didn't see Senator Marino or any member of this house clamoring to redo the process for the simple reason that -- yes, Senator, do you want me to yield?

ACTING PRESIDENT LIBOUS: Senator Skelos.

SENATOR SKELOS: I had introduced with Senator Nozzolio and with a number of my other colleagues this or very equivalent legislation. The -- approximately or within a

couple days after Ned Regan's announced resignation, I also sent the legislation to Speaker Weprin, asking him to join us in the process of changing the constitution. Not necessarily did it have to be exactly the way I had drafted the legislation but to join me in changing the constitution, and he did not even extend the courtesy of a reply. Perhaps now with Senator Marino being the lead sponsor on this, he will extend the courtesy of a reply that we do amend the constitution for situations that may arise in the future.

Now, we understand that this concurrent resolution will not affect the present selection of the Comptroller. We understand that. I think the press understands it. I think everybody understands it. All it's doing is changing the constitution should this situation occur in the future and allowing the people to make determination whether they want the constitution changed. That's what this does.

SENATOR GOLD: Will the Senator

yield to a question?

ACTING PRESIDENT LIBOUS: Senator Skelos, that I believe was a point of information. And now Senator Gold is asking if you will yield to a question?

SENATOR SKELOS: Absolutely.

SENATOR GOLD: Thank you, Senator. So, Senator, you are saying, and I think rightfully so, since we all know that a constitutional amendment has to pass two separate legislatures, that this particular bill we are on now has no application for this process. Is that correct?

SENATOR SKELOS: Well, it doesn't -

SENATOR GOLD: For this election for Comptroller now.

SENATOR SKELOS: For this election, nor does Senator Connor's amendment.

SENATOR GOLD: Yes, for this Comptroller election now.

SENATOR SKELOS: Nor does Senator Connor's amendment.

SENATOR GOLD: Right. Will you yield to another question?

SENATOR SKELOS: Sure.

ACTING PRESIDENT LIBOUS: Yes, he will.

SENATOR GOLD: And as I understand it from your comments earlier, the process we're involved in now for the election of a Comptroller is a simple process, which you ask us to change for the future, but it's a simple process whereby the two houses of the Legislature, as one body, will select a Comptroller. Is that correct?

SENATOR SKELOS: You are defining it as simple.

SENATOR GOLD: Yes, but that's the process; correct?

SENATOR SKELOS: The process is in the constitution. You are defining it as a simple process.

SENATOR GOLD: Yes. Will you tell me, is it more complicated than that, sir, under existing law?

SENATOR SKELOS: Pardon me?

SENATOR GOLD: Is it more complicated than that under existing law?

SENATOR SKELOS: It's exactly what you're saying. The two houses get together and elect a -- 211 legislators will make their preference known.

SENATOR GOLD: Thank you very much. To conclude my remarks, Mr. President.

I understand that the proposal in front of us is for future elections, and I don't have to go into the merits of the two choices, because I think Senator Connor in his expertise has explained very clearly why the amendment that he offered is preferable.

But I will conclude my remarks in the same vein I started them, Senator Skelos. There isn't a doubt in my mind -- isn't a doubt in my mind that while the ballgame was loaded in your favor, or so you thought, there wasn't the slightest concern on the Republican Party for the wishes of the people or to get input from the people.

It is a new awakening. A new awakening. A new math, and you understand the problems you have with that math that all of a sudden want you to change the process, and everybody understands that.

I support the amendment.

SENATOR SKELOS: Mr. President. First of all -

ACTING PRESIDENT LIBOUS: Senator Skelos.

SENATOR SKELOS: In terms of 1957, I think John Marchi perhaps was the only Senator here in this legislative body and I dare say in the Assembly. 1957, I think at the age of 9 the last thing I was thinking about was who is going to be the Attorney General. I was perhaps thinking about how my Little League baseball team was going to do, that type of thing. But I don't think many of us in this room were deeply involved in the selection of a successor Attorney General.

The point is we recognize that there has to be a change in the constitution to

give the people the right to vote. Now, in Senator Connor's amendment, one thing I would like to point out and I -- I dare -- I would never compare my expertise in election law to Senator Connor's. But in the amendment, you mention that a person to fill such actual or prospective vacancy for a term which shall begin on the first day of the vacancy. Now, if a person has passed away and the successor Attorney General under your amendment is selected 45 days, let's say, down the road, your amendment -- and if the constitution were amended -- would bind that appointee to whatever actions occurred during that period of time because his term of office would begin on the date of the vacancy.

So I don't even know how you can say somebody's term of office can begin before they are even appointed to that office. That's like saying if you come in in a special election, you are going to go back 45 days and your term of office, your pension benefits, your health benefits, are all going to be

retroactive. So I think that's a defect in the drafting of the legislation.

I also believe that as I mentioned, under the rules of the Senate, this type of amendment cannot be offered, although I'm not going to ask the president to so rule because I think it deserves a real airing today. But I know that when people -- Senator Connor mentioned that the Senate races, people need a voice up here; you should have special elections. And I agree with him. But the Comptroller of the state of New York under current law is the trustee of a $56 billion trust fund, and the retirees of this state, the local municipalities of this state, deserve to have the voice that they want through a democratic process protecting that fund.

The same thing with the Attorney General. He is or she is the chief law enforcement officer of the state of New York, and the people have the right to select that person by vote. And I think sometimes we under estimate the intelligence of the public by

saying, "Who cares? They won't come out and vote." Well, I think there are an awful lot of retirees in this state that would come out and vote if there is a vacancy in the office of the Comptroller to make sure that their rights are being protected.

In terms of signatures and independent candidacies, that certainly can be handled by changing the Election Law. And I know certain questions that were raised will be brought up by Senator Nozzolio in the next piece of legislation that will be before the house. And, you know, Senator Connor, nobody knows better than you that if the people want to get signatures -- look at what Mr. Perot did in this state in such a short period of time. How many signatures did he get, 100,000 signatures? How many did he get, in what period of time?

SENATOR CONNOR: I will yield. The number 93,189 filed comes to mind. I don't know why. But the fact is he had a long period of time, though, Senator. He had the five-week period there.

SENATOR SKELOS: Can we not provide for independent candidacies? Can't we change the Election Law? Once we give the people the basic right to vote, can't we under the Election Law then make the changes?

SENATOR CONNOR: Senator, the problem is if the Governor were to call an election on 30 day's notice, those independent petitions would be due about ten days thereafter. So as a practical matter to print them and all, you would have about six days to get them all over the state. I don't think that practically can be done. It takes time to deliver the petitions to people, to organize petition carriers, and to get the petitions back at some central place in this state.

So the real problem there is -- I don't care, you would have to lower it to 50 signatures. Sure, if you did that, more than one independent candidate would undoubtedly run. But with the present kinds of requirements of distribution between half of the Congressional districts in this state, that you

couldn't do in that period of time, Senator.

(Whereupon, Senator Spano was in the chair.)

ACTING PRESIDENT SPANO: Senator Daly.

SENATOR DALY: I have been asked to withhold my remarks until the amendment is defeated. I will speak on the main bill.

ACTING PRESIDENT SPANO: The question is on the amendment.

Senator Present.

SENATOR PRESENT: Mr. President. Before you call for the vote, I would like to note that this amendment violates rule 6, section 9 (c) of our rules of the house, and we're not objecting to that, and there has been no one objecting. Please call the roll on the amendment.

ACTING PRESIDENT SPANO: On the amendment, all those in favor signify by saying aye.

Senator Dollinger, do you wish to be heard?

SENATOR DOLLINGER: May I speak on the amendment, on Senator Connor's amendment? Can I, Mr. President?

ACTING PRESIDENT SPANO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. I guess as a student of constitutional law, I'm always a bit troubled when we go about amending the constitution simply because of loss of political power for a particular part of government, and I think we're in a dangerous territory when we change our constitution based on the vagaries of changes in political power and the distribution of political power under a constitutional document.

And what I see happening here - and I agree with both my colleagues, Senator Connor and Senator Gold. What we see is a shift in the political power created under the constitution; that because the majority in this house will not be in the majority in a joint session to elect a new Comptroller, there is suddenly a hue and cry that we ought to go back

and change the underlying constitutional document.

Well, one of the questions I asked in the Judiciary Committee's deliberation on this document was whether there was any dis cussion in the 19609s when a constitutional con vention was held in this state, a constitutional convention that was created pursuant to a prior constitution in which the issue of reshaping this state in its form of government was dis cussed, whether during that constitutional convention there was a discussion and a consid eration given to changing the power that is held by the Legislature by joint session in appoint ing vacancies to fill vacancies in either the Comptroller or the Attorney General's office. I thought it would be very instructive for this body to look at the dispassionate deliberations of that constitutional convention, when they considered changing the whole structure of government, to look at what they dealt with and how they dealt with the problem of vacancies occurring in the Attorney General and in the

Comptroller's office. I thought that discussion would be extremely helpful to us in this process.

I haven't seen it yet. I had hoped that we would have it available today. I'm going to continue to try to look for it just for enlightenment, but I had hoped that it would provide us with some guidance; that that discussion would tell us what the considerations were, the debate about whether or not the secrecy and the short time frames that are presented in the majority proposal here, whether they would have a real practical impact, as Senator Connor predicts, on the ability of someone to actually run for these offices or whether we would in fact have -- and this is the critical point I just want to touch on briefly.

When Senator Connor said it would be just like the budget, it brought back to my mind my message from three weeks ago, which is, quite simply, it will be done in the smoke filled rooms. It will be done in the rooms of a Democratic convention or a Democratic conference

or a Republican conference or any of the other major parties. It will all be done by five people sitting there blowing the smoke away. There won't be any people involved in that. They will be given access to the ballot, and we'll have a hurry-up election that I think, as Senator Connor practically predicts, will draw less than ten percent.

That's the way to elect anybody, we ought to scrap that whole process. But it seems to me that we are making a significant - in my judgment, a significant mistake when we change our constitution because of shift in political power.

Let's look at this issue in broader detail. And if you do look at it in broader detail, you will see that Senator Connor's amendment which provides for an election in November following the primary process gives all the people the opportunity to be heard just as they were heard in the election of everyone in this chamber. They will get real opportunity to have a candidate elected at a

time when there will be a significant turnout.

I will close with one final thought. Senator Connor said that the cost of a special election -- if there is no other reason, don't do it because of the cost. Our estimate is that the cost of holding a general election statewide is about $20 million. It will be $20 million that we would tack on in ten days to get 15 percent of the voters to turn out.

Let's do it in November. Let's take the amendment. Do it when the people's voice will be heard in abundance, and I think that's the proper way to do it. The amendment is the proper way to give the people a real say in this process. Don't let it be done by secrecy and surprise.

SENATOR DALY: Mr. President.

ACTING PRESIDENT SPANO: Senator Daly.

SENATOR DALY: On the amendment. I would like to speak on the amendment, Mr. President.

And in answer to comments made by

several of my colleagues on the other side of the aisle, first of all, the last comment, that this is a shift in political power, it seems to me if you check history, the Democratic Party has controlled the Governor's office in this state for the last 20 years. They have also controlled the Assembly for 20 years.

I don't see this as an immediate shift, this proposal by Senator Marino and Senator Skelos, to be a -- caused by a shift in political power. That's a ridiculous accusation.

Senator Gold said that this proposal is absurd, that having the people vote on such a proposal is absurd. You know, when you look at the situation, literally, what we have in New York State right now is a disenfranchisement of a political party. Literally.

Senator Connor says be practical, be practical. Does anyone over there want to tell me right now that there is any chance at all that a Republican will be appointed to the

Comptroller's office? So, literally, under the present -

I will not yield at this time, Mr. President.

Literally, practically, de facto, under the present system. And get this. In a state where the people have chosen to select a Republican Comptroller, perhaps to counterbalance a Democratic Governor, for the last 12 years; that a Republican will not even be considered for this office.

And what does this proposal deal with? It does not even deal with this situation. It doesn't deal with what's going on. We know that's done. We know that there is going to be a person selected by the Democratic members of the Senate and the Assembly who will be a Democrat. We know that. We accept it.

What's wrong? A new awakening. If this is a new awakening, then we need more. What's wrong with proposing to the people of this state? And that's what this does. We gave the people of the state a choice. We're saying

we don't like the existing situation. In our judgment, we feel it should be changed. Now, the people will speak, not the Legislature. If the people don't like this idea, they will turn it down.

But we don't like the existing situation. We think the constitution should be changed, and we would be derelict in our duty if we did not make the proposal. Call it a new awakening. Maybe we should have done it twenty years ago. I'm not going to argue that point. I think perhaps we should have. But we're doing it now, and it should be considered now on its merits.

You know, you go off so a tangent and try to hide the real purpose of this bill by talking about it in the context of the existing situation. We don't want to talk about it that way because it doesn't fit. We know. We know the Comptroller will be selected by the Democratic majority in the Assembly combined with the Democratic minority in Senate. That's a given. That's gone.

What we're saying is we don't think it's right. We see a state where the Comptroller, as I said before, is of one party while the Governor is of the opposition party, and this has existed for three straight elections. Maybe the people are telling us something. Maybe they are telling us we want ballots. We want a member of one party in the executive office and a member of the other party in the Comptroller's office. Come to think of it, that's the way it was probably back now almost 30 years, when Comptroller Levitt was the Comptroller, was a Democrat when Comptroller Levitt was in office, and, of course, we had the Republican Governors.

So let's not play games with this. Let's look at it in the language of the proposal. Basically, giving of the people of the state a choice, a choice for a change in the constitution, one that we feel they deserve, one that we feel is needed.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT SPANO: Senator

Connor.

SENATOR CONNOR: Yes, to close on the amendment. First of all, I would like to thank the Majority Leader and the Deputy Majority Leader because I think the point of this amendment isn't to score points but to have a discussion, and I think it was helpful.

As I said initially, I recounted how shocked my wife was that she doesn't have a vote in this process. I agree that the people voting is a better way, and I certainly agree the constitution is the constitution, and we have a present provision that we have to abide by. And I certainly don't -- you know, I don't really care how a political party or its adherents come to see the light or not. History is history.

But the fact is that I think my idea is a better idea. I have no pride of authorship, and I would urge the Majority Leader, as we all acknowledge -- and I understand the political drama to bring this out now this week. But the fact is, to do a real

constitutional amendment, we're talking about a process that goes over the next three years at least. And I would urge the Majority Leader to take a look at this amendment if it doesn't pass here as a better way.

Because I think the special election idea which comes to mind right away, "Oh, a special election is better," has the pitfall of the party leaders really picking the candidates. It would allow a handful of party leaders to sit down and have no contest, to horse trade. They do that in some places over judgeships and what have you. Suddenly you would have -- what good is a special election, I ask you, if the only candidate on the ballot has three or four party cross endorsements? That could happen under this amendment. Then the hue and cry would be a real hue and cry, and it wouldn't just be involved with winners and losers. And that's the possibility that could happen with the majority's proposal as it's written now.

Also, the interim selection

basis, I understand why institutionally the Senate wants to say, Look, we want to have our own vote. Let the Assembly have their own vote. But, institutionally, on that interim basis if the house were divided under political control, you would get no result, and win or lose, a result in a democracy is very important because, you know, government goes on.

I think my proposal of an election at the next cycle for all the reasons I have outlined and, as Senator Dollinger pointed out, the dollar figure. Think about it, $20 million -- $20 million. I have seen special elections for Assembly and for Senate that cost the board of elections in the city of New York -- for example, indeed I suspect with 3,000 voters in my own election, an Assembly District special election costs about $100,000. That's what it costs to run. You get 700 people to vote. I mean is it really cost effective? Does democracy compel that we hold elections where the cost per voter is a couple thousand dollars when we know that the state in its programs

there's a drastic need for money? I mean think about how many mouths you can feed. Think about how many senior centers you can support, how many meals can be provided, et cetera. How the schools cry out for that money. I don't think we can really justify holding a state election costing a thousand dollars a vote or something. That would be absurd.

And I remind you that $20 million is not a cost to the state. It's a cost to those localities. You go back and tell your county board of elections they should have to spend an unanticipated two or three thousand dollars in moderate-sized counties. You go back to Long Island and tell your board of elections, Oh, gee, Nassau County, it's going to cost you a couple million dollars to run this special election, or Suffolk County. Tell the city of New York, It's going to cost you $4 million or $5 million; we're having a special election.

We're having a big party. This proposal would have the state force the localities to throw a big party, and nobody was

going to attend. I just think my proposal is a better way. It doesn't cost money. It lets the people decide. It doesn't let the party bosses have a stranglehold on who gets to be on the ballot, and it's the most democratic.

But, again, I have no provide of authorship. I understand today's political drama, but I also hope the Majority is serious, as is the Minority, in going forward, looking to the future to change the constitutional provisions. And I offer this idea as perhaps a better way. If it doesn't pass today, I urge you to think about it because there is plenty of time to address this problem.

ACTING PRESIDENT SPANO: Question is on the amendment.

SENATOR GOLD: Party vote.

SENATOR PRESENT: Party vote in the negative.

ACTING PRESIDENT SPANO: Secretary call the party line vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes 23, nays 34,

party vote.

ACTING PRESIDENT SPANO: The amendment is defeated.

On the resolution. Secretary will call the roll.

(The Secretary called the roll.)

SENATOR SKELOS: Mr. President, I would like to explain my vote.

ACTING PRESIDENT SPANO: Senator Skelos to explain his vote.

SENATOR SKELOS: I have enjoyed the discussion that occurred today between Senator Connor and myself and other members of the Legislature because it does point to the need of a constitutional amendment.

You know, there were certain comments that were made about the cost of holding the special election. Where Senator Dollinger came up with the 20 million, I don't know. We can discuss it afterward, especially since Speaker Weprin indicated that it would cost perhaps $10 million statewide which, even that, we feel is quite a bit inflated.

But I also believe it is an elitist statement when you say something to the effect of it's too much cost for people to vote. We have thousands and thousands of individuals who gave up their lives in the Second World War and other wars to make sure that we had the right to vote. And perhaps to some that seems a bit corny, but I truly believe that, and I think what's important today -- and quite honestly, all my friends on the other side of the aisle should be voting for this because so often I hear them on the other side talking about election reform and this reform and that. And here we have a basic right to vote, and they are voting against it.

Perhaps they should send a message to Speaker Weprin that he should lay his cards on the table and let us know if he believes that the people in the future should have the right to vote when a vacancy occurs in the position of Attorney General or Comptroller of this state and start serious discussions with Senator Marino about reforming and changing the

state constitution so that the people can vote in the state of New York.

SENATOR STAVISKY: Mr. President, I rise to explain my vote.

ACTING PRESIDENT SPANO: Senator Stavisky to explain his vote.

SENATOR STAVISKY: I wish to make it very clear that in voting against the measure before us, I am not voting against the people's right to participate. If we truly wish to have the right of the people to participate, then by all means let us provide for a fair system of primary election in advance of a special election.

There is a lot wrong with special elections when party leaders by themselves decide who should be the party designee. If you really want to have public participation, then give us something that guarantees the right of a primary in each party, the right of independent candidacy and then a special election or a general election as the case might be.

Having explained my vote, I am

not voting against public participation. I'm voting against this closed door back-room form of party politics in selecting a Comptroller and an Attorney General.

I wish to be recorded in the negative.

ACTING PRESIDENT SPANO: Senator Stavisky in the negative.

Senator Connor to explain his vote.

SENATOR CONNOR: Yes, Mr. President. Just to explain my vote. And I don't want to get into the numbers. We can do this any time. But let me give you one example. It takes approximately 100,000 election inspectors, half from the Republican Party, half from the Democratic Party, paid by the localities, to run a statewide election. They get somewhere between $65 and $89 for a very long day from 5:30 in the morning until 9:30 or 10:00 o'clock at night. At that pittance of a pay -- that pittance of a pay, that works out to about $8 million right there.

You haven't talked about printing ballot costs. You haven't talked about putting machine mechanics and so on, all the other things that go into conducting an election.

So I suggest to you the figure of $20 million is relatively accurate. And it's not putting a price tag on voting, Senator Skelos. It's merely talking about the most efficient way to spend that $20 million to have an election. All have to agree, the most efficient way would be to spend that $20 million on an election occasion where four or five mil lion people will vote instead of 250- to 300,000 voters will vote. We're talking about spending that $20 million in the best way to guarantee the most people possible the right to vote.

And I think that what we're talking about here -- it's not a dollars figure. It's what's the best way to enfranchise the most voters with that money. And therefore, I certainly -- and in voting no on this, it's only because I think I really believe there is a better way, and there's a back-door trap in the

Majority's proposal; and that is, the party bosses will pick the candidates not the people.

ACTING PRESIDENT SPANO: Senator Connor in the negative. Announce the results.

THE SECRETARY: Those reported in the negative on Calendar Number 498 are Senators Connor, Dollinger, Espada, Galiber, Gold, Leichter, Markowitz, Masiello, Mendez, Montgomery, Ohrenstein, Onorato, Santiago, Smith, Solomon, Stachowski, Stavisky. Ayes 40, nays 17.

ACTING PRESIDENT SPANO: The resolution is adopted.

Senator Santiago.

SENATOR SANTIAGO: Had I been in the chamber yesterday, I would have voted no on Calendar Numbers 452, 456 and 460.

ACTING PRESIDENT SPANO: The record will so indicate.

Senator Present.

SENATOR PRESENT: Mr. President. May we take up Calendar 5358, please.

ACTING PRESIDENT SPANO:

Secretary will read Calendar 558.

THE SECRETARY: Calendar Number 558, by Senator Marino, Senate Bill Number 4596, an act to amend the Public Officers Law and the Election Law.

ACTING PRESIDENT SPANO: Senator Nozzolio.

SENATOR NOZZOLIO: On behalf of Senator Marino, I would like to offer this legislation and explain it for our colleagues.

My colleagues, now that the constitutional arguments have been joined, raised, debated and put aside for another day, it's time for us to address the issue at hand, the selection of this Comptroller, this year, this time. The arguments that we heard discussed on the last bill and amendment deal with the constitutional changes to choose the Comptroller upon a vacancy, but we know those constitutional changes can't occur for a number of years.

What we are offering is to open

up the process today, to open up the process for the current selection of the next Comptroller. Our bill amends the Public Officers Law and the Election Law to include the people of New York in the selection process. Our bill requires the Governor to call for a non-binding referendum of preference within ten days after there is an announced vacancy.

Our bills, those offered this afternoon, those offered earlier this week, continue our effort to lift the veil of secrecy that has surrounded this process. The high stakes lobbying that we have seen behind closed doors in choosing the next Comptroller has only served to weaken our people's faith in government. I think this debate today is a good debate of these issues. However, I think putting a price tag on the democratic process is another way to weaken our people's faith in that democratic process.

It is time we bring the selection process for this Comptroller not the next Comptroller -- the people have a right to vote

on the selection of this Comptroller, as Mrs. Connor would like to see; that I believe, as we believe, that it's time that the people have this right.

I was in first grade when Senator Gold referenced the 1957 selection. Senator Skelos and I at that point were not consulted on how that process would reach the people in the best possible way. We know this bill reaches the people. It reaches the people directly. It reaches the people not the party bosses as may be suggested in the selection process tainted by that selection, by that process.

This guarantees that the petition process prevails and that those who seek the office of Comptroller would be able to get on the ballot in a non-binding referendum and allow the selection of the Comptroller to take place as that referendum process is governed by our Election Law.

That Senator Daly eloquently stated the need for independence in the selection of a Comptroller. The people have

demonstrated that need for independence in their, I believe, not by accidental choice of choosing a Comptroller of the other political party as the Governor. That independence was an independence that has become a deep tradition in New York State. The reason that we need an independent Comptroller to be an independent watchdog of what happens both in the Governor's dealings, in the legislators' dealings and in the conduct of the fiscal affairs of local government. We need an independent watchdog. The people of this state have recognized the need for an independent watchdog.

Unfortunately, what is happening by this process, a process where the foxes decide who the guardian of the chicken coop will be, we have not a watchdog selected but a lap dog selected, a lap dog that can be a puppet of the Governor, controlled by a majority of the legislators and, in effect, not that independent voice that the people have established in a longstanding tradition of New York.

Our bill recognizes this need to

have the people of this state have an active voice in the selection of the next Comptroller. The constitutional oddities, for one reason or another, need to be changed. And that debate was crystalized over the last bill, but let's get to brass tacks. Let's get to the selection process today, and let's not hide behind the veil of the constitution.

That is a process that, in effect, would have the selection of the Comptroller chosen by the people, the selection of the Comptroller this time chosen by the people.

And as such, Mr. President, I advance the bill.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yes, I will yield to Senator Connor.

ACTING PRESIDENT SPANO: Senator Connor.

SENATOR CONNOR: Thank you, Senator.

Mr. President, you know, there is something missing in this newborn Republican drive for reform and I thought, what is it? What is it? The bills apply to Attorney General. They apply to vacancies in the office of Comptroller. And then I thought, aha! Governor and Lieutenant Governor, when there is a vacancy in the office of Lieutenant Governor. And Governor Cuomo a number of years ago proposed a constitutional amendment to deal with that. He proposed that. What does the law say? The Majority Leader acts as Lieutenant Governor in the absence of Governor, he acts as Governor. And should the vacancy occur in the governorship, the Majority Leader of the Senate becomes the Governor without a vote from the people. Without a vote from the people. I think these bills should go back to the drafting boards. I think the majority in this house forgot to include Lieutenant Governor and Governor. I think that they should be included.

And I'm ashamed to say in my amendment which was defeated and when I

introduce it as a separate bill to amend the constitution, I'm going to include those offices. Governor Cuomo wanted to include them. If you recall after Lieutenant Governor DelBello resigned, Senator Anderson served ably and well as the acting Lieutenant Governor, acted as Governor, on occasions.

SENATOR SKELOS: Will you yield?

SENATOR CONNOR: Certainly.

SENATOR SKELOS: The amendment that you proposed before, did that include Lieutenant Governor?

SENATOR CONNOR: That's why I just confessed.

SENATOR SKELOS: You just thought of it?

SENATOR CONNOR: Senator, I made an error. I hastily prepared the amendment, and I give you -- I bet Senator Marino didn't think of it in his own amendment, in his own constitutional amendment, and I'll bet he wants to go back and amend that, and I won't say there is -- everybody will understand.

ACTING PRESIDENT SPANO: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President. Will Senator Connor yield?

SENATOR CONNOR: Certainly, Mr. President.

ACTING PRESIDENT SPANO: Senator Connor yields.

SENATOR NOZZOLIO: Senator Connor, are you trying to tell us something? Do you know some inside information about an imminent resignation of maybe the Governor or Lieutenant Governor?

SENATOR CONNOR: Certainly not.

SENATOR NOZZOLIO: Is there a scoop that you would like to share with us?

SENATOR CONNOR: Certainly not, Mr. President. But even our Governor is mortal. Everybody is, on a serious note, and vacancies do occur. I don't dispute that.

The point is, as we all pointed out, we are not dealing with current events. We are planning for the future of the state in

light of current events and history, the history of Attorney General Lefkowitz' selection, the history of the vacancy in the office of Comptroller, and I allude to the past not so long ago vacancy in the office of Lieutenant Governor. These things happen for a variety of reasons.

And what I'm saying, Mr. President, is while we're dealing with it let's deal with it all. Let's let the people decide when there is a vacancy in the office of Lieutenant Governor. Let the people decide who ought to be the new Lieutenant Governor. Let's let the people decide should multiple vacancies in the office of Governor and Lieutenant Governor occur at the same time. Let the people decide who the new Governor is. Why should this body pick a governor? If together with our colleagues, the 150 colleagues in the Assembly, the majority says we shouldn't pick a Comptroller or Attorney General, I submit to you that the 61 Senators here should never be in the position of picking a Governor or a Lieutenant

Governor. Let the people decide. And I realize it slipped all of our minds, and I'm sure the majority will seek proposals very soon from them to deal with this anomaly, this inconsistency in their approach.

Now to Senator Nozzolio's bill in particular. Senator Nozzolio said that his bill wouldn't involve the party bosses. The fact of the matter is -

ACTING PRESIDENT SPANO: Senator Skelos.

SENATOR SKELOS: Mr. President. Just to clarify. Are you calling for the special election of a Governor as against the Lieutenant Governor ascending to that position?

SENATOR CONNOR: No. What I'm saying is in the case of a vacancy of a Lieutenant Governorship or should -- hey, we all work in the same building. People fly in airplanes. What I'm saying is should there be a simultaneous vacancy in the offices of Lieutenant Governor and Governor, I think the people ought to elect a new Governor and

Lieutenant Governor rather than have legislative leaders ascend to these powers, and that's no reflection on any -- as I say, certainly Senator Anderson and certainly the Majority Leader or the Speaker, you know, obviously are leaders of our state, but they are not elected by the people to those offices, and I don't think the people of one particular Assembly District or Senate District ought to, in effect, be electing the Governor or Lieutenant Governor.

But as to Senator Nozzolio's bill, he said he took the party bosses out. Well, Mr. President, his preference vote -- his bill says that nominations of candidates for the referendum of preference shall be made in accordance with the provisions of the Election Law that applied to special election, and I'm telling you those provisions say that when there is a special election the party rules pick the candidates -- the party rules, the party bosses.

Sure, the Republican Party will have a state convention. The Democratic Party will have a state convention. And all those

well-known state committee members, household words, will meet and will pick household names, will pick the major party candidates. I suggest that if you look at the rules, and I have looked at them, of some -- of the other three parties, you will find their conventions are much smaller, made up of a handful of executive members, and they will pick candidates, too, or maybe they will trade to give their line to other candidates, but the bosses will decide who is on the ballot under Senator Nozzolio's provision.

Again, an independent will have to struggle in a short time period to get sufficient signatures to get on the ballot. And dissonant voices, voices in the Republican Party or the Democratic Party that don't meet the approbation of the party bosses will be frozen out, frozen out of the process.

Now, this is the first time I have seen the majority ever come out with a preference for the voters, and I think I should revive a proposal that I sponsored at the

suggestion of Governor Cuomo a number of years ago, in a limited initiative proposal that said when the Legislature refuses to act on voting on important pieces of legislation -- not votes it down -- let's say assault weapons or something -- refuses to bring it to the floor to vote it down. Hey, if you don't want it, vote it down. But refuses to let something come to the floor for a debate and a vote, that upon the petition of a large number of New York voters, it will go on the ballot. It will be initiative. The Legislature will have to vote on it. Not pass it.

ACTING PRESIDENT SPANO: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President. Will Senator Connor yield?

ACTING PRESIDENT SPANO: Senator Connor yields.

SENATOR CONNOR: Certainly, Mr. President.

SENATOR NOZZOLIO: Thank you, Senator Connor. Senator Connor, you are very

skilled in knowledge of election law, and that I would like to beg on that expertise to ask you this question about the number of signatures required for statewide candidate in the last presidential cycle. That I know you -

SENATOR CONNOR: We lowered it, Senator. We lowered it to 10,000 from 20,000. But it still remains -- actually, it's 50 from each Congressional -

SENATOR NOZZOLIO: So it was 20,000 lowered to 10,000 during a contracted time period. Do you recall what that time period was?

SENATOR CONNOR: The petitioning period for president was, my recollection, July -- the date in July that Bill Clinton was nominated by the Democratic Convention. I think that was in the 20s, 20-something of July. And the last day to file petitions my recollection is was August 27. So that there was a four-week petition period.

SENATOR NOZZOLIO: I'm informed that the party petition process -

SENATOR CONNOR: Oh, I thought you meant independent. I'm talking independent.

SENATOR NOZZOLIO: I was talking party petition process.

SENATOR CONNOR: Well, party petition process was more truncated, and the numbers of requirements were cut in half.

SENATOR NOZZOLIO: I'm informed, Senator, that the party petition process was a statewide 18-day period. Is that what you recollect?

SENATOR CONNOR: That's correct, Senator. I'd also point out that no one got on the ballot that way. The party conventions put them all on the ballot. No one got on the ballot last year statewide -- Mr. Sharpton was put on by the state convention, Elizabeth Holtzman was put on by the state convention as was former Congresswoman Ferraro and Attorney General Abrams. So nobody had to use it. Thank God, in that truncated period, no one had to use it.

SENATOR NOZZOLIO: Senator, if

you will continue to yield. Then the only candidate that had to use the statewide petition process to get on the ballot as a presidential candidate was Ross Perot, is that correct?

SENATOR CONNOR: That's not correct. There were other independent presidential candidates. There was a New Alliance Party candidate. My recollection is there were three other independent candidates. But that petitioning period was not truncated. The number of signatures were cut; but if it was truncated, it was by a number of days. They still had at least a four and a half-week to five-week time period to get on the ballot.

SENATOR NOZZOLIO: But they ended up -- did each of those candidates that you mentioned, each of them got on the ballot?

SENATOR CONNOR: Some of the other people we never heard of were challenging each others' petition. And to tell you the truth, Senator, I don't know. I think one was successful in knocking somebody else off.

SENATOR NOZZOLIO: Senator, my

point in rising was to -- in reaction to your comments about the party bosses having exclusive control over who was going to be on this non-binding referendum. That out bill has a 5,000 signature requirement, so that anyone who does not receive the designations from their respective parties then can circulate petitions and get -- upon 5,000 signatures qualify for the ballot over a 10-day period. Now, I guess what I'm trying to -

SENATOR CONNOR: Senator, I will concede that that can be done, but you still maintain the requirements of distribution among Congressional candidates which is another and different obstacle, and I -- it can be done, but that makes it more difficult. If you just say a straight 5,000, I say that's a snap.

SENATOR NOZZOLIO: But 50 signatures for half the Congressional districts, how difficult is that in all practicality?

SENATOR CONNOR: Well, you can theoretically comply with it from Westchester to Long Island, theoretically, but that's just more

difficult because it's harder in some Congressional districts than others.

SENATOR NOZZOLIO: Our point, Senator, it's a point you raise, and I think it's a critical one in this process, that we're not trying to make it so onerous that no one else can get on the ballot, and I guess you conceded that point.

SENATOR CONNOR: Senator, I will concede it's better than the present law as to independents. But let me point out that the party candidates would still be selected without benefit of primary by the party bosses. Should they want to contest that, they would have to run independent, break with their party, form a new independent body or party, and run that way. And secondly, that the party nominations still -- you know, you don't have primary in here. You don't have petitions. You couldn't petition.

For example, under the present law when you go to a party convention, state convention, if you get 25 percent of the vote on

any ballot you are on the primary ballot. Under this provision, you could go to the party convention, get 49 percent of the vote, the other guy gets 51 percent, the other person is the candidate of the party, and you are out because you don't have any provision for a primary in here, Senator. There is no primary under your bill.

SENATOR NOZZOLIO: Mr. President. Will Senator continue to yield?

SENATOR CONNOR: Certainly, Senator.

SENATOR NOZZOLIO: But, Senator, aren't you begging the question here? We're talking about not a regular election; we're talking about, by its very nature, a special election and an election that doesn't take into consideration the political calendar because it's urgent. It needs to have a vacancy filled. It's not something where we have a normal process. It's an abnormal process. And what we're trying to do is bring people into that process.

SENATOR CONNOR: Senator, on the bill. I think that in copying the special election time frame and procedure, you still end up with the only candidates the people get to have an effective say, absent a write-in or an independent campaign, are the major party candidates picked by the party bosses.

Now, Senator Daly said before, "Oh, there's no Republicans in this process." Nobody ran. Nobody stepped forward and said, "I have better ideas than these other people. Despite my party label, I'm putting them forth." No one did that.

Now, I'm not suggesting it would or would not have mattered. That's the democratic system, the contention between ideas, the debate, the conflict between people of different political philosophies. That's what it's all about.

Nobody chose to take on that battle even if it looked like a loser. Nobody wanted to make the case for the Republican Party in this raise, and that's unfortunate.

And I know how your party feels. You are going to miss Ned Regan, staunch independent Republican Party loyalist that he was. And I understand those frustrations.

But the fact of the matter is none of these bills -- I think the partisan overtures are shown by the fact that none of them include Lieutenant Governor or Governor vacancies. Why not?

And I have to tell you, a preference vote, can you really imagine under this bill, the candidates? Okay. The party bosses select a Democrat, and the party bosses select a Republican. Maybe there's a couple other people running. Statewide preference vote, 30- to 40-day campaign, got to cost $2 million. Got to cost a major candidate $2 million to go on the media, if not more, and make their case.

They are going to do it in a beauty contest that's not binding? I can't believe any serious candidate would do that, go into a non-binding beauty contest, spend all

that money, make their case, win whatever it is they win, and then not get selected by the Legislature. I find that difficult to believe. And I don't want to go back home to Mrs. Connor tonight and say, "Oh, you are going to get to vote; but if I don't like the outcome, I can ignore it."

How are you going to tell the voters that? Oh, they can do anything they want anyway. And you think you are going to get a turnout in that election? You think you are going to get a voter turnout in that election? Come on, folks, come out and tell us what's on your mind, but we don't have to follow it.

Unfortunately, the voters in this state are all too often, whether you are dealing with assault weapons or civil rights for certain groups or a variety of anti-bias violence, a variety of issues. The voters of this state are inured to faith in the Legislature. All too often, they have spoken in a variety of ways, if you read the polls. They don't even get a vote here. So now they are going to believe that,

aha! we are listening.

I agree this bill gives them a voice, but it doesn't make anybody listen. It allows the voters a shot in the void, but we don't have to follow it. And then what's it say? We're going to come back and have concurrent resolutions. Oh, the two houses have to agree again. I see. They will have to agree. But you will say, "Come on, the two houses aren't going to ignore the voice of the people."

Well, I suggest to you that when the winner got 4 percent of the registered voters in this state and the loser 3-1/2 percent of the registered voters in the state because only 7 or 8 percent turned out in this non-binding preference that cost the state $20 million to run, I suggest to you, Mr. President, we will be back to another budget process. The Speaker and the Majority Leader meeting and battling over what's going on. "Gee, is that really a mandate? The guy got 3 percent of the vote, and we're supposed to vote for him?"

So I think that this -- I mean I understand the political impetus behind this. I just don't think it's practical. I think we ought to dig in. What is it, effective immediately? Oh, stop the process and we'll have a preference vote. Why don't you just commission a Gallup poll? I mean I don't understand how this is legitimate.

And the fact of the matter is, Mr. President, it's not going to happen. I think that what we ought to do in a non-partisan spirit, a bipartisan spirit in this Capitol, is get together and, between Senator Marino's constitutional proposal, the one I have suggested, work out something that deals with the problems, the practicalities, and insures in the future the voters will have a real voice, a determinative voice on vacancies with Attorney General, Comptroller, and on vacancies in Lieutenant Governor or simultaneous Governor and Lieutenant Governor vacancies. I think we ought to address all four statewide offices that way.

Thank you, Mr. President.

ACTING PRESIDENT SPANO: Senator Daly.

SENATOR DALY: In listening to Senator Connor, I guess I can best sum up what I understand of his comments that the people should be deprived of the right to vote because they choose not to vote. I don't like that.

ACTING PRESIDENT SPANO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. I guess I'm amazed at all of this idea of a non-binding preference. Senator Daly just said, "deprived of the right to vote." As I understand this proposal this is a whole new right to vote. This is a right to vote for something that doesn't mean anything.

This is the cruelest hoax you can ask the voters of this state to be asked, which is, we want your vote for Mike Nozzolio to be the next Comptroller, but you know what? It doesn't count.

I'd suggest to Senator Nozzolio that Senator Connor's point about turnouts in

special elections, "Go to the voters and tell them that they've got ten days; they've got a special election; the preferences all going to be lined up by the party bosses, and, oh, by the way, your vote doesn't count," I will put a package of White hot dogs from Rochester, New York, on the fact that you are not going to get 15 percent of the people to vote in that referendum, in a non-binding referendum.

This bill creates the most expensive poll in the history of New York State, a non-binding poll that's going to cost $20 million that will have no effect on the final vote.

The last thing I can't believe, Mr. President, is I'm familiar with a nonbinding special referendum. In fact, my recollection is that a country with no history of democracy just embarked on a non-binding referendum. It's called Russia. People who have no experience with democracy, don't have a 200-year tradition of democracy, just had a non-binding referendum. They're trying to go to us -

SENATOR NOZZOLIO: Mr. President. Will Senator Dollinger yield?

SENATOR DOLLINGER: As soon as I finish this thought, Mr. President.

ACTING PRESIDENT SPANO: Senator refuses to yield at this time.

SENATOR DOLLINGER: Here's the Soviet Union marching down the road to democracy, trying to follow us down the path of democracy, to give their voters the right for meaningful votes, and all of a sudden this proposal says, "Oh-oh, we're going to borrow the Soviet model, have a non-binding referendum, where your vote doesn't mean anything but we want you to come out and vote."

I can't believe that we would stand the concept of voting on its head by telling, cruelly and deceptively, the voters of this state that, "Guess what? We want you to vote, but it doesn't mean anything." The last thing we need is Russian democracy in New York State.

SENATOR NOZZOLIO: Mr.

President.

ACTING PRESIDENT SPANO: Senator Nozzolio.

SENATOR NOZZOLIO: Couldn't quite tell. Has Senator Dollinger finished his thought yet?

SENATOR DOLLINGER: I have, Mr. President. I'll be glad to yield.

ACTING PRESIDENT SPANO: Senator Dollinger yields.

SENATOR NOZZOLIO: Thank you, Mr. President. Thank you, Senator.

Senator, are you saying that if there was a referendum statewide on the selection of a new Comptroller and that there became a candidate who was selected in a non-binding referendum that you would ignore the wishes of those who voted in this referendum and vote contrary to their wishes?

SENATOR DOLLINGER: I'd simply point out, Mr. President, that depending on how the voters voted in my district, if they were a vote apart, the 340 people that voted in the

election, I could sit down and say, "Gee, only 30 people out of the 300,000 that I represent actually voted. I have the ability to vote as I think the majority of my constituents would." Which, frankly, Mr. President, is the way I think that I'm hopefully casting every ballot in this chamber. Because I don't ask them for a non-binding preference on every issue that we have come up. I haven't asked them for a referendum on this.

SENATOR NOZZOLIO: Senator, how can you assume that only 30 people consider this issue of a trustee of $56 billion of pension fund, that how can you assume that those people in your district or across the state are not interested in this issue? Maybe you are not interested in this issue, Senator, but I think that many people across the state are interested in who the trustee of their pension funds is to be.

SENATOR DOLLINGER: Mr. President. In response to Senator Nozzolio's question, it seems to me -- seems to me that if

15 percent of the people vote in that election, any member of this chamber could sit down and say, "What do the other 85 percent of the people in my district want me to do?"

That's what we all do in this process. We try to figure out how as representatives of people, the people in our district would like to see us cast ballots. So if 15 percent, which is my guess of how many people would show up in a totally revolutionary new form of balloting in this state called the non-binding referendum, which the bottom line is your vote doesn't really mean anything, I would be in the same situation. I would say, "What of the other 85 percent who didn't vote, how would they want me to vote?"

SENATOR NOZZOLIO: Would Senator Dollinger continue to yield?

SENATOR DOLLINGER: I might say -- again, Mr. President, just let me finish the thought. I might say, "Gee, 7 percent of the people in my district voted for a Democrat and 6.9 percent voted for a Republican, but that's

only 13 percent of the total people I represent. I'm frankly in the same decision making posture that I would be on any other issue in front of this chamber. So I don't think it changes my calculations, Mr. President. I would listen to the people, try to figure out what their will is.

But this is no way to do it, in a low-voter-turnout, non-binding referendum that we're importing from some place else.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: May I interrupt this discussion on this bill, ask that it be laid aside just for a short moment. Call up Calendar 485, read the last section and take a roll call.

ACTING PRESIDENT SPANO: Lay this bill aside. Secretary will read Calendar 485.

THE SECRETARY: Calendar Number 485, by Senator Larkin, Senate Bill Number 4597, an act to amend the Real Property Tax Law and the Transportation Law.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

SENATOR PRESENT: Call Senator Trunzo.

SENATOR TRUNZO: Yes.

SENATOR PRESENT: Senator Lack.

SENATOR LACK: Aye.

SENATOR PRESENT: Senator Johnson.

SENATOR JOHNSON: Aye.

SENATOR PRESENT: And Senator LaValle.

SENATOR LAVALLE: Aye.

SENATOR GOLD: And Senator Hoffmann.

SENATOR PRESENT: And Senator Hoffmann.

SENATOR HOFFMANN: No.

SENATOR PRESENT: And Senator Libous.

ACTING PRESIDENT SPANO: Senator

Libous.

SENATOR LIBOUS: No.

ACTING PRESIDENT SPANO: Senator Leichter.

SENATOR LEICHTER: No.

ACTING PRESIDENT SPANO: Senator Solomon.

SENATOR SOLOMON: No.

ACTING PRESIDENT SPANO: Just slow it down a second and let the Secretary catch up.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Nolan.

SENATOR NOLAN: No.

THE SECRETARY: Senator Markowitz. Oh.

(There was no response.)

ACTING PRESIDENT SPANO: Withdraw the bill.

SENATOR GOLD: Do you have Senator Jones?

ACTING PRESIDENT SPANO: No,

she's going to stay. Okay. Back to Calendar 558.

Excuse me, Senator Present. Can we have some order in the chamber, please.

SENATOR LEICHTER: Mr. President.

SENATOR PRESENT: Senator Leichter.

ACTING PRESIDENT SPANO: Senator Leichter.

SENATOR LEICHTER: I thought the clerk had called my name, and I voted "No" on Senator Larkin's bill.

SENATOR GOLD: Yes.

ACTING PRESIDENT SPANO: Thank you. We have that, Senator Leichter.

We have withdrawn 485. We're back on Calendar 558. Senator Dollinger has completed his comments and next on the list is Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. I first want to thank Senator Nozzoli -- Nozzolio, I'm sorry -- because he

proved a proposition that he stated earlier. He acknowledged Senator Connor's wisdom and skill in this area. And then by your questions and by your answers, you established that proposition, Senator, and I thank you for that.

But I want to disassociate myself from one thing that Senator Connor said. He said, you know, the Governor is mortal, and I think, you know, that could lead to the dangerous inference that the doctrine of gubernatorial infallibility no longer applies, and I wouldn't want to annoy any occupant of the second floor even though he is known for his good even temper.

But, in all seriousness, this is the sort of debate that we love, and everybody else yawns and laughs. Because it's pretty clear, you know, the games that everybody is playing, and so on. So let me join the fun.

But the one thing I get from this which I enjoy is this suddenly new-found populism by my friends of the Majority where, "Let the public know; let the public be heard;

let the public be involved." You know, and that's what we on this side of the aisle have been saying when it comes to the legislative budget. I had tears in my eyes when I heard Senator Skelos talk about the people who went off to war who gave their lives to their country, and they came back and now, as Senator Skelos said, "You don't want to let them vote." Well, Senator, how about letting those same veterans, those same people who fought for democratic ideals, know how their money is being spent?

So I love the idea of populism. I love the idea of letting the public be involved and known and be heard and so on, and I just hope that new found populism that we see, which was obviously prompted by a sudden political reality, would also carry over to some other areas where I think the public ought to be involved and the public ought to be heard.

Having said that, I think that - as I pointed out, I think Senator Connor made eminent good sense. I hope, though, out of this

discussion would come changes in the constitution. Because we all agree that this is not a good process for choosing a Comptroller or choosing an Attorney General. We need a process also for choosing a Lieutenant Governor should the Lieutenant Governor leave office before the end of his term, and I think we can put together a fair, sensible system.

Having said this, let the fun continue. Thank you.

ACTING PRESIDENT SPANO: Senator Solomon.

SENATOR SOLOMON: Yes, thank you, Mr. President. Will Senator Nozzolio yield, please?

SENATOR NOZZOLIO: Certainly.

SENATOR SOLOMON: Yes, Senator, I'm sure you've done a lot of research -- since the last time we had a vacancy was about 35 years ago -- on this legislation. Can you tell me what other states in this country have non-binding referendum on any other issues?

SENATOR NOZZOLIO: Yes, Senator,

I would be glad to tell you that we as a nation have been electing a president of the United States for now about 200-plus years in establishing what we know as the electoral college and the electoral votes; that I certainly will be sure never to elect Senator Dollinger a member of that college because we've had a tradition in this country of the electors being selected not the direct election of the President of the United States.

We stopped, Senator, at that review. We believed that if it was good enough to select a President of the United States through this process that it was also good enough to select a Comptroller, as well.

SENATOR SOLOMON: Okay. Senator, will you yield for another question?

SENATOR NOZZOLIO: Certainly, Senator.

SENATOR SOLOMON: But we do elect electors that elect a President of the United States, do we not? Do we elect electors to elect the President of the United States?

SENATOR NOZZOLIO: Yes.
SENATOR SOLOMON: I see. And Senator, that's in the federal constitution, correct?
SENATOR NOZZOLIO: Yes, Senator. But my point is -
SENATOR SOLOMON: I see.
SENATOR NOZZOLIO: -- and I'm not trying to be glib.
SENATOR SOLOMON: I see.
SENATOR NOZZOLIO: Yes. Yes. The answer is yes. We also, though -- my point, Senator Solomon, was that we are choosing a non-binding referendum process. The electors are not bound by our federal constitution to follow the popular vote chosen in the presidential election.
SENATOR SOLOMON: Senator, just one more question on elector. But before I get back to the electors, let me ask you a question. Is there any other state that has a non-binding referendum on any other usual issue in the United States that you are aware of?

SENATOR NOZZOLIO: Senator, I have not done the research to give you an adequate answer to that question.

SENATOR SOLOMON: Okay. Senator, if you will yield again. Do you know of any other countries that have non-binding elections?

SENATOR NOZZOLIO: I stopped with the United States of America, Senator, in my research.

SENATOR SOLOMON: Okay. All right. Senator, just one other question. Are you aware of whether or not the electors that are elected in the national election in this state sign a document pledging their allegiance to specific candidates to vote for those candidates?

SENATOR NOZZOLIO: No, Senator, I'm not familiar with such a provision.

SENATOR SOLOMON: On the bill. Thank you, Senator.

ACTING PRESIDENT SPANO: Senator Solomon on the bill.

SENATOR SOLOMON: I'm glad there

was so much research done on this legislation by the Majority. In fact, Senator, if you had read the newspaper, Russia which recently entered democracy or alleged democracy had non-binding referendums last week. It was on the front page of the New York Times this week and last week.

And I dare say that I don't believe there is a jurisdiction within this country that has a non-binding referendum. And if you would go back and look at the way the presidents are elected, they are not elected by non-binding referendum. They have electors who elect the President of the United States. And basically, what happens is, if I'm correct, those electors make a pledge to support that candidate.

And what I'm saying here is we have a process, I don't know where you really picked this out of the air, but, yes, nonbinding referenda happened to actually have an existence in some foreign countries. There is no jurisdiction in this country that has -- no locality and no state has that procedure. And I

really think you just picked it out of the air.

Thank you.

ACTING PRESIDENT SPANO: Senator Volker.

SENATOR VOLKER: Mr. President. I just want to say very quickly I'll tell you one of the places where this idea came from. It came from the Governor of this state. And I'll tell you how. Governor Cuomo had been urging us for years to do a non-binding referendum on the death penalty. It just dawned on me when I was listening to what you said here.

You know, we really, as I under stand it, could put a non-binding referendum on the ballot. We don't need a constitutional amendment to do that, and I believe some states have done it, have done it in the past for various reasons.

Frankly, I rejected the idea when it was suggested to me by Governor Cuomo and some of his people because my thought at the time was that on an issue, a political issue or an issue such as this where it was pretty clear

where the people stood, the issue of having a campaign across the state discussing an issue that was discussed in this Legislature and that has been debated over the years and one which, by the way, I was certain I could win but which he realized that the Governor who is a great debater and who had the ability to command television and radio and media way above anything that I could do or anything of us in this Legislature, because of course what he says is believed by the media far more than any of us. I think there is one difference in this and that is that the issue of a Comptroller and the issue of who should be a Comptroller is a whole different kind of issue.

I would be the first to admit to you that I have some question about this sort of thing, but I would say to you this, that the process -- I'm told that the only time -- I'm not completely sure about this. I'm told the only time that this process was ever run to its complete zenith -- that is, in the Lefkowitz case, as I understand, there was eventually some

sort of an agreement and so forth. But the only time was Millard Fillmore, who was from Buffalo, and it was a little before anybody's father or grandfather's time in this house.

I would think that one of the things that my good friend Ned Regan has done for us is to make us take a look at some of these provisions in the state constitution. And we don't need a constitutional convention and all sorts of other things to deal with these kinds of issues, certainly not an issue that hasn't been an issue for 100 and some years or whatever.

But I think that, you know, Senator, I suppose that you can castigate the idea of a non-binding referendum, but as I point out, a lot of other people of suggested it for various reasons. And since this issue has come to the forefront now, the issue of how we would appoint or elect a Comptroller, I think it's certainly something that we should look into and certainly something worthwhile to debate.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT SPANO: Senator Connor.

SENATOR CONNOR: Mr. President, just one thing. You know, I would remind Senator Nozzolio that after the electoral college is elected, you know they don't all meet and say, "Well, Bill Clinton won the popular vote; we're all voting for Bill Clinton." That's not what they do.

The Republican electors come in and say, "Even though Bill Clinton was the preference of a majority of Americans, we're voting for George Bush," and of course the Democratic electors come in and say, you know, "We're voting for Clinton." They have the cover of saying he is the choice of the American people, and then he gets more votes, and nobody says to the Republican electors, "You did wrong. You weren't supposed to -- the people wanted Bill Clinton." It's not a non-binding preference. It's not an apt analogy.

But the apt analogy, Mr. President, is that the electors go in and

generally, almost universally, vote for the person that won their state. And I suggest to you if we had this preference, members would come in subsequent to it and vote for the person who won their district. And is that non representative? No. They would say, "That is democracy; the majority of the voters in my district in the preference poll voted for so and so, and that's who I'm voting for."

And it doesn't take a political genius to realize in the present Legislature that the most likely result is that the Democratic candidate would win the districts of Democratic members of the Assembly and the Senate and the Republican candidate is most likely to win the preference vote in the districts represented by Republican members of the Assembly and the Senate. And then we would be back here and what's -- we now have to have one of these joint resolutions? We'd be back to gridlock.

We would have spent $20 million on a preference, and I venture to say not a half

a dozen members would do other than reflect the preference vote in their district, and we end up having spent $20 million on a statewide preference vote and we'd be back here, the Senate voting for the Republican candidate, the Assembly voting for the Democratic candidate, and no Comptroller.

To me, that's taking political theatre a little far. Were we to have a system like that, it wouldn't work. It wouldn't elect a Comptroller. It wouldn't guide us on how to elect a Comptroller. It would only guide individual members on how to cast their votes, and it may be that the handful whose district voted for the opposite party person and they may switch, but the net result will be -- would have been if you had this preference that the Republican Senate would vote for the Republican, the Democratic Assembly would vote for the Democrat. And you would have gridlock not an answer. It's just not an answer. It's a press release. It's not an answer.

ACTING PRESIDENT SPANO: Senator

Gold.

SENATOR GOLD: Thank you, Mr. President. Will Senator Nozzolio yield to a question?

SENATOR NOZZOLIO: Certainly, Mr. President.

ACTING PRESIDENT SPANO: Senator yields.

SENATOR GOLD: Senator, I listened to your comments -- questions to Senator Dollinger, and it made me wonder just how you envisioned this working in your situation. This is a non-binding vote. Now, if the vote in your Senate district went one way but somebody else had the majority in the state, what would you do? What would you do?

SENATOR NOZZOLIO: I'm a representative of people. As such, I would look to those citizens who cast their election ballots in my district and vote the will of my district. The point is, Senator Gold, to give the people a say. It's not to decide -- we still have judgment factors, but we want the

people to have a say. But right now, the people have no say and that our intention is only to give that say to those people.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR NOZZOLIO: Certainly, Senator.

SENATOR GOLD: In other words, would you in the way you feel about the exercise of your office feel that you would be bound by what happened in this referendum, even though the language of it says it's not binding?

SENATOR NOZZOLIO: Senator, we could debate Edmund Burke all afternoon, but the fact is we're trying to give the people a say in this process.

SENATOR GOLD: Yes. Well, thank you, Senator.

Mr. President, on the bill. I'm glad you said what you said because I realize, Senator Nozzolio, I am somebody who has great empathy for you, because I came over from the Assembly, and it took a while to get used to

this house.

I understand your comments about Senator Dollinger, but I really don't understand those comments. Senator Dollinger gave you an answer which was perhaps a little more lucid than yours but in the same line. If it's not binding, it's not binding. You consider it. And I don't think there was one word in Senator Dollinger's remarks where he indicated anything other than a great respect for his constituents.

Now, Senator Nozzolio -

SENATOR NOZZOLIO: Senator Gold yield?

SENATOR GOLD: Of course.

SENATOR NOZZOLIO: Senator Gold, I don't know if you were here to hear the entire commentary by my colleague from Rochester. But what I took umbrage of Senator's remarks were that he suggested only 30 people would vote in such a referendum in his district. Now, I think that flies in the face of respecting the fact that the people in his district, as in all our districts, are interested in these issues, and

that that is why I rose, and that is why I made the comment I made.

SENATOR GOLD: Thank you, Senator.

Mr. President. As is quite obvious at the end of April, having watched Senator Dollinger perform his duties for four months, he doesn't need any help from me in taking care of himself. But that's not what he said. I mean the point that he was making, Senator Nozzolio, is simple.

If you have 100 percent of the voting population in your district is X and in this particular referendum just a fraction of those people vote, I mean are you going to take that as the total voice of your population? And Senator Dollinger's remark was a very valid one. It shows one of the faults of this particular bill.

The other question I have for you, Senator Nozzolio, which I'm not asking you but I'm throwing it out there, is if you're so concerned about the population why don't you put

in a bill which really creates an election? This non-binding business is just -- really creates an absurdity.

Some quick comments. Somebody used the expression that somebody over here was going to hide behind the veil of the constitution. Do you realize what a comment that is? There is not one person in this house that didn't raise his or her hand and swear to uphold the constitution. I'm not hiding behind it. I'm protecting it with every fiber in my body. And if the constitution sets up a process, I'm going to live by that process.

Comments were made, and I understand now -- by the way, this is always an education to be here. Senator Spano was 4 years old in 1957. You were in the first grade. I was -- look, I admit I'm getting older. I was graduating Cornell and one year into law school. You know, I'm glad we're learning about each other. Senator Marchi was here making sure the place still stayed. And I'm glad about all of that.

But, you know, it's very funny. When you talk about being concerned about the back door deals and all these terrible oops-da, the stuff that happens in politics, that's what you're talking about is 1957. And that's why even though you were in the first grade you were ashamed and, as I graduated from Cornell as a government major, I was ashamed. And that's why the Speaker and your Majority Leader and other leaders said let's do it differently this year.

Now, I'm pretty sure that in 1957 there were no hearings. These hearings are wonderful. There aren't hearings because the constitution or the legislation says to do it. There's hearings because a Speaker, who is really -- what is the legislative word? - mensch, wants the process out in the open, and he wants people to hear from these people before any election takes place. And at these hearings Republicans as well as Democrats had an opportunity to ask embarrassing questions, any kind of question of these candidates, and that's a process that no Republican Legislature ever

did before when they had a majority in both houses, and it's a process that was initiated and agreed to by four leaders. It should have been carried out.

As a matter of fact, when your leadership and Rappleyea backed out of that agreement, the Speaker and the Minority Leader of this house even said, you know, "We're going to hold the hearings, come in. Nobody is going to tell you you don't have a seat, that you can't be there to ask questions."

So the fact that you chose not to participate doesn't mean it's a back-room process. This is the most open process for an election of this type that has ever happened in the history of this state. It's interesting that at this point you complain about it. The closed processes you didn't complain about.

The bottom line here is that while many people in this chamber and in other chambers, in the other house, have suggested that we ought to take a look at this, there is nothing wrong with that. Maybe we should take a

look at it. But the bottom line is that I don't want this debate to close without some recognition on the record that Manfred Ohrenstein and Saul Weprin, together, are responsible for the most open process of this type in our history of our state and I, for one, am very, very proud of them. Doesn't mean I won't go to bat for a change. Doesn't mean that the comments made by Senator Connor are not articulate and bright and ought to be listened to, because they are. And yours are not bad, either.

But the point is that this process is something we should be very proud of. I'm voting against this bill today because I think it is an answer to nothing, but I wanted the record to indicate.

ACTING PRESIDENT SPANO: Senator Nozzolio to close.

SENATOR NOZZOLIO: I'm very proud of this legislation, Senator Marino's and this conference's attempt to make a bad process much better. What this is all about, ladies and

gentlemen, is giving the people a say.

You're sidetracking it, members of the Minority. You are trying to obscure the issue by suggesting that this referendum as a non-binding referendum is a referendum without merit. You are saying that even though people would have a say under this process that their say is still no good.

I challenge you to look at this process as a non-binding one only because it's the best we could do under the legal strictures that we're confronted with. The state constitution would not allow us in this bill to state it to be a binding referendum. I dare say if the measure had stated it was a binding referendum, you would be up and charging that it was against the constitution and, therefore, would not be applicable.

We took that constitutional argument away. We balanced the constitutional argument and the non-binding nature of this referendum as being half a loaf but better than no loaf, allowing people the right to have a say

in the process versus forbidding them to have any say in a process that I believe has not improved at all since 1957, when it was last used.

We want the people to have a voice in the selection of a new Comptroller. We want that Comptroller to be independent of this body, of the Assembly, of the Governor. The fox should not be deciding who the guardian of the chicken coop is to be. We believe the people should have that say.

I will close by saying that Boss Tweed would certainly approve of the way the Democrats are selecting our next Comptroller. It's time to diminish the influence of the power brokers' influence on these decisions which are made behind closed doors, and let the people have the say in who the Comptroller is to be.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT SPANO: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: I just rise to explain my vote. I join in the sentiments expressed earlier by my colleague, Senator Gold, with respect to the openness of this process. I only point out to my colleagues on the other side of the aisle, does it sound familiar when you talk about a process that you are not heard on? Does it sound familiar when we talk about change, and it goes unheard? Does it sound familiar when someone says we're trying to draw attention to the fact that this is not an open and public process and that the people are being excluded like Senator McArdle did in his quote in the New York Times? Does it sound like Senator McArdle? Senator McArdle seems to speak on behalf of most of the house most of the time.

But I just point out to all of you that when we talk on this side about opening

up the process, about opening up the Senate, about disclosing mail, about itemizing budgets, about quarterly reports, so that the people will have some accountability from us, seems to fall on deaf ears on the other side of the aisle.

Now the same complaint comes back to us, because something has changed. Because suddenly the members of this conference have the ability to stand in the majority with our colleagues in the Assembly.

I would suggest as Senator Connor has and Senator Gold has that maybe we drop all this at some point in the future and talk about real change and real reform so that the sentiments that Senator Nozzolio expressed about accountability and listening to the people that it will be the norm in this house and not the exception.

I vote no.

ACTING PRESIDENT SPANO: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 558 are Senators

Connor, Dollinger, Espada, Gold, Hoffmann, Jones, Leichter, Markowitz, Masiello, Mendez, Montgomery, Ohrenstein, Onorato, Stachowski and Stavisky. Ayes 42, nays 15. Also Senator Galiber recorded in the negative.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President. May we take up Calendar 485, please.

ACTING PRESIDENT SPANO: Secretary will read Calendar 485.

THE SECRETARY: Calendar Number 485, by Senator Larkin, Senate Bill Number 4597, an act to amend the Real Property Tax Law and the Transportation Law, in relation to railroad real property.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT SPANO: Senator Dollinger, would you like to withdraw the roll call?

SENATOR DOLLINGER: Yes, Mr. President. Could I just have a question -

ACTING PRESIDENT SPANO: Senator Dollinger.

SENATOR DOLLINGER: -- perhaps to the sponsor? As I understand it, the community enhancement board will review the plans that are submitted by the railroads in this case.

SENATOR LARKIN: Not by the railroad. Local governments will submit plans. Local government will be a participant in this process and the board will review it, Senator. And in the event that the railroads do not do the enhancement program as they had projected, they will not be entitled to the tax exemption for the coming year.

SENATOR DOLLINGER: Just for my edification, Senator, could you tell me where

that is in the bill? I know it talks on page 9 of the bill that the board may approve, and then it says it shall not approve, but just where in the bill does it say that the tax exemption shall not be granted?

SENATOR LARKIN: Senator, the powers of the board are on page 5, and they start on line 9. And the enhancement program starts on page 60, line 8 and goes all the way through.

SENATOR DOLLINGER: I will continue to search for it, Mr. President, but I'm just intrigued by what happens if the plan was disapproved and where the language was that said that.

SENATOR LARKIN: Over a cup of coffee in Rochester in the morning, I'll show it to you.

SENATOR DOLLINGER: Well, I'll continue to look while we perhaps discuss it further, if that's -

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT SPANO: Slow roll call has been requested. Secretary will call the roll.

Sergeant at arms, please get the members in the chamber for a slow roll call.

THE SECRETARY: Senator Babbush excused. Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Aye.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator Daly.

SENATOR DALY: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: No.

THE SECRETARY: Senator Espada.
SENATOR ESPADA: No.
THE SECRETARY: Senator Farley excused. Senator Galiber.
SENATOR GALIBER: No.
THE SECRETARY: Senator Gold.
SENATOR GOLD: No.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Halperin.
(There was no response.)
Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoffmann voting in the negative earlier today. Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson voting in the affirmative earlier today.
Senator Jones.

SENATOR JONES: To explain my vote.

ACTING PRESIDENT SPANO: Senator Jones to explain her vote.

SENATOR JONES: First, I want to thank Senator Larkin, because it does represent an effort to help the situation for the local government. Certainly, letting the tax abatement stand would not have been any help.

However, I just can't feel at this point that it's enough. We keep talking about our local government, the needs they have. We cut back on revenue sharing. We have concerns about school aid. The railroads have become very profitable since that ceiling law was first established. And I think if we want to give the railroads a tax break that it's up to the state to do it and not stick our local governments with another issue where they could have raised a little extra tax money.

ACTING PRESIDENT SPANO: How do you vote, Senator?

SENATOR JONES: No.

ACTING PRESIDENT SPANO: Senator Jones in the negative.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Yes.

THE SECRETARY: Senator Lack voting in the affirmative earlier today.

Senator Larkin.

SENATOR LARKIN: Yes.

THE SECRETARY: Senator LaValle voting in the affirmative earlier today.

Senator Leichter voting in the negative earlier today.

Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous voting in the affirmative earlier today.

Senator Maltese -- excuse me. Senator Libous voting in the negative earlier today. Senator Maltese voting in the affirmative earlier today.

Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Marino.

(Indicating "Aye.")

THE SECRETARY: Aye. Senator Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator Masiello.

SENATOR MASIELLO: No.

THE SECRETARY: Senator Mega.

SENATOR MEGA: Yes.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nolan voting in the negative earlier today. Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Ohrenstein.

(Indicating no.)

THE SECRETARY: No. Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Pataki.

SENATOR PATAKI: Aye.

THE SECRETARY: Senator Paterson.

(There was no response.)

Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

(There was no response.)

Senator Sears.

SENATOR SEARS: Yes.

THE SECRETARY: Senator Seward voting in the affirmative earlier today.

Senator Sheffer.

SENATOR SHEFFER: Yes.

THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
(There was no response.)
Senator Solomon voting in the negative earlier today. Senator Spano.
SENATOR SPANO: Yes.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: No.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky voting in the negative earlier today. Senator Trunzo voting in the affirmative earlier today. Senator Tully voting in the affirmative earlier today.
Senator Velella.
(There was no response.)
Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon excused. Senator Wright.

SENATOR WRIGHT: Aye.
ACTING PRESIDENT SPANO: Secretary will call the absentees.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Halperin.
(There was no response.)
Senator Paterson.
(There was no response.)
Senator Santiago.
(There was no response.)
Senator Smith.
(There was no response.)
Senator Velella.
(There was no response.)
Ayes 32, nays 19.
ACTING PRESIDENT SPANO: The bill is passed.
Senator Galiber.
SENATOR GALIBER: Mr. President.

I was not in the chamber yesterday, and I would like to make a statement for the record, with your permission. Yesterday, I was out of the chamber; and if I were here, I would like to be recorded for the record that I would have voted in the negative on Bills Number 452, 455, 457 and 460.

ACTING PRESIDENT SPANO: Without objection, the record will so indicate.

SENATOR GALIBER: Thank you, Mr. President.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Mr. President, I wish to call up a Rules bill, Senate Print 4651, which is now at the desk.

ACTING PRESIDENT SPANO: Secretary will read.

THE SECRETARY: Calendar Number 570, Senate Bill Number 4651, by the Committee on Rules, amends Chapter 79 of the Laws of 1990 -- 1989, amending the Correction Law.

SENATOR PRESENT: Mr. President.

I now move to reconsider the vote by which this bill passed and ask that it being restored to Third Reading.

ACTING PRESIDENT SPANO: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT SPANO: The bill is before the house.

SENATOR PRESENT: Mr. President. I now move to discharge the Committee on Crime Victims and Crime and Correction from Assembly Bill 7691 and substitute it for this identical bill.

ACTING PRESIDENT SPANO: Substitution ordered, without objection.

SENATOR PRESENT: Mr. President. Is there a message of n ecessity at the desk on this bill?

ACTING PRESIDENT SPANO: Yes, we have a message at the desk.

SENATOR PRESENT: I move we

accept the message.

ACTING PRESIDENT SPANO: All those in favor of accepting the message, signify by saying aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The message is accepted.

SENATOR PRESENT: Mr. President. May we have its third reading now.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Unanimous.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President. There being no further business, I move we

adjourn until Monday, May 3rd, at 2:30 p.m., intervening days to be legislative days.

ACTING PRESIDENT SPANO: Senate will stand adjourned until Monday at 2:30, intervening days to be legislative days.

(Whereupon, at 4:23 p.m., the Senate adjourned.)