

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 15th NOVEMBER 2017

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[9:30]

**The Roll was called and the Dean led the Assembly in Prayer.**

**PUBLIC BUSINESS - resumption**

**1. Ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (P.83/2017)**

**The Greffier of the States (in the Chair):**

The first item of business is the Ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, P.83/2017, and I ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to ratify the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, signed at Paris on 7th June 2017 under the aegis of the Organisation for Economic Co-operation and Development (O.E.C.D.).

**1.1 Senator P.M. Bailhache (The Minister for External Relations):**

In the context of the furore surrounding the publication of the papers stolen from the law firm Appleby, this is a fortuitously timely proposition. It underlines the fact that Jersey has been in the forefront and one of the leading countries in seeking to establish international rules to ensure that multinational companies pay their fair share of tax in jurisdictions where they operate. The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, which I will call the Convention, is one of the outcomes of the O.E.C.D. and G20 projects to tackle the problem of aggressive tax-planning strategies that exploit gaps and mismatches in tax rules so as artificially to shift the making of profits to jurisdictions which have no or very low tax. Jersey became a B.E.P.S. (Base Erosion and Profit Shifting) Associate and a member of the B.E.P.S. inclusive framework at its inaugural meeting in June 2016. The Government is fully supportive of the B.E.P.S. project and is active in implementing the actions which make up the project. As a B.E.P.S. Associate, Jersey is able to contribute to the overall development of the project through policy dialogue and exchange of information, participating in this case on an equal footing with O.E.C.D./G20 and many other countries and jurisdictions. On 7th June this year the Chief Minister, together with other Ministers and high-level officials from 76 different countries, signed or formally expressed their intention to sign the Convention. It has been described as an innovative multilateral convention that will swiftly implement a series of tax treaty measures to update the existing raft of bilateral tax treaties and reduce the opportunities for tax avoidance. The Convention will also strengthen provisions to resolve treaty disputes through mandatory binding arbitration and thereby reducing double taxation and increasing tax certainty. The Convention applies to modify the tax treaties between 2 or more parties to the Convention and Jersey is a party to this Convention. It will be applied alongside existing tax treaties, modifying their application in order to implement the B.E.P.S. measures. The Convention has needed to be flexible in order to ensure that the B.E.P.S. measures can be fully implemented and to acknowledge the positions of different countries. It provides flexibility by specifying the tax treaties to which the Convention applies, and they are called the "Covered Tax Agreements". The Convention will only apply to those agreements that a country has specifically listed in that respect. It provides flexibility with respect to provisions that relate to a minimum standard, so whether a Covered Tax Agreement, that is a Double Tax Agreement, meets the B.E.P.S. minimum standard will be determined in the course of the overall review and monitoring process by officials in the B.E.P.S. framework. Opting out of the provisions or parts of the provisions with respect to Covered Tax

Agreements is possible and is accomplished through a mechanism of reservations. Choosing to apply optional provisions and alternative provisions can be done by applying a number of provisions if all the contracting jurisdictions to the Covered Tax Agreements affirmatively choose to apply them. At the time of the signing of this Convention, signatories were requested to produce a document listing the agreements to be covered and specifying the reservations expected to be entered. The document which applies to Jersey is attached as Appendix 2 to the Report and Proposition showing that the agreements to be covered are those Double Taxation Agreements which we have with Cyprus, Estonia, Hong Kong, Luxembourg, Malta, Qatar, Rwanda, Seychelles, Singapore and the U.A.E. (United Arab Emirates). The document lists the expected reservations covering treaty amendments that are considered not to apply to the Jersey agreements. The ratification of the Convention, if the Assembly agrees to do so, will further reinforce Jersey's commitment to the B.E.P.S. project. The Convention is expressed to enter into force following the deposit of the fifth instrument of ratification, acceptance or approval. If the Assembly ratifies the agreement today, it is hoped that Jersey will be one of the first 5 countries to ratify the Convention and to bring it into force. We think that this will further endorse Jersey's international reputation as a responsible jurisdiction, which is among the leaders of those countries promoting the adoption of international standards to tackle aggressive tax avoidance. Two jurisdictions, 2 countries, have so far ratified the Convention. The first to do so was Austria, the second was the Isle of Man; I very much hope that the third will be Jersey. I move the proposition.

**The Greffier of the States (in the Chair):**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition?

**1.1.1 Deputy M.R. Higgins of St. Helier:**

I am in favour of this particular proposition, but could I ask the Minister for External Relations whether the recent Apple transactions would be covered by this? In other words, is it trying to stop that type of thing? They are moving their profits, they have got offshore profits, they are not repatriating them to the United States or they are not paying their taxes in the countries in which they operate, and it is coming through centres like our own. So would this particular treaty prevent that happening?

**1.1.2 Deputy G.P. Southern of St. Helier:**

Following on from that question: would the Minister explain how the substance test mentioned yesterday by the Chief Minister might apply to this particular treaty or how this treaty might impact on the substance test proposed yesterday for doing business that is not aggressive or abusive tax avoidance?

[9:45]

**1.1.3 Senator P.F. Routier:**

I very much welcome this proposition because in doing my time with involvement on the Overseas Aid Committee and then Commission as a chairman, it was always one of the worrying things that we were supporting projects in developing countries who, in their own countries, it was suspected that they were not gaining the best from their own community from the resources within their own jurisdiction and that major multinational companies were using the resources of the country and then taking the profits out and putting them in other countries. I think this is a very welcome proposition which hopefully will try and avoid that in the future and the people in developing countries will then be able to share in their own resources.

**1.1.4 Senator P.M. Bailhache:**

I thank those Members for their contributions. So far as the question from Deputy Higgins is concerned, the difficulty in relation to the alleged Apple transaction is that, as the Chief Minister explained yesterday, we do not really know very much about it. The extent to which the Apple Corporation did, through companies which are not Jersey companies, put money into Jersey is being investigated, as I understand it, and it may be that we will know a little bit more in due course. The overall thrust of this convention is to do exactly as Deputy Higgins suggests: it is to prevent multinational companies from moving profits around to low tax or no-tax jurisdictions and thereby avoid tax which they should legitimately be paying. One of the mechanisms for achieving that end will be a requirement that corporations should show in their accounts exactly where profits are made. Those accounts will be available publicly and will enable tax authorities in different countries to assess whether or not there should be a tax on profits that have been made by a multinational in their jurisdiction. So, I cannot answer the question specifically about Apple but in principle I think that the Deputy is correct. So far as Deputy Southern's question on the substance test is concerned, this is work which the O.E.C.D. is undertaking at the present time. This Convention does not settle a substance test, it is still uncertain what the ultimate internationally-acceptable substance test will be, but it is work which the O.E.C.D., and I think also the European Union, are working on to see whether there can be international agreement on what it should be. I thank Senator Routier for his comment and I agree with him. I move the proposition.

**The Greffier of the States (in the Chair):**

Those Members who are in favour of adopting the proposition, kindly show. The appel has been called for on the proposition and I ask the Greffier to open the voting.

**POUR: 43**

**CONTRE: 0**

**ABSTAIN: 0**

Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator A.J.H. Maclean  
Senator I.J. Gorst  
Senator P.M. Bailhache  
Senator A.K.F. Green  
Senator S.C. Ferguson  
Connétable of St. Clement  
Connétable of St. Peter  
Connétable of St. Lawrence  
Connétable of St. Mary  
Connétable of St. Ouen  
Connétable of St. Brelade  
Connétable of St. Martin  
Connétable of St. Saviour  
Connétable of Grouville  
Connétable of St. John  
Connétable of Trinity  
Deputy J.A. Martin (H)  
Deputy G.P. Southern (H)  
Deputy of Grouville  
Deputy J.A. Hilton (H)  
Deputy J.A.N. Le Fondré (L)  
Deputy of Trinity  
Deputy K.C. Lewis (S)  
Deputy M. Tadier (B)  
Deputy E.J. Noel (L)  
Deputy of St. John  
Deputy M.R. Higgins (H)

Deputy J.M. Maçon (S)  
Deputy of St. Martin  
Deputy R.G. Bryans (H)  
Deputy S.Y. Mézec (H)  
Deputy A.D. Lewis (H)  
Deputy of St. Ouen  
Deputy L.M.C. Doublet (S)  
Deputy R. Labey (H)  
Deputy S.M. Wickenden (H)  
Deputy S.M. Bree (C)  
Deputy T.A. McDonald (S)  
Deputy of St. Mary  
Deputy G.J. Truscott (B)  
Deputy P.D. McLinton (S)

## **2. Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment (P.84/2017)**

### **The Greffier of the States (in the Chair):**

We now move on to the proposition from the Chief Minister entitled Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment.

### **2.1 Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment (P.84/2017) - third amendment (P.84/2017 Amd.(3)) - amendment - proposal of the Chief Minister to reducing the lodging period to enable debate on 15th November 2017**

#### **2.1.1 Senator I.J. Gorst (The Chief Minister):**

I wonder if it would be helpful if we could deal with the amendments issue at this point prior to reading the proposition. It seems to me, I think, although you will advise, there are at least 2 amendments which are not yet in time. We are going to, I hope, have a productive and wide-ranging debate on this issue during the course of the day. It would seem to me sensible for the Assembly to allow both of those amendments to go forward whether Members are going to support them or not and I wonder if I could just move that proposition.

#### **The Greffier of the States (in the Chair):**

That was not what I was going to do, but, yes, that is fine. **[Interruption]** So there are 2 amendments. Sorry, can I finish, Deputy Le Fondré? There are 2 amendments, which I think you are talking about here, one is the amendment to the third amendment lodged by Senator Ozouf and the other is the fourth amendment lodged by Senator Ozouf; neither of them have served their lodgement period yet and the proposition, as I understand it, is to use Standing Order 26(7) to allow both to be debated, correct?

#### **Senator P.F.C. Ozouf:**

Indeed.

#### **The Greffier of the States (in the Chair):**

Is this a speech or a ...

#### **Deputy J.A.N. Le Fondré of St. Lawrence:**

It is a question ... well, I do not know. Is this a proposition that we talk on, because I do have some reservations?

#### **The Greffier of the States (in the Chair):**

Yes, it is a proposition you can talk on, yes.

**Deputy J.A.N. Le Fondré:**

I would like to express those reservations.

**The Greffier of the States (in the Chair):**

Is the proposition seconded? **[Seconded]**

**2.1.2 Deputy J.A.N. Le Fondré:**

I would like to express those reservations. It is mainly that I am slightly uneasy on a matter like this that an amendment was lodged so late in the day, and I quote from Senator Ozouf's ... this is particularly the third amendment, when he says he started work on it on 3rd November but the proposition or the amendment lodged by Senator Bailhache was ... I have not got it right to hand, was lodged or presented to Members some 10 days before. So I am slightly uneasy essentially that despite the 10-day gap that the Senator started work 10 days after, according to his own report, that I believe it only went to the Bailiff on the Monday, so the date he registers is a Friday, and so I am not too sure if the reason that he did not understand the lodging dates from such a senior Member of the States, who should know these things, and could have very easily asked, is a worthwhile or valid reason for allowing the lodging time to be reduced. So I just really wanted to express my reservation on that front.

**2.1.3 Senator P.M. Bailhache:**

I see that Senator Ozouf's light is flashing and all I was going to ask was, whether Members could be reminded what the Standing Order says and whether Senator Ozouf could identify why he falls within the Standing Order and the Assembly ought to debate these amendments.

**The Greffier of the States (in the Chair):**

That is a very good point. Just to issue the reminder: "The States may reduce the minimum lodging period for a proposition if they are of the opinion that it is in the public interest to do so."

**2.1.4 Senator P.F.C. Ozouf:**

I made it very clear that I would ask the Assembly, and I am grateful because the Chief Minister had made the proposition himself. I did start drafting the amendments on the date that I said and I offer no criticism whatsoever to the Presiding Officer ... or the enormous assistance of the Greffe. However, it is the case that there was quite a lot of work done in order to ensure that the amendments that were eventually lodged were compliant with Standing Orders. I believe I drafted an amendment which was and it was submitted and it was rejected and so there was quite a lot of toing and froing over a period of some 48 hours. I was not expecting that and so I was expecting, in good faith ... and, again, I was given, as always, excellent assistance by the Greffe but that was not assisted by the fact that I did not realise that the Greffier himself was out of the office and also the Deputy Greffier and so I was trying to get hold of people that I was not able to do so. So I regret that ... I believe it is in the public interest that there is a debate on a most important matter of a referendum, which is effectively the first referendum. In fact if we were having this debate tomorrow then the amendments would be within time. In fact we are taking it today, which is fine, so effectively I am asking for a lodging date reduction of one day in order that we may have a debate otherwise there will be no option. There will be no optionality for the amendment that Senator Bailhache lodged in terms of his referendum. I will not go into the arguments now because that is clear to Members but effectively there will be no debate on the option to what I believe is to be a fundamentally important matter of public importance and that is a referendum, and effectively I attempted to try and put in place some strictures to that amendment in order to make it slightly more palatable if that amendment is going to be successful. So I beg the indulgence of the



Assembly. I wish it would have been different. To Deputy Le Fondré I say, I am learning to be a Back-Bencher and I find myself in a rather curious position of having genuinely believed that it was in fact a 4-day lodging period because effectively we have got the rather odd situation, and I do know how to read Standing Orders, that if the Chief Minister's proposition, which does not account to the Minister's proposition is a ... would have been in his own name and an amendment to an amendment would have been 4 days not a week but because the proposition is in the name of the Chief Minister, which does not have collective responsibility, which has been amended by a member of the Council of Ministers in his own name, it falls within the week limit. So for that reason I hope that Deputy Le Fondré will understand that notwithstanding 18 years in this Assembly even I was confused by that, so I beg the indulgence of the Assembly and ask them to support the Chief Minister's proposal for a lodging reduction day of one day.

**Deputy J.A.N. Le Fondré:**

Just to clarify, is this on both amendments because ...

**The Greffier of the States (in the Chair):**

Well, I was going to clarify that. There are 2 amendments in question. The amendment to the third amendment, Senator Ozouf is absolutely right, the lodgement period would be met tomorrow, if the debate were tomorrow. The fourth amendment, however, was significantly out of time and it would not be debatable without this sort of provision until 23rd November.

**2.1.5 Deputy J.A. Martin of St. Helier:**

I do have sympathy for Senator Ozouf coming across these benches and having to do some, you know, extra [**Interruption**] ... I did not say that at all. He works very hard and he always has done. I go back to the point, just what the Chief Minister has proposed, I think I could swallow, the one day. The other amendment, obviously I looked at that, and I do not see this, depending on the outcome of today, this is not something that Senator Ozouf could relodge as a standalone proposition. It is asking to constitute a different panel on the outcome so I would urge the Chief Minister to separate his proposition out. He might have some more sympathy. One day; I think we could all live with. We cannot keep stretching Standing Orders, as Senator Bailhache has said.

**Senator P.F.C. Ozouf:**

Could you just remind us, which ones because the Chief Minister said both? Perhaps we could just be advised about which ones because I am confused as well.

**The Greffier of the States (in the Chair):**

It is the amendment to the third amendment; that is the one which would be out of time until tomorrow. The fourth amendment, which is out of time until 23rd November, which is the subject of Deputy Martin's comments.

**Senator P.F.C. Ozouf:**

If it may assist ...

**The Greffier of the States (in the Chair):**

Well, okay.

**Senator P.F.C. Ozouf:**

Can I just add as a supplementary? If it may assist I am more than happy to concede that that is a standalone proposition.

**The Greffier of the States (in the Chair):**

Well, it is not in your gift I am afraid because it is the Chief Minister's proposition. Can I ask if any other Member wishes to speak on the Chief Minister's proposition?

**2.1.6 Connétable C.H. Taylor of St. John:**

I believe I am on record last time this request was made to allow a debate to take place early and I said: "For the very last time." The rules keep being bent and I think sooner or later we have got to install discipline and one has got to firmly say "no" and that, I am afraid, is my feeling.

**2.1.7 Deputy J.A. Hilton of St. Helier:**

I stand to say I think it really is a question about fairness. We are being asked to extend the lodging period by one day for one of Senator Ozouf's amendments. I think in the recent past ... I cannot remember a time when the Assembly have been asked to do that, generally for one of the Back-Benchers, and the Assembly have agreed to do it. Senator Ozouf is a Back-Bencher and I think it is a question of fairness in these circumstances so I would appeal to Members to, on this occasion, allow it to happen and let us treat all Members fairly regardless of what their position was previously.

[10:00]

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak? If not I ask the Chief Minister to reply.

**2.1.8 Senator I.J. Gorst:**

I think Deputy Hilton has just eloquently made my point for me. I think it is right that this Assembly holds Ministers and departments to a higher and different standard to Back-Benchers. I have said, not at the last States sitting but the one before, and I might mention it again during this debate, it is totally inappropriate that Back-Benchers do not have appropriate support to undertake their work in bringing forward propositions, amendments to legislation and support for their constituency work. It cannot go on and we have got to stop playing games in this Assembly that pretends anything other than that. For my part, I think most Members are absolutely reasonable and I accept what Deputy Martin said, a reasonable approach is to allow the amendment which is just one day short and therefore I can either take 2 votes or just take a simple vote on the first amendment and withdraw the second amendment and accept that Senator Ozouf will bring forward, if he so desires, a standalone proposition at a future date. So it is just the first amendment. I know Members are reasonable and I ask them to be so in supporting the allowance of this amendment to be brought forward one day so it can be taken today.

**The Greffier of the States (in the Chair):**

So I understand from that that the proposition is that debate will be allowed on the amendment to the third amendment and you do not wish to press the fourth amendment? Fine. That is the proposition. Those Members who are in favour ... the appel has been called for. Members are invited to return to their seats. The vote is on whether to reduce the lodgement period for the amendment to the third amendment and I ask the Greffier to open the voting.

**POUR: 38**

Senator P.F.C. Ozouf  
Senator A.J.H. Maclean  
Senator I.J. Gorst  
Senator P.M. Bailhache  
Senator A.K.F. Green  
Connétable of St. Clement  
Connétable of St. Peter  
Connétable of St. Lawrence

**CONTRE: 5**

Senator S.C. Ferguson  
Connétable of Grouville  
Connétable of St. John  
Connétable of Trinity  
Deputy J.A.N. Le Fondré (L)

**ABSTAIN: 0**

Connétable of St. Mary  
Connétable of St. Ouen  
Connétable of St. Brelade  
Connétable of St. Martin  
Connétable of St. Saviour  
Deputy J.A. Martin (H)  
Deputy G.P. Southern (H)  
Deputy of Grouville  
Deputy J.A. Hilton (H)  
Deputy of Trinity  
Deputy K.C. Lewis (S)  
Deputy M. Tadier (B)  
Deputy E.J. Noel (L)  
Deputy of St. John  
Deputy M.R. Higgins (H)  
Deputy J.M. Maçon (S)  
Deputy of St. Martin  
Deputy R.G. Bryans (H)  
Deputy of St. Peter  
Deputy S.Y. Mézec (H)  
Deputy A.D. Lewis (H)  
Deputy L.M.C. Doublet (S)  
Deputy R. Labey (H)  
Deputy S.M. Wickenden (H)  
Deputy S.M. Bree (C)  
Deputy M.J. Norton (B)  
Deputy T.A. McDonald (S)  
Deputy of St. Mary  
Deputy G.J. Truscott (B)  
Deputy P.D. McLinton (S)

**Senator P.F.C. Ozouf:**

May I take this opportunity of thanking Members for that but I can also withdraw the amendment that would be significantly out of time and I will simply relodge that as a standalone proposition in due time because it seems to be that inadvertently I did not realise that it was so out of time and I will withdraw that and I will consider what to do with the amendment that is underlying the amendment to my own amendment. So that one is being withdrawn.

**2.2 Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment (P.84/2017)**

**The Greffier of the States (in the Chair):**

Okay. So the fourth amendment has been withdrawn. So before we get going I just wanted to say something about the order of proceedings, just to make sure everyone is clear from the start. I circulated a running order last week, or earlier this week, sorry, which sets out the order in which the amendments are to be taken. The first Member to speak will be the Chief Minister to move his proposition. After that I will invite Senator Bailhache to move his amendments and after that, following what has just happened, I will ask Senator Ozouf to propose the amendment to Senator Bailhache's amendment. The debates on each of the amendments and amendment to amendments are on specific subjects. I understand for some Members they may wish to set out their overall position on the main proposition briefly during debate on perhaps Senator Ozouf's amendment to the amendment or Senator Bailhache's amendment, particularly if they only wish to speak once

today and within reason that will be permitted but detailed remarks about the history of the role of the Bailiff, the civic role of the Bailiff, the relationship between a proposition and the Care Inquiry, the specific provisions in the Chief's Minister's proposition; these should all be left to the debate on the proposition itself which will take place after the amendments. So I will attempt to be fairly strict on Members to try and keep some sort structure to the day and I hope that is helpful. **[Approbation]** My next act of kindness is to **[Laughter]** ... is to spare the Deputy Greffier the job of reading out the entire proposition as it is very long and I imagine you have all read it - unless you feel there is a need to hear it - otherwise I think we should take the proposition as read and I will invite the Chief Minister to propose it.

### **2.2.1 Senator I.J. Gorst (The Chief Minister):**

I have been in this position for a number of years now and throughout that time I have been of the view that this Assembly would, at some point, need to consider in detail the question of who should serve as our elected Speaker and whether we wish to allow the current overlap between our legislature and judiciary to continue. It should not come as a surprise to Members that I make that opening point. I have made it in the previous 2 elections and, depending on the outcome of our deliberations today, will continue to make it. The impartial advice provided to the Assembly on several occasions has been clear. Modern, international, democratic standards are also clear. Unfortunately what is also clear is that so far we, as an Assembly, have complied with neither of those. It is for these reasons that I have brought forward this proposition asking the Assembly to take the in principle decision to elect its own Speaker and Deputy Speaker. It is not a decision that I have taken without careful consideration because I acknowledge that there are differing and strongly held views on this subject, not only in this Assembly but also across our community. I have got to say it would be far easier for me to be listening to someone else making this proposition this morning but that would not have been right nor would it have been in keeping with the responsibilities of the office of Chief Minister or the interests of our Island. During previous debates of course Members have often commented that they do not have sufficient information to take this decision even in principle. It was therefore clear to me that I should bring forward a detailed proposal for Members in order that we can have this in-depth debate and I believe that Members on both sides of the argument support us having that debate today. So I do so as a person who greatly respects and holds dear our Island's unique identity, customs and culture. I value the historic role of the Bailiff, as I know many across our community do. I am not a revolutionary, nor will I ever be. I am sometimes referred to, I think probably disparagingly, as a quiet reformer but I bring forward reform in what I believe to be the best interest and the best long-term interest of our community. On Liberation Day this year the Bailiff spoke about our institutions and respect for our institutions and the people in those institutions endeavouring to do their best on behalf of the whole community. I thought that was a brave speech but what he said was absolutely right. I want to continue to support our institutions because I believe they have served our Island well. But in supporting them I want them to remain relevant and sustainable for the modern day and into the future, and that is a further reason why I am bringing forward this proposition today. So perhaps it is a valid criticism to say I should have done this earlier. Why have I waited until now? I also fully accept that we did not need the Independent Care Inquiry's recommendation to alert us to the fact that we have a lack of separation of powers and have not implemented all the recommendations of the Clothier and Carswell Reviews. It is equally the case, however, that the Inquiry did make its recommendations that we give further consideration to the recommendations of both of those reviews and it included a specific quote regarding the lack of separation of powers. Of course, it was strictly outside of the Inquiry's terms of reference but they made the recommendation nonetheless. I argue that we cannot ignore independent advice, especially when it has been repeated for a third time in a third report; all of which has been commissioned by either this or previous Assemblies. As I have said, all Members are aware, the question of who should serve as

our elected Speaker in this Assembly has been the subject of debate for decades. I think, however, what has been noticeable in recent years is the greater intensity and regularity of the debate than at any other time previously. I do not think there is any prospect of this trend reversing. In fact quite the opposite. Both the independent advice that has been provided to the Assembly and the clear global democratic standard means that if nothing is done the debate can only continue and, if anything, intensify further. I think it is that, failure to reform, that has the potential to damage our Island and our institutions, especially this Assembly and ultimately the office of Bailiff. I do not want that to happen in either case. Members have often observed that change in this regard is inevitable. It is simply a question of timing and of the amount of information that they require in order to make the change and an understanding of the detailed implications and implementation and how such a change would work in practice. Today Members have greater detail than they have previously had and therefore I think the time has come for the Assembly to elect its own Speaker. I know that some of those Members who felt in the past they do not have enough detail will continue to have questions and I am very grateful to those Members that I have met with, who I know continue to have questions, and for that reason cannot support the proposal at this time. I would, however, suggest that there will always be questions.

[10:15]

There will always be questions of procedural detail and what this proposition does is ask that P.P.C. (Privileges and Procedures Committee) think carefully when developing the legislation that would result from this in principle decision being agreed. It will be scrutinised. There will be an opportunity for further public consultation but I am absolutely convinced that any questions that arise can and will be resolved because today is about taking the first step, an in principle decision, that this Assembly should elect or appoint its own Speaker in common with every other democratic legislature in the world, except for our friends in Guernsey. The arguments in favour of the Bailiff ceasing to serve as Speaker and being replaced by an elected Speaker are well known and have clearly been set out on several previous occasions, including in the report to this proposition. I do not want to go into great detail this morning but I do want to highlight a few important points that I hope Members will keep in mind during the debate and then ultimately in deciding how to vote, either later today or perhaps even tomorrow. The proposition makes clear how a Speaker would be elected, should it be agreed that the Speaker should be chosen from among elected Members, but very importantly it leaves open the option for a non-States Member to be appointed to the role. I know that this is another issue that Members disagree on. Some strongly believe it should be an individual elected from elected Members in this Assembly and others strongly believe it should be a person appointed from outside of the Assembly. This proposition does not decide that question. We have often asked whether a Deputy Speaker would also be needed and this proposition sets out why we would need to elect one Deputy Speaker while also maintaining the provision for another elected Member to preside if necessary. The election process, term of office and process for the removal of Speaker and Deputy Speaker are set out. The proposition also clarifies the means through which the Speaker and Deputy Speaker would continue to represent their constituents while maintaining impartiality either in the Speaker's case at all times and for the Deputy Speaker when in the chair or deputising for the Speaker in his or her other duties. Finally, the additional resource that would be needed to support a Speaker is confirmed. The Speaker would clearly need the support of one additional senior officer but otherwise could depend on the existing support provided by your own office and the Law Officers' Department. It, of course, has been pointed out by P.P.C. in their amendment that further work would be required should the Assembly opt to appoint its Speaker from outside its membership and I accept that and therefore accept P.P.C.'s amendment. The key point I would raise at this stage is that any challenges and questions we face regarding the topic will almost certainly have been faced previously and resolved by other countries and other jurisdictions and therefore we need not fear. Whether we opt for an appointed or an

elected Speaker we are not breaking new ground. In fact we are at the rear of the pack. While the matters of process are important it is arguably of more interest at this stage to mention the significant advantages for this Assembly in having their own elected or appointed Speaker. A Speaker would be the dedicated servant of this Assembly only with no other calls on his or her time. The Speaker would be a representative of this Assembly both within the Island and externally, perhaps at C.P.A. (Commonwealth Parliamentary Association) type events. They would have the time necessary to play a key role in promoting the development and understanding of the States Assembly and democracy in Jersey. As was mentioned by Lord Carswell a Speaker could also fully involve him or herself in the development of the Assembly's procedures. Something which historically Bailiffs have not felt in a position to do. In essence, we would have a champion for the Assembly and that can only be positive for democracy in Jersey. It is not just in the Assembly's interest to choose its own Speaker of course. The advantages are much wider. Members will recall that the Carswell Review highlighted the restrictions that the Bailiff's current role has on the proper exercising of his judicial responsibilities. There are occasions where it is both necessary and in order for the Chief Justice to criticise the Executive, possibly even the legislature, as part of a healthy system of checks and balances. But I can only imagine it is difficult for the Bailiff undertaking both roles to do so and that is why we have seen it rarely happen or we have seen Bailiffs rarely make such criticisms. This could, of course, be because we are all so good at doing what we do or it might be because the Bailiff, rightly, has to be seen to be above politics and maintain their neutrality in this Assembly. But either way it cannot be good for our Island that our Chief Justice finds themselves in such a position. By extension, Members should remember that a decision by the Assembly to elect its own Speaker would allow the Bailiff and Deputy Bailiff significantly more time to devote to their primary responsibilities of being the chief and deputy Chief Justices of Jersey. It is for their skills, after all, in these roles that they have been appointed and are remunerated and allowing them to have greater focus on their vital Royal Court work I think will be extremely positive and enhance further our judicial system in Jersey. A further advantage of making this change, which is often overlooked, is that it will further enhance the principle of judicial independence in Jersey. Value 1.3 of the Bangalore Principles states that: "a judge shall not only be free from inappropriate connections with and influence by the Executive and legislative branches of government but must also appear to a reasonable observer to be free therefrom." At present, it is difficult in Jersey to be absolutely categorical to say that we adhere to that last requirement of that principle and that is simply because of the lack of separation of powers in the current role. Members should also be aware that earlier this year I brought forward draft proposals for enhancing judicial independence and establishing a Judicial and Legal Services Commission in Jersey, and I am very grateful to those Members of this Assembly who have been working together with Senator Routier on those proposals. A number of responses to the consultation, which concluded in August, pointed out the irrationality of bringing forward such proposals while making no reference to the Bailiff's concurrent role as Speaker and Chief Justice. I have to say that while it was my consultation and they are my proposals I simply cannot argue against the point that those consultees were making. How can we proclaim the virtues of judicial independence in one breath and then support an overlap between the legislature and head of the judiciary in the next? I will, of course, bring forward those proposals no matter what the outcome of this debate today because they make important progress in our judicial appointments process but we should be under no illusion; this Assembly cannot claim to be truly and wholly committed to the principle of judicial independence while it allows the current arrangement to continue. I should also touch on, at this stage in my speech, about the day-to-day management of any potential conflict. I think in practice, it is a concern of principle. The Bailiff and Deputy Bailiff manage their arrangements accordingly and recuse themselves when they are sitting in the court and remove themselves from the chair that you are sitting in this morning when they consider there is a conflict. Of course, the very fact that they have to do this at all demonstrates that there is a conflict at the

heart of their role. There is a conflict and it exists every day. In allowing it to continue I think we do a great disservice to our courts, to the public and to ourselves, the democratically elected Members of this legislature. I want to touch also on another key aspect of the debate which I know is of concern to a number of Members and Islanders and that is the future of the Bailiff's role as civic head of Jersey. In fact in previous debates there have been 2 areas of argument about why we should not make this change. One being all of the details that I have already spoken about and the second being the perceived knock-on effect to the Bailiff's civic head role, and I have no doubt that my colleague here to my right will be speaking at length about that. Let me, for my part, be absolutely clear. My commitment to the Bailiff's role as civic head is absolute and resolute. The proposition is about improving our democratic structures and public institutions and, for my part, that means doing all we can to maintain and strengthen the Bailiff's civic head role. Before bringing this proposition I gave very careful consideration to ensuring that the civic head role would and could continue. In seeking the reassurances that I needed and desired I again referred to the independent advice we have been given on this matter, both by Clothier and Carswell, all recommending that the Bailiff continue in his role as civic head. I have tried, therefore, to firmly establish not only that this will be the case but how also we can ensure it continues to be the case. It is important to keep in mind that the Bailiff's role as civic head is held separately to that of his other roles. It is not dependent on his role as presiding officer and will not disappear if we choose to elect our own Speaker. The Bailiff would continue to undertake his or her community engagements, their representative role with visiting ambassadors and politicians and their ceremonial role on important Island occasions. The Bailiff would also maintain a link with this Assembly. They would swear Members in, preside for the process of electing or appointing a Speaker and take the chair on Liberation Day and other appropriate occasions.

[10:30]

The proposition would ensure that on civic occasions the Bailiff continued to be the first in the order of precedence and the office would continue to be afforded the respect it is currently held in and it deserves. Put simply, as far as the Bailiff's civic responsibilities are concerned there should and would be no change. While it is difficult to add any further clarity to my own position and the words I have just spoken on the Bailiff's continuing role as civic head, I acknowledge that some Members are of the view that warm sentiments, positive intent and goodwill are not enough to secure the role on a long-term basis. There is a view that the civic head role is intertwined with that of President of the Assembly. I disagree with that, as I have said, but I do understand why Members take and make that point. I have therefore gone further; in the report to my proposition in order to clarify that I would be willing to place the civic head role on a statutory footing should this be seen as necessary by Members. This will put the debate beyond any doubt and ensure that the role of civic head is protected long into the future as a key part of the office of Bailiff. In fact it would strengthen the office of Bailiff from the current role of civic head and the way that it is interpreted and how it extends from ancient traditions. Before bringing my opening comments to a close I do wish to make reference to international standards, a matter which I have often referred to with regard to this subject. A key argument which I believe bears remaking is that Jersey's current arrangements are not consistent with modern international democratic standards. I know that this comparison can antagonise some Members of the Assembly and our community who argue that we do not simply need to follow every other country's arrangements just for the sake of it and that is a principle that I agree with and support. I understand that there are occasions when a Jersey specific solution is more appropriate and is the standard that others could follow. The role of the Jurat, the Honorary Police system, the Parish Hall Inquiry system; these are not common global institutions but, as I have said, they work incredibly well for us in our community and they are widely admired. There are times and areas where it is the right thing to be unique but there are times and areas where it is less so and being in a position where one clearly breaches a globally accepted principle

of the separation of powers for my part I believe falls the wrong side of that division. We, in this Assembly, are used to adhering to global standards. It is not a new phenomenon. Right across the business of government we are at the forefront of setting global standards and in other areas where we encourage Ministers to bring forward legislation, policies and procedures to ensure that we do into the future. Only yesterday the Minister for the Environment was rightly challenged about environmental standards and whether we are meeting the globally accepted standards in our community. Members were right. I hope that they do not argue today on this particular issue that this is a standard we should just put to one side. Take housing, we are following U.K. (United Kingdom) decent home standards. We get criticised for that but it is the right thing to do, to bring the standard of social housing in our community up to and beyond standards elsewhere around the world. As we have already mentioned this morning, this proposition has been the subject of a number of amendments and I look forward to discussing and debating those as well throughout the course of the day. I look forward to endeavouring to answer Member's questions and I look forward to hearing the views of all Members, especially perhaps, those Members who have come to this debate genuinely undecided on how they will vote today. I hope that they find the proposition has given sufficient detail to feel that they are able to take an in principle decision in favour of this change and to work with P.P.C. bringing forward the next phase of the work. We have recommendations from 3 independent reports. We have clear democratic standards to aspire to and there are numerous potential advantages for our Assembly and other public institutions. Whatever the result of this debate today it will not go away. We must continue to reform and enhance our public institutions so that they meet democratically international standards so that they work and perform for the benefit of the whole of our community. This is not revolution. This is meeting current standards today and into the future and there are many benefits to be derived from it. We will have to make the change carefully but it is right that today we make the decision to change and I urge Members to think and consider carefully before they cast their vote.

**The Greffier of the States (in the Chair):**

Is the proposition seconded? [**Seconded**]

**2.3 Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment (P.84/2017) – third amendment (P.84/2017 Amd.(3))**

**The Greffier of the States (in the Chair):**

We move on to the third amendment, lodged by Senator Bailhache, and I ask the Greffier to read the amendment.

**The Deputy Greffier of the States:**

Page 2 paragraph (1) - before the words "to agree that -" insert the words "subject to paragraph (3)." Page 3, paragraph (2) - for the full stop at the end of the paragraph, substitute a semi-colon. Page 3, new paragraph (3) - after paragraph (2), insert the following new paragraph (3) - "(3) paragraphs (1) and (2) shall be void and of no effect unless the majority of the people voting in a referendum on the question of whether the Bailiff should remain the President of the States, held in accordance with the Referendum (Jersey) Law 2017, have voted against the Bailiff remaining the President of the States."

**2.3.1 Senator P.M. Bailhache:**

I should like to begin by making the usual declarations of interest. The Bailiff is my brother and I held the office of Bailiff between 1995 and 2009, neither of those facts affects or influences me in the slightest. I am concerned only with what is in the best interests of Jersey, as I see it. I should also like to say that this is not a wrecking amendment. That unjustified accusation was levelled against me on a previous occasion. The amendment is brought because I believe it should be



brought, as I will explain. I am, however, going to adopt a different stance from the one that I took on an earlier occasion when the Constable of St. Helier brought a proposition and when I voted against the Constable's proposition, even though it had been amended by my amendment. If this amendment is adopted, as I hope it will be, I shall vote for the Chief Minister's amended proposition. The reason for that is that in many respects I agree with the Chief Minister's remarks about the intensity of the debate increasing. I think that the constant sniping at and criticism of the Bailiff's position as President of the States is beginning to undermine the office itself and to destabilise one of our important institutions. So I, as I have said, am going to vote for the Chief Minister's proposition if it is amended because I think it is time a final decision was made. That decision can only be made by the States but with the consent of the people. I am going to be fairly brief in moving the amendment because the arguments in favour of a referendum on this important constitutional matter have been substantially set out in my report, which I hope that Members will have had the opportunity to read and to reflect upon. Is it a political issue, as suggested by the Chief Minister, or is it a constitutional issue? It seems to me blindingly obvious that a change to our constitution, particularly a change to a position which has endured since the States Assembly came into existence in 1524, must be a constitutional matter and that, in fact, is what the law states. Article 2 of the States of Jersey Law 2005 states, and I quote: "The States of Jersey are constituted as follows, a Bailiff, a Lieutenant Governor, 8 Senators, the Connétables of the 12 Parishes" and so on. When it was proposed to remove the Senators from the States we had a referendum. When it was a question of whether the Connétables should remain in the States by virtue of their office we had a referendum but when it comes to the Bailiff, who has been in the States for 400 years or more, and centuries longer than the Senators, it is apparently all right to remove him without asking what the people think. Would we take the same view with His Excellency? Would we remove Her Majesty's personal representative from our Assembly without asking what the people think? I sincerely hope not. The same principle applies to Her Majesty's Bailiff. It is a constitutional issue. The truth is that many of those who oppose this amendment really do not want to know what the people think. The unspoken message is that the views of the public are irrelevant and that is not my approach. With any important constitutional issue the public is entitled to have a say. This is a principle which is not unique to Jersey. The United Kingdom Government took that view in relation to leaving the European Union and as to the question of whether Scotland should become an independent state. That is democracy, whether one likes it or not. I do not think that any Member who votes against this amendment can truly call himself or herself a democrat.

[10:45]

Senator Ozouf is a Member of many talents but when he has a bee in his bonnet about something, and he has dozens of energetically buzzing bees in this particular bonnet about the Bailiff's role, he forgets about democracy. He does not want to risk knowing what the public thinks about the proposal to remove the Bailiff from the States. During one of the senatorial hustings before the 2014 election he tried, very properly I would say, to raise the issue with the public and I remember it well. He got, in fact, no support from his audience and he dropped it like a hot potato. Now, of course, things may have changed, I accept that. The public may very well now have a different view but we will never know unless we ask them to express their views in a referendum. I hope that the Chief Minister will deal with the issue of democracy when he speaks on this amendment too. After the last elections the Chief Minister asked me to go and see him and asked me whether I would continue as Minister for External Relations. I said that I would like to do so but that we were divided on the question of the Bailiff's role and was that a problem? His response was that the electoral campaign had shown that the public had no appetite for change and that so far as he was concerned it was a matter for the future but not for this term. Now, of course, the Chief Minister is entitled to change his mind. I would not suggest otherwise. But I would like to know whether he now subscribes to the Senator Ozouf view that the opinion of the public does not matter or does he

believe that the public is in favour of change and, if the latter, what is the basis for that change of opinion? Some Members may think that the election of a Speaker is an internal matter for Members and in a sense so it is. If it were simply the political issue of whether the Speaker should be the Bailiff or an elected Member it would be an internal matter for the States but removing the Bailiff from the States is not such a simple matter because he is not only the President of the States but he is also the chief citizen, the Chief Minister has spoken a bit about that, and guardian of the Island's constitutional privileges. Those 2 issues turn what might otherwise have been a straightforward political matter into a constitutional issue. I set out in my report why I believe that contrary to the views expressed by the Chief Minister the Bailiff would not long remain chief citizen. It is a view which is shared by my predecessor as Bailiff who gave evidence to the Carswell Commission to that effect. I will not, however, go into those matters now. They might return to them in the context of the debate on the Chief Minister's proposition. The issue of the guardian of the Island's constitutional privileges is very relevant to the question on whether or not this is a constitutional issue and there should, accordingly, be a referendum. I am not clear where the Chief Minister stands on the issue of the Bailiff's role as guardian of the constitution. I do not personally think it will be possible for the Bailiff to exercise that function if his connection with the States Assembly is severed. Even if he were to return on Liberation Day, and why on earth should he return on Liberation Day, to preside over the Assembly? It does not seem to me that there will be any longer any connection with the States. So the Bailiff will not know what is going on in relation to the United Kingdom and the relationship with the U.K. and what is going on in Whitehall because there will be no opportunity to find out. Presumably his oath of office will be changed to omit the reference to protecting the privileges and freedoms of the Island. So who, in the absence of the Bailiff, is going to do it? Will it be the Attorney General? What would then happen if the Attorney was newly appointed to the role and had no experience of the constitutional relationship? As both law officers are usually appointed at the same time, or more or less the same time, they could both easily be in the same boat. A great advantage of having the Bailiff as guardian of the constitution is that he has had years of experience of the constitutional relationship and how it works in practice from his time both as a law officer and later as Deputy Bailiff and Bailiff, and of course he is a constitutional lawyer. So will the Chief Minister himself become the guardian of the constitution? If so, how is he or she going to acquire the knowledge and experience that will enable him or her to undertake that role or are we going to rely upon the top civil servants who are, however talented, usually from England and without any longstanding feel for the constitutional relationship. We need to know the answers to those questions. The Chief Minister has elaborated very considerably on his proposal but, as I said in my report, there is one very substantial omission and it relates to the role of guardian of the constitution. The answers to these questions underline the fact that whether or not the Bailiff remains the President of the States is a constitutional issue and not a political issue and the States should not change the current position without knowing that they have the consent of the people. I move the amendment.

**The Greffier of the States (in the Chair):**

Is the amendment seconded? **[Seconded]**

**2.4 Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment (P.84/2017) – third amendment (P.84/2017 Amd.(3)) – amendment (P.84/2017 Amd.(3).Amd.)**

**The Greffier of the States (in the Chair):**

We now move on to Senator Ozouf's amendment to the amendment and I ask for the amendment to the amendment to be read.

**The Deputy Greffier of the States:**

Page 2, amendment 3, for the proposed new paragraph (3) substitute the following - “(3) paragraphs (1) and (2) shall be void and of no effect until a referendum on the question of whether the Bailiff should remain the President of the States, held in accordance with the Referendum (Jersey) Law 2017, takes place and shall not be implemented if the result of the referendum shows that a majority of registered voters have voted for the Bailiff to remain President of the States.”

#### **2.4.1 Senator P.F.C. Ozouf:**

I, yesterday, was interviewed on why I brought forward my amendment to Senator Bailhache’s amendment and indeed there was media coverage yesterday also in one online publication about my amendment which said: “Goodbye, the Bailiff.” The interviewer that I was interviewed by in the Royal Square started the discussion and indeed was a journalist, I think who had been in Jersey for some time, started the interview by saying to me: “So you are removing the Bailiff.” Now, both of these examples, and both of these examples from yesterday, are very relevant to whether or not the question of a referendum is ... without in any way describing and suggesting that we cannot have a referendum does really emphasise and explain the point of, can we have a rational and detailed debate on the issue of Bailiff and what the Bailiff will be, because the emotional arguments and all decisions to vote are apparently made on emotion, with the basis of fact, is that we will have a referendum that will be characterised by people to say that we are effectively saying goodbye to the Bailiff. In one of the media responses to my proposition yesterday I stated that it is not goodbye to the Bailiff, and this is directly relevant to the amendment that I am seeking to make. Senator Bailhache’s position is clear. He does not want to see the removal of the Bailiff from this Assembly and I respect and understand that. He discharged the functions of the Bailiff when I was a Member and did so extremely well. He did so in a time before the introduction of ministerial government. Constitutions - and he made reference to previous referenda - evolve and have constantly evolved since the position of Bailiff was created. Perhaps it was in 1066. Perhaps it was in subsequent years. When the position of Bailiff was originally conceived the world was different. The Royal Court was the Legislative Assembly. It was in a world where the Monarch did not, whether or not it be King Rollo, the Duke of Normandy, the Kings or Queens of England and their successors, had not delegated their powers to a parliament. The origins of the legislature of Jersey, as explained by Senator Bailhache, were in fact and must be importantly relevant to this debate and whether or not it is the right thing to have a referendum, and particularly what Senator Bailhache’s underlying proposition seeks to do, and correct me if I am wrong, it proposes to have, effectively what I understand, a binding referendum which is effectively something that goes above and beyond that of previous referenda that have been held in Jersey and has no tests associated with it. If I may just ask the Greffier for a copy of my proposition in written form that I am going to just refer to rather than ... because my iPad because keeps breaking down. I am extremely grateful. There has been, and my report sets out, referenda held in other places. The Senator referred to the importance of referenda in the Scottish debate, in the recent Brexit debate. He referred to the referendum that was held in 1947 or perhaps 1948 when the Jurats were removed and he says for that reason we must have a referendum on the issue of Bailiff. Now, I am yet to be persuaded that a referendum is needed. I am not sure that it is such a constitutional issue so much as a democratic issue but the proposition of Senator Bailhache, even if you agree or not with the referendum, comes with no tests to be met. None whatsoever. There is no test of turnout. It is binding and the proposition of the Chief Minister will be null and void if a majority of people voting vote in favour of the referendum question in the affirmative of the removal of the presiding officer. Jersey has low voter turnouts. There has been a live debate in the U.K. as to whether or not the Brexit referendum should be effectively adopted notwithstanding the fact that a majority of people in the United Kingdom voted in favour. That was a clear referendum. Okay, the debate was largely inflamed and on both sides of the argument arguments were put that were largely emotional and everybody looking at that referendum would question whether or not the arguments were valid.

[11:00]

But the fact remains is that it was advisory and indeed the U.K. Parliament ... the Prime Minister yesterday had said the final decision on Brexit will come back to this Assembly and I have made another proposal, which I believe is in time, that the final decision of the adoption of any Speaker after the P.P.C. amendment should come back to the States only after the next election. So Members effectively have a palette of choices. They have a choice to put some strictures on the referendum. I wished there to be, and I am sorry that Senator Bailhache thinks that there are lots of buzzing issues and wasps or otherwise in my head. **[Interruption]** Bees, yes, bees. I am not sure what the difference is between bees and wasps, yes. Well, obviously there have been some bees in my head. Perhaps I must not be waspish today, must I? Yes, I do have a bee in my bonnet but we will come to that at the Christmas Party. **[Laughter]** The fact is ... which will not be televised I hope. I cannot see Deputy Labey here at the moment. I wanted to put in for the avoidance of doubt but was ruled out of order, and I accept the rulings of the Chair, I wanted ... but I have put in the appendix to my proposition. I do not want not to hear the people of Jersey and what they think, I say to Senator Bailhache. I want to hear what the people of Jersey think and if I may remind him most respectfully he says that I raised the issue and quickly dropped it in the last election. It was in Trinity that I raised with the Chief Minister the issue of Bailiff. If I may just say I was returned in that fine Parish of Trinity not with quite the same eighth position as some of the other candidates, so clearly the voters of Trinity knew exactly what I was proposing. I did not drop it. That is absolutely incorrect. My position on this has been clear from the start. I wanted to adopt Clothier; that removed the Bailiff. I have been a tireless supporter of various different attempts to try and get ... including the issues of Senator Bailhache in terms of reform of the States. I am afraid the good parishioners of Trinity afforded me 618 votes and that was not far behind the amount of votes that the good Senator had himself. Indeed I think I can ...

**The Greffier of the States (in the Chair):**

Senator, I think move on, back to the amendment rather than ...

**Senator P.F.C. Ozouf:**

Fine, okay, fine. Just the point is: it is not fair to say that it was dropped like a stone. That is not right to say and I reject that argument made by Senator Bailhache. Now, Senator Bailhache also says because there was a referendum held in 1947 there must be a referendum held. Now, that referendum in 1947 was not the only referendum that has been held and did not ... was advisory, was not compulsory and was effectively up to the States to approve afterwards. It was not binding in the way that Senator Bailhache is proposing. There have been other constitutional changes which have not been the subject of referenda of a binding nature in this Island. The increase of Deputies in 1854. The Senator went on in his remarks to speak about the various evolutions over time but I mean I could also say to Senator Bailhache that effectively there was no referendum in 1854 when the amount of Deputies was there. I would also draw the attention to the Assembly that in 1947 that referendum was very much about elected representatives. It was the removal of the Jurats and the creation of the Senators. That is a democratic issue. It was not like effectively a constitutional matter. It was a democratic issue. Now, for me there is an important issue. This is a democratic issue. It is for democratic members of the Assembly to make this decision. I was not able to remove the words “null and void”. I am hugely perturbed by this. I am hugely concerned about the null and void and binding referendum particularly with the knowledge that effectively we have such low voter turnout. What are we to have? Are we to have a referendum with a turnout of 30 per cent on an issue that is going to be emotionally driven? Driven by a media that will say, and I cite in evidence, the 2 stories yesterday: “Goodbye to the Bailiff.” Are we going to have an emotional debate pulling at the heartstrings where people do not understand? No, I wanted to put the additional stricture that if we are to have a referendum, it must be accompanied by a meaningful

and informed campaign of public information, which should incorporate the provision of independent information on the role of Speaker as well as holding of hustings and deemed appropriate focus groups in order to engage with the maximum number of Islanders. If this amendment is successful, and I hope it will be, then that can come certainly later, because the worst thing we need to do is to have simply a referendum on a question which people will not understand the issue they are voting on. Votes are based upon emotion. If it is going to be a referendum without any test of turnout and it is going to be illegitimate, then how can we say that that is democratic? My amendment, not perfect, I fully accept, is certainly better than having an unamended proposition. Apparently I was not able to remove the words “null and void” but effectively it should be for a majority of registered voters. At least that would mean that there is effectively a test of legitimacy as to whether or not it is going to be binding. The mover of the unamended proposition has not really given any justification as to why this amendment should be binding, has no tests and has given no reasons why there is not a good reason to vote in favour of at least putting some sort of stricture on the binding referendum which we are to decide. Referenda have their place. They have their place on important constitutional issues, they have of course a role on membership of the European Union, Scottish independence, *et cetera*, but on an elected Speaker, I am doubtful. If we are to have one, then there should be at least a test of legitimacy. That is the purpose of this amendment, because if we do not have some sort of test of legitimacy, I seriously worry that we will not have a proper debate and that we will be put into a position which almost means that the will of the Assembly ... and I think that the issue of the elected Speaker being the elected Speaker’s Assembly Speaker and not, if I may say, the people’s Speaker, because they are unelected, they are imposed upon us, issues not only of the separation of powers are relevant and I think that it is extremely difficult to hold a referendum on that. I have done my best to try to put some controls in place and to make it democratically safer than unamended. I ask Members to, on that basis, at least support putting in place a test, not the most ideal test. Yes, we can put some further strictures in later with a campaign, but certainly unamended I think it is simply completely unacceptable. I move the proposition.

**The Greffier of the States (in the Chair):**

Is the amendment seconded? [**Seconded**] Constable of St. John, it is your turn.

**2.4.2 The Connétable of St. John:**

I have heard a most frightening speech. If I read about the proposed amendment to the amendment, that a majority of registered voters... I have been thinking through the last election and I do not think anybody sitting in this Assembly having achieved a majority of the registered voters in their district. On that basis, none of us would be here. Senator Ozouf went on to say: “If a majority of the electorate” and I will repeat that: “If a majority of the electorate voted in favour of keeping the dual role, then the Chief Minister’s proposition would be nullified.” Oh dear, perhaps we should not listen to the people we represent. We are, after all, their servants and I am sure that the Chief Minister himself would be the first person to say that we are here to serve the people of Jersey. The Senator went on: “How can we say it is democratic when the public are voting on a subject they do not know about?” Oh dear. How dare he turn around and say the people who democratically elect us do not know what they are voting for? Although I am prepared, in his particular case, to make an exception. This is very clearly, I believe, an attempt to derail what is a necessity. There is no doubt whatsoever that this is a constitutional battle. It has been clearly shown to be a constitutional matter and it should therefore go to a referendum. Anyone who is opposed to a referendum on this subject is putting himself above democracy, because at the end of the day, it will be decided democratically and no one can argue against that.

**2.4.3 Deputy S.M. Brée of St. Clement:**

It is a great pleasure to follow the Constable of St. John, because he has picked up on a number of areas that I think we need to just look at. This is the amendment to the amendment. It is a very clever amendment, because on the one hand it says we have to have a minimum number of people agreeing, but as the Senator well knows, previously general election turnouts have been below, on average, 40 per cent. By bringing this amendment to the amendment, the Senator knows full well that it is highly unlikely the bar he is setting will ever be reached. It then raises the question, why? Why has the Senator brought this? Because essentially I believe the Senator is against a referendum of any kind. Surely the question we and the public have to ask ourselves is why? Why has the Senator set the bar so high that it is highly unlikely it would ever be reached? Therefore I would urge Members to just reject this amendment to the amendment and get back to the important debate, which is on Senator Bailhache's amendment as to a referendum.

#### **2.4.4 Deputy J.A.N. Le Fondré:**

I was going to try to use this element of the debate as the main thing on the general referendum, so I will try not to repeat later, but it depends what is said. Just as an observation, I have obviously misread the 2 amendments in front of us, because Senator Ozouf, on at least 2 occasions, used the expression "null and void."

[11:15]

Both of them say "void" so I do not know if there is a difference between null and void and void in legal terms, but anyway "null and void" is not in either of the amendments as written, including the Senator's own amendment. I am also slightly puzzled on the issue around whether this is binding on a future Assembly. My understanding is that whatever happens, this is about this particular proposition. Therefore if this referendum is approved and therefore a referendum is held and the public vote one way or another, if they do not support the removal of the Bailiff as President of this Assembly, then this proposition is void. That does not stop a future Assembly debating the matter again, as far as I can see. It is not binding on a future Assembly, but hopefully that Assembly would then be mindful of the results of any referendum. For me, that has got to be the fundamental basics of a democratic approach. I am sure that the Chairman of P.P.C. is going to talk about their comments, but I think Deputy Brée and the Constable of St. John have made the point that this is about a majority of registered voters. Just to cite the P.P.C. comments: "This amendment raises 3 concerns. It contravenes the guidance issued by the Venice Commission" and they explained why, "and it generates a potentially difficult political situation, where if the status quo was supported by a sizeable majority of those voting in a referendum" but it did not reach the bar that is being set. In other words, P.P.C.'s comments - and I am sure the Chairman will elaborate on them later - say that this amendment is not supportable. What I do want to just try to do, if it is permissible, is talk about the general principle of the referendum.

#### **The Greffier of the States (in the Chair):**

My view is that Members want to try to do it properly and separate things out. I think Deputy Brée, for example, specifically said he would come back to the question of a referendum in general in the next debate, so save it up, I think.

#### **Deputy J.A.N. Le Fondré:**

That is fine then, Sir. I was slightly puzzled, because obviously the proposer was allowed to go all the way back to the times of Rollo and 1066.

#### **The Greffier of the States (in the Chair):**

A degree of latitude is sometimes allowed, but ...

#### **Deputy J.A.N. Le Fondré:**

That is fine. All I will say then is that this an important issue to the public. I will explain why in the next debate. It is a matter of constitutional importance, not just because it is a matter of law, as Senator Bailhache has already pointed out, but for other reasons behind that that back up that statement. Therefore, in my view, a referendum in itself is critically important on this thing. For the avoidance of doubt, if a referendum is approved, as proposed by Senator Bailhache, I will support the main proposition. Let us get back to is it workable. Under Senator Ozouf's amendment I do not think so, for all the reasons that P.P.C. have laid out. On that basis, I think we should be rejecting this very swiftly, because otherwise ... I think the comment has been made, this is an unworkable amendment.

#### **2.4.5 Deputy J.A. Martin:**

I am on P.P.C. and I fully understand the reasons we have put in the comments. I want to rise to say we have gone away from why we need a referendum. It started in the speech of Senator Bailhache, but I will try to focus on the amendment. We have now been told we have referenda on constitutional matters, like the Constables. That was a wrecking amendment. We had 3 issues that should have gone to the electorate and it was wrecked by Senator - then Deputy - Green. Fine, it was an amendment, it was approved by this House and it was just on Constables. We have heard from people who I would presume would vote not to remove the Bailiff as the Speaker of the House and they say this is a wrecking amendment. I know what it says in the comments of P.P.C., that it is not normally done this way, but is it so important? I really think, and I am just saying this, if you need to think independently on an amendment, you do not automatically know which way the referendum is going to go. Would the U.K. Government not have loved a clause like this when they were going out? They all thought they were staying in. What about Scotland? I am just saying this would make it a very, very good possible campaign because you would make people come out and they would come out and vote in the other thing that goes on on 16th May next year, which is to elect people who sit on this side of the Assembly. It is the way you look at it. Do you want the referendum to be a very small turnout or do you want it to be really truly a sample of all the people who can vote? It is just a thought. It is up to people to decide, do you want a get-out clause if you lose?

#### **2.4.6 Connétable J. Gallichan of St. Mary:**

I will come back, if I need to, on the wider matter of the referendum as well, but I just think Members need to be quite clear on this, regardless of what Senator Bailhache may have tried to engineer as regards making this binding, as it were. The fact of the matter is the public of this Island do not trust a referendum anymore. **[Approbation]** Any Member who does not think that is a problem, think again. I have never felt such a backlash from the public as when they thought the Assembly wanted to know what they felt. They made their feelings known and the Assembly then ignored them. I think in this case Senator Ozouf is quite simply setting an impossible target. I cannot see how we could expect the majority of registered voters even to turn out, let alone for a majority of them to approve or disprove a proposition. We would be extremely lucky to get 26 per cent approving or disproving. I just feel that the Assembly must take cognisance of the fact the public felt let down. I will come back to that perhaps later, but this is an impossible target and I think whatever way we look at it, the whole proposition will fail if this is accepted.

#### **2.4.7 Deputy J.M. Maçon of St. Saviour:**

It will come as no surprise to Members of this Assembly that I have long believed in minimum participation thresholds when it comes to referenda. In fact, I have stood in this Assembly twice arguing why that should be the case, because we know, because of the issue that we have had with lower participation in referenda and elections, it becomes very difficult for any of us to come and say: "This is the view of the public" when you have such a small amount of people participating. It

seems strange on the one hand to say: “We want to know what the will of the people is on the Island, but we only really want to know what a small percentage of these people think.” Again, if you are saying: “This is such a big issue. It is a constitutional change, we must know exactly what is going on, but only in the minds of a small amount of people in the Island” for me it is not good enough. That has always been my position when it has come to taking these matters to the public with regards to minimum participation thresholds. Just in response to the Constable of St. John, we know that in the last referendum the Parishes of St. Mary and Trinity did get over 50 per cent turnout in their electoral registers. Others, Grouville, for example, got 49 per cent with no contested elections. If there was a contested election, perhaps that would change. St. Brelade it was around 45 per cent. I know in my own district I got my 40 per cent, so that is the one I have usually campaigned on, so I know that. St. Helier again provides a big problem. To say 50 per cent of the minimum participation threshold is entirely unthinkable, it means that we have got to work hard in St. Helier. That is what it means. I do not think it is a bad thing, turning around to the public and saying: “No, we expect this of you. We expect to understand to know what you think. We expect you to engage in the process in order to be able to legitimately say: ‘This is what you think.’” I do not think Senator Ozouf should be criticised for saying that in a referendum there needs to be some criteria in order to validate what the result is. I have stood in this Assembly and I have argued that point before. It will come as no surprise to Members that I will be supporting this amendment for all those reasons.

#### **2.4.8 Deputy M. Tadier of St. Brelade:**

I might have made a similar speech the last time. I think it was the previous speaker who moved a similar amendment for a different referendum. Unfortunately this kind of blunt tool of putting a threshold in at 50 per cent, it may seem logical on the surface of it to say that if half of the population that can vote turn out to vote, then that means it is a legitimate referendum. It is nonsense when it comes to mathematics and in particular to the branch of mathematics that deals with that kind of thing, statistics. That is because it does not ensure any kind of statistical significance for the outcome. What I mean by that, in very simple terms, for example, if you have a 50 per cent turnout in a referendum and 49 per cent vote one way and 51 per cent vote the other way, the 51 per cent win it. That is not particularly statistically significant, so that could be quite an arbitrary result, because we do not know how the other 50 per cent of the voting population might have voted, whereas if there was only a 40 per cent turnout but 80 per cent of the 40 per cent that turned out voted one way or the other on any given subject, that is a much more statistically significant outcome. It means that even if there was 100 per cent turnout, you can project what the outcome of the population would be from that 40 per cent. That is why it is a very blunt tool. There are statistical charts which mathematicians use, normally on some kind of bell curve, and you decide what certainty you want. We can never be certain, of course, unless you are getting a whole sample of the population, but that is what mathematicians use, they use 2 per cent, 5 per cent, 10 per cent certainty. If you have, for example, a 5 per cent certainty, it means that you know with 95 per cent certainty that the results you have are representative of what the whole population would choose. This proposition does not do that. It is simply an arbitrary figure which would appeal to non-mathematicians. It does not have any intellectual or academic rigour and it certainly has not been run past the Statistics Department. If the proposition was to have in future that all results should be statistically significant so that we could surmise mathematically what the rest of the population would want, even on a small turnout, even when we get 21 per cent turnouts, you can still project from that if the margins are significant enough to have legitimacy for what the eventual outcome would be. There is of course a different argument, which is perhaps much less nuanced or esoteric to understand and that is to say we do not apply the margin for any other election. We do not do it when we are in here, so we are quite happy for ourselves to be elected on 21 per cent turnouts. We are quite happy to be elected on 35 per cent of a 21 per cent turnout, for example, if it



ever happens. We do not require ourselves to get even 50 per cent of the vote in single seat elections, which is quite remarkable, but we do seem to want to apply it to a referendum. Let us not beat around the bush here, we know that these amendments - both amendments, in fact - are being used as political devices, for whatever reason, to try to get a political advantage. It is not about wanting to consult with the public at all, it is about getting the political advantage in this Assembly over our adversaries. That is the honest reason for it, whether it is Senator Ozouf or Senator Bailhache, who remains a Minister, I am not sure for how much longer after this week, either way, but that is perhaps an argument for another day. I have tried to direct my comments to this. This does not make any sense whatsoever. We are not very good at doing referendums and the Assembly does not understand mathematics. That is why we have got a Statistics Department to consult with and they have not been consulted with on this.

#### **2.4.9 Connétable L. Norman of St. Clement:**

Even by his own high standards, I think Senator Ozouf's proposition, and especially his speech this morning, was extremely bizarre. He was worried about this being a binding referendum, which of course it is not, because we have no legislation to have a binding referendum, but what worried me most was he was worried about the public, the electorate, voting on something which they do not understand. How patronising a statement is that? I had to remind him yesterday during Question Time something about the principles of democracy. There is nothing more principled in democracy than a referendum. The democratic principles apply and that is why we have elections. We ask the people to vote, to give a decision on what they want to see happen and that is what the proposition is all about. The Senator is worried about a relatively small turnout and I think we average around about 30 per cent Island-wide at the general election, but we are prepared to accept that result. We are prepared to accept it because we should take more note of the people who show an interest and want their views known than those who choose to abstain and have no interest in the political process, or in this case, in the role of the Bailiff.

[11:30]

I think it is important we take note of people who are showing an interest in these issues rather than the others. I think no matter what the turnout is, the result of the referendum would be legitimate. Deputy Brée said that this was a clever proposition or a clever amendment. I disagree totally, Deputy. I think it is a cynical amendment. I think it is a wrecking amendment. Can I remind Members about the Venice Commission? We heard a lot about the Venice Commission a few months ago when we were discussing reform of the States. What do the Venice Commission say about referenda? Their guidance says: "It is advisable not to provide for a turnout quorum and it is advisable not to provide for an approval quorum because that risks involving a difficult political situation if the draft is adopted by a simple majority lower than the necessary threshold." If we have in this referendum a 40 per cent turnout and 35 per cent of those support the Bailiff remaining in the dual role, it fails because we have not reached a 50 per cent turnout. As the Constable of St. Mary reminded us a few moments ago, people are still upset about us not accepting the result of the last referendum. If we allow this to go ahead and we have the referendum, they are going to be even more upset and you will have lower and lower turnouts. We agreed last year we shall have in position very shortly the Referendum Commission. If Senator Bailhache's proposition is adopted, that will be referred to them for advice. One of the advices they can give us, if we ask them so to do, is should there be a threshold on turnout, and if there is, what should it be? I think they will probably give us better advice, certainly I am convinced they will give us better advice than Senator Ozouf is trying to do this morning.

#### **2.4.10 Deputy A.D. Lewis of St. Helier:**

Briefly, I have just been looking at what other countries do when it comes to constitutional change and it would seem that the vast majority of countries, both in the Western world and others, when there is a major constitutional change, they do expect more than 50 per cent in terms of result, but not in terms of turnout. Although I can understand where Senator Ozouf is coming from here, it is an impossible dream. Unfortunately, at the moment, we all know that voter turnout is low. If he had come forward and said: "To make a constitutional change of this kind, then it should be at least 60 per cent of the electorate, of the vote, in favour to make the change" I could possibly have bought into that. There are a number of examples. For example, in Australia they have had 48 referenda, of which only 8 have succeeded. There they have to have a double majority. What that means there is that 4 of the 6 states have to say yes and if it is less than that, it does not go ahead. As a consequence, they have only won 8 of 48 referenda. I think there is some bit of cynicism there as well, in that the Government did not necessarily want these things to be won, so one has to look through that. Likewise, in the E.U. (European Union), the Council of Europe, for example, you have got to have 55 per cent of the Assembly there before you can make a constitutional change. In that, 65 per cent of the country's representatives have to be there voting at that time. There is quite a high bar when you make constitutional change. I know that is what the Senator is trying to get at, but we have to be realistic as well. What he is suggesting is just not realistic. Had he come forward with something that was realistic, I would have definitely supported it, because we all know what has happened in the U.K. with regard to Brexit, a very narrow margin and a completely flawed campaign, in my mind and many others, and a very, very small margin to make a major constitutional change. In my mind, that is wrong. But we are not talking about that, we are talking about something that is not achievable, so I would suggest that this is not the way forward and I think we should revert back to Senator Bailhache's laudable suggestion of a referendum, one that can work and people can have their say. If they choose to turn out, great; if they do not, that is a matter for them. In the last referendum, those that turned out in their numbers were people that were genuinely interested in what we do in here. Those that were not interested did not turn out. Those that were emotionally engaged with that issue did vote in a particular way that was more emotionally driven than based on the facts, but the majority of people that voted in that referendum studied the issue, studied the information given to them by the Commission and made informed decisions based on that information and, yes, a bit of emotion too. We did not say how many had to turn out. We gave the public that opportunity to decide that themselves. What we did not do, which is what the Constable of St. Mary has eloquently said, we did not take any notice of what they said, we did not implement the result of that referendum. That is haunting us now. It is often mentioned to me and it has been in recent days because this subject was raised yet again. Approach a referendum with caution. If we are going to have one, listen, observe and take the result and do something with it, but that is for another day. Today we are debating an amendment which I do not think has any legs, because it is not appropriate to what we currently know happens in the Island, which is unfortunate. I would urge Members to vote against it.

#### **2.4.11 Senator P.M. Bailhache:**

I will only speak very briefly because I completely agree with what the Constable of St. Clement said in his speech, but I think it could be expressed even more strongly. In the 2013 referendum, 26 per cent of registered voters cast a vote. In the 2014 referendum on the Constables - and this was a referendum held at the same time as a general election - only 39 per cent of registered voters cast a vote. The result of the amendment is this: suppose 49 per cent of the registered voters turned out to vote in this referendum, which is higher than we have ever achieved before, and every single one of those voters voted in favour of keeping the Bailiff in the States, that would still be of no effect. The Chief Minister's proposition would continue and the Bailiff would be out. Senator Ozouf, I have to say, knows that because I think it was Deputy Maçon who proposed the relevant amendment in 2013 to introduce a minimum participation rate. In the debate around that proposition, Senator

Ozouf said this: “I am afraid, given the track record of elections in Jersey across the board, added to the electoral register overstatement number” that is another issue “50 per cent is not going to work. We have set ourselves up for failure. I think that that is a very serious issue and I would say that even more strongly in the amendment debate on the 50 per cent. It cannot be reached; it will not be reached. It is setting up to fail.” Senator Ozouf knows that if his amendment is adopted, it will render the referendum entirely nugatory. What would that do to democracy in Jersey? People are not stupid. They would realise that voting in the referendum, if they wanted to keep the Bailiff as the President of the States, was futile. I think it would make people even more despairing of their ability to make their voices heard. Senator Ozouf is wrong to suggest that my amendment seeks to create a binding referendum. It is no such thing. Nothing would prevent any Member bringing back a proposition in the new Assembly after May. The only advantage of that would be that Members would be voting against a knowledge of what the people wanted, assuming they had voted to retain the Bailiff. If they voted not to retain the Bailiff, then of course there would be no further debate. I think this is indeed a cynical attempt to render the referendum of no practical effect. If Members do not want a referendum, so be it, but let us not have a farcical pseudo-referendum.

**Senator L.J. Farnham:**

Senator Bailhache has covered the point I was going to make relating to the difference between the turnout at the 2014 referendum with the one held separately.

**2.4.12 Deputy G.P. Southern:**

I have just been reminded by colleagues this is just on the 50 per cent. What is that 50 per cent about? That 50 per cent is a wrecking amendment to make sure that the main proposition does not go through, as indeed the amendment that it is amending is also a wrecking amendment to make sure that we find a way to not do what the Chief Minister wants. That is the reality of where we are. We are playing political games. We know that we, as representatives, are in a representative democracy, but whenever we find things difficult, especially on complex issues such as this one is, where our Chief Judge is also in charge of the Assembly and we are told by the entire world, apart from Guernsey, that this is fundamentally, legally, jurisprudentially wrong and we have ignored it for so long and we are sitting on our bottoms trying desperately to ignore it while we do and we continue. Quite frankly, it makes me feel quite remarkably sad that we cannot get hold of this and we have got to go to that devilish mechanism, the referendum. We have seen the results of that in the U.K., where voters were completely lied to, on both sides, fair enough: “I will lie better than you.” We are so frightened and scared of what our prospects were that we got a result, which was based on fully informed consent, was it? It was not. There were lies going around all over the place. The proposer of this amendment, the amendment to the amendment, says that what we need is a fully organised campaign with honesty and truth out there so that people can understand and then we can trust their vote and they can trust themselves to vote, because they will understand it properly, because we will have told them clearly and without bias what the issues were. False laughter, I should say. The reality is no, we are playing games today. We may take all day playing those games. We will come to a conclusion by the end. My instinct, my brain tells me to vote against this one, to vote against the next amendment, because they are both wrecking. They are just saying: “Do not make any progress” and I shall be voting for the main proposition and nothing else.

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak on the amendment to the amendment? If not, I ask Senator Ozouf to reply to the debate.

**2.4.13 Senator P.F.C. Ozouf:**

Perhaps I have achieved my objective, because I wish no disrespect, but we have been here before. The Constable of St. Helier brought a proposal for an elected Speaker. It was amended by Senator Bailhache to put a referendum in and it was withdrawn. Senator Bailhache knows exactly what he is doing with his underlying proposition. He knows exactly. He will never be moved on his position of effectively having an elected Speaker, I suspect, and he wants to have a referendum which is designed to play at the heartstrings of people in terms of their view, just as I explained the media did yesterday. I may have put the wrong test in. I accept that. Deputy Maçon was correct, and he reminded me last night, kindly, that in fact he had brought forward a test for a lower test. Indeed, I would remind Members that whatever the design of the Assembly today on a referendum, those matters will need to come back to the Assembly, they will need to be referred to the Electoral Commission or whatever, the Referendum Commission or whatever we are having - I did not know that this thing existed, I must say - and then maybe it could be improved. Maybe a 50 per cent turnout is much too high of a bar. I do not wish to play with Members, I do not wish to waste Members' time, but it is important that the arguments about what is going on have had the opportunity of being ventilated, not in an emotional way, which was previously done when the Constable of St. Helier proposed his proposal for an elected Speaker. We have a vote on a referendum which just went through and then effectively the proposition was wrecked. We are here again.

[11:45]

I do not particularly like my amendment. Members can see I struggled with it. I struggled because I wanted to basically do it. I did not understand. I still do not understand the issue of whether or not this thing is binding. Apparently it is making the proposition null and void, but then it is still up to the Assembly to decide, so we are back to square one. I just simply think that this whole thing is flawed. What I do say to Members is that to vote in favour of my amendment does give the opportunity of setting a barrier, a bar. It may be the wrong bar. That can be revisited in subsequent legislation when it comes forward, but at least it has some sort of control. I accept that in the rush to get something in and approved, I probably put the wrong number in. I accept that. I must say that it is only the Deputy of St. Peter who holds in this Assembly the most legitimacy in terms of her electorate, because she has got more than anybody else. She has got 37 per cent of her voters, so that is obviously very good, so well done to the Deputy of St. Peter. Others are not far behind them, but I will not go through them, but effectively I understand exactly the point that Members are making. We have appalling voter turnouts; we have appalling results in terms of previous referenda. The last referendum on the constitution of the States had 3 options. Option B only got through because of the alternative voting system. How legitimate was that, in the benefit of hindsight? One has to really question it. The U.K./Scottish referendum had a voter turnout of 85 per cent; the U.K. referendum had a voter turnout of 72 per cent. We had, in our last referendum, a turnout of 26 per cent and only 10.6 per cent of those people voting voted for the option that we then rejected. It is ridiculous. It is a tragic state of affairs and goes to the very heart of the problem of referenda and our political system. I will not take Members' time up any longer. Obviously Members know exactly what is going on. This is an amendment to try to improve a wrecking amendment. That is what it is doing. If I have served any purpose in that, then I am pleased to have done the service of this Assembly. I will take with good grace and without any sense of personal criticism the thrusting remarks of the Constable of St. Clement, who I like very much and enjoy an odd sweet across the ... **[Laughter]**

**The Greffier of the States (in the Chair):**

That is not in order, I am afraid, to have a sweet.

**Senator P.F.C. Ozouf:**

I know. I am afraid the cameras can see it now, Sir. It is a problem. We are going to have to stop that, Constable. But I am trying to effectively sweeten what is effectively a completely unpalatable referendum. Members know that and I ask Members to consider the fundamental issue of tests. The number can be changed in subsequent referenda when the legislation comes forward, but to have no test at all would be simply, I think, an extremely dangerous situation should this Assembly agree to have a referendum at all. We will get back to that debate in a minute. I move my amendment and ask for the appel.

**The Greffier of the States (in the Chair):**

The appel has been called for on the amendment to the amendment. If Members would like to return to their seats, and I ask the Greffier to open the voting.

**POUR: 8**

Senator P.F.C. Ozouf  
Senator I.J. Gorst  
Deputy of Grouville  
Deputy M.R. Higgins (H)  
Deputy J.M. Maçon (S)  
Deputy L.M.C. Doublet (S)  
Deputy S.M. Wickenden (H)  
Deputy M.J. Norton (B)

**CONTRE: 39**

Senator P.F. Routier  
Senator A.J.H. Maclean  
Senator L.J. Farnham  
Senator P.M. Bailhache  
Senator A.K.F. Green  
Senator S.C. Ferguson  
Connétable of St. Helier  
Connétable of St. Clement  
Connétable of St. Peter  
Connétable of St. Lawrence  
Connétable of St. Mary  
Connétable of St. Ouen  
Connétable of St. Brelade  
Connétable of St. Martin  
Connétable of St. Saviour  
Connétable of Grouville  
Connétable of St. John  
Connétable of Trinity  
Deputy J.A. Martin (H)  
Deputy G.P. Southern (H)  
Deputy J.A. Hilton (H)  
Deputy J.A.N. Le Fondré (L)  
Deputy of Trinity  
Deputy K.C. Lewis (S)  
Deputy M. Tadier (B)  
Deputy E.J. Noel (L)  
Deputy of St. John  
Deputy of St. Martin  
Deputy R.G. Bryans (H)  
Deputy of St. Peter  
Deputy S.Y. Mézec (H)  
Deputy A.D. Lewis (H)  
Deputy of St. Ouen  
Deputy R. Labey (H)  
Deputy S.M. Bree (C)  
Deputy T.A. McDonald (S)  
Deputy of St. Mary  
Deputy G.J. Truscott (B)  
Deputy P.D. McLinton (S)

**ABSTAIN: 0**

## **2.5 Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment (P.84/2017) – third amendment (P.84/2017 Amd.(3)) - resumption**

### **The Greffier of the States (in the Chair):**

We move back to the debate on Senator Bailhache's amendments. Does anybody wish to speak?  
Deputy Kevin Lewis.

#### **2.5.1 Deputy K.C. Lewis of St. Saviour:**

A very good debate this morning. Pardon for the croaky voice. Should Senator Bailhache's amendment go through, so be it. However, I would ask just one thing. As opposed to the last, well, I think I can only describe it as a dog's dinner. Can we please have absolute clarity and the referendum be precise and concise? I do not want to see option 1, 2, 3, 4 or A, B, C and D. Could we just have the referendum saying: "Would you like the Bailiff of Jersey to remain Speaker or President of the States Assembly, yes or no?" and I will be satisfied with that.

#### **2.5.2 Deputy S.Y. Mézec of St. Helier:**

Referendums give you results. They do not give you answers. That is, I think, the theme of what I want to say throughout my remarks in this debate they give you results. They do not give you answers. It is for that reason that I am not a fan of referendums. I think they are often used as a convenient excuse for politicians who lack conviction to pass the buck. That is certainly the case in Australia where they have recently had a very nasty and divisive campaign in their referendum on same-sex marriage. Thankfully, they reached the right decision and I congratulate that country and its voters for doing that, but of course there is no guarantee that the result will be implemented. So, referendums I think can be used in a bad way like this. For me, the legitimate role of a referendum is to decide an ultimate question to try to maintain some sort of civil order during a big transition in which people are incredibly divided. The example that I use there is Northern Ireland where they had a referendum on the Good Friday Agreement, something which helped bring an end to decades of conflict there and established the principle of consent between both sides in how they were governed there. Contrast this with the recent referendum in Catalonia, which has been an absolute disaster because of 2 government sides not prepared to work together on it. It looks like things are only going to get worse in that jurisdiction. What referendums are not for are to infringe the rights of minorities or to justify bad democratic practice. Now, there are examples in the United States where referendums are frequently used to infringe the rights of minorities, where in some states they bring forward propositions on gay rights or bringing forward referendums to institutionalise oppression against transgender people. In my view, that is not a legitimate use for a referendum. They are also not to be used, in my view, to justify bad democratic practice. So, I will tell the Assembly something they might not be aware of here. In Switzerland, women did not have full, equal voting rights to men until the 1990s. Yes, that is 100 per cent true. In local elections in all parts of the country they were not fully equal until the 1990s. The reason was because every time there was a change to the franchise it had to be put out to a referendum in which only men could vote in it. Now, that is an example of it being used to infringe the rights of minorities or to justify bad democratic practice. That is what this referendum would be. It would be an opportunity to justify bad democratic practice. If the public come out and vote to support maintaining the current situation, that will not mean that Jersey no longer has problems with a lack of separation of powers. Those problems will continue and Jersey will have to suffer the negative effects to our reputation for years to come as a result of that. I have always used the example that if we had a referendum on taking away the vote from left-handed people and all the right-handed people came out and voted to take away the vote from left-handed people and the majority won, would that be a legitimate referendum? I would hope that most of us would consider it would not be. So, I think that this is offering us an opportunity to pass the buck in a way that I do not think is acceptable. In the debate

on the previous amendment, the Constable of St. John said something along the lines of anyone who opposes a referendum is putting themselves before democracy, and I think comments like that demean this sort of debate. If Members will forgive me, I will use myself as an example because every single election manifesto that I have been elected on, and the manifesto that I was not elected on, although only just, I said that I supported separation of powers and splitting the dual role of the Bailiff. So when I vote for an unamended proposition I am doing exactly what my voters in my constituency gave me a democratic mandate to do. So it is because I support democracy that I will be voting for that proposition and voting against a referendum. I really do not think comments like the one made by the Constable of St. John do this debate or this Assembly and its reputation as a whole any favours. The Constable of St. Clement said that in his view - and again this was in the previous debate on election turnout - it would be right to pay more attention to those who show interest and turn out to vote. I do not agree with this. I think that this is an Assembly for the entire Island, not just the 30 per cent of people who come out to vote. It is right that we consider the 70 per cent of people who for whatever reason decide that they do not want to engage in our democratic process. There will be some people within that 70 per cent who do not engage because they are just innocently not interested, perfectly happy with how things are, and they are happy to just go along with what everybody else decides. But there is a proportion of people of those would-be voters who choose to abstain who do not vote because they think it is a waste of time. The Constable of St. Mary I think very ably made the point before about the rejection of the previous referendum by this Assembly. That certainly is a widespread view among the public. We risk that happening all over again. Essentially, giving this decision to a small minority of people ... Senator Ozouf referenced the 2013 referendum where something like only 10 per cent of registered voters had supported the winning option at the end of it. I really think this is not good democratic practice. It is a farce and it is especially a farce when this Assembly has the opportunity to make progress on the back of several reports that have been produced. No matter how many more consultations, how many more reviews we have, it will always come up with the same decision, and to have a referendum on it risks putting off the inevitable. I think that would be a spectacular waste of money and I think it would damage people's faith in politics. Senator Bailhache said in his opening speech for this amendment that he considered referendums to be used for constitutional issues. I find this to be very strange because, of course, Jersey has made constitutional changes without reference to a referendum before. We never had a referendum on whether we would have a general election day. I happen to think the move to a general election day has been a bad thing. I think it has contributed to more uncontested elections and reduced voter turnout. We never had a referendum on reducing the number of Senators. Some people think that was right; some people think that was wrong. I happen to think that that was fine because I think it made the system more manageable, but there will be others who completely disagree with me on that. We never had a referendum on whether Jersey, which has an established state church, would leave the Diocese of Winchester, despite hundreds of years of connections there. That is something I think is a significant constitutional issue for the Island in which there was no referendum. The U.K. had no referendum on establishing a Supreme Court. That was done because they believed that in their system, where the House of Lords was acting as the Supreme Court for the U.K., there was an unhealthy crossover between law makers and those who presided over courts. That was done without a referendum. It was seen to be the natural thing. One reason they were able to do it without a referendum is because the country had elected by a landslide a government that had an electoral pledge that it would get on with that. While I mentioned my own manifesto previously, while I may disagree with the Chief Minister on many political issues, all credit to him that he made this an issue in his own campaign. He was very clear on where he stood and he topped the poll. I consider that a mandate to get on with this because it was one of those policies that he was clear on. The European Union referendum, that absolute fiasco, was an example of the uninformed asking the unprepared to deliver the undefined. Does Jersey want that? I really, really hope we do

not because it is proving to be a disaster in the U.K. and it is something that the Island could do without when we have so many clear examples of reports that have spoken of the importance of the separation of powers and the Commonwealth standards.

[12:00]

The one point that Senator Bailhache has made that I find interesting - and I want to hear him address this in his closing remarks - is he spoke of the role of the Bailiff as being the guardian of the constitution and the Island's privileges and how that could not continue if the Bailiff was not in the States. Well, I want to ask him: what does it mean to be the guardian of our constitution? Let us examine a scenario where perhaps a Government in the Island was going to try to get this Assembly to pass laws that were in direct contradiction of the Island's historic privileges. Perhaps innocently or perhaps negligently the Government was attempting to do something. What would the Bailiff actually do in that situation? Would he sit in that chair and say: "Excuse me, I am the guardian of the Island's privileges and what you are doing contradicts that. I am going to stop you"? No, of course, he would not because he cannot. Well, he may try, who knows, but that I think most people would consider to be a democratic fiasco. It would be completely inappropriate. The role of the guardian of the Island's privileges or constitution or whatever that is does not entitle an unelected Crown officer to overrule a democratic Parliament. So, were he to no longer be President of this Assembly and were he to continue his role as civic head of the Island, which this unamended proposition guarantees, there is no risk on a practical basis to what that means whatsoever. So, I do not think there is that much more to say on the principle of this referendum. The one final thing I want to say, and it goes back to the point I made previously about the idea that we should pay more attention to the views of people who vote than those who do not, I have news for Members of this Assembly who may not realise it, but this subject will not captivate the public. They will not be interested. The number of people who will come out to vote will be absolutely minimal. You want to go round my constituency with me and go to places like Journeaux Court or Cherry Orchard Court and knock on people's doors and say to them: "What do you think about the cost of housing here?" They will have something to say. "What do you think about the problems many young people face with access to higher education here?" They will have something to say. "What do you think about the dual role of the Bailiff?" Nothing. The vast majority of people will have nothing to say on it at all. It is an item of interest for people whose lives are dominated by their interest in politics. That is why it is a subject that matters to me because politics is a huge part of my life. That will be why it is a subject that matters to Senator Bailhache because politics is big in his life. But to ordinary people there are so many more important issues and if we were going to put something out to referendum to try and captivate the public's interest, it should not be on something that most people will have no interest in whatsoever. Who presides over this Assembly is ultimately a matter for this Assembly. **[Approbation]** The person who sits in that chair must be somebody who we have confidence will be able to do the job properly and who we can sack if we have to and have to make no other considerations for their other roles, whether it is as civic head of the Island, whether it is as Chief Judge. It is a matter for this Assembly and for no one else, in my view, and that is why I think that Jersey can go ahead with this like a mature democracy capable of deciding its future and without having to use these strange antidemocratic tactics, in my view. We can join the 21st century and we can have a government system not just on the dual role of the Bailiff but there are other things that need to be considered as well, other issues to do with what was recommended in the Clothier report. I would be very proud to say as an Islander that we did not need to go through any of these divisive and nasty referendum campaigns like they have in other countries because the politicians of this Island had the courage of their convictions. They knew what was right, what was wrong, what was democratic and what was not democratic. They got on with it. They did not waste that money on a referendum that no one would engage with and instead spent their time debating the issues that matter to people, solving those problems and



making ordinary Islanders' lives better. This is a complete distraction and I urge Members to vote against it.

### **2.5.3 The Connétable of St. Mary:**

That was a very powerful speech I think Deputy Mézec gave then. I think he is partially correct when he says that people are not interested in this matter. Certainly, people have been telling me recently, over recent days when I have been asking them, surely we have more important things to consider than this. But then they have also told me that they have lost faith in the Members of the Assembly, more accurately and specifically members of the Government, I think. But not one of them has said they have lost confidence in the Speaker, which I think is quite interesting. I will make my position on this quite clear. I am finding it increasingly hard to support a referendum on this or any other matter. It is not a question at all of not being democratic. It is not that I do not want to know what people think, but I am more concerned about whether they are coming forward with their ideas based on an understanding of the actual position and the implications. Obviously, we in this Assembly are in a very privileged position and we must not ever forget it, that generally most of the time - although sometimes it is evident we are not - we are in a better position to grasp the facts and a better position to have the information at our fingertips than are members of the public. That is one thing. I need to know that if we are going into a referendum the public are making their decision based on sound fact and an understanding of it. I also need to know what the Assembly will do with the knowledge that we get from a referendum. Senator Bailhache has confirmed a few moments ago that he is not trying to make a binding referendum, but his amendment does seek to ensure that whatever the result of the vote today it would only really be triggered by the result of that referendum. So, in some ways it is binding. We are saying now that whatever the public decide we will accept it. If they do not make the decision that is specified, then the proposition is void. Now, that is all very well to say that in that respect we will be listening to the public this time, but actually no because whatever we decide today we are reliant on legislative change. At that point, we can always say: "Yes, okay, that is fine." We can always change our minds, and that is what the public are so wary of. I will say it again. The public were bruised by the way that their views were not accepted and I think that is something that we really have to take into consideration. Briefly, if I am going to support this referendum I need to hear from the proposer of the amendment. I need to hear how the proposer envisages engagement and education being handled in the run-up to the referendum. Unless I can get some real cast-iron ideas on that, I cannot support this. I am also minded that we have seen what happened in the Brexit vote. We have seen how the campaigns were run there. We have lessons that we can learn from that. It is human nature. Both sides of any referendum question want to win, so how can we be guaranteed that the campaigns are purely informative? They are bound to be biased. It is human nature and that is the difficulty I have to overcome. So, I need reassurance, otherwise I am afraid I have to be true to myself and say that no, I was put here to make a decision.

### **2.5.4 Senator L.J. Farnham:**

I think I disagree with the previous 2 speakers when they say that this is of little interest to the majority of Islanders. On the spectrum of political subjects that we debate, there are always different levels of interest. Some people are very interested in something; some people are not. What I do think, though, is that this sadly has become something of a side show. I agree that we should address this, but I would rather be spending this time on more productive matters such as the provision of affordable housing, such as the continued growth of the economy to benefit Islanders, such as controlling and managing better our population. These are the things that we should be spending days on. But, having said that, I also want to try and reconcile something. Unless I misheard it, if we look back to the 2013 referendum with the 26 per cent turnout, I remember Deputy Mézec who was heavily involved in that referendum. The Deputy - he was not a Deputy at

the time but subsequently - was fairly outraged at the result, albeit only 10 per cent of those that turned out to vote voted for the option. The Deputy and other Members were outraged that it was not put into practice by the Assembly, and probably quite rightly so. Because with hindsight I think many of us have learned to ignore the public in a referendum is the wrong thing to do. I would hope it will be a long time before the Assembly does that again, which is why I welcome the changes to the Referendum Law because I hope that future referenda can be better structured. I refer to Deputy Kevin Lewis's comments. Why would we not want a referendum? Why would we not want to ask the people of Jersey about this? I think we rectified this slightly when we asked about the Constables at the last election, and that was a successful referendum because we listened but we also got a very credible turnout. I say credible; we had the best part of 40 per cent turnout and that reflected itself, as Senator Bailhache reminded us, in the Constables referendum. Now, that is credible. Our elections here are credible. People in Jersey choose not to vote and I would like to see more people turning out to vote, but that is about us engaging them in politics. We are not going to engage them in politics by spending days talking about such, although these are important issues at least, at this time. Deputy Mézec and the Constable of St. Mary also touched on the issue of Senators. I think it was a big mistake and it was a real election issue in 2011. The electorate were not happy that this Assembly, without their permission, consent or even consulting with them, removed 4 Senators. We are at risk perhaps of making the same mistake again because the removal of those 4 Senators set the Assembly in a direction that has become almost unsustainable when it comes to electoral reform. Because the Assembly also voted on having a single election day before the Assembly agreed on the makeup of the Assembly and that has led us into this conundrum. So, I think it is perfectly right and fair to ask people what their views are on this issue and I think Members will be surprised. Because while this is of no interest to some Islanders and of little interest to other Islanders and of middling interest to some other Islanders, it is of great interest to a lot of Islanders. Let us not go back and make the same mistake as we did with Senators with the Bailiff. Let us ask them. Let us not be afraid of the results over the referendum. I honestly believe that the majority of Islanders want to retain the Bailiff as Speaker of the Assembly. That is my view right now; it might change. What I do undertake, having learnt from previous mistakes of the Assembly, is that if we do have a referendum and we do ask the people their views on this, then whatever the outcome is, we should follow it. I undertake that even if the referendum votes to remove the Bailiff as Speaker of this Assembly, although right now I disagree with that, I undertake to go with that. That is what is meant by Members of this Assembly putting the Islanders' interests before their own. So, let us get on and let us have a referendum. Let us ask the Islanders what they think about this important matter.

#### **2.5.5 Deputy J.A.N. Le Fondré:**

I am very glad to follow the last speaker. On this occasion I am not going to be agreeing with any or certainly not many of the views of Deputy Mézec and, oddly enough, I might be agreeing with one or 2 views of the Chief Minister. Deputy Mézec does not think it will capture the imagination of the public and finds that a referendum would be an expression of ... I think it was antidemocratic was the expression used, which I find slightly bizarre.

[12:15]

How can going to the population as a whole be antidemocratic? The one view I will agree with on the Chief Minister is he said there are strong views on the subject. He referred to: "I value the role of the Bailiff as many across the community do." That community is our electorate, is our Island, and on something like this we should be giving them the chance to express a view. Oddly enough, I do agree with the comment of the last speaker in terms of the 4 Senators that were removed. I do not know how I voted. I suspect I voted for that because I was in the Assembly at the time. How much grief have I had, not necessarily as an individual but as a Member of this Assembly, for

removing 4 Senators without going and asking people? I will tell you what, Members, we will get a lot of grief if we remove the Bailiff - that will be how it will be seen - without going back to the electorate. I am very clear on my mandate. My mandate was that I support the Bailiff in this Assembly. Very clearly on all the various documents I have produced that is what I say. To be fair to Senator Bailhache, he has been quite clear. Oddly enough, and I do not even know how I found it, I was playing around on Google the other day and he goes back to 2010 when he was suggesting that if the role of the Bailiff came up that it should be a matter for a referendum. This is not a wrecking amendment. This is a deeply held view that this is an important constitutional matter and, therefore, it is of such importance it should go to the Island. Now, let us go back to why it is a constitutional matter. We have heard all sorts of things about why a referendum will not work. Apparently, women did not have the vote wherever it was. That is just fog. We know that. We are not in Switzerland in the 1990s. I do agree with the comment it has to be a yes/no vote. That was very clear on the Venice Commission. That is why the damage that occurred on the earlier referendum ... which was not the last one. I had to correct somebody the other day. The last referendum was the one on the Connétables. I would suggest that was a better outcome from the point of view of engagement with the public and it was a clear choice. I very much reiterate, before I go to the constitution, that if this amendment does go through I will vote for the main proposition. If it does not, I will not. That was different to where I was last time round because last time round I thought I would be very clear with my electorate, if you like, but I think it has got to the point this matter does need to be decided. So, be very clear. For me, this is not a wrecking issue or anything along those lines. If this is voted through, I will vote for the main proposition. If it does not, I will not. Going back to the constitution, not only is it in the States of Jersey Law 2005 under constitution of the States and saying that the States are constituted as follows and the Bailiff is the first item in there, it is under Standing Orders as well. We know that when we get to that final push of the button today, it has to be an absolute majority of this Assembly. Why was that Standing Order put in? I was present at the time. It was the late Senator Mike Vibert that lodged it about 10 years ago. What he said was: "My proposition seeks to introduce a similar safeguard in relation to propositions relating to the composition and election of the States. I believe that any changes to issues of such constitutional importance should have an even greater safeguard." So, the reason we have this extra level even within ourselves is because it was deemed to be that important. We have previously said or indicated from both the earlier referendum, which did not go so well, and also the Constables that constitutional changes should go to the electorate. Let us be consistent. We did actually approve that principle in 2013 by 32 votes when the original principle of the referendum on the Bailiff was agreed. If it helps just to remind a couple of people, Senator Routier voted for it. The Connétable of St. Clement voted for it. The Connétable of St. Lawrence voted for it. The Connétable of St. Mary, the Connétable of St. Brelade, Deputy of St. Martin and Deputy Bryans, and those were all people sitting in their posts now. We have already done the referendum on the Connétables because, again, that was a constitutional change. It was also a change very important to the community. The Bailiff is just so much more than just who we have as Speaker. Before I go on to that slightly - that is around the importance of the role and the importance of the role to the community - let us just go back. Members may recall that my Scrutiny Panel ran a Mori poll on electoral reform earlier this year. The one clear thing that came out was that 87 per cent of the public that we spoke to, which was over 1,000 people, felt there should be greater communication with the public on matters relating to significant changes to political representation and governance. At the time, 71 per cent wanted a referendum on the changes that were being proposed at that time. I would, therefore, suggest it would be a similar level of desire for the removal of the Bailiff. Now, I am not going to cite too many articles, but there have been a number of articles in the press recently, again about the importance of this role to the writers. I therefore reiterate again because it is an important role that is why we should be going to the community. The writer I want to quote says: "States changing an arrangement which has stood the test of time on the strength of academic

idealism is making us a hostage to fortune. One has only to remember that the well-intentioned inventions based on the pursuit of an ideal can lead to unforeseen consequences. The change from our system of consensus and committee government to the autocratic ministerial government is thought by many to have created an inferior form of democratic government where the role that many of the elected representatives play has been diminished in favour of unelected consultants from outside the Island and from the finance industry.” I will not name them but this is a senior person who I would have said was on the fringes of the finance industry some time ago. “Regrettably, the stock of the politicians is at a low ebb, which is not surprising when the credibility of certain politicians has been subject to adverse comment, dubious statements and practices. Against this background, it is not surprising that there are those who are wary of substituting in such an important office an untried political appointee, an appointee who may not reflect the allegiances or perceptions of the majority of the electorate for a tried and tested apolitical person [this is the reference to the Bailiff] who has served an apprenticeship, is professionally qualified and experienced in matters of state. One has only to follow the activities of Mr. Bercow, the current Speaker of the Commons, to realise that some persons from the political ranks are not able to be other than politically motivated in discharging their duties of office when they should be impartial.” The writer sums up: “Our Bailiff as our civic head is the one constant person in a changing political scenario in whom we can rely upon in times of trouble, confident that he will truly represent the people of Jersey without fear or favour and uphold our heritage, judicial rights and liberties.” To an extent, I would argue that takes us down to the role of guardian of the constitution. In that instance, he is saying let us leave well alone. Now, if on that basis we vote to remove that Bailiff without reference to those type of individuals, and I would suggest that view is representative of the people who I have spoken to in this time, I think the credibility of this Assembly will fall even further. I do want to touch on the issues around ... actually, before I go there, a final comment about whether it is important and constitutional. The Chief Minister in his actual report refers to it as constitutional, in fact as does P.P.C. It is important and it is very important to how we operate. The issue was raised about the guardian of the constitution. I would argue again that particular role has an impact on all Islanders. Sorry, we seem to be having a separate debate in the corner. It is our constitutional position that allows Islanders to have a direct say in how this Island is run rather than just electing one M.P. (Member of Parliament) to represent us in Westminster. It is the Bailiff who protects that role. What I do want to do is just refer to some comments because I would argue it is the role of the Bailiff as President - which is what we are discussing and which is, therefore, the subject of the referendum - that protects that role. Ultimately, there have been a couple of instances this year. We have had the Chief Minister trying to interfere in the appointment process for judges. That was earlier this year and resulted in a Corporate Services comments paper on the matter. I understand there have been other instances as well. All it takes is for law to be drafted that places our law or part of it to be subservient to another law somewhere else. It could be as simple as a Motor Traffic Act, for the sake of argument, that says the Minister will have or will adhere to the rules of the ... I have no idea, the U.K. Motor Traffic Act in the U.K. because it is a shortcut. Okay, that probably does not work as I phrased it but take the principle, please. What I want to refer to is a comment that was made. I think it is in one of the documents we have had from P.P.C. It has certainly been related in the past. This is a quote from one of the former holders of the office. I think it was Sir Michael Birt. It says: “It is essential from the point of view of preserving Jersey’s constitutional autonomy that day-to-day practice is consistent with that autonomy. A decision taken by Jersey for short-term advantage in relation to a particular matter may create a precedent which weakens Jersey’s long-term constitutional position. It is, therefore, of vital importance that the Chief Minister of the day is alerted to any possible implications for the constitutional relationship when a particular matter arises. He cannot rely on his civil servants for this as nowadays they tend to be appointed from the United Kingdom and are, therefore, unfamiliar with the subtleties of the constitutional relationship,

and, in any event, as non-lawyers they would not be in a position to advise on the complexities of that constitutional relationship.” He then talks about why the Bailiff is particularly well suited to provide advice on the constitutional relationship because he would usually have previously been the Attorney General. He will be steeped in the nuances and subtleties of that constitutional relationship. There is a comment on Carswell: it was important that the Bailiff should continue to occupy that role. What the writer then says is: “The difficulty is that it is hard to see how this role could continue if the Bailiff was simply Chief Justice. The underpinning of his role in official correspondence is that he is President of the States.” That is why I think the position is sometimes underplayed: it is just the Speaker we are changing. To an extent, what does the Speaker mean? If one looks at Westminster very briefly, the Speaker can suspend M.P.s. If one looks at the U.S. (United States), I think the House of Representatives Speaker is something like third in line to be the President of the United States, appoints chairmen of committees and membership of committees. Now, the issue here is that I would argue we have an exceptionally impartial position at this stage because our President does not get involved in any of that. As President of the Assembly, he sees all legislation before it is lodged. He is, therefore, in a position to be able to use his professional skills to identify the types of issues on constitutional matters, and that is why I submit that the protection and guardianship of those constitutional matters is important for the public because it is protecting the identity and the independence of this Island. As I said, to an extent I am disappointed with those who say it is our decision and only our decision. It is true, it is ultimately the decision of this Assembly, but as I have hopefully outlined it is a constitutional late change under the law. I would suggest, and as has been suggested in correspondence as well, that one of the reasons that the ministerial system is not well viewed in many quarters is because of a perception of lack of consultation. There is a word I am not going to use; it is probably too emotive. Basically, decisions just go bang and they are not taking regard of the nuances of the views of the population. That is why I am saying it is not just our decision. I go back to that Mori poll that Corporate Services ran earlier this year. Those we asked were very clear: on matters like this they need to be informed and they want to have a say. As an aside, I was in St. Ouen on Saturday at a very good event.

[12:30]

There were parishioners there that I knew from St. Ouen who were very much of the view that they should have a say. It is all very well saying people are not engaged about it. When they realise what is in front of us, they get very concerned that they are not going to be asked their opinion on this matter. The analogy I use is that of a stool. We have talked about the various roles of the Bailiff. If it is a 3-legged stool, what is being argued about is: “Do not worry, we are going to just saw off one leg. Do not worry about the other bits; that stool will still be the same.” I am sorry, I think that is rubbish. By removing the Speaker role, the rest of the position of Bailiff will start to crumble and that stool over time will start to fall. The point there, to conclude, is surely the very point of democracy is taking account of the views of the people on important matters. This is clearly a constitutional matter. It is clearly a matter of huge importance when one erases 700-plus years of history at the push of a button. Islanders should have a say. In the view of Islanders it will be a change in a position that has been in place for over 700 years. That is an erasing of a position in history. It is erasing 700 years of history at the push of a button. Islanders should have a say and Islanders have said they want a say on this type of matter. That has to be the best democratic way ultimately and we will bring this Assembly further into disrepute if we do not ask them, as in the public, to show their views. In my opinion, that should be with a referendum. That should be held on the date of the May elections next year, which is outlined in the report to this amendment, and it should be a yes/no question. If that is the case, it will be clear. There will be a good debate at the time. The public will have decided and then the future Assembly can then implement the wishes of

that public at that time. I will support this amendment. If this amendment is approved, I will support the main proposition. If it is not, I will not.

#### **2.5.6 Senator S.C. Ferguson:**

Just a quick one to support the view that the public would like to have their say. The people I speak to, apart from colleagues in this Assembly who do support the removal, in the public I come across it is quite the reverse. They want their say, so I will be supporting the amendment. As for the other comments we have been having, what I do wish people would say and stick to is that the Bailiff is not the Speaker of this House, this Assembly even. He is the President and it is quite a different role. People who say that he is the Speaker have totally missed, as Deputy Le Fondré has said, the concept of how his role operates. I think they ought to spend their lunchtime going and looking it up.

#### **2.5.7 Deputy S.M. Wickenden of St. Helier:**

Firstly, when I look at this amendment - and I will try and stick to the amendment unlike other speakers - I am surprised how it got through. Because the main proposition that this tries to amend talks about selecting our own Speaker and this is asking for a referendum on whether the Bailiff should be President of the sitting. I think a lot of people have said if we do vote in favour of a referendum for this - and be careful what you wish for - the wording has to be careful as well because it has to be about the main proposition. It should not be: "Do you think that the Bailiff should no longer be the President of the States Assembly?" because that is not what the proposition is asking for. That will be an outcome if we vote in favour of the main proposition. The outcome will be that the Bailiff will stop being the President of the Assembly. The question should be: "Should the Assembly elect their own Speaker to preside over the States Assembly?" or something along those lines. The wording has to be that. Otherwise you are trying to make it emotive and we get back into the wrecking games and the political games. The proposition talks about: "Do we elect our own Speaker and our own Deputy Speaker?" If we are going to have a referendum and you want to vote either because you like the wrecking idea or you think the people of Jersey should have their say, it has to be worded right. It cannot be in these games that are just trying to pull on heartstrings in such ways. Senator Farnham said why should we not ask the opinions of the electorate. I go back to what Deputy Mézec was saying. They are not really concerned about who sits in that seat in here. That is for us to be concerned about. If we were going to have a referendum that the people of Jersey wanted, let us do it on the Minister for Treasury and Resources' Budget at the end because that will affect every single Islander, every single one of them. If we think that their questions are important about things that will affect and change their lives, let us do it on the budget because that is their taxes. I think that the previous 2 speakers will have egg on their face when they see the low turnout of a referendum. They will have to kind of apologise even maybe to say: "I got it wrong, they did not want their voice" because it will not be a high turnout; people are not concerned about this. This is a wrecking motion to try and just put it off or change it or try and affect the outcome in a different way. I will not be supporting this. I do not know how it was even allowed because I do not think it refers to the main proposition. I do not know why it was allowed to get through in the wording that it is. If we do go down this referendum route, make sure we get our wording right.

#### **2.5.8 Connétable A.S. Crowcroft of St. Helier:**

Much has been said on this and I am not going to repeat previous speakers, nor am I going to talk, as some have done, about the main proposition. I would urge Members though to be really honest here. If they really do not believe that we should change this ancient system that we have, then why do they not simply vote against the main proposition? It seems to me that the imposition of a referendum on the public is a very convenient way for some Members to avoid taking that difficult

decision because we have been here before and this is merely, for me, a repeat of a previous attempt to follow what I thought was important and what I thought was democratically important, which is a separation of powers. As an aside, it is quite strange to be called by Senator Bailhache not being a democrat if I vote against his proposition. Surely the whole point of those who support the election of a Speaker is they feel it is better for democracy. I think people should be very careful before they suggest that people who do not support them are not democratic. We are all democrats. We are all in this Assembly because we have been elected by the public. None of us, I believe, can fairly be accused of not being democratic simply because we feel that we want to get to the heart of the matter, which is to have a debate on whether we have an elected Speaker or not. The Senator was also, I think, unfair in that he characterised Senator Ozouf, who takes a real interest in this whole matter, of having a head full of buzzing bees. I thought that belittled the fellow Member in the research that he had done and his clear experience on the subject. I do not think we should be belittling each other; we do perhaps sometimes. I know I have made jokes about certain speakers of prolixity in the past, not looking in any particular direction. But I do not think it was fair on Senator Ozouf, particularly before he pursued his amendments, that Senator Bailhache described him as having a head full of buzzing bees. The Senator also said, in proposing this amendment, that this will put the matter to bed once and for all. I can assure him that it will not. We, of course, had a referendum about the right of the Constables to sit in *ex officio* capacity in our Assembly, effectively gerrymandering our Island in terms of the amount of political influence a person has absolutely depends on where you live. It does not even happen in Guernsey because they have their system right. If Members think that because we have had an election on keeping the Constables' automatic right to stay in the States has put that matter to bed they are completely wrong. It will keep coming back until we come up with a way of having a fair system that gives equity of representation in our Island. For the same reason, I think if we have this referendum, whichever way it goes, quite honestly I do not think it will make much difference but I think a lot of people out there will regard it as a burden, as a sideshow and, as Deputy Mézec said quite accurately, they have other things they would rather have a referendum about. Deputy Wickenden suggested one. I will suggest another, population. The public are really concerned about whether the Island can take continued immigration and have a referendum on that if you must. But let us not have a referendum on whether we have an elected Speaker or continue to use the services of the Island's Chief Judge. I do not think that will get the public's attention. The only people who will be interested are, of course, the people who have been contacting us and there have not been many who have contacted me, perhaps because they know my views, are the people who do not want us to change anything. Of course they want a referendum so they can ... and we heard it from Deputy Le Fondré, who used the words removal of the Bailiff I do not know how many times in his speech, and that is the line that we have taken for this referendum. Of course everyone says: "We do not want to remove the Bailiff. We do not want to remove the Lieutenant Governor. We do not want to remove the Dean." These people are all wonderful and they are part of ... these things, of course, are not up for discussion at the moment; the Dean is looking alarmed. **[Laughter]** No, if we have a referendum about making a fundamental change to the way we do business in Jersey, everyone will vote against it. But, as I say, it will not make any difference. People who believe that we should have an elected Speaker, who believe in the separation of powers, they will come back year after year after year. The only thing that will probably change us is when someone outside of us, someone outside Jersey says: "Jersey, get your act together, you have to do this." Then, of course, we will probably do it. What a shame that we cannot do it ourselves. We have a chance today to do that ourselves, to take a bold decision, not to put it off for next year to a referendum. We have a chance today to make a decision to have an elected Speaker and I urge Members to reject the amendment and to get on to the main debate.

**The Greffier of the States (in the Chair):**

Deputy Tadier, you are next. There is 3 minutes until quarter to and we normally break for lunch, so I am wondering how long you ...

**Deputy M. Tadier:**

Sorry, I think it would be nice if Members could leave 2 minutes early for lunch and then I will make a full and wholesome speech after the lunch break.

**LUNCHEON ADJOURNMENT PROPOSED**

**The Greffier of the States (in the Chair):**

The adjournment is proposed. I have been asked before we finish to remind Members that there is a briefing about Elizabeth Castle, I think, in the Jersey Museum in the Oules Room on the second floor of the museum, so make your way there. Assembly is adjourned until 2.15 p.m.

[12:43]

**LUNCHEON ADJOURNMENT**

[14:16]

**The Greffier of the States (in the Chair):**

We resume the debate on the Chief Minister's proposition on Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment. The next speaker is Deputy Tadier.

**2.5.9 Deputy M. Tadier:**

May I congratulate you on what a fine job you have been doing this morning, Sir? **[Laughter]** I would not have noticed who was chairing if it was not for the fact that there is no mace today and perhaps in the future we can sort the Greffier out with his own mace for when he presides. But, clearly, there are more pressing issues when it comes to who chairs this Assembly. What we have seen today is that quite clearly any professional person seems to be able to do it quite well, including the Bailiff, Deputy Bailiff and non-Bailiffs. It is important that we keep sight of the main issue here, despite the fact that we have had amendments on very narrow issues, we should still be looking at where we are going. The fundamental question that we are dealing with is, should the States Assembly, the legislature, of this Island elect its own Speaker? In fact, should it be able to elect its own Speaker? We have also got the idea that Parliament is sovereign and now that is important for 2 reasons. It is important because referendums should be used very sparingly and they should be used on specific issues. It is true that they can be used on constitutional issues. I would suggest that what is being put forward here is a misrepresentation of the fact that this is a constitutional matter; it is not. The wording of the Chief Minister is very clear and it has been worded very carefully to say that this is a matter about electing a Speaker for this Assembly, about giving the choice. Not to this Assembly in fact but to the future Assembly post-May 2018, so that they can decide, as is normal and as is only right for any legislature that makes its rules but also makes laws for the Island or the country that they govern, to choose who presides over their Assembly. At the moment we do not have that possibility; we have a Speaker, a President, a Chairperson, it is all the same thing because the person does the same job. If we elect our own Speaker they will still be doing the same job in terms of this Assembly. The Chief Minister was quite clear that this is not to do with separating out the roles of the judiciary and the civic headship of the Island or, as Senator Bailhache would call it, the guardian of the constitution, which we can perhaps talk about in a moment. We are not touching that, the Chief Minister has been quite clear on that. He has even put a paragraph in to say that the Bailiff will remain as civic head. We are not even talking about removing the Bailiff as judge in this Island but, as far as it concerns us, we can only talk about matters that affect us and that is why it is on the very narrow issue of the Speaker. We also have to talk about the separation of powers because that is an idea, a philosophy and a



basic democratic principle that did not come about with Clothier. It was not Clothier and Carswell who invented that. It is a longstanding democratic principle, not just for Parliament but also for the judiciary, whereby the judiciary and the legislature must be kept separate, not just in fact but also in perception and that nobody who exercises a judicial role should also exercise a political role or a role in the legislative. That is exactly what is the case at the moment, no matter how we try to spin it. In a sense, it is perverse because we have already answered that question in not too distant history because the Jurats were removed from this Assembly post-war. I cannot remember whether that happened with or without a referendum, perhaps somebody can answer that point. I do not think there was ever a referendum on the changes that happened post-war and they were significant; they were much more far-reaching than what is being proposed today. It was generally accepted and widely accepted that you cannot have people sitting in the other place enforcing laws and exercising judicial decisions and have the same people sitting in here. Of course, the argument would be made that the Bailiff is not really a legislator, he just sits in this Assembly and there is no real problem, there is no actual conflict. I do not think that is true and I think we should not be talking about it in this debate and that perhaps gets to the next point. But if we have a referendum debate, what kind of referendum campaign is it going to be? Is that going to be an edifying process? Is that going to be a process that restores faith in our institutions? We cannot get away from the Care Inquiry. They said to us: "You need to take a long hard look at yourselves to make sure that you restore faith in your institutions." A referendum is not going to do that, it is going to be, at best, a bun fight. I think there are going to be arguments on both sides. It will, inevitably, if not by us but by others out there, get personalised. They will say: "Do you remember the time when the Bailiff shut down so-and-so's microphone many years ago and he was kicked out of the Assembly?" In response to people, of course, who are trying to legitimately argue that the Bailiff is not political, will say: "He is political because he intervenes in debates." How can somebody who is the guardian of the constitution with all the tradition in which that is steeped, including religion, seek to be impartial in Assembly when politicians are making comments that may go against his interpretation of what the unwritten or invisible constitution is? These are arguments that were put forward, not by myself but which were made to Carswell in the report. Of course, we know that various reports in recent history have made the decision for us. They did not recommend the referendum incidentally; Carswell did not suggest having a referendum on the separation of roles of the judiciary and who chairs this Assembly. Will the public be given correct information on which to base their decision making in the event of a referendum? I think that question was put by the Constable of St. Mary and others. What will the question be? Who chooses the wording of the referendum? These are all questions that need to be answered and we do not have an answer to those points. Yesterday we struggled to make a decision in this Assembly because we did not have enough information to make an informed decision. Half of the Assembly did not feel they could make that decision, the other half did and it did not get to the final vote anyway because we found that the right process had not been gone through and the Minister withdrew that. That is politics and it was unfortunate, it was not a great use of time. How much more so is putting a referendum to the public on a subject that others have said is fairly niche, fairly esoteric? Very important, of course, but it is important for those who have an interest in jurisprudence and who have an interest in politics and the systems of the legislatures around the world. Are we reinventing the wheel? We know what best practice is. Why is it that Jersey seeks to adopt best practice in so many areas, not least when it comes to complying with international finance regulations, when it comes to the way our Public Accounts Committee works and we are a shining example for other jurisdictions and other Parliaments? Yet, when it comes to this particular issue, we cannot hold our heads up high and say that we adopt even good practice, let alone exemplary best practice. It is not the public who will have to go around the world and explain themselves to others. They do not have to look people in the eye and say: "This is the reason." "That is a bit strange, is it not? Tell me that again, you do not elect your own Speaker and the way you have a President of your Assembly, not only

do you not choose them but it is also a judge but it has to be judge every time and it is a senior judge. You do not even choose your senior judges; that is appointed by another country. It is not another country but it is appointed by the Crown and you do not get any say on it.” I think when you start to say it like that and you start hearing that regularly, whether it is Commonwealth Parliamentary Association, whether it is with British Irish Council, which I know Deputy Le Fondré and Deputy Lewis are both, I am sure, very competent members of, I would like to be a fly on the wall when they have to try and justify that position to others, whether you are the Chief Minister or the Minister for External Relations going around the world and trying to say: “This is how we do things in Jersey. We are a model of best practice but do not look at that because it is very strange.” But, of course, we are going to put that to the public because the public know best about these very specific type of issues; I would suggest that is not the case. Let us look at the wording of the amendment because, as we know ... incidentally, I suppose the clumsy segue, when Deputy Le Fondré says that we are going to erase history at the press of a button, I do not think you can erase history, first of all. I think you can make history and you can write history and that may be what we are doing today. But somehow, by voting here against the referendum or to have our own Speaker, that would be creating history, it would not be erasing history by any means. I am hearing, yes, it will but, of course, that speaker who is saying that will have a chance to speak in a moment. It will not erase history, it will simply be adding to our new traditions. The wording of the proposition says, essentially, let us read it: “...shall be void and of no effect unless the majority of the people voting in a referendum on the question of whether the Bailiff should remain the President of the States, held in accordance with the Referendum (Jersey) Law 2017, have voted against the Bailiff remaining the President of the States.” The problem is that we have not been given a specific set of wording on which the public will be voting and the actual wording that is chosen is very important. As the Minister for Social Security knows, when you are holding a consultation, depending on which questions you ask, you can solicit different responses. Do you want to pay tax? Would you like to pay no tax? Yes, I would love to pay no tax but get better services. Would you like to be able to walk around on stilts all day and be able to fly? Yes, I would love that. How do you do it? You cannot do it, it is not possible. The public will also give you answers that are mutually contradictory if you ask them lots of different things; they want to keep Senators, they want Deputies, they want Constables to be in the States but they also want to have one type of elected States Member elected on different days but they want to have Senators elected before Deputies and so on. That is not insulting the public, what I am saying is it is very key what we ask them. If the wording is to be: “Should the States Assembly elect its own Speaker?” I do not really have a problem about that. That is a fair question; that is what the Chief Minister is asking for. We could ask another question, should an unelected Chief Justice or Chief Judge always be imposed on the democratically-elected States Assembly without Members of the said Assembly having any say on that? That is also a reasonable question because that is exactly what they are asking the public to do. Also, this idea about getting rid of the Bailiff and it is the tone and the phrase of the debate, not just in this Assembly but also outside and I think Senator Ozouf was right to point the finger at the media. We have this idea and there is an unfortunate undercurrent of racism directed at the English, which is not uncommon in Jersey history. There is, of course, an argument for another day about the effects that English colonialization has had on the history and culture of the Island but that is not an argument for today. It has been unfortunate that when we see the images on the television it is couched and I think Channel Television were the only ones that I remember doing this. You see the argument saying that there are moves to make Jersey like the U.K., and they show the classic footage of John Bercow coming in with his robes carrying his mace, so that we are just slavishly following what the U.K. is doing again.

[14:30]

It is being imposed on us, as the public would say, by Gorst, that Englishman who is not a real Jerseyman. That is unfortunate because I think that is being what I have perceived as an undertone in the argument and that is not valid at all. That leads on to the second point: what is the referendum going to achieve when we hold it at the same time as a general election? It is compelling in the sense if we want to get a high turnout, it saves money; you are more likely to get a high turnout at election time. The reason we need to put it at election time is because Senator Bailhache knows you will not get a bit turnout otherwise unless you do it at election time because it is not a matter that ignites public interest. What we should be doing at the next election is holding this Government to account for their policies and their successes and their failures. The Council of Ministers, those who are running again, should be standing up and defending their record and what they set out to do in 2014 and how it compares with what they have actually done. We should be debating the issues to do with affordable housing, which is a perennial issue but which is still a problem and which is probably one of the biggest issues facing the Island, along with population growth, which this Council of Ministers has failed to get a grip on, along with many other issues, such as the new hospital, which would be solved within the first 6 months of the Minister for Health and Social Services' tenure, which still has not even been decided on the final plans, let alone the cost or where the cost is coming from. In my constituency it should be about, of course, population growth but also about the Les Quennevais School building and how that is going to pan out and we will all have those issues. I am worried that by this very niche issue being imposed on the electorate, it is going to give a get-out-of-jail-free card, not necessarily to the Council of Ministers but to some States Members who may have very little to go back to their constituents with during the last 3 or 4 years but to say, what do you think about this matter of the Bailiff? "I am not sure, you give me another glass of wine with my Christmas dinner, Constable, then maybe I will tell you." Because who is going to turn out at this election and what are we here for? It is really to make ... or your brussels sprouts. We are here to legislate for the future. We are not here to legislate for the past. This is not about deleting history. This is about engaging with the public and we know that perennially we have an issue in engaging with young people in our Island and for young people this is a complete non-issue. It is a non-issue in the sense that, of course, it goes without saying that you should not have a Chief Judge who is presiding in your legislature. It is basic; it is so obvious. The fact that we are even having to debate this, let alone suggest putting it to a referendum, only enhances the contempt that anybody under 50 in this Island has for this Assembly and I think that is true. What I would suggest is that we give this proposition short shrift. Let us get into the real meat of these arguments, the pros and cons about having an elected Speaker. How is it going to work in reality? Let us not abdicate our responsibility. This idea that we are somehow being anti-democratic if we do not vote for a referendum, I think it is much more democratic to nail your colours to the mast one way or the other, preferably you should have told your electors in 2014 what your position is on the dual role of the Bailiff, on Clothier because those are perennial issues that have not gone away; they have been on the table for at least the last 15 years. I certainly did, we certainly did and if you have not done that then that is a problem. I am quite happy to look at any of my electors in the eye and say to them: "This is why I voted for this this way and take that in the round and if you disagree, of course, you can vote in secret and I will never know how you voted." I will stake my political future, as we all will, on the decisions and the words that we make in this House. That is the real way to do it; let us see this for what it is. It is no coincidence that the main proponents of the referendum are the ones who do not want any change, by and large. I think let us make the decision and we can make it today. If it does not get through, do not worry, it will come back in 6 months, 12 months, 18 months in the next Assembly but it is a decision that will not go away. It is a decision that needs to be made and it needs to be made by us, not the public.

#### **2.5.10 Deputy R.J. Renouf of St. Ouen:**

It seems to me that the question of putting the role of the Bailiff to a referendum was attractive. But at first sight, the more I thought about it, it has perhaps a superficial attraction but in my consideration of it I cannot support the view that it is a constitutional question. It seems to me that it is not altering the representation of the people, it is not altering the powers of this Assembly and it is not diminishing the rights and responsibilities of citizens. I have to ask myself, would the conduct of political affairs be very different if someone, other than the Bailiff or the Deputy Bailiff, was sitting in that chair? I think the answer is no, our political and civic life would continue much as it has. Therefore, I cannot consider it, such a fundamental matter relating to the constitutional set up of our Island that it needs to be treated as such. Reference has been made to the Bailiff acting as the guardian of the constitution and that role may well be reflected in the oath taken by a Bailiff in which the Bailiff swears that he will uphold and maintain the laws and usages and the privileges and freedoms of this Island. I think we need to ask in what capacity is that duty vested in the Bailiff? I believe it is vested in the person who was appointed to administer justice in this Island by the sovereign, historically centuries ago no doubt. Before this States Assembly was developed as a separate Assembly, the oldest reference to a constitution for the Island is the constitution of St. John, not of St. John, of King John. **[Laughter]** St. John would be a bit older than that. But no one really knows whether King John had any involvement in them or whether they date from his time because in King John's time the loss of Normandy was thought to be a temporary blip. But, as time went on and the Channel Islands were 100 miles from the English mainland, facing an enemy shore, sovereigns came to realise that special arrangements needed to be made for the Island. The Bailiff, whether that office existed before the loss of Normandy or not, was appointed to administer the King's justice in the Island and to safeguard the King's interests, which would have included upholding such constitutional arrangements as existed. All this predates the establishment of the States of Jersey as a legislature. I believe that the question of the guardian of the constitution is not tied to the Bailiff's role as President of this Assembly. It is tied, rather, to the Bailiff's role as President of the Royal Court. I think the notion that the Bailiff is a guardian of the constitution is obviously something we want to protect but it vests those constitutional safeguards in the judiciary and that is important. If there were ever concerns that this Assembly was acting contrary to the constitutional arrangements that apply in the Island, it is for an independent judicial arm to correct this Assembly. It is not proper, it seems to me, for a judicial officer sitting as President of this legislature to try and move the legislature into a different position. The Bailiff, if he was President, could not act in some way to try and protect and correct this Assembly from a position in which the Bailiff thought the Assembly was erring; that is a role of judiciary. Regardless of how this debate turns out, the role of the guardian of the constitution of Jersey will remain and it need not be affected by the Bailiff no longer serving as President of this Assembly. Therefore, I think in our choice of who presides over this Assembly we need not worry whether that role of guardian of the constitution is imperilled. But if there remains a concern over that role, then we can legislate for it. The Chief Minister, in his address this morning, spoke about the suggestion that legislation could be introduced that embeds the Bailiff's role as the civic head and the same could be said of embedding the role of guardian of the constitution. In fact, I think it is probably better to vest that role in the Royal Court itself, rather than in one judicial officer. Give our Royal Courts, our Supreme Courts in the Island jurisdiction over constitutional matters and that is the best modern judicial and democratic practice. We have seen that recently in the U.K. where the House of Lords as a judicial body was removed from the House of Lords as a parliamentary body and instead the Supreme Court of England and Wales was set up and we have seen how that Supreme Court has been ready to rule on constitutional matters and accept that jurisdiction, particularly in the case where it ruled on whether Parliament should be able to vote on the question of E.U. withdrawal when the Government was not inclined to give Parliament a vote. So that is the guardianship of the constitution; it is a judicial function. Therefore, I believe it is entirely within the competence of this Assembly to decide who should preside over it. I do not believe that a

decision to change, to elect our own Speaker, would change the rights of citizens, would change the laws by which Jersey men and women are governed, or would alter the democratic process by which we achieve representative government in this Island. Therefore it is a matter for us, it is us talking about ourselves, and I do not think this will engage people greatly in the Island. There will be some who will speak loudly, but it is not that crucial a question. In fact I would say that the debate we had yesterday on the future direction of our health services is more important to our citizens than the decision we are making today about who presides over our debates. So we have been well served by successive Bailiffs serving as Presidents of this Assembly, but I think it is entirely up to this Assembly to decide whether that arrangement should continue and unnecessary to put the issue to a referendum.

#### **2.5.11 Deputy P.D. McLinton of St. Saviour:**

I was sort of dreading you saying that, Sir, following the eloquent speech of the Deputy of St. Ouen, but I am going to say much of what the Deputy of St. Ouen said only far less eloquently. By the way, I had to pop down to town earlier and the buzz around town about the Greffier presiding over the Assembly was amazing, they were all talking about it: "How is he doing? He is very good, you know, he has a sense of humour and a sparkle in his eye. Oh yes, but I like it when the Bailiff does it because sometimes ..." They do not care. They just do not care. **[Laughter]** No offence meant. It is not who presides over this Assembly that is a concern to the vast majority of residents on this Island. It is the subjects that are up for discussion that they care about. There are certain Members of this Assembly who seem to fail to wrap their head around that notion. Yes, we are, in a manner of speaking, talking about ourselves again and that is the main criticism out there in the real world.

[14:45]

Some Members, do not mistake your interest in who is sitting in the big chair for everybody else's interest. They are getting on with their lives. Traditionalists want no change. It is the nature of traditionalists. I really believe that this Parliament suffers at times because of the grip of the traditionalists looking back perpetually and fearing change. Regarding the referendum, we are elected to make decisions. We are not elected to be fearful of making a decision, so asking the public again what decisions we should make. We are elected to make decisions. We are representative of the people out there. Have the courage of your conviction, whichever way it might be, in this Assembly and make that decision today and do not delay it, because this Assembly, as with many others previously, but I feel particularly this Assembly is becoming famous for not making decisions, to the point, when this Assembly, as it stands, will not even exist, and you will have been a part of Assembly that did not make a decision about much of anything. That is not what you want to go to your grave with that on your C.V. (curriculum vitae). So, I would say no referendum and then make the decision within this Assembly, preferably today, but make a decision. That is what they say: "Will you make a decision? Please, make a decision. We elected you to make decisions. Have the courage of your convictions, whatever they may be." Why go to the electorate to ask them about the future of somebody who is not even elected to take a seat in this Assembly of any form? They are not elected. You are asking for democracy, but we have the Speaker foisted upon us. Do we not, like every other, bar one, parliament on this planet get the right to elect our own Speaker? Why can we not do that? Should we not do that? Of course, I am a big fan of the Bailiff. I enjoyed very much sitting behind him at Liberation Square while he struggled with the microphone not working, I thought he was remarkable. The Bailiff turned up to the gala performance of Eisteddfod, which by the way was remarkable, the talent we have on this Island, and I was pleased to see him there. He will still be there. We are not getting rid of, we are just not; he will be there. In fact I would say that this will free him, he will be able to speak on political matters once he has been released from the need for silence because he sits in

that chair, and then he can express what he is really here for. It would make more sense to the rest of the world as it looks in on us. He is a judge, and a damn fine judge, excuse my non-political language, but he is good. That is what he is for, not for refereeing sometimes madness in here. He can do better than that. We need somebody we elect to take that seat. So I say no referendum and I say the time to move forward and history, you do not get rid of history, there was a time when the monarch was the absolute ruler, just to take England as an example, over your life and then that changed. People go: "We cannot change history." History changes, sometimes without you even noticing. Let us be a part of making history. Let us be a part of making common sense. Please reject the notion of a referendum and vote for, when we eventually get to it, the proposition.

**2.5.12 Deputy S.M. Brée:**

I think it is important that we go back and talk about the subject of this amendment, which is a referendum, and we concentrate solely on that. It has been suggested that this is some form of wrecking motion. It is not because at the heart of it there lies a fundamental principle, which is: does constitutional change demand a public referendum? Now, we have just heard from Deputy McLinton that we should have the courage of our convictions. Well I do and I am supporting a referendum. That is my conviction. In the previous debate, Deputy Southern suggested that we were playing games. Deputy Mézec, in this debate, now accuses people who support a referendum for passing the buck. I am doing neither. This is a constitutional change. It is not just internal to this Assembly. It is not, because this change means a change to the constitution of this States Assembly. You cannot avoid that fact. I believe firmly in the fact that we are servants of the public. We are not here to dictate to them. We are not here to suggest that they somehow lack the knowledge or intelligence to understand constitutional matters. As such, I for one believe that we should seek the opinion of the public because, while this matter may have been discussed at the hustings of the elections, it was not probably forefront in the electorates' minds. Now, I think I agree with many Members who have said that, as an Island, we do not do referendums that well. I do not think anybody could argue with that fact. So it is down to us, as their elected representatives, to change this. Let us learn from previous mistakes, because unless we learn from those mistakes we will not move forward. We should be willing to engage with the public. We should be willing to listen. We should be willing to talk to them. For those people who say that Islanders are not interested, I disagree entirely. As such, I urge Members to support this amendment calling for a referendum. It is a vitally important part of the democratic system and society that we live in that, should a constitutional change be put forward, then the views of the public, who we represent, but have not engaged with them on this specific topic, those views should be sought and, most importantly, should be listened to. As to the question that will be posed in the referendum, it is important to note that I believe the chairman of P.P.C. raised the question of we do now have a Referendum Commission. So let us look to them to assist us in this, but let us not deny the public the right to have their voice over a constitutional change.

**Deputy J.A.N. Le Fondré:**

May I seek a question from the Attorney General now he is back in the Assembly?

**The Greffier of the States (in the Chair):**

If you put your microphone on and tell us what it is?

**Deputy J.A.N. Le Fondré:**

Yes. There have been 2 issues that have been coming through and I was listening with interest to the Deputy of St. Ouen. So, from a legal perspective, is this a change in the constitution? Second question, and maybe you can rule on this one, but maybe a lawyer can tell us, does this proposition remove the Bailiff, as in the main proposition, as Presiding Officer?

**The Greffier of the States (in the Chair):**

Sorry, I do not understand the second question.

**Deputy J.A.N. Le Fondré:**

Does this proposition remove the Bailiff as Presiding Officer to this Assembly?

**The Greffier of the States (in the Chair):**

I think on the second one it is fairly clear what the proposition does; it tasks the P.P.C. and others with bringing forward legislative change to the Assembly for further decision. That obviously affects the position of the Presiding Officer. It is an interesting question because the proposition still provides for the Bailiff to preside at certain points, but clearly it affects his membership and his role as Presiding Officer, but that would be for further discussion I think. Attorney General, do you want to tackle the essay question?

**Mr. R.J. MacRae, H.M. Attorney General:**

Could the Deputy remind me of the question again?

**Deputy J.A.N. Le Fondré:**

From a legal perspective, is this a constitutional matter? Is that defined in law anywhere?

**The Attorney General:**

I am sure Deputy Labey was joking when he muttered the word “planted” moments ago; I assume he was joking because I can assure him that is wide of the mark. Whether or not to have a referendum of course is a political issue upon which I express no view at all. But in the view of the law officers, both of them, the removal of the Bailiff from the role of Presiding Officer is clearly a constitutional issue. **[Approbation]** It is clear from Article 2 of the 2005 Law entitled Constitution of the States, which begins by saying: “The States of Jersey are constituted as follows: the Bailiff ...” This question goes to the heart of our constitution, the heart of our constitutional history, we are called a Bailiwick because the Bailiff is custodian of the Island. On one view, we would cease to be a Bailiwick if he stopped being the First Citizen of the Island, which may arise in due course from this. So, in the view of the law officers, this is plainly a constitutional issue. While I am addressing the Assembly, I know the Deputy of St. Ouen indicated that in his view the Bailiff’s role as custodian of the constitution, guardian, arose from his role as Chief Justice and not from his role as President of the States. Of course the Assembly has in front of it the evidence, the letter from the last Bailiff, Sir Michael Birt, in which he expressed the view that the role arose principally from his role as Presiding Officer of the Assembly, and that is certainly the view that I have always had.

**Senator I.J. Gorst:**

Could the Attorney General clarify therefore whether the advice he has just given aligns with the advice of the Carswell independent review, which suggested that the role of Chief Citizen arose from the historic role of the Bailiff and not from him being the President of this Assembly? I wonder if he could just explain how he marries the opinion he has just offered the Assembly with the opinion of the Carswell review. I wonder if he could also confirm that his point about constitution was a point about the constitution of this Assembly, not a wider unwritten constitution that we enjoy.

**The Attorney General:**

It seems to me that the role of Chief Citizen arises both from the Bailiff’s role as Chief Justice and as President of the Assembly. That has certainly always been my view. In relation to the second

issue, my view and that of the Solicitor General is that this is a constitutional issue in all senses, not the narrow sense arising from law, this is an issue that goes to the heart of the constitution of this Island.

**Senator I.J. Gorst:**

The Attorney General would confirm then that he disagrees, in his view, with the finding of the Carswell independent review?

**The Attorney General:**

I think to answer that question fully I would need to have the precise wording of the review in front of me and I will in due course answer that question more fully if required to do so.

**Senator I.J. Gorst:**

I would be grateful if the Attorney General could do that. We are now just in a debate about referendum. We are going to come on to the main debate. It seems to me somewhat surprising that the Attorney General would make such an observation this afternoon during the course of an important debate, which runs counter to the advice that this Assembly has had from an independent review.

**The Greffier of the States (in the Chair):**

Attorney General, did you wish to say anything in response?

[15.00]

**The Attorney General:**

We have already filed an opinion, which does not accept the views expressed by Lord Carswell in relation to human rights issues, and I will revert in relation to this issue again later on today, if I may.

**Senator I.J. Gorst:**

Of course, the Attorney General will be fully aware that, nor does my proposition, nor does anything I have said today, refer to the human rights issue. There are many other grounds why this change would be appropriate. **[Approbation]** I wonder if the Attorney General could give us his advice, in that regard, which appears counter.

**Senator P.M. Bailhache:**

May I ask for a ruling on a point of order? Is it appropriate for the Attorney General to be used for proxy warfare between 2 sides of the argument? **[Approbation]** It really seems to me that the Attorney General has expressed a legal view and that is the end of the matter.

**The Greffier of the States (in the Chair):**

I do not think anything out of order has taken place, to be honest, and I would say the Attorney General has offered a view and Members, or the Chief Minister in particular, has asked him for clarification and that seems to me to be appropriate. It is not particularly unusual for Members to want to seek further advice, or further clarification, on what are obviously complex matters. Constitutional law, as you will understand better than anyone, is very complex. So, I do not think anything untoward has taken place. I do not, however, Senator Farnham, wish to encourage an extended debate on this matter. The Attorney General has undertaken to come back with some further thoughts and I think he should be left to get on with it, unless you have another point you wish to make, Senator?

**Senator L.J. Farnham:**



I just want a point of clarification. I thought this Assembly took its legal advice from the Attorney General and not Lord Carswell. **[Approbation]**

**The Greffier of the States (in the Chair):**

That is a debate on points, not a point. Deputy Tadier, do you wish to join in?

**Deputy M. Tadier:**

I have just got a question to the Attorney General, following on from what he has just said. If the Bailiff ceases to be the President of this Assembly, will he cease to be the guardian of the constitution automatically?

**The Greffier of the States (in the Chair):**

I do wonder whether that is encapsulated in the points, which the Attorney General undertook to come back on, because I think these are quite complex matters. Unless the Attorney wishes to offer an answer straight away?

**The Attorney General:**

These points and that question in particular is covered in terms in the letter from Sir Michael Birt.

**Deputy M. Tadier:**

Is it not the case that, if the Bailiff ceases to be a Member of this Assembly, he will still have the other roles and, therefore, his role as *de facto* civic head, or what has been termed as the guardian of the constitution, I say that in those couched terms because I have yet to see a copy of the constitution, or the title of deed that appoints the Bailiff as guardian of the invisible constitution, but let us presume that is the case, that will still continue, will it not?

**The Greffier of the States (in the Chair):**

Deputy Southern, do you wish to contribute? No, fine. I think probably the matter rests there for now and the Attorney General will come back in due course, unless you really wish to contribute?

**The Attorney General:**

I really cannot do better in relation to the question Deputy Tadier asked and I invite him to consider the letter that Sir Michael Birt wrote in January 2011, which is attached to the P.P.C. comments of 13th November, and which, in paragraph 6(iii) and paragraph 8 and 9, deals in terms with the questions that he raises, and I should indicate that I entirely agree, as adviser to this Assembly, with what Sir Michael Birt said in that letter in this regard.

**The Greffier of the States (in the Chair):**

I think it is time to move on with the debate and the next speaker is the Connétable of Trinity.

**2.5.13 Connétable P.B. Le Sueur of Trinity:**

I only planned to speak once and it was in the debate on this amendment. Over the life of this Assembly, I have considered myself to be a fairly loyal supporter of our Chief Minister and, despite the views often expressed in the local media and in this Assembly, on the whole I think he does a good job. That said, today, I am afraid he and I are going to seriously part company in our position on this matter. Over the past months, as this issue has been rolling around in the drum, I have taken every opportunity, when meeting with my parishioners, to canvas their view on the role of the Bailiff, particularly as President of this Assembly. Without exception, not one of them has found favour with the suggestion that there is any need for change. I would go further to say that most of them found the whole idea abhorrent. Most expressed the view that the Chief Minister and other political enthusiasts for change could, and should, be finding more important things for this Assembly to spend its time on. **[Approbation]** I consider myself extremely lucky to live here, in

the Bailiwick of Jersey, and it is that word that does it for me, “Bailiwick” and “Bailiff” are inextricably linked. The Bailiff is appointed by the monarch, as our constitutional link with the United Kingdom. How anyone in this Assembly can believe that they are qualified to interfere with our quasi-independent constitutional status and everything that it brings with it is, in my opinion, deluding themselves. Our Bailiff and Deputy Bailiff are our senior judges and they are trained to be impartial and if we cannot trust them then what hope is there for any of us? Where is the evidence that anyone has suffered, or been disenfranchised, simply because the Bailiff has this dual role? I put it to you that it is a concept born out of misunderstanding, or a misguided perception. It will come as no surprise that I will not be supporting the Chief Minister’s proposition and I would not support it if I was hanging by my thumbs in the Royal Square. I am inclined, however, to support Senator Bailhache’s amendment for a referendum, being the very minimum requirement for such a far-reaching constitutional change. If we, in this Assembly, believe that 49 Members have the right to simply disregard centuries of history and tradition then this will go down in Island history as a very bad day. We should stand up to the critics, be fiercely protective of our unique quirky ways and traditions, because that is what makes living in this glorious Island so special. Our system has served us well for centuries and I see no reason why we should simply kowtow down to external pressure for change. We must do nothing that will diminish, or dilute, the position of the Bailiff as Civic Head of our Island and he must remain President of the Assembly. This is Jersey, not some miniature county council in the U.K. I appeal to Members: do not let us be railroaded into giving up our independence and our heritage and I say stop; enough is enough. I urge Members to support this amendment and to reject the main proposition.

**2.5.14 Deputy G.P. Southern:**

Whoa, boy, yes, it is fun, is it not, sometimes? I am reminded of the adage that if you ask 2 lawyers for their opinion - and remember lawyers only have opinions, they do not have facts - you are likely to get 6 answers. This afternoon we have had one, 2, 3, and quoted Sir Michael Birt, 4, 4 lawyers who cannot agree whether this is a constitutional matter, or not. Carswell says one thing, the Deputy of St. Ouen says another in very fine terms, the A.G. (Attorney General), without wishing to, gets drawn into, I believe, making a political statement in this House ...

**The Deputy of St. Ouen:**

Would the speaker give way?

**The Greffier of the States (in the Chair):**

Is this a point of clarification, or what is the basis of this?

**The Deputy of St. Ouen:**

I wish to make it clear that I am not seeking to give any sort of legal advice to the Assembly. I am speaking as the Deputy of St. Ouen. I may hold a qualification as a lawyer, but I think it is unfair and I do not wish the Assembly to be misled by it being suggested that I am in the position of giving any sort of legal advice.

**The Greffier of the States (in the Chair):**

Spoken like a true lawyer, Deputy. **[Laughter]** Deputy Southern.

**Deputy G.P. Southern:**

I was not threatening to take him to court. But, nonetheless, he is a lawyer and he did offer an opinion. Now, whether that is a legal opinion, or not, I know not. But, nonetheless, it showed the difficulty of this particular debate and its nuances and subtleties and really quite extraordinary complexity. Yet, what this amendment says is that we should take that finely balanced complex decision and we should offer it to the people: “You make your mind up. What is it? Is it a

constitutional matter? Is this the guardian of the constitution, or not? Sit around in the pub, sit around in the coffee shop, and debate it and come to your conclusion in a rational, sensible, reasonably ordered, debate.” That will inevitably happen if we decide to go for a referendum. We are told that the public should be listened to by the Deputy of St. Clement, in front of me, Deputy Brée. I would hope that everyone, all 49 of us in this House, would listen to the public, time and time again. In fact, catch me on the street and I will probably have my ears worn out by several people filling me in on their latest hobby horse, and we do listen and we are in close connection with our public. However, we are a representative democracy and my voters know very well that I will come into this House and make up my mind on the strength of the arguments, or other, as to how to vote, and I will not necessarily vote in the way that all of my constituents wish me to. From time to time I will be at loggerheads with them. But that is what I am paid for. That is what they expect of me. If I was to just lamely say: “The majority of people I have spoken to say this so, despite my misgivings, I had better go along with that”, sometimes I will, sometimes I will not. That is what I am here for; for a representative democracy. Now, we have heard some very highfaluting sounds from the Deputy of St. Ouen, some fine arguments, nicely put. But I want to ask a different question. My colleague was talking about the question being asked. I want to ask the question, and it is not at the same level as we heard from the Deputy of St. Ouen, it is at a much more ground level, it is the back to basics. The question would be: “Do you want to pay over £300,000 to a person to sit in and make sure we do not fight in the States, or would you have him, with his legal expertise, doing what he is being paid for, being Chief Judge, and exercising his legal judgments on case after case? Would you rather him in here, or there?” Well, I know what I would say to that. If I am going to pay somebody £360,000 a year, I expect them to be doing a job in the court and not in here, because anyone with a modicum of skills can stop us from fighting, most of the time. It does not get physical. That will happen anyway. As we know, today, it is happening now. So, we come back to the question, and we are going to give this decision, finely balanced as it is, nuanced as it is, to the people to make their own mind up. I am reminded, also, of one of the things that we do in the States is that we ask questions and the question arises as to what is a good question. I love asking questions and I am quite practised at it. I know that genuinely, most of the time, I am asking genuine questions: “What is the situation with this? What is the situation with that?” Sometimes, however, I have some information on which to base my question and I suspect that I know what the answer is going to be and boy do I love that, because I know there is something happening and I think I know what the answer is and let us see how we can dance around this, what sort of answer am I going to get, because they are the very best questions.

[15:15]

I come back to the question of the referendum, whatever this form of words, a single, simple, question asked when I suspect I know what answer I shall get. The answer is that the northern, traditional, green, Parishes will vote in favour of maintaining the Bailiff in his current position, others may not, and that the result will be one of rejecting the Chief Minister’s motion, because that is the conservative nature of the people who vote, now they vote 70 per cent rate, 50 per cent rate. Come to town, where my supporters who will not be debating about the Bailiff’s position, necessarily, are less likely to vote. So, I ask a question, suspecting that I know what the answer is. Will that debate be conducted in a rational and sensible manner? Will we have information? Will we be able to make our minds up, based on all the information for and against and balance that argument, or will we be in the land of propaganda? Will we be taking sides in this argument, pumping out the propaganda to say one side, or the other side? Will we have the equivalent of the charabanc going around the Island with £350 million per week on the side of the van? I do not know what the equivalent argument is; perhaps it is £360,000 a year down the drain. But will we have that? Will we have a rational argument, or will we have propaganda about pros and cons and the personalising, because that will happen, as well, of the arguments and a good decision made?

No, and I think I have heard the referendum defined as the last refuge of the political scoundrel and I believe that to be true. We are here in a representative democracy, I said before, and I will say again, we have to make our mind up and we do not have to farm this one off on the people and say: “The people know best.” In this case they possibly do not and, boy, will we try and fool them left, right and centre, to vote one way, or the other. That is the reality. Please do not vote for a referendum when you know, or suspect, what the answer is. Stand by your own conscience, reject the referendum, and vote with your conscience on the main motion.

**2.5.15 Deputy M.J. Norton:**

It is a pleasure to follow Deputy Southern. It is not very often we get to agree and when we do I want to enjoy it as much as I possibly can. I respect, I hope and I trust I do, the opinions of the Members of this Assembly and the views of this Assembly. I sincerely hope that I trust and respect more than anything, whichever way you vote, the way that you vote, because you do so on your opinions and your views, representative of those that voted you in. I respect them. That is why we are there. It has been said by quite a few before what our job is. Our job is to make the decisions. Our job is not to abdicate our right to vote, because it might be a difficult decision. It is not our job to abdicate our vote, to decide that we will not vote but, instead of us voting, because it is a difficult decision and we are getting to the sharp end of the pencil, we should instead go to the public. We do that on every decision. We can argue about constitution for an awful long time and I suspect we probably will, but it is what we are here for and if every time it is going to be a difficult decision we have to go back to the public and, let us face it, we have gone to the public before and we have seen how that has worked out. We have had review after review after review, long before I was here, and all of them have pointed in the one direction, but perhaps that is for the next part of this debate. This is about the referendum and what we are here for, whether we, as elected representatives, wish to have a Bailiff, or not, as President of the States is up to us to decide. It is really, really simple. If you do not think it is up to you to decide, what are you doing in here? You are not representing those people who elected you. What do the public want us to do? Never mind what we want to do. Do they want the opportunity to have their say, or do they want us to make some decisions and use the vote that they gave us when they elected us? I cannot support the amendment, although I do not agree that it is a wrecking motion; I cannot support the well thought-out amendment to move to a referendum, because it is our responsibility to make decisions, not to abdicate our responsibility and give it to somebody else because it is difficult.

**2.5.16 Deputy G.J. Truscott of St. Brelade:**

This will be quite a short speech at this stage. I have a larger one should I need it and I am hoping that I do not for later on. I generally am supportive of this referendum amendment. We, as Members, need to, as we did with the electoral reform debate and Constable referendum, engage with the people on this matter. This is, according to the A.G., a major constitutional change and I, personally, have no mandate to remove the Bailiff from his role in this Assembly. It was not in my 2014 manifesto, as, like you, Deputy Mézec, you had it in yours, but I did not have it in mine. Certainly, most of the voters in St. Brelade would, I am sure, be mortified if I were to cast my vote for removal. Simply put, I want to let the people decide as to whether the Bailiff stays, or goes. Surely, that is the most democratic way.

**2.5.17 Deputy J.A. Martin:**

I am trying to keep this part very, very narrow and I keep rereading Senator Bailhache’s report. I mainly decided to speak when I heard the Constable of Trinity’s speech. But this goes back to the report and on page 3, Senator Bailhache, I think, is trying to make, he says, the case for a referendum. He states: “The question of whether there is public support for change is of critical importance. There is, at present, a complete absence of any public mandate for such a significant

constitutional change,” an argument for the next debate. This is the part: “There has been no popular clamour for the change. There has been little public discussion outside the bubble of the States Assembly. There have been no Parish Hall meetings and there has been little indication from comments in the media that the public are really engaged.” But the Senator still stands up and says: “It is of so much importance to the public, ask them.” Very contradictory. But the people, and there are 12 of them, and I tell again my own Constable off, has the Parish Hall as their facility - and the Deputy of Grouville can remember which year - I think it is even the year before the Bailiff came - it is the Constables’ law, in fact it is 1304, but it is before this, and it gives them the reason that they should do things and it says they should consult. The Deputy of Trinity told us he has spoken to, I think, 6 people, who absolutely say, if he was hanging from his thumbs in the Royal Square, he could not support... more than 6. It does not matter, it is not recorded. I have not had one person, except for one ex-States Member today give me an email. I get loads and loads of emails on different things. The Senator has not made the case for a referendum. I am so scared about the question. Everyone loves the Bailiff. I love the Bailiff. It does not mean I want him to be President of this House. But this is what anybody, who does comment to the likes of the country Parish Constables thinks, we are going to sack him and he will be down at Social Security next week, looking for some income support. I mean it is so badly represented that we are going to get rid of the Bailiff, well it sounds as if we are going to hang him in the Royal Square, or something, it is mad. It is not a thing that I feel comfortable. I listened to what the Constable of St. Mary said and other people on what the last referendum we had, the way we have treated people, make sure you know you are putting the right question to the next referendum you go to and this is not one. Nobody is clamouring for this. The other point, as I say, there are some people, and it was again the Constable of Trinity said: “I am going to vote for the referendum and I am going to vote against the proposition.” He has a personal opinion; he wants to see the Bailiff remain as President of the House. It is fine. But do not use this referendum for people who do not want it. There is plenty more things, as people have said today: “You can put your referenda. It is too messy. It is nothing to do ...” We are grownups. We are elected and we can decide. This is time. We have had 3 strikes now, on commenting on this; 3. It is not extraordinary. This was not done in a vacuum. This is for the next debate. Really, has not made the case. I cannot put this to referenda. Sorry.

### **2.5.18 Deputy A.D. Lewis:**

It is up to us to decide this and we will. It is also up to us to discuss this openly with our constituents. We have. I think the Constable of Trinity articulated that extremely well. We can do that through referendum. If Members are totally convinced that the right decision would be to change the role of the Bailiff, then fine. You will have plenty of time to convince the electorate that that is the case. That is exactly what happened with the Electoral Commission Report. It was published, it was well consulted on, there were Parish Hall meetings and we had a referendum. Thinking people turned out to that referendum, in small numbers, I accept. That is because they were genuinely interested in what we do in here. They decided they wanted some change. The amount of people that decided they did not want any change at all was relatively small. So, have confidence in your convictions. If today the decision is made, put it to the people. Spend the time and effort explaining what many of you have done very eloquently today, the reasons why that change may occur. That is our job, as representatives of the people, to explain to them the things that they do not have the time to work out for themselves, they do not have the time to read all the information that we have. That is our job, so that is what we should be doing: explaining this in more detail to constituents. I have done a lot of that already. People have discussed this matter with me and I have explained the pros and the cons and the reasons why the Chief Minister has brought this and the reasons why I would find it difficult to support the Chief Minister’s proposition. That is our job. Doing a referendum, there is nothing wrong with that. We have a precedent, we have done it already. Some may say not as successfully as we could have done. So,

let us learn from that and let us have the best referendum we possibly can have. Let us engage with our constituents as well as we possibly can. Let us not be fearful of the results, but let us listen to the results when they happen. So, I say to Members: you should have nothing to fear from a referendum. If you speak as eloquently as you have done today during the process of referendum your points will be heard. They will be accepted by many people. The public are not stupid, but they do rely on us to give them that information, freely, openly and using the facts; not creating the facts, but using the facts we have, the reports which we have, which people referred to today. Then, yes, some people will vote with emotion, some people will vote for tradition's sake and some people, and I think a large number of people, will look at the information and listen to what we have all got to say, in the cold light of day, and make informed intelligent decisions. Let us give our electorate some credit, because that is what they do, the majority, that it what they do.

[15:30]

There is nothing to fear from a referendum. So, I would say, Members, please this is an intelligent, well-thought out, sensible amendment, support it. If we leave here today and have not done so we will lose even more faith from our constituents on the basis of not listening to them in previous referendums by not having one on this particular subject, which is of great interest to a number of Members. I have much more to say on this; it will wait to the main debate. But, please do not kick this out of touch too quickly. It has merit. I would urge Members to seriously consider and vote for Senator Bailhache's amendment. We owe that to our constituents, to give them that opportunity to have their say. Thank you.

**2.5.19 Deputy L.M.C. Doublet of St. Saviour:**

I just want to make one point, really. I do not want to repeat arguments that have already been said, but there is one thing I do not think anybody has mentioned, which does concern me. I am very concerned about public engagement. I know most of us are. If you look at this from one way, we are thinking: "We will put this referendum in at the general election where people will be voting anyway. It does seem sensible. There might be a fair turnout. We will get views from people at that election." But, look at it the other way round. I am concerned that putting this referendum question at a general election will have an impact the other way round and will stop people from coming to vote in the general election. I will tell you why. People have been saying: "Oh, we are insulting the public by saying they are not intelligent enough to understand this question, not intelligent enough to understand our system." I do not think that is it at all.

**Senator P.M. Bailhache:**

Would the Deputy mind speaking up a bit?

**Deputy L.M.C. Doublet of St. Saviour:**

I will try to speak up. I think I have picked up a sore throat from my neighbour here. **[Laughter]**

**The Greffier of the States (in the Chair):**

That seems to be placing a false motive on Deputy Kevin Lewis.

**Deputy L.M.C. Doublet of St. Saviour:**

I am sure he did not mean to. I have been listening to these arguments, Members saying: "We must not patronise the electorate and assume that they are not intelligent." I do not think that is why people are not engaged with politics. I do not think it is a lack of intelligence. I think our population are intelligent people. It is because they find it boring. It is because they are not interested. I am thinking about my own experience. I consider myself an intelligent person. I have a psychology degree, *et cetera*. I was not interested in politics for a long time. I did not vote. I just was not interested until I started seeing, perhaps, younger Members, people like me, getting

involved and more interesting issues being discussed. I am really concerned that if this referendum is included in the general election, it will add to that feeling of people looking at the political scene, looking at the issues and thinking: "I am not interested in that. That is not relevant to me. Why do I want to go and think about who is presiding over the States Assembly?" There are several different parts to our political system, which I believe P.P.C. and the Greffe do campaigns to educate people on. It is not that people are not intelligent enough to understand it; it is that they do not have the time, as well; (a) they think it is a bit boring, but (b) if you look at our population, our demographics, we have about 70,000 people of working age. We all know that mantra in Jersey "busy, busy, busy". Whenever you ask somebody: "How are you?" "I am busy. I am busy. I am busy." Do we really think that people have the time to have this discussion? It has taken us nearly a whole day to have just about the question. Do you think people have the time to take from their working lives, from their families, to sit and think about this? They do not. Yes, they are intelligent and they could understand it, but they do not want to. They want us to make this decision. However Members are going to vote on Senator Gorst's proposition - I will not comment on that just now - but I really do not think this referendum is necessary. I think it will have a negative impact on public engagement. I think Members should vote against this amendment.

#### **2.5.20 Connétable J.E. Le Maistre of Grouville:**

I am not going to speak for very long, but I think it is such an important matter that I do need to put my position forward. It is very much in a similar vein to the Constable of Trinity. The matter is of considerable importance to parishioners of Grouville, the people that I represent. Since I was first elected, 4 years ago, it was one of the subjects about which I had most feedback. In the vast majority of cases, that feedback is to maintain the *status quo*. In fact, lately I cannot remember anybody giving the contrary view. The proposal to remove the Bailiff from this Assembly has been brought a number of times, even since I have been in here. But, it was the Care Inquiry that was the catalyst for it being brought this time. The Care Inquiry gave no evidence as to why the dual role should be terminated, other than a perception of a problem, from one witness. Indeed, the Care Inquiry, as I read it, found that the judiciary, including numerous Bailiffs, acted properly, professionally and effectively. **[Approbation]** This proposed change is a fundamental constitutional change, which will eventually lead to the demise of the Bailiff as our civic head. We should never make such a constitutional change, without the mandate of the electorate through a referendum. I will be supporting this amendment.

#### **2.5.21 The Connétable of St. John:**

Before I start - now that we know that this is a constitutional issue, it is clear - I would ask the Chief Minister if he would accept this amendment, so that we could move on. No? Okay. I had to ask the question, because I think it would be correct to give him the opportunity to accept what is right. I must take exception with a comment made by Deputy Tadier, when he referred to the Bailiff as being "appointed by a foreign power". Well, the Crown. The Queen is our Duke and it is correct that he appoints the Bailiff. Such a comment, I think, should not be made in this Assembly. "The public are not interested" is another comment that has been made, I think it was Deputy Mézec. Coming from a Parish, which I sincerely hope when Deputy Southern referred to green Parishes, he meant green, leafy, highly intelligent Parishes and not in any derogatory way. I can say, as so eloquently put by the Constable of Trinity, who has made one of the finest speeches I have heard in this Assembly, that he has consulted, as I have. I regularly go for a walk around the precinct and one of the topics that is regularly brought up is: we must keep the Bailiff. I think it clear, and it should be made clear, that this is not a wrecking amendment. It is simply consistency. I believe, certainly from well before my time in this Assembly, it has always been the intention, or always been proposed as an amendment, that there should be a referendum. This brings me on to the final part of my speech. Why should we be frightened of a referendum? The answer is:

because we do not like the result we think it might have. It is quite simple. We have heard how Members have said: "Oh, it is in my manifesto." It might be in your manifesto, but that does not give you *carte blanche* to say that that is what should happen. Because you are one of a number of people and those who elected you may have agreed with 6, 7, 8 other points in your manifesto and disagreed with that one. So, it does not give a *carte blanche* on somebody's manifesto, unless they were being elected on a single topic manifesto. We are elected to represent our various constituents and Parishes. It is for that reason that a referendum is correct. Because, at the end of the day, it is their decision as to what should be done when there is a constitutional change. This is a constitutional change. I have not heard much from local legal advisers saying it is not a constitutional change. It has only been those who have come from the outside, allegedly being experts, who have claimed it is not constitutional. I urge everybody to put this Assembly's faith in the people we represent and ask them: "What would you like?" I urge Members to support the referendum.

#### **2.5.22 Senator I.J. Gorst:**

I said, some hours ago, that I was not looking forward to being the mover of this proposition and so I have been proved right. I understand that this is a difficult decision for a number of Members in this Assembly. I have just spoken to one of my colleagues here about my questioning of the Attorney General, and I certainly do not want to unwittingly draw the Attorney General into political comment. I apologise to him, if he feels that I have done so. That was not my intention. But, I am sure he will equally accept that, as a lawyer, it is right to ask questions of advice. I wonder then, before I say anything further, whether the Attorney General would wish now to address the Assembly and address the questions that were raised.

#### **The Attorney General:**

Yes, I am grateful. Thank you, Chief Minister. I have had the chance to revisit the report of Lord Carswell. He did not quite say, as was suggested, that the Bailiff's position as civic head does not depend on his role as Presiding Officer of the Assembly; what he said was a bit different. He said, at paragraph 5.11.14 of his report: "A number of respondents expressed concern ..."

#### **The Greffier of the States (in the Chair):**

I am sorry to interrupt. I am not sure we are still quorate. I think we are a Member short. I wonder if Members could come through from the coffee room. If not, then I think we will have to call the roll. No, I think we are in time. Thank you, Deputy.

#### **The Attorney General:**

Yes. What Lord Carswell said was: "A number of respondents expressed concern lest the Bailiff's position as civic head would be undermined if he were no longer to be President of the States. In our carefully considered opinion, it should not be. The Bailiff has a long-standing position of pre-eminence in the affairs of Jersey, which does not stem from his function as President of the States, rather, the contrary; his function as President of the States derived from his civic pre-eminence. In our view, that pre-eminence can be maintained, without having to maintain his presidency. So, that view as to the historic reason for the presidency, arising from the civic pre-eminence, was put in context by Sir Michael Birt in his letter, as follows, and what he said coincides with the advice I gave to the Assembly. He said, having regard to the passage that I have just read to the Assembly: "The review asserts that the Bailiff could continue to be civic head, even if he ceased to be President of the States. The reason and support of this conclusion are given in paragraph 5.11.14. In effect, there is only one reason given, namely a historical one. The Bailiff's position of pre-eminence in the affairs of Jersey pre-dated his function as President of the States, but his function as President of the States derived from his pre-eminence."



[15:45]

Here is the essential bit: “This is true, as a matter of history, but in modern times it is his position as President of the States which has underpinned his status as civic head of the Island. I know of no country, or jurisdiction, where a person who is merely the Chief Justice is the civic, or ceremonial, head of the country, or jurisdiction. I accept that if, for example, the legislation enacting any reform provided in law for the Bailiff’s position as civic head, this would underpin it for a while. However, I do not believe it would last for more than a few years. It would simply not be sustainable over the longer period. The Bailiff would become a remote figure, unknown to Members of the States, because he would no longer have regular interaction with them.” He goes on to describe some of the current roles of the Bailiff as civic head and says: “It is his status, as President of the States, as well as his historical role which gives legitimacy to the performance of those functions.” I agree with him and what Lord Carswell said should be considered in that context.

**Senator I.J. Gorst:**

I thank the Attorney General for his clarification and reference back to both the review of Lord Carswell ... let us just remind ourselves that on that panel sat a Jersey lawyer, as well. So, let us not get into the division of suggesting that Lord Carswell was a senior judge from Northern Island and, therefore, knew nothing about how our constitution, or about Jersey, because there was a Jersey lawyer sitting on that panel to advise on exactly these particular matters. I am also grateful for the Attorney General reminding us that the former Bailiff, himself, said that, as a matter of history, the case that the Carswell review outlined was correct. The concern was whether, in practice, over time, even if it were in legislation it might diminish. Of course, that is an opinion and only through a change would one know whether that was, ultimately, what happened in practice, or not. I want to try and focus my comments on the issue of referendum and whether it is appropriate, in this instance, to have a referendum. Those on both sides of this debate have suggested that the reason those who are against the referendum are fearful that the public might say: “No, they wish to retain the Bailiff as Speaker.” Of course, many Members, who have spoken in favour of a referendum, have previously spoken, and some of them have already admitted, in their comments, that they are against the change. Let us be honest. Let us be open. Let us not try and accuse each other of playing politics, when we are all politicians, but trying to find our way through what is a difficult question. For my part, I have been clear in the Assembly previously about my view on a referendum. I just want to pick up on a number of points. Firstly, the mover of the proposition, to bring forward the referendum, said in his opening comments that the current conversation, the constant discussion - “sniping”, he might have used that word, I would not necessarily use that word - is in his opinion, undermining, right now, the role of the Bailiff. I understand that sentiment. But, the proposition suggests that by having a referendum, the matter will be settled. I do not see that. The referendum, if Members decide to have a referendum, will, of course, give a result, but it will not settle the matter that 3 independent reviews have said we should change. It will not settle the matter that meeting modern, democratic, international standards around the separation of power, if the public say they wish to retain the Bailiff as Speaker, or President, of this Assembly. We will have a decision of the public, but we will still be out of kilter with all other modern democracies, as I said earlier, other than our colleagues in Guernsey. That will then be an issue for the next Assembly to face and to deal with. The last time we had an issue like that, where it required us to do something to change, where we had a referendum result that required us to change legislation, we did not achieve it. Because we found 101 reasons why the referendum was flawed, why the result did not mean what it said, why the public had not been properly informed before they cast their vote in the referendum and, therefore, we ignored it. Of course, we did not ignore the referendum about the Constables, because it required no action. Had the referendum gone the other way and P.P.C. had brought the legislation forward to enact that change, I have no

doubt that we would have found ourselves very much in the same position. So, it seems to me, that one of the prime reasons to move a referendum will not be addressed. It will not settle the matter. I do not know whether we are going to make a step towards settling the matter today. That is in the hands of the Assembly. But, it will change. I think most Members, even those who are against my proposal today, accept it is a matter of time. The other argument that we have got somewhat bogged down on is the matter of the Bailiff, as the guardian of the constitution. We heard that the role of the Bailiff, as the guardian of the constitution, comes from the Bailiff's oath. We also heard that the Bailiff was eminently suited to being guardian of the constitution, because of their previous role as law officer, namely Attorney Generals. It was the experience that they gained in that office that led them to being eminently suitable to being guardians of the constitution. I do not question the duties imposed upon a Bailiff by the oath of office they take. Of course, they are there. Nor do I question that the Attorney General does not see also his role in giving legal advice, which is in line with the constitution that we enjoy. Nor would I, when I remind myself of my own oath and the oath of Deputies in this place, who say that we will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors, according to law, that we will uphold and maintain the laws, privileges, liberties and franchises of Jersey. That can only mean that we, too, commit ourselves to upholding the constitution of Jersey in our deliberations. I am not sure whether I want to go into the detailed process of how these issues happen in practice. But, Members will be reminded that when, earlier this year, I think it was, we brought forward a decision to the States about we, ourselves, being masters of our destiny here in Jersey and making a decision to acknowledge what the United Kingdom was doing in regard to Article 30. We were acting upon constitutional advice from a third party Q.C. (Queen's Counsel) that we should, at all times, work towards nurturing that constitutional relationship, that we, in this place, should at all times consider the impact and continue to work to enhance it. The Bailiff's role, in the Bailiff's oath, provides for that. But, each one of us has an obligation, in our oath, to uphold the constitution. We are the democratically elected Members of this legislature. Her Majesty is our head of state. But, democracy must surely trump appointment at all points, because we are trying to deliver and enhance a modern democracy in our community. I think we all share that desire. We often wring our hands about whether our democracy is fit for purpose and about how we should change the franchise of Members of this Assembly. This is just another part of some of those questions. Then we come to: what would the question for a referendum be? Would it be that the Bailiff should no longer be the President of the Assembly? Or would it be that the States Assembly should elect its own speaker? We would have 2 very different campaigns if we chose one, or the other, of those questions, because it is not about removing the Bailiff. It never has been. Yet we know that those that want to see no change will use those emotive words, because it will give them advantage in a campaign. That is politics. But, I also point to what Deputy Southern said: "In all conscience, is that how we would want to run a campaign?" Or would we want to be open and fulsome and balanced in the approach that we take? I hope it would be the latter. Other Members have said: "Well, of course, we have to have a referendum, because we are riding the coach and horses through 400 years of history." I see somebody in front of me nodding. Let us not forget that even the role of the Bailiff has changed over the course of those 400 years. The Bailiff no longer has a casting vote in this Assembly. We have changed from a feudal system to a democratic system. Which of us would go back? Yet, we hear some Members, who I understand are so respectful of our history and tradition, that they are finding it really difficult to balance that with a modern democracy and modern democratic standards. I do not think the case has been made for a referendum. I do not think the referendum will solve the issue that the proposer would like to be solved, which is that we put this question to bed and do not ever have to revisit it.

[16:00]

Equally, I am absolutely clear, and we need to be open with the public and not be - I cannot think of a word that is going to be parliamentary - as a broad brush approach. I want to see this change. By having a referendum, I accept that I add further uncertainty into whether it will be delivered. I would like those in favour of a referendum to stand up and acknowledge that, for the same reason they are in favour of a referendum, because they think it is more likely not to deliver the change. Let us at least be open and honest with the public. But, for those reasons, I will not be supporting the amendment for a referendum.

### **2.5.23 Deputy R. Labey of St. Helier:**

I think I owe the Attorney General an apology for barracking across this house the word “planted” and inferring that he had taken Deputy Le Fondré aside and used him as his stooge there. I do apologise to the Attorney. I hope we are not going to fall out over it. It looked like that to me and I know it was a misconception and I apologise. Very soon after the “Paradise Papers” were released I was listening, as I normally do, to Radio 4 in that 6.00 a.m. to 7.00 a.m. slot, the *Wake Up to Money* slot. The reporter was asked to describe Jersey. The phrase he used in this description was of Jersey being a relatively democratic jurisdiction. I do not want to be part of a relatively democratic jurisdiction. I want to be part of a totally democratic institution and jurisdiction. If we are perceived as being just relatively democratic, that is a worry. That should be a worry for all of us. The Constable of St. John says that we should ask the people, in this referendum about who sits in that chair, because it is their decision. It is not their decision, it is ours. I have just come back from Sydney – I was in Sydney 3 weeks ago - at the Commonwealth Parliamentary Association Conference for Australia and the Pacific Region. I mean, 30 or 40 Parliaments were represented at that convention. All of them, apart from mine and the delegate from Guernsey, came from Parliaments, from Assemblies, from Houses where the parliamentarians, where the elected representatives, elected and chose their Speaker, their President. How long is it going to be before we can join those ranks, of accepted, proper, parliamentary procedure? It depresses me that we have to have this embarrassment, as it is sometimes. I do not talk the Island down when I am there. I try to steer clear of the subject. But, it is an embarrassment. No referendum is going to make this final decision, as I think Senator Bailhache alleges. It is going to go on and on and on. We have had Carswell and Clothier and the Independent Care Inquiry make these recommendations and it is going to continue. I know it is tough for people. I have huge respect and affection for our Bailiff. I think the Chief Minister has set out a really positive and good course of action, where we can try to get this separation of powers, but also carve out a proper role for our Bailiff, for him to continue as the civic head. I know and I respect that that is still too difficult for some Members. They feel they cannot break with that tradition. Other jurisdictions, that I met in Sydney, have had traditions to deal with too. The conference was about engagement and when we had a session on the engagement with young people ... we had lots of Pacific Island regions, some Islands as big as ours, or smaller, or what have you. I cannot remember if it was the Cook Islands, or Samoa, or the autonomous region of Bougainville, or Majuro, one of those said in this section about engaging with young people ... and the lesson for that, the main drive of that was: you should listen to young people, rather than try to put your message on them. The best thing to do when trying to engage young people is to listen to them. A couple of the representatives said: “We have a difficulty with that, because young people are not supposed to talk to their elders. They are supposed to listen to their elders.” It is like a tribal, elders system that has borne out. But, still, they confronted that and they were changing and they were breaking with that centuries old tradition. They were doing their best to change and to modernise. Similarly, we had delegates from another of the Islands, and I cannot remember which one, off the top of my head, and the lady delegate, the woman delegate, took the table. She came to the lectern and she said: “I hope I am not going to get into trouble for this, I am supposed to, as a woman, follow the men. I am not supposed to go first. I am not supposed to lead. I am supposed to follow. But, we are changing. We are trying to change.” And

the 2 men that were from there said: "Go ahead, go ahead." They are working hard on their traditions, long traditions, and we have to face up to ours. When the tradition becomes out of date and is an embarrassment and is not regarded correctly by the rest of the democratic world, how long are we going to lag behind? I would just also say this. We have a really bad history with referenda. Please, Members, let us not go down this line. What is going to happen if the referendum says, votes to keep the Bailiff as Speaker of this Assembly, but a majority of those elected to the next House in May 2018, are separation of powers supporters and have had that on their manifesto? We can have a kind of referendum. If candidates nail their colours to the mast, explain to people their position - and it will be difficult in some cases, but not as difficult as I think Members believe - let us nail our colours at the next election in 2018 and say what we believe in and let the public decide, but please, we would not be talking about a referendum unless the Chief Minister had put this proposition forward. It would not have suddenly sprung up. I feel sorry for him and that he has been hijacked with this. I understand Senator Bailhache's point, of course we all understand. We all know where the battle lines are drawn. I am with the Deputy of St. Ouen as regards this being a constitutional issue. I do not see how we can have any constitutional issues when we do not have a constitution, but please, let us not go down this referendum route, whether you support Senator Gorst, or not.

#### **2.5.24 The Deputy of St. Mary:**

I rise principally to reply to the Chief Minister's invitation, anyone thinking of voting for a referendum should nail their colours to the mast. If I do vote for a referendum - and on that, I am not yet decided - it will be simply for one reason: to determine the views of my parishioners. I wish to know how they wish me to vote and I will take cognisance of that when the vote eventually comes. I also refer to an earlier comment made by the Chief Minister, where he regretted that this debate had been, somehow, linked to the Care Inquiry, but linked it has. If I may look at, or refer Members to, recommendation 7 in the inquiry, which refers to "the Jersey way" and, again, that that should not be confused with what we are debating today, but it is there, the recommendation is: "We, therefore, recommend that open consideration involving the whole community is given to how this negative perception of the Jersey way can be countered on a lasting basis." I repeat: "We recommend that open consideration involving the whole community is given." How better can we give consideration to the whole community, other than having a referendum and ascertaining their views? If I do follow that referendum route, that is the sole reason I will vote for it. I am privileged to follow Deputy Labey, who has now left. He referred, on several occasions, to the embarrassment caused by the fact that we do not have a separation of the judiciary and the legislature at presidential level. The Care Inquiry, which again has provoked this, makes recommendations that: "Further consideration be given to the recommendations contained in the Clothier and Carswell reports." I think we need to remind ourselves that the recommendations contained in those reports were not confined to the separation of powers at the presidential level. They covered other things, more important things, I suggest, such as judicial powers being vested in Ministers; the fact that there were no tribunals against which decisions could be appealed against and the fact that the ultimate appeal was the Royal Court, when, in practice, no one who is the victim of such a decision by the Minister would dream of applying to the Royal Court because of the formalities involved. Members will be aware of the recent report, issued by the Legal Commission, which addresses all these points in the context of the Jersey inquiry and I would have hoped that we could have deferred this particular debate until those recommendations, which more meaningfully address the concerns of the inquiry, have been met, but that has not been the case. Primarily, I rise to explain my position as to the referendum and I suggest that other Members, who do vote for the referendum, will be doing it for the same reasons as myself, to gauge the wishes of their constituents.

#### **2.5.25 Senator P.F.C. Ozouf:**

This is not, in my view, a matter for a referendum and I will explain the reasons why. There has to be - and I think there has been - some fierce exchanges in this Assembly, which is good. Democracy should be noisy sometimes, but it should be respectful. There has to be, however, some honesty, I think, about this issue of constitutional *versus* political. If this is a constitutional matter, then I do not believe, in itself, that is an argument in favour of having a referendum. I say that because there has been numerous constitutional evolutions over time. The role of the Bailiff has evolved over time; the role of Bailiff has changed throughout its history. The Bailiff used to be, if Members care to look at the board, as we have our privileged position of our own entry with the wonderful list of Bailiffs that have served our Island, they will notice the repeated de Carteret name in association with the Bailiff. In fact, it is true to say that the Bailiff, for more than 100 years, was regarded as almost a *de facto* hereditary position, that of the de Carteret family. Somebody has suggested that, in fact, it is now perhaps the Bailhaches, but that would be unfair; that would be most unfair.

**The Greffier of the States (in the Chair):**

I think that is inappropriate.

**Senator P.F.C. Ozouf:**

That is inappropriate. I will withdraw that.

**The Greffier of the States (in the Chair):**

This debate has continued without personalisation. It has been the general office of the Bailiff and I think that is the appropriate way to continue, so thank you, Senator.

**Senator P.F.C. Ozouf:**

I will withdraw that. I said it was an inappropriate thing to do.

**The Greffier of the States (in the Chair):**

Well, do not say it.

**Senator P.F.C. Ozouf:**

The fact is that we cannot bury our head in the sands. This is a change of our democracy, it is a further evolution, that has been a constant evolution of our constitutional democracy. It is, perhaps, a status issue for some people, but I think it is an important issue of fundamental democracy. Not all changes, as I said earlier, of constitutional changes have been the subject of referenda. There was not a referendum in 1771, when the concurrent law-making powers of the Royal Court were abolished and the States Assembly was created. Throughout the last 246 years, the composition of the States' legislative Assembly has changed. There has not always been referenda about that issue, if that is constitutional, or democratic constitution.

[16:15]

The Bailiff has always presided over the court and this Assembly is not a division of the court. Nobody would say that. If a referendum is required on this issue, then the mover of the proposition must, surely, explain why there has never been a referendum on the issue of an elected Speaker, to my knowledge, in any other jurisdiction anywhere else in the world. Now, there is this argument about whether, or not, it is a dual role and I accept those arguments. I accept that it is a matter of perception. The arguments around the constitution of this Assembly have always been - and the Constable of Trinity is not here, but, perhaps, he is in the coffee room, listening to my remarks - there has always been this issue of a divide between the town and country. It is a sad fact of history that there has been a divide between the town and country, but the people that I have spoken to in the country, when explained exactly what the role of Speaker might be, changed their mind. When

I speak to them about the esteem in which this Assembly is held, they lament the standard of this Assembly in society. In fact, in many ways, one of the principal reasons why I do not think this is an issue for a referendum and I support the underlying proposition, is that I want to see a raising of the standard of debate. I want to see a raising of the standard in which this Assembly is held by the people of Jersey. I do not think that this is a subject which we can have a rational and non-emotional debate in a referendum on. I think it is simply too difficult. I do not think that we will ever win with the arguments, as I explained in my earlier remarks, the fact that some people will simply vote in a referendum, because they believe that somehow, as another speaker has said, that we are saying goodbye to the Bailiff. I just simply think that it is not possible to have that subtlety of argument. I have another amendment before this Assembly, which should, if any Member wishes to link a proper democratic decision and a proper democratic debate, which I understand now was not necessary, but I put it in as a protection, as I wanted the final say on the elected Speaker to happen after the next election. This should be a matter for us in our manifestos and in the positions that any candidate comes forward for election. It is one of a number of policies and promises and undertakings that one should set out in a manifesto, but to say that the issue of the Presiding Officer of the States ... and frankly, I disagree, fundamentally, with Senator Ferguson when she says that there is a difference between the President of the States and the Presiding Officer. I have had an email from an expert on this subject, who has written a book on this subject, who absolutely disagrees with Senator Ferguson. I will give way if she wishes.

**Senator S.C. Ferguson:**

Thank you. I did not say that. I said there was a difference between the President and the Speaker.

**Senator P.F.C. Ozouf:**

It is the same thing. My point is the same, and if I missed the point, the fact is that I do not agree, says my correspondent, with Senator Ferguson that there is a difference between being a Speaker and being a President. Both the Australian and Canadian senates have Presidents, who do not have the same job as the Speakers in the lower Houses. It is just a name. The Scottish Parliament chose Presiding Officer, because President is a more continental term. I am afraid I reject the arguments that Senator Ferguson made.

**The Greffier of the States (in the Chair):**

Senator, is this directly related to the issue of a referendum?

**Senator P.F.C. Ozouf:**

It is, but it goes to the heart of the issue as to whether, or not, the question of the referendum will be understood. That is what I am trying to say. I am almost confusing you, Sir, and you are not to be confused, but you are almost reinforcing, by your rightful questioning of me as to the relevance of the argument, as to whether it or not it is ...

**The Greffier of the States (in the Chair):**

No, I am not querying the relevance of the argument. I am saying that the debate is about whether, or not, to have a referendum. It seemed as though you were straying into other matters, but if you are linking it back to the question or whether or not to have a referendum, that is absolutely fine.

**Senator P.F.C. Ozouf:**

Thank you for that clarification. I think that it is almost impossible to disaggregate these issues. I think it is impossible to have a referendum question. What will it say? That the proposition before us - I am not sure I have got exactly the recital before me that Senator Bailhache is proposing - is it going to say President, Speaker? I just do not know. All I know is that people will be confused. I also put forward, in my own amendment ...

**Senator P.M. Bailhache:**

Will the Senator give way?

**Senator P.F.C. Ozouf:**

With pleasure.

**Senator P.M. Bailhache:**

If the Senator refers to my amendment, it says: "People voting in a referendum on the question of whether the Bailiff should remain the President of the States." That is the question which I am putting forward for the Assembly to consider.

**Senator P.F.C. Ozouf:**

Therefore, the Senator has made the point exactly as the point which I think is the most confusing, because I cite from my correspondent, who is an expert and has written a book on the issue, the issue of President does not necessarily link to that of the Speaker and, therefore, there will be confusion. If the Senator is saying that the referendum question is about the President, then I am afraid the good people of Jersey will be totally and utterly confused. They will not understand, because, of course, the President of this Assembly is ... we understand it, we understand that the President equals the Speaker, the Presiding Officer, but I am afraid our constituents will not and they will take arguments like the *Bailiwick Express* did yesterday when they said: "Goodbye to the Bailiff." They will do, like one of the T.V. (television) channels said: "Why are you throwing out the Bailiff?" They will have this view and that is why it is not a relevant question in a referendum that can be a rational question. With our voter turnout as low as it is, I am afraid that I worry even - and while I think there is a good attempt at trying to get a binding referendum and I understand the arguments of the Constable of St. Mary in relation to her remarks - we do not have a good history of having referenda and sticking to it. If it is not binding, which apparently it cannot be, there is going to be an expectation that it is. We are going to have a referendum on the presidency of the States that is not binding. It is a chaotic state of affairs, when one has to question, again, whether, or not, this is the most important issue, that perhaps we should be having a referendum on the constitution and the membership of this Assembly again, in order that we can deal with the absolute unfairness of the representatives and how we are elected. I am afraid there is no escaping this issue. As the Chief Minister rightly said, there is no escaping the issue about the issue of the Presiding Officer, or the Speaker of this Assembly. There is no escaping the issue of needing to tackle the issue of the Members of this Assembly. Election observers are going to say things that are uncomfortable. They may even say something about a referendum, if we have, effectively, a question about the presidency and about whether, or not, that is a legitimate and properly understood question. My concluding remarks on this issue is back to this issue of whether, or not, there is an advantage and a real democratic advantage in having a Speaker dedicated to the task, because I understand the issue of the separation of powers, but I recall - and I hope other Members will recall - the visit of the highly eminent former Speaker of the New Zealand Parliament, Sir Lockwood Smith, who came to address Members in the days after the last election, where I hope that His Excellency, the High Commissioner of New Zealand, as he had been appointed, gave Members a real sense of importance of the role of being a parliamentarian. New Zealand had, before that individual became Speaker, a very low standing in the eyes of the people of New Zealand. A dedicated Speaker there always was, but the Speaker - former High Commissioner, now retired - made a real difference in relation to the matters before the New Zealand Parliament. Having a dedicated Speaker is going to improve democracy. Now, that is an issue, maybe, for the main debate, which I will come back to, but I have already, I think, articulated the reasons why it is impossible to have a rational debate in relation to this issue, but if there was a rational debate, if anything could be gained from it, if it could be a question about raising the standards of the States

Assembly by having a dedicated Speaker, then, yes, I might be in favour of that, because I know the advantages that would accrue to this Assembly of having that role, also the solving of the problem of the dual role, but I am afraid it is not possible to do so. I will come back to the main proposition later and explain those arguments. This proposition has been described as an unfortunate proposition, with a known outcome, should there be a referendum. I think that those are really serious issues. I do not believe that it is possible to have a rational referendum on this issue devoid of emotion and devoid of the kind of issues that other Members have spoken about in the Brexit referendum, where, effectively, a whole load of emotional arguments were attributed to being almost a non-conformist individual, somebody who does not respect the constitution of Jersey. These things are going to be said. If you dare to suggest, as what happened to me in Trinity, you will be shouted down. The moment you talk to people, you can get them to change their mind. This is not an issue for a referendum. It should be an issue for focus groups, for proper understanding. If Members go back and look to my alternative proposal, which is the appendix that was attached to my failed amendment, they will see that what I tried to do was to, effectively, have an alternative to a referendum, which was effectively focus groups, a proper independent qualitative and quantitative poll in relation to this issue and then for this Assembly to make the decision for its Presiding Officer and not to have a referendum. I believe the arguments in favour of a referendum are massively outweighed and undermined by the fact that it is simply not possible to have a rational debate. I urge Members to, while superficially incredibly, incredibly powerful - and we are going to hear Senator Bailhache at his best in his summing-up, I know that, I am just waiting for it - but we have to, basically, remove some of the emotion and one has to make a rational decision and think through the election next year and how that question is going to play out and how we are going to deal with the consequences of it.

[16:30]

We have been not very good at dealing with the consequences and results of previous referenda and I suspect we will be in exactly the same position, where we will have a referenda with a certain result and then this Assembly, as re-elected individuals, will find it very difficult to deal with. I urge Members to vote against the amendment.

#### **2.5.26 Deputy M.R. Higgins:**

I have been listening intently to the debate. Equally, I have been doing some research and looking at previous documents. One I came across was *The Cry for Constitutional Reform - A Perspective from the Office of Bailiff* by Philip Bailhache, 1999. He was talking about the role of the Bailiff and about different aspects of the job, but nowhere did he talk about referenda and the need for referenda and for the people of the Island to be consulted on it. Equally, there was another document called *The Second Interim Report on the Constitution Review Group 2007*, which, on that panel, had Sir Philip Bailhache and his brother, William, the current Bailiff, and others. There was an interesting comment. This was presented to the Assembly in June 2008 and it considered that: "The dual role of the Bailiff, as President of the Royal Court and President of the States would have to be reviewed in the event of independence." That review was talking about whether Jersey should be independent and they were saying that if we were going to be independent, we should ... in fact, I will read what it says: "The report concluded that if Jersey were to have the privilege of sovereign status, then it would, arguably, be of great importance to avoid any misconceptions, however misconceived, that the independence of the judiciary might be compromised by making provisions for an elected, or appointed, Speaker other than the Bailiff." If we go independent, yes, you can separate the 2 roles, but if we remain with the Crown, no. Also, the Carswell review, we have already heard from the Attorney General how Sir Michael Birt had made various comments. He wrote a letter on 25th January 2011 in response to the Carswell review. I might add I have got a lot of respect for Sir Michael Birt, a great deal of respect. He stated: "I naturally accept,



unreservedly, that the decision is ultimately one entirely for the democratically elected Members of the States and they will decide, having placed such weight as they think fit, upon the views expressed in the review.” That was in response to Carswell, but he also went further. At a conference of the Commonwealth Magistrates’ and Judges’ Association, which took place in Jersey in September 2013, he again stated: “Ultimately, it is entirely a matter for the States whether they wish the Bailiff, who is appointed by the Crown, to continue as their Speaker, or whether they would prefer to have an elected Speaker.” That is Sir Michael Birt. What I would say to that is, again, there is no reference that this should go to a referendum, it is saying it is for the Members of this House to decide. I believe that, as well. In fact, I will just go back to something that the Chief Minister said earlier. The Carswell panel recommended that the Bailiff should continue to act and be recognised as the civic head of Jersey. The panel considered that the role of the civic head is of great value to the people of Jersey, that the Bailiff continue to do so, if he ceased to be President of the States. Senator Gorst has said: “We will put it into the law. The Bailiff can be the civic head.” The fact that he is the Speaker, or the President of the States Assembly, does not come into it. The role can be given to him and, as I say, it is not tied to that particular role. Some of the comments were made about the Speaker, or the Bailiff, sitting in the Chair, that he would be the guardian of our rights and privileges and so on. The truth of the matter is, most states have a constitutional court. If we wanted someone to make sure that the States were following our constitution, then we could create a constitutional court and the judges can look at it in an impartial way, without having to be in the States. We do not need one individual, here in the States, making that decision. I might add that, like others, I have spoken to people, who are almost incredulous that we have a Speaker, who is a judge and who has not been elected by the Assembly. The Commonwealth Parliamentary Association, in their recommended benchmarks for democratic legislatures, said: “For Presiding Officers, the legislature shall select, or elect, Presiding Officers, pursuant to criteria and procedures clearly defined in the rules of procedure.” As has been pointed out, we are one of the very few states - ourselves and Guernsey - that do not elect our Speaker. I do not believe that it can continue for any greater period of time. I might also add I have had conversations with John Bercow, the Speaker of the House of Commons, and we were talking about our situation. He said the House of Commons would never tolerate the system that we have here. About the only other thing that I am going to say, at this point, is that, again, people have commented on the wording of the referendum. We just had Senator Bailhache tell us what was in it, talking about the President of the States. That will really confuse the public, if that wording goes through. I must say the one that I think is more appropriate, if we ever did to go a referendum, would be: “Should the States have the right to elect their own Speaker?” **[Approbation]** That is what the question should be, not the presidency of the States, because, again, as Senator Ozouf mentioned, the media and others will be going: “They are dumping the Bailiff. They want him out the door” and people get the wrong idea. If the wording was: “Should the States have the freedom to elect their own Speaker?” then I think there would be no problem with the wording of that. Anyway, to finalise, I will just say that I shall, obviously, be voting against the referendum. I think it was one of the Constables said: “We have had this tradition of having referenda.” We have not. We have had very few of them over time and really it is for this House to make decisions. That is what we have been elected to do and we should stand by whatever decisions we make.

#### **2.5.27 Senator A.J.H. Maclean:**

I am going to cheer up your afternoon. I am going to speak about the amendment only and I am going to speak for a very short period of time, because I think most things have been said. But I do want to just make a couple of comments, if I may. I was listening to many of the speeches that we have had today on this topic. I was listening to Senator Ozouf’s comments. He said one thing that caught my attention and that was the remark that the dual role is a matter of perception. He is largely right. I think it is, in many people’s minds. It is a matter of perception. What struck me

when he was saying that was that, if that is the case, we are seeking today, potentially, to sweep away centuries of our history and of our tradition. I think to do that, at the flick of a button, without giving the opportunity for the people of this Island to have their say is entirely, entirely wrong. I have also heard comments from a number of Members talking about the need to move in the direction that is being proposed, the need, because we have to move to a more modern and a more democratic arrangement. I would say that the referenda is nothing short of direct democracy. It is giving an opportunity for the people to have their say in a matter that, I believe, is critically important to the Island. I think that that referenda taken in the past have been ignored by this Assembly is nothing compared to what the wrath of the public would be if we were to make such a significant decision today, without giving them the opportunity to have their say. For that reason, I believe that we must support the amendment of Senator Bailhache and move towards a referendum.

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak on the amendments? If not, I ask Senator Bailhache to reply to the debate.

**2.5.28 Senator P.M. Bailhache:**

I am going to disappoint Senator Ozouf, I am afraid, because this is not going to be an emotional speech, it is going to be an entirely pragmatic speech. I would like to thank all Members, who have spoken this afternoon and this morning on both sides of the argument. I think it has been a good debate. It is a debate which many of us have heard before, but it is an important debate. The Chief Minister said that a referendum would not settle the matter and I agree that with an issue which is as controversial and as important as this, it is probable that a referendum would not settle the matter for ever, but it would quieten it for a while. I think we have seen that effect in relation to the position of the Constables. I think it would be a brave person who brought a proposition to the States to remove the Constables from the Assembly in the light of the result of the referendum that was held in 2012. The issue, it seems to me, is very straightforward. Do we think that this is a constitutional issue, where we ought to ensure that we have the consent of the people before we make this substantial change? My submission is that the arguments are overwhelming. The law says it is a constitutional issue, the Attorney General has, helpfully, confirmed that it is a constitutional issue, not merely in the sense that it is about the constitution of the States, but it is about the constitution of the Island. We need to reflect upon that. Deputy Mézec made an interesting speech and he asked me to say a few more words about the guardian of the constitution. I am very happy to do that, because I think many Members, and certainly many members of the public, do not really understand what the role of the Bailiff is insofar as he is the guardian of the constitution. Why should they? How should they? I want to make it clear, first of all, that it is not a question of the Bailiff, in that capacity, mandating any kind of action by the Assembly, or by the Government. The role of protector, or guardian, of the constitution is purely advisory and it is the duty of the Bailiff to give counsel and advice to Ministers if he thinks that any constitutional matter, in particular in relation to our constitutional relationship with the U.K., is in question. The Bailiff can say to a Minister: "Have you thought about this? Have you taken legal advice?" and this happens from time to time, when the Bailiff approves the lodging of a law, or a regulation. I certainly, as Minister for External Relations, have been asked on more than one occasion whether I have considered such and such a point and I have found that advice to be particularly helpful. Very recently, my ministry received a very useful piece of constitutional advice from the Bailiff in relation to our wish to have the W.T.O. (World Trade Organisation) agreement extended to us. Senator Ozouf, he is always going in and out, perhaps it is those bees again. **[Laughter]** Senator Ozouf - I hope he is listening - will remember that there was an occasion when he was in India, poised to sign a double taxation agreement with the Minister of Finance in India, when, for some reason, the matter was referred to the then Bailiff, Sir Michael Birt. Sir Michael advised of a

constitutional complication, which caused the Minister to defer, to his embarrassment, I am afraid, because he was out there and the Minister of Finance was almost poised to sign. It caused, anyway, the deferment of the signature of the double taxation agreement. I recall that when I held office as Bailiff, advising Senator Le Sueur, as Chief Minister, about some regulations which were then before the House of Lords. The U.K. Government had in mind a change to the Common Travel Area so as to make it possible to require Channel Islanders to show their passports before they could enter the U.K.

[16:45]

I advised the Chief Minister that there was a constitutional issue in question, because Channel Islanders had a right, under our Royal Charter, to enter the U.K. and did not have to show their passports. The Chief Minister of the day followed that up and engaged with the Constitution Committee of the House of Lords. At the end of the day, the regulations were defeated and subsequently they were not brought forward. The role of guardian of the constitution is not an empty cipher. It is of great practical importance. The Deputy of St. Ouen is wrong, I am afraid, to say that it is tied to the role of President of the Royal Court. Since the enactment of the States of Jersey Law in 2005, which requires the Royal Court to refer to the States Assembly any order in council, which comes down for registration, which does not have the approval of the States Assembly, there is nothing for the Royal Court to do in terms of defending our constitutional privileges extra-judicially. The Chief Minister reminded us that all Members share the duty to protect the constitutional privileges of the Island and, of course, he is correct. But the overriding responsibility lies with the Bailiff and if the Bailiff did not have the means to give that advice to Ministers, the position of the Island would be weakened. I have yet to hear anything from the proponents of change as to what would be done to protect the Island in those circumstances. The Constable of St. Mary queried whether people would understand the referendum and that was echoed by a number of other speakers. My answer to that is that it is up to the campaigners in the referendum to make sure that they do understand it. I see no reason why there should not be a lively and informed campaign on both sides of the argument, then people would understand. Deputy Le Fondré made an interesting speech too. One phrase that he used stuck in my mind, where he said it was important to the community. Indeed, it is important to the community as to whether the role of the Bailiff changes. Deputy Wickenden and a number of others suggested that it was not about the Bailiff, but it was about an elected Speaker and that it was a domestic issue for Members. That was a refrain that was heard many times. Why should Members not elect their own Speaker? If it were purely an internal matter for the States, as I said in my opening, I could very well accept that argument. The trouble is that one cannot look at this issue with a horse's blinkers on. One has to look at the matter in the round. It is important that, if change is to be made, people and the community as a whole understand the collateral consequences. Will there be collateral damage, unintended consequences? The guardian of the constitution role is one very pertinent example of that. Another one concerns the argument around the civic head of the Island. They have been well-rehearsed. It is late in the afternoon and I am not going to repeat all those arguments. I do not think that getting the Bailiff to turn up on Liberation Day, or to preside over the election of Speaker - I must say, I do not understand why the Chief Justice should preside over the election of Speaker. If we are going to follow the House of Commons, why do we not have the senior Member, the Father of the House, presiding, as happens in the House of Commons? We certainly do not need the Bailiff here for that purpose and I think that is just a fig leaf to make us imagine that there is going to be some real connection between the Bailiff and this Chamber in the future. I think we really all know, in our heart of hearts, that if the Bailiff were no longer the President of the States, he would become a remote figure, completely removed from the work and soul of the Assembly. For some Members, that is a perfectly acceptable consequence. The history and tradition of the Island would, I believe, keep the role of civic head alive for a few years, but I

have no doubt that quite soon, and certainly eventually, it would wither away. I think, to be truthful, that Lord Carswell knew that, but he thought that the removal of the Bailiff from the States was more important. I suspect that that is really the view of the Chief Minister, too. But the Bailiff's role as chief citizen of our bailiwick, as some Members have pointed out, is part of what makes this Island different. We are becoming - and this is not a racist remark - but we are becoming increasingly English, we are following the United Kingdom more and more in the laws that we adopt and the things that we do. I do not say that in a disparaging sense, at all, but as a rather despairing lament of what makes this Island different, special, unique, is increasingly being chipped away. It may be that Commonwealth parliaments, all derived from the English, or United Kingdom Parliament, have a tradition of electing their speaker. We have a tradition that in our Assembly, which is - as Senator Ferguson rightly says not a parliament - is presided over by the Bailiff. I do not find it necessary, unlike Deputy Tadier, to justify that state of affairs to outsiders. It is the way in which Jersey has operated for hundreds of years. The Bailiff is the President, or *Président*. Deputy Labey, on the same theme, said that he wanted a proper parliamentary process. Parliamentary, Deputy. He went on to say that our system was out of date and an embarrassment. Well, I am sorry if he feels that. I think that many people, certainly outside this Assembly and perhaps even some inside the Assembly, feel very differently and feel that there is some pride to be had in the Bailiff, as the President of our Assembly [**Approbation**] lending the dignity of his office to our affairs. This is an important constitutional matter. Going, as the Attorney has said, to the very heart of our constitution. We should not make such a change, without knowing what people think. A referendum is a possibility to engage the public. It does not need to be complicated, and I think that, in fact, it would be very constructive to engage and to explain to members of the public, who might not understand it, part of our constitutional history, so that they can learn and all, who take part, can make an informed decision. I make no presumptions about what the outcome of a referendum may be. I am afraid that a lot of this debate has proceeded upon the basis that, if Members support this amendment, somehow the referendum is being settled and that the issue will then have been decided. I do not accept that. I have listened to the Constables and I think that they are right, that in the country Parishes, maybe, the opinion goes in one direction. I think that in the urban parts of the Island the opinion may very well go the other way, and I think that a referendum will be a chance for us all to understand what the people think on this most important constitutional issue that is before us. I think that Members should respect the views of the public and I ask for the *appel*.

**Deputy S.Y. Mézec:**

I seek a point of clarification from the Senator. He helpfully addressed the point that I raised in my speech, which I asked him to speak on, which is instances where the Bailiff has acted in his capacity as guardian of the constitution and he listed examples where the Bailiff has offered advice to Ministers on issues to do with our constitution. Could he clarify how many of those occasions, where advice was offered, occurred within this Chamber and how many occurred outside this Chamber?

**Senator P.M. Bailhache:**

Sorry, I did not hear the last sentence. What was the question?

**Deputy S.Y. Mézec:**

I was asking: on those instances where the Bailiff - acting in his capacity as guardian of the constitution - has offered advice to Government Ministers on constitutional issues, how many of those occasions occurred in this Chamber in which we are now sitting and how many of those occasions occurred outside the Chamber?

**Senator P.M. Bailhache:**

I think almost all of them will have taken place outside the Chamber.

**Senator P.F.C. Ozouf:**

A point of clarification: the Senator spoke about the incident in India, in respect of the double taxation treaty. I think it is just for the record that, while the former Bailiff was involved, in fact it was the Attorney General of the day that I received the advice in relation to dealing with the matter, and it would be wrong to suggest that it was simply the Bailiff that was involved in that. I was involved in it directly, I can assure Members, and it would be wrong to ascribe that as being simply a matter that was in the sole preserve of the Bailiff.

**Deputy J.M. Martin:**

Sir, can I ask for some information from the Chair? Is it a constitutional vote, do we need over 25?

**The Greffier of the States (in the Chair):**

It is a good question. The only vote in this process, on which the Standing Order 89A applies, which is the one that requires an absolutely majority, would be the vote on the main proposition. All these other votes, if we get to them, on amendments and so on are normal votes. The *appel* has been called for. I think Members are in their seats. I ask the Greffier to open the voting.

<b>POUR: 25</b>		<b>CONTRE: 22</b>		<b>ABSTAIN: 0</b>
Senator A.J.H. Maclean		Senator P.F. Routier		
Senator L.J. Farnham		Senator P.F.C. Ozouf		
Senator P.M. Bailhache		Senator I.J. Gorst		
Senator S.C. Ferguson		Senator A.K.F. Green		
Connétable of St. Clement		Connétable of St. Helier		
Connétable of St. Peter		Connétable of St. Mary		
Connétable of St. Lawrence		Connétable of St. Brelade		
Connétable of St. Ouen		Deputy J.A. Martin (H)		
Connétable of St. Martin		Deputy G.P. Southern (H)		
Connétable of St. Saviour		Deputy M. Tadier (B)		
Connétable of Grouville		Deputy of St. John		
Connétable of St. John		Deputy M.R. Higgins (H)		
Connétable of Trinity		Deputy J.M. Maçon (S)		
Deputy of Grouville		Deputy of St. Peter		
Deputy J.A. Hilton (H)		Deputy S.Y. Mézec (H)		
Deputy J.A.N. Le Fondré (L)		Deputy of St. Ouen		
Deputy of Trinity		Deputy L.M.C. Doublet (S)		
Deputy K.C. Lewis (S)		Deputy R. Labey (H)		
Deputy E.J. Noel (L)		Deputy S.M. Wickenden (H)		
Deputy of St. Martin		Deputy M.J. Norton (B)		
Deputy R.G. Bryans (H)		Deputy T.A. McDonald (S)		
Deputy A.D. Lewis (H)		Deputy P.D. McLinton (S)		
Deputy S.M. Bree (C)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

**Deputy M. Tadier:**

May I ask the Chief Minister whether he would consider withdrawing his proposition?

**The Greffier of the States (in the Chair):**

You can ask him.

**Deputy M. Tadier:**

I am seeking leave of the Assembly to do so.

**The Greffier of States (in the Chair):**

You can ask. Chief Minister, do you wish to say anything at this point?

**Senator I.J. Gorst:**

No, I have spoken throughout this debate as respecting democracy, wanting to ensure that we have a modern, fit for purpose democracy. It would not, therefore, be right for me to withdraw my proposition, because of a democratic decision of this Assembly, whether I supported it, or not. Members now have to decide whether they wish to support the proposal as it is now amended.

**2.6 Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment (P.84/2017) –amendment (P.84/2017 Amd.) - as amended**

**The Greffier of the States (in the Chair):**

We now move on to the amendment, lodged by P.P.C., which relates to the timing of the change. I wonder, before the amendment is read, whether the committee wish to move it as amended, or whether it wishes to have a separate debate on the amendment to the amendment?

**The Connétable of St. Clement:**

The Committee are quite happy to accept Senator Ozouf's amendment, because what the Senator says in his amendment would have happened, in any case, but it just spelled it out.

[17:00]

But I was hoping that the Chief Minister would also accept the amendment, as amended, because now that Senator Bailhache's amendment has been adopted and there is no way that, if the change is agreed, it can happen for May 2018; it would have to be January 2019, at the earliest, so it does seem to me it should form now if ... I make the proposition and accept Senator Ozouf's amendment.

**The Greffier of the States (in the Chair):**

Well, because the main proposition has been read, we have to go through the motions of making the amendment, but obviously it is up to Members to decide how long they wish to debate that given the Constable's comments. Is there any objection to the amendment being read as amended? If not can the Greffier read it, as amended, please?

**The Deputy Greffier of the States:**

Page 3, paragraph 2, for the words "following the 2018 general election" substitute the words "in 2019, provided that any such legislative amendments must include provisions for an appointed day act, which shall only be brought to the Assembly after the elections of May 2018".

**2.6.1 The Connétable of St. Clement (Chairman, Privileges and Procedures Committee):**

All this amendment now means is that, should the proposition of the Chief Minister, as amended, be accepted, and the referendum is a vote in favour of the Chief Minister's proposition, that the Privileges and Procedures Committee would be required to bring in the necessary legislation and Standing Orders, so that it would have effect from January 2019. I move the amendment.

**The Greffier of the States (in the Chair):**

Is the amendment to the amendment seconded? **[Seconded]**

### **2.6.2 Senator P.F.C. Ozouf:**

May I just seek clarification in relation to the matter, which is the reason why I brought it? Is that notwithstanding the adoption of Senator Bailhache's amendment, that what is the status of a referendum? I just seek advice for this, just for the avoidance of any doubt. I was under the misapprehension that there was an attempt in Senator Bailhache's amendment for it to be a binding referendum, but I am pleased to be advised as to whether, or not, the issue of a referendum is going to be subject to a non-binding and the referendum law and, therefore, is advisory. The reason why I am asking for that clarification is because I believe that, ultimately, if this is going to be a final issue for the Assembly, I am not sure what the consequences of a referendum, which is in a majority against, would void the proposition of the Chief Minister. Because, presumably, what could happen is another proposition could be brought forward, in early course, in the new Assembly and then, notwithstanding the fact that the proposition of Senator Bailhache attempted to nullify the proposition of the ... I am just not sure what it means.

#### **The Greffier of the States (in the Chair):**

I am sure the Attorney General can correct me, if I am wrong, but what the amendment, which the Assembly has just agreed, does is it ... if the main proposition is then adopted, P.P.C. working with the Chief Minister's Department, are required to go away and work out the practicalities of how to bring this proposition into effect. Meanwhile, the proposition only comes into effect if the circumstances of the referendum are met, so there is a referendum and the Island votes in favour of the change. The Referendum Act still has to come to this Assembly and be decided, in the normal way, and the legislation still has to be agreed by the Assembly, in the normal way. If the referendum vote went in favour of not making a change, the proposition is void, but there is no restriction on this debate coming forward again, either in the same form, after the due period passes for these things to happen, or in a different form. There is no other restriction. I will look at the Attorney General, in case he wants to tell me I am wrong, but I think that is the position.

#### **The Attorney General:**

No, I agree with your analysis.

#### **The Greffier of the States (in the Chair):**

Do you wish to speak in this debate, Senator Ozouf?

#### **Senator P.F.C. Ozouf:**

No, I have got nothing further to say and I am grateful for the clarification because, effectively, it means that Members can put forward their proposals of how they would vote in a decision of the presiding officer, and whether or not they would support a revised proposition, notwithstanding the referendum, because it will be advisory. I am grateful for your guidance.

#### **The Greffier of the States (in the Chair):**

Does anybody wish to speak in the debate on this matter, the amendment from P.P.C.? If not, Chairman, do you have anything further to say?

#### **The Connétable of St. Clement:**

No, thank you.

#### **The Greffier of the States (in the Chair):**

Those Members in favour of adopting the amendment as amended ... the *appel* has been called for, that is on the amendment, as amended. I invite Members to return to their seats and I ask the Greffier to open the voting.

<b>POUR: 42</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy S.Y. Mézec (H)		
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

## **2.7 Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment (P.84/2017) – second amendment (P.84/2017 Amd.(2))**

### **The Greffier of the States (in the Chair):**

The Assembly now moves on to the second amendment, lodged by Senator Ozouf, and I ask the Greffier to read the amendment.

### **The Deputy Greffier of the States:**



Page 3, new paragraph (3), after paragraph (2) insert the following new paragraph - “(3) to request the Privileges and Procedures Committee to bring forward the Standing Order changes necessary to enable a specially constituted Scrutiny Panel, comprising at least one Minister, or Assistant Minister, as well as Back-Benchers, and representative of opinion across the Assembly on the question of the Speakership, to scrutinise draft legislation arising from this proposition, and for that specially constituted panel to be the relevant Scrutiny Panel for the purposes of calling in such legislation for scrutiny under Standing Order 72.”

### **2.7.1 Senator P.F.C. Ozouf:**

I am aware that the Corporate Services Scrutiny Panel has made some comments, in relation to my amendment, which I thought was a reasonable one. If the arguments of the constitutional issues are to be still alive in Members’ minds, then they will understand that the constitution is a matter for all Members of this Assembly, irrespective of their role as being members of Scrutiny, or Ministers. There is an additional issue, which is, I think, relevant, and that is that the Corporate Services Panel membership seems to be of the view that they are again the proposals of the change. That is maybe a relevant factor; I do not ascribe any particular contrary views, or any sort of inappropriate views, but it is difficult to see how a Scrutiny Panel, with such very fiercely held views, as clearly a number of the Members have spoken in the previous debates and no doubt in the debate that we are going to have ... and I note that Deputy Le Fondré and Deputy Brée are the chairman and vice-chairman and they have clearly made their views known. So, if this is a constitutional matter then it requires a specially constitutionally driven and all-encompassing Scrutiny proposal. I think that the arguments in favour of that, if it is true that it is a constitutional matter and a matter for all Members, then that must be, therefore, permissible for being different to that of the normal ministerial legislative scrutiny process, that exclude Ministers, rightly, from that scrutiny proposal. I move the proposition.

### **The Greffier of the States (in the Chair):**

Is the amendment seconded? **[Seconded]**

### **2.7.2 Deputy J.A.N. Le Fondré:**

I rise, as president of the Chairmen’s Committee and I hope Members have looked at the comments that we issued on this amendment and the comments that were issued were approved unanimously by all of the chairmen which constitutes all the chairmen of Scrutiny and the chairman of the Public Accounts Committee as well; as a Chairmen’s Committee that is what we comprise of. It is difficult to know where to start, because the trouble with the proposition here is it demonstrates a clear lack of understanding of the Assembly’s scrutiny processes, but some of the core principles that underpin good scrutiny, wherever it is being carried out; not least the principles of independence and objectivity. It is a great shame that Senator Ozouf had not approached the Chairmen’s Committee at any time with his concerns - obviously the first we knew about this was when it was lodged - because we might have been able to help him with some of the problems that he has and addressed some of the inaccuracies and, I would suggest, confusion behind this amendment. For example, in his report he seems to indicate a lack of capacity between the Corporate Services Scrutiny Panel and the Care of Children in Jersey Review Panel, that they do not have the capacity to undertake the work that was envisaged in this area. Given the timing of what is considered, that is simply not the case and was certainly news to us. The reality is, I would say, quite a good news story, because we do co-ordinate our work across the panels, if that was to become an issue, and arrangements are very much well in hand for how Scrutiny is going to approach any work arising from the Independent Jersey Care Inquiry report. The Care of Children Review Panel is already tasked with ensuring that no issues fall through the gaps and ensuring that scrutiny is undertaken of all the associated legislation. Where the standing panel maintains an

interest in carrying out the work, then the 2 panels will liaise in order to agree how and by whom individual pieces will be scrutinised, and that is all done through the Chairmen's Committee maintaining an oversight and co-ordination role. In terms of objectivity, the Chairmen's Committee was particularly disappointed - and I think as chairman of Corporate Services I am particularly disappointed - at the negative inferences in the amendment and the accompanying report about objectivity and impartiality of serving Scrutiny members. They are not only uncalled for and un-evidenced, but it shows a fundamental misunderstanding of the principles of good scrutiny. Senator Ozouf calls, in his amendment, for a special Scrutiny Panel that will "be representative of opinion across the Assembly" and this is where misunderstanding really reveals itself. It is the case that not only here, but in places like the U.K. House of Commons, Scotland, Ireland, Wales, Australia and Canada, among a very long list, that any personal, or party political, views, or even agendas, are left behind when entering the panel, or committee, door. Parliamentarians participating in Scrutiny are expected by colleagues and the public to conduct their work objectively and transparently, being as open as possible and making as much of their work as possible public within the usual confines of confidentiality and data protection matters. That transparency is crucial, as it helps provide the basis by which the accountability can occur. With that in mind, simply having a known view on something does not represent a conflict of interest. In fact, that situation is arguably more transparent than those working with unknown views. It simply should not matter. We are not in the Scrutiny role to drive forward our own opinions and we will be held to account to this Assembly if that is not the case. I know, in certain past reviews, when we have wanted to bring one, or 2, Members in on reviews, somebody said: "No, do not worry, we expect and know that you will do a good job." Scrutiny Panels and their members are expected to operate objectively, on all matters, on behalf of the Members of this Assembly, who we are appointed by and accountable to, and that will continue to be the case. Now, I think a possibly even more important point, that needs to be addressed about this amendment, is that it effectively amounts to a permanent proposal to abandon the Troy Rule, an absolutely fundamental component of our current system of government. Because, this amendment effectively leads us to dispose of the principle of a minority Executive that underpins the system of checks and balances to ministerial, or Executive, power. It would not be at all appropriate for a principle of such importance to be abandoned so unnecessarily and certainly not before a relevant comprehensive review and analysis of the machinery of government had been undertaken, for example, by P.P.C. I think it would be fair to say that the Chairmen's Committee, as a whole, has been increasingly concerned to witness the blurring of the lines between the Executive and the legislature by some Members of the Assembly and I would like to repeat some quotes from the esteemed Lord Lisvane, who is the former Clerk of the House of Commons, which he made in his 2016 report called *A Review of the Function of Tynwald*. Indeed, these are quotes that we have had to previously make to the Chief Minister on the very issue of blurring of roles and responsibilities and this is when there seemed to be a suggestion of appointing rather a lot more Assistant Ministers than we presently do. So, commenting about the importance of ensuring a clear delineation of roles, Lord Lisvane said: "Perhaps the most difficult element to defend to the wider world is the fact that whatever may be claimed for the ability of departmental members to free themselves of government responsibilities and criticise other parts of the same government through independence, it is the case that 26 out of 30 eligible members of Tynwald, or 87 per cent, are in Government." This lack of evidence of separation of roles between the Parliament and the Executive, oddly enough, means that the Isle of Man may be seen to fall short of good standards in governance. This amendment, itself, would, therefore, breach the Troy Rule. I will make some further comments, just to identify, briefly, the issues that we have identified in our comments. We have identified it as an unnecessary, problematic and unjustified departure from the existing framework for Scrutiny. It does say this is an exceptionally important piece of legislation. Now, we have argued and we have

obviously accepted that this is an important matter to the community, but in terms of scrutiny we do an awful lot of important matters.

[17:15]

This is no more important, for scrutiny purposes, than care of children, living on low income, discrimination legislation, or even the hospital. So, from that point of view, there is not a justification, in the view of the Chairmen's Committee, to go with this amendment, which is a permanent change to Standing Orders. It is clear that there would need to be significant and contentious amendments, so it would need to be brought forward by P.P.C. and the subsequent process and timeframe for a Scrutiny debate of any such changes is potentially lengthy, even before you got to the main proposals. So, it would not be out of the question that we could still be discussing the changes in Standing Orders long after the matter of the Presiding Officer had been settled. There is a comment from P.P.C. on the fourth amendment, which is probably equally apt. As a summary. To quote, it says: "Senator Ozouf's amendment is far from straightforward and is likely to prove difficult to implement in practice." It is a shame. I will finish that it is regrettable that this amendment calls into question the integrity and capabilities of the current Scrutiny membership. We have not needed any convoluted special arrangements imposed on us to date, yet we have managed to undertake effective work on all manner of extremely important Island-wide topics over the last 3 years. Just in case people disagree, I would like to cite the Chief Minister, on one particular piece of work, when he said that Scrutiny has done an excellent piece of work on the matter in hand. That is on Hansard and I was very welcoming of his comments at the time. I think even Deputy Labey picked up on those at the time as well. I do not see the evidence that we need to be subject to special measures now. We have been and we are still perfectly capable of following due process and good practice in establishing suitable arrangements to make sure the appropriate scrutiny is undertaken on any issue, including this one. This is an ill-conceived, ill-considered amendment with potentially far-reaching negative implications and it fails to understand basic core principles of good Scrutiny and how Scrutiny functions. I do ask the States, on behalf of the Chairmen's Committee, to reject it.

### **2.7.3 Deputy S.M. Brée:**

Firstly, the Senator seems completely confused on this particular amendment. He says that comments were received from the Corporate Services Scrutiny Panel. They were not. This was Chairmen's Committee comments. He is questioning the ability and integrity of Scrutiny members to carry out work that they have been carrying out, for which he has praised them in the past, and he is now saying we do not have either the ability or, indeed, the integrity to look at this evidence based, apolitically, and coming to a sensible view and presenting a report based on evidence and apolitical views to the States, in order for the States to then be further informed on the matter when the debate happens. There is no difference between the legislation that will be put forward, lodged by P.P.C., should this proposition of the Chief Minister succeed and all the other legislation which we have been looking at. So, why? Why, suddenly, does Senator Ozouf not trust the ability, or integrity, of Scrutiny? It is, because, I believe, there is a fear in Senator Ozouf that it is a question of, perhaps, the way in which work is done. Ministers and Assistant Ministers, perhaps, have different views on matters to members of Scrutiny, but I think the most telling and most damning sentence in the report attached to this amendment - and I will read it for Members - the justification is that it is of such importance that a dedicated panel is necessary to look at it, rather than the work being done on the side of the desk by the Corporate Services Scrutiny Panel. May I assure you, as vice-chairman of the Corporate Services Scrutiny Panel and chairman of the Economic Affairs Scrutiny Panel, that we do not do things on the side of the desk? **[Approbation]** To suggest that we do, I find extremely insulting and I would urge all Members to just reject, out of hand, this amendment.

#### **2.7.4 Senator I.J. Gorst:**

I thought we decided after July of this year that we were going to be a bit more open and honest with people. Did we not? We committed ourselves to doing just that. This is not a proposition which criticises the previous work of Scrutiny and there is no suggestion that it does. As 2 members of the Corporate Services Scrutiny Panel have said, Ministers have stood up and congratulated them for their work in the past. I would - and it is too late for 2 Members now - ask them politely. They know that they are not in favour of a change for this Assembly electing its Speaker. They know it. They are telling us that on this important issue they can put what they have described, in this debate, as 400 years of history that was so important that we should not change it, that they will put that belief, that issue that they spoke passionately about, to one side. That is what they are asking us to accept. I ask them just to consider whether they really think that will enhance the good work that they do, or not. It is for them to decide. Here is a proposition that will mean that they will not have to make that difficult decision. I think it is helpful to them. I think it will enhance their work.

#### **Deputy J.A.N. Le Fondré:**

May I seek a point of clarification from the last speaker? The Chief Minister seemed to be implying that any legislation - I should emphasise, as a point of further clarification, we have not discussed this as any panel - coming to review would be for a legislative scrutiny and I presume would not be about the principles. Has the Chief Minister not understood that?

#### **The Greffier of the States (in the Chair):**

It is not quite a point of clarification, I think. That is more of a debating point, Deputy Le Fondré. Can we move on to Deputy Andrew Lewis?

#### **2.7.5 Deputy A.D. Lewis:**

I am glad the Chief Minister spoke before I did, because I thought I was coming in earlier than that. He certainly made me think. I think what Senator Ozouf is trying to do here is laudable, because it is very clear to me that Deputy Le Fondré and Deputy Brée have a position on this issue, already, so it is a bit of a get-out-of-jail free card to scrutinise this fairly, openly and transparently without fear or favour. The bit that I am concerned about, though, is that I am not a great advocate of mixing the Executive with Scrutiny. I just do not think we are ready for that. We do not have the constitution, or rather the Assembly is not constituted in a manner that would make that very easy. The Troy Rule would be severely compromised, as is stated in the comments from the president of the Chairmen's Committee. On that basis, I cannot support it. However, I do hope that a way can be found to scrutinise this, should it come to that, because it is important to be scrutinised, but Members must be very open, as they already have been, about their objections to a particular piece of legislation and stand away. I would expect Members to do that, anyway, and I am sure they would, but this just enables it to happen in a slightly more transparent and organised way. But I am afraid I cannot support it, on the basis it simply will not adhere to the principles of the Troy Rule, so on that basis I will be rejecting the amendment.

#### **2.7.6 Deputy J.M. Maçon:**

For those Members who, perhaps, do not understand Scrutiny, of course, there are alternative ways in which if a Member wants a certain piece of legislation, or policy, scrutinised, there is nothing stopping Scrutiny, perhaps the Corporate Services Scrutiny Panel, setting up a sub-panel in order to deal with this. If there is an air of concern about the membership and who should sit on it, of course, if this does go to referendum, I do not think any of us should be so brave as to presume that we would be here in the next Assembly and carrying out that work, so I do hope consideration of that is not based on the personalities of who sits on certain sub-panels as it is. Therefore, we must

remember that Scrutiny is a public process. It is there to gather evidence. If this were to be adopted, it would then have to go to P.P.C. P.P.C. would then have to draft the Standing Orders. They would then have to come back here. We would then have to debate them and have that all set up. It seems to me to be a totally unnecessary, bureaucratic and cumbersome process when it would be far more simple for Scrutiny to set up a sub-panel in order to deal with this issue. So, why not proceed in that manner? Therefore, that is why, as part of the Chairmen's Committee when we made this decision, it seemed totally unnecessary, and I do hope we stop wasting the Assembly's time. I would ask Senator Ozouf to withdraw this amendment.

#### **2.7.7 Deputy L.M.C. Doublet:**

Deputy Maçon is my vice-chair and clearly great minds think alike. I wanted to just let the Chairmen's Committee know that, of course, I do support these comments. It was my vice-chair that was at the meeting when they were discussed, but I did approve them when they came through and I am fully supportive. As vice-president of the Chairmen's Committee I do like to think that we can all be reflective as chairmen, and women as it may be, of our own views, our own ways of working. I think, perhaps, the point that Deputy Maçon has made, I would call upon Deputy Le Fondré as the president of Chairmen's Committee to, perhaps, think about how he might go about scrutinising anything that comes through. Because I really do feel that there would be value in, perhaps, a review panel, and I think that means we can co-opt Back-Benchers, who are not already on Scrutiny, if we wanted to get a greater diversity of views. I think Deputy Le Fondré is nodding there. I think we should always be challenging ourselves and reflecting on our own views. There is always room to listen to other Members' views on our views as well, and I hope that Deputy Le Fondré will be able to do that. I will support him in that process if I can.

#### **2.7.8 The Deputy of St. Ouen:**

I rise to give strong support to the comments made by Deputy Le Fondré and Deputy Brée. The Corporate Services Scrutiny Panel members have been elected by this Assembly. They are elected to do the job. Our Standing Orders prescribe that certain matters are referred to that panel and we have put in place the membership of that panel. For 3 years now they have been scrutinising legislation, difficult pieces of legislation, and issues that are within its remit, and there has not been, so far as I am aware, any expressed criticism of their abilities as scrutineers. If any Members of this House believe that the members of that panel were unable to act in an impartial way, as scrutineers, then it is up to that Member to bring a vote of no confidence, quite frankly, in the panel. But, to suggest, by this amendment, that they are now unsuitable, just because they have expressed a view, even strong views, of effectively scrutinising legislation is wholly improper, it seems to me. I would beg to differ with the Chief Minister, who is wagging his head at me. It is possible, it must always be possible, for persons elected to Scrutiny to take an objective view on the evidence presented. Public hearings are held. Evidence is given in public.

[17:30]

It is published. It is there. A report is presented. If the report is badly put together, if the report of the Scrutiny Panel does not reflect the evidence that has been heard, then criticism can be given, but it is for those elected Members to do the job as scrutineers, until such time as this Assembly says it has no further faith in their abilities to do the job.

#### **Senator P.F.C. Ozouf:**

May I propose the adjournment with the ...

#### **The Greffier of the States (in the Chair):**

No, because I was going to ask Members, who still wish to speak in this debate to put their lights on and then Members can decide whether they wish to adjourn at this stage, or whether they wish to conclude this amendment.

**Deputy J.A.N. Le Fondré:**

Can we finish this particular amendment?

**The Greffier of the States (in the Chair):**

If there is a proposition to adjourn, I think, let us take the views on the proposition to adjourn.

**Senator P.F.C. Ozouf:**

I wish to propose the adjournment, on the basis that there are important issues which have been raised in this debate about the Troy Rule. Deputy Le Fondré said, in his submission, the Troy Rule was broken. I am advised that it is not relevant, but I want to get confirmation of that, and also there is the opportunity, overnight, for the absolutely understandable position that has been made, the olive branch that has been made, by kindly Deputy Doublet, that there is the opportunity, perhaps, of a sub-panel to be agreed. Therefore, on that basis I would ... **[Interruption]**. I do beg Deputy Maçon's pardon. Now, if such a thing was to be agreed overnight, then I would willingly withdraw my proposition. I move the adjournment.

**The Greffier of the States (in the Chair):**

Those Members in favour of adjourning kindly ...

**The Connétable of St. Clement:**

Is it possible to speak on the adjournment motion?

**The Greffier of the States (in the Chair):**

I was hoping to avoid it, Constable, but yes, if you wish. **[Laughter]**

**The Connétable of St. Clement:**

I do think it is quite important that we do attempt to finish this particular amendment this evening **[Approbation]**. I say that for a number of reasons. We have a considerable amount of business still on the agenda which, technically, we are supposed to complete tomorrow. I think there is a risk that we are not going to do that. If we do not complete this item tonight, we almost certainly will not do that. But even if we do not do that, I will be suggesting to Members they will need to think if we do not complete tomorrow about when we are going to continue with the business left over, or we try very hard to finish the business tomorrow. I would ask Members to vote against the adjournment motion.

**The Greffier of the States (in the Chair):**

Sorry, a point of clarification for you, Constable. When you say about this business, do you mean this amendment, or the full proposition?

**The Connétable of St. Clement:**

This amendment.

**The Greffier of the States (in this Chair):**

This amendment. Does any other Member wish to speak on the adjournment proposition? Senator Routier.

**Senator P.F. Routier:**

I was particularly taken by Deputy Doublet's suggestion of being able to, perhaps, find a middle way through this because I think ... **[Interruption]**. Well, yes, okay, Deputy Maçon said it first and it was reinforced by Deputy Doublet.

**Deputy J.M. Maçon:**

It is my political career. **[Laughter]**

**Senator P.F. Routier:**

I think it is good it has come from 2 people, who are within the Scrutiny system. What occurred to me during their speeches is: is there a time when Scrutiny Panels ...

**Deputy J.A. Martin:**

Sorry, this is about the adjournment.

**The Greffier of the States (in the Chair):**

This is the adjournment proposition.

**Senator P.F. Routier:**

Oh, is it really? **[Laughter]** I am against adjourning.

**The Greffier of the States (in the Chair):**

Thanks for that. Deputy Tadier.

**Deputy M. Tadier:**

It is clear that we cannot make a decision about whether to adjourn, so could we put it to the public, or maybe a poll on the BBC, or all 3 of the BBC listeners who are tuned in at the moment? Maybe they can decide for us.

**The Greffier of the States (in the Chair):**

Yes, thank you, Deputy. Deputy Le Fondré?

**Deputy J.A.N. Le Fondré:**

Yes, I would like to vote against the proposal to adjourn. We should complete this tonight. The 2 issues that Senator Ozouf has referred to are referred to in our comments, so they are not new and they should have been addressed. What was being proposed about sub-panels is a standard matter, which the Chairmen's Committee, or Corporate, or whoever can decide at that time if people want the legislation reviewed - we do not know what we are getting. So, it is a standard process. It is not new and does not require a major debate.

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak on the adjournment proposition? If not, Senator Ozouf, do you wish to say anything?

**Senator P.F.C. Ozouf:**

No further comments, apart from the olive branch is there overnight, in order to clarify the Troy Rule and a sub-panel and I move the adjournment and hope Members are reasonable, because we could dispatch this thing more quickly by withdrawal of the proposition, subject to those matters being clarified overnight. I move the adjournment and ask for the *appel*.

**The Greffier of the States (in the Chair):**

The *appel* has been called for on the question of the adjournment. Members are invited to return to their seats. I ask the Greffier to open the voting. If all Members have had the opportunity to cast their votes ... **[Interruption] [Laughter]**. This is the adjournment.

**Deputy J.A. Martin:**

It is shall we go, or shall we stay now?

**The Greffier of the States (in the Chair):**

*Pour* means go home; *contre* means stay to the end of this amendment.

<b>POUR: 18</b>	<b>CONTRE: 27</b>	<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf	Senator P.F. Routier	
Senator A.J.H. Maclean	Senator P.M. Bailhache	
Senator I.J. Gorst	Senator S.C. Ferguson	
Senator L.J. Farnham	Connétable of St. Clement	
Senator A.K.F. Green	Connétable of St. Peter	
Connétable of St. Helier	Connétable of St. Lawrence	
Connétable of St. Ouen	Connétable of St. Mary	
Connétable of St. Martin	Connétable of St. Brelade	
Deputy of Grouville	Connétable of St. Saviour	
Deputy M.R. Higgins (H)	Connétable of Grouville	
Deputy of St. Peter	Connétable of Trinity	
Deputy A.D. Lewis (H)	Deputy J.A. Martin (H)	
Deputy L.M.C. Doublet (S)	Deputy G.P. Southern (H)	
Deputy R. Labey (H)	Deputy J.A. Hilton (H)	
Deputy S.M. Wickenden (H)	Deputy J.A.N. Le Fondré (L)	
Deputy M.J. Norton (B)	Deputy of Trinity	
Deputy T.A. McDonald (S)	Deputy K.C. Lewis (S)	
Deputy P.D. McLinton (S)	Deputy M. Tadier (B)	
	Deputy E.J. Noel (L)	
	Deputy of St. John	
	Deputy J.M. Maçon (S)	
	Deputy R.G. Bryans (H)	
	Deputy S.Y. Mézec (H)	
	Deputy of St. Ouen	
	Deputy S.M. Bree (C)	
	Deputy of St. Mary	
	Deputy G.J. Truscott (B)	

**The Greffier of the States (in the Chair):**

So, we carry on with the debate on the second amendment. The next speaker is Deputy Tadier.

**2.7.9 Deputy M. Tadier:**

Despite Deputy Russell Labey’s protestations, I will speak, but I will try and keep it short, because I have to go and play the accordion somewhere later on. No doubt the issue of who chairs this Assembly will be a hot topic as well as whether we play *Knees Up Mother Brown* or *My Old Man’s a Dustman* and what language we sing in. What is all this about? The Chief Minister stood up and said: “Let us have some honesty in this Assembly.” They are both smiling over there. They know there is something funny going on here. Senator Ozouf knows that he has presented a formula of words, which no reasonable States Member can agree to, to set up a Scrutiny Panel comprising at least one Minister, or Assistant Minister, as well as Back-Benchers. Well, we know that Scrutiny cannot consist of Ministers and Assistant Ministers. He could have asked for a panel to be set up,



or a body. We do have those; they exist already. We have a longstanding panel that is looking at legal aid and that comprises a mixture of Members from across the ministerial and non-ministerial, but that is not a Scrutiny Panel. So, it is well within the existing framework to set up a special panel. If we are going to be honest, we know this is basically ... and it is appropriate that it is on at the same time as when we are shortly to be debating same-sex marriage, because this is nothing less than a right-wing lovers' tiff which has been going on in this Assembly between Senator Ozouf and the Deputy of St. Lawrence. They used to be so closely intertwined, did they not, when they were working hand-in-hand as Minister and Assistant Minister at Treasury and Property Holdings, and now ... **[Interruption]**. Well, no, I think we want some truth in this. This is nothing but a bit of mischief making. If there is an issue with people holding political views and then looking at them on Scrutiny, we need to decide that when we constitute our Scrutiny Panels. I think there is a genuine concern about when a matter comes to the Assembly that relates to the Privileges and Procedures Committee, should that automatically fall into the remit of the Corporate Services Committee when it is to do with the whole of the Assembly, not to do with the Chief Minister, the Minister for Treasury and Resources, *et cetera*? That seems wrong and we need to fundamentally address that issue. It is, of course, the case that the Corporate Services Committee happened to be of one mind on this particular issue. It does not necessarily mean they cannot scrutinise it properly, or if they were comprised of a different political opinion, they could not scrutinise it. I guess the question now is: what is the chronology of all of this? We have decided that if we do go ahead with voting, the substantive amended proposition through - and it is still a big if; I suspect it will not necessarily get through - it has to go to the public. If the public reject it, there is nothing left to scrutinise. So, are we putting the cart before the horse, here? We firstly need to make a decision in this Assembly whether we want to elect our own Speaker, then it has to go to the public if we do that, then after that hurdle and only after that hurdle, it seems to me, there could be scrutiny. The question of when scrutiny occurs, if at all, is a big question. I would renew my plea to the Chief Minister overnight to seriously consider withdrawing this proposition, because it is no longer what he tabled. The Chief Minister and others have spoken vigorously against why we should not have a referendum, including Senator Ozouf, and I think there is the rub. I do not have many regrets in my political life, but I am starting to regret passing this very simple proposition over to the Chief Minister, because I could have quite easily lost it myself without any help from him. **[Laughter]** I could have quite easily lost the referendum debate, as well, without any help from him, with due respect. So, I feel aggrieved because, certainly, if it had been my proposition, it would have been much simpler. It would have been much more 'in principle'. It could have been amended, of course, and it would have been put to a referendum and we could have debated this months ago. I would still retain the right to withdraw that proposition and put it to the Assembly that we withdraw it. I cannot do that anymore, but I would like to suggest that the Chief Minister seriously considers doing that overnight as a gesture.

**Senator P.F.C. Ozouf:**

May I seek leave to withdraw the amendment, **[Approbation]** because I think there is a better standalone proposition that could be brought forward and I take Members and particularly Scrutiny ... so, may I seek leave of the Assembly to withdraw the amendment?

**The Greffier of the States (in the Chair):**

The Member has sought leave to withdraw the amendment. Any objection? That is agreed to.

**Senator P.F. Routier:**

May I propose the adjournment?

**The Greffier of the States (in the Chair):**

The adjournment has been proposed. Is that agreed to? I believe so. Just before we leave, a number of propositions have been lodged today, one proposition Income Support: reinstatement of single parent component by the Health and Social Security Scrutiny Panel, and I think 4 amendments to the Draft Budget Statement 2018, lodged by Senator Ozouf. The Assembly will resume at 9.30 a.m. tomorrow.

**Deputy J.A.N. Le Fondré:**

Just to clarify, is the date of lodging today on all those amendments?

**The Greffier of the States (in the Chair):**

You can go and look in your pigeonhole and check that out for yourself. The Assembly will resume at 9.30 a.m. tomorrow.

**ADJOURNMENT**

[17:41]