

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 16th NOVEMBER 2017

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[9:30]

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

PUBLIC BUSINESS – RESUMPTION

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

The Greffier of the States (in the Chair):

Before we begin, there has already been a proposition lodged which is the eighth amendment to Draft Budget Statement 2018 from Senator Ozouf. We now resume the debate on the proposition from the Chief Minister, Elected Speaker and Deputy Speaker of the States Assembly: selection and appointment P.84. We dealt with the amendments yesterday and now we return to the main debate and I ask if anybody wishes to speak on the proposition?

1.1 Connétable A.S. Crowcroft of St. Helier:

My main concern, as I mentioned yesterday when we debated the amendment, is that we may be forcing upon voters in May next year a quite unnecessary referendum; one which could be a complete distraction from the serious matters that will be in the public's mind in May. As I said yesterday, there are other burning questions which the public I am sure would like to express their views on in a referendum but the separation of powers after a period ... we had various figures 400 years, 700 years were mentioned yesterday. Clearly, we have been using the present system for centuries. As a supporter of an elected Speaker I have to admit that the present system is not broke. Indeed, I suspect that a lot of people who voted yesterday for the referendum voted that way because they do not want it to happen and they feel the best way of securing that is to take it to a referendum where they are hopeful the public will return the Bailiff to the Speaker's chair by a large majority. So, I do not think we should fool ourselves about this. Clearly, there is a split in the States. I suspect it is not nearly as close as yesterday's vote and I suspect that there are probably no more than a dozen or so Members here who believe, as I do, that we should have an elected Speaker. Therefore, I would urge Members to throw out this proposition if it has effectively been changed beyond recognition. Members who vote against having a referendum on the removal of the Bailiff from the Speaker's chair next year are not anti-democratic, they simply believe that the public have more important things on their minds at the moment than we how we organise our sittings. So I would urge Members to bring this debate to a speedy conclusion so that we can move on to other matters. Thank you.

1.1.1 Senator S.C. Ferguson:

It occurred to me yesterday that what the Chief Minister did not clearly explain is that he is effectively promoting the Bailiff to a titular position; a Speaker to do the day to day grind and the Bailiff to be wheeled out on special occasions. If he meant this, why did his explanation wander all over the place and not identify the overall aims. I mean, we have ... yes, we have had Clothier who had a whole load of matters ... 3 particular matters to consider that no one should hold or exercise political power or influence unless elected by the people to do so. Fair enough. He said that: "The Speaker is the servant of the Assembly not its master and can be removed from office if not satisfactory, while the Bailiff, appointed by the Queen's letters patent to a high and ancient office should not hold a post subservient to the States which brings up this question of accountability. Although I rather feel that if there really was dissatisfaction with a particular Bailiff then this House ... this Assembly, sorry. I must not fall into this anglicised trap. This Assembly ...

Male Speaker:

Why not?

Senator S.C. Ferguson:

Well, if people want us to be called the County of Jersey, fine but I do not. The second reason that the principle ...

The Greffier of the States (in the Chair):

Can we allow Senator Ferguson to continue with her speech without barracking from the back?

Senator S.C. Ferguson:

I will save my insults for them until later, Sir. **[Laughter]** What is sauce for the goose is sauce for the gander. The second reason was that the principle of separation of powers held that no one who is involved in making the law should be involved judicially in a dispute based upon them. The third reason was stated to be that the Bailiff makes decisions about who may or may not be allowed to speak or put questions in the States or about the propriety of a Member's conduct. But, as the Attorney General said in P.54, comments in actual fact I would say ... paragraphs 19 and 20 he disagreed with this and said that clearly it was incorrect because the propriety of the Bailiff's decisions relating to the regulation of the internal proceedings of the States were covered by parliamentary privilege and not amenable to challenge in the courts. Now, interestingly, according to Professor Andrew Le Sueur who happens to have a first-class degree in law and is the Professor of Constitutional Law at the University of Essex and occasionally serves on the Jersey Law Commission and who specialises in tiny legal systems which I think probably includes us; he might well in fact be a useful guru at election time. Anyway, according to him, the Carswell report and the accompanying legal opinion by Singh ... have satisfied practically nobody in either Island. The report recommended that the Jersey Bailiff's role in the legislature should be replaced by an elected Speaker, though in addition to his judicial role, the Bailiff should continue to be the guardian of the constitution and the conduit through which official correspondence passes between the Jersey Government and the U.K. (United Kingdom) Government. He notes that: "By way of contrast, the European Court ruling on the McGonnell case did not oblige constitutional change to be made. It required only that a judge does not sit in a case concerning a piece of legislation in respect of which the judge had a role during the legislative process. Looking at Jersey there are a number of people who can preside over the legislature in addition to the Bailiff and there are several members of the judiciary able to sit in the Royal Court instead of the Bailiff. In practice, boxing and coxing can avoid an infringement of McGonnell." I think that the other factor is that neither Clothier nor Carswell really understood the historical basis and ethos of our Islands. Both Clothier and Carswell persist in speaking about a Speaker and do not seem to understand that the Bailiff is the President of the States. You know, it is not for nothing that the technical term for the Islands has always been peculiar of the English Crown. Those who wish to anglicise our Island would presumably party to the changing of this term to that of Crown Dependencies.

[9:45]

Why do they need to call us that? We are the Channel Islands; we are Jersey and that should be sufficient. Perhaps they are the same as those who have changed the technical name of the British Isles to the United Kingdom instead of Great Britain. Or would they prefer the County of Jersey? Anyway, I digress, the whole point is that the role of the Bailiff is rather more responsible in the States than the English understand. The very wording of our oath and the oath taken by the Bailiff underscores that. Even the oath taken by the Members of this Assembly is significantly different to that taken by British M.P.s (Members of Parliament). The British oath is: "I, name of Member, swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors according to law, so help me God." That is it. This is in stark contrast to our oath which ... the first part is fairly similar, you swear and promise before God that you will well and faithfully discharge the duties of ... that you will be faithful and bear true

allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors according to law. The difference is the second part that you will uphold and maintain the laws, privileges, liberties and franchises of Jersey, opposing whomsoever may wish to infringe the same. That you will attend the meetings of the States whenever you are called upon to do so and generally that you will fulfil all the duties imposed on you by virtue of the said office. All of which you promised to do on your conscience. The Bailiff's oath is a great deal broader and more important. There is the first bit about swearing allegiance to the Queen. Then that you will "uphold and maintain the honour and glory of God, that you will uphold and maintain the laws and uses and the privileges and freedoms of this Island and that you will vigorously oppose whomsoever may seek to destroy them. That you will administer justice to all manner of persons without favour or partiality and that you will take heed of the good advice and counsel of the Jurats as the case may require." All of which you promise on your conscience. I think it is a very important difference that the Speaker of the House of Commons only has to swear allegiance to Her Majesty. Our elected representatives have to oppose anyone who may wish to infringe our laws, privileges, liberties and franchise. The Bailiff has to vigorously oppose whomsoever may seek to destroy them, to administer justice to all manner of persons without favour or partiality and to take heed of the good advice and counsel of the Jurats as the case may require. After all, the Bailiff is a Crown appointment which is a rather different matter to being a States appointment which is what we seem to be reducing it to. The Harwood Report in Guernsey was rather more practical when considering the role of the Bailiff as president. One of the important matters they included was protecting the rights of back-benchers against the powers of the executive if such a style of government was to be adopted. I think that is quite important. We pass resolutions and propose a law that need the authority of Westminster, with authority of the Privy Council to validate them. The Chief Minister appears to be relying on Clothier, Carswell and Oldham without bothering to speak with Westminster, the Privy Council or even the Bailiff. This strikes me as being incredibly discourteous. It seems to have escaped everybody the Bailiff is appointed by an Order in Council as a Crown appointment. Therefore, apart from being incredibly discourteous to Her Majesty who takes a great interest in the doings of her Crown peculiars, we seem to be doing this totally base over apex and we have adopted a totally short-sighted approach. We have a number of highly intelligent, competent and qualified individuals who have been prepared to spend time in service of the Island and all that can be done is to whinge at them. If we kick them in the teeth will they still devote time for the Island? I would not. There are the messages which I received last night. A lot is being said about having an independent Member sitting as Speaker but any Member appointed has presented a manifesto before the elections. There are therefore, inherent biases built into the system. I am told that Speaker Bercow does tend ... although he is a Conservative, does tend to favour Labour Speakers. The only independent Speakers that we could elect would be those elected unopposed as they did not have to publish a manifesto. There is a call for more democracy. The contention that our current system is not democratic, I totally agree with that but not because of the ancient and noble post of Bailiff, I agree because of ministerial government. Sadly, we have the current supporters of that system now trying to inflict yet another English custom on us. If you continually worry about what other people are saying or thinking about you, you will achieve nothing. Have we sufficient faith in ourselves and our traditions to follow our vision of what we want the Island to be? Or do we just want to follow the herd and copy someone else because we either cannot think or are too frightened to stand up for ourselves. Or are we just totally brain-washed into copying the U.K.? As it happens, I will be supporting the proposition but most definitely not because of my support for the Chief Minister, his Council of Ministers and the programme of Anglicisation which is being brought in but because of the referendum. Since the overwhelming support for the Connétables in that referendum, that last referendum, that topic has not recurred. We need to hear the public voice and let us deal with this once and for all. Thank you.

1.1.2 Connétable C.H. Taylor of St. John:

I think we have had the debate. This goes to a referendum and lets the people speak. There is no more ideal democracy than that so I will be supporting this proposition simply because it is going to a referendum and I think we need to move on as quickly as possible. Thank you.

1.1.3 Senator P.F.C. Ozouf:

I understand that some Members will feel downhearted. I also understand that Members of the public simply are astonished that this States Assembly may well be attempting to promote a policy of what is being described in the media, worryingly, as effectively ejecting and ending the historic role of Bailiff in Jersey. The comments that I have received from supporters of mine, constituents and other people who have reported matters to me, demonstrate my serious concern. In no way do I suggest that people are unthinking or are unaware of the situation that the Bailiff and the issue of the presidency of the States and the presidency of the court are but I am afraid that the comments that I have received do show a need to explain the day to day realities of what is required in a modern democracy. I will continue to support the proposition that is brought forward by the Chief Minister. I do so because I fundamentally believe that there is an underlying principle and an underlying requirement that democracy and democratic decisions should be left to elected people and that the judicial matters which are also part of the whole concept of a constitution and a constitutional arrangement should be left to independent justices. The Bailiff is unelected, he is a Crown appointment but let us not be deluded, if I may say to Senator Ferguson, that somehow the Crown makes these decisions in a personal capacity. Any Member that suggests that the Crown is making or any monarch is making decisions has forgotten the fact that the Crown has delegated matters to Ministers; Ministers of the Crown and Ministers of State. It is the Privy Council that has for hundreds of years effectively advised the monarch who makes no decisions at all apart from the ratification of the advice of her Ministers. The Crown delegates all of the powers that the Duke of Normandy had in succession ... in the right of the Duke of Normandy. I am afraid to say that I do not accept and will never accept a position where an unelected individual enters the political fray and that is allowed and permitted in a democracy to make political comments. I could quote from some uncomfortable passages that were made in the court not far from here in a recent swearing in when I objected, as a democrat, to being told certain matters in terms of our constitution. I will not quote them but suffice it to say that I found the interjections of an individual, a Crown officer, in relation to certain political matters to be, frankly, unbecoming.

The Greffier of the States (in the Chair):

Senator, I think it is unfair to make those sorts of comments. No Member here really knows who you are referring to but you are effectively casting aspersions on a Crown officer. I think either you put allegations to the Assembly in the form of a motion of censure or something like that or you do not cast those sorts of suspicions around.

Senator P.F.C. Ozouf:

Well, okay, I do not wish to cast aspersions, I just wish to make ...

The Greffier of the States (in the Chair):

Well, sorry, it is not okay. You have cast aspersions and I think you should withdraw that and move on. [Approbation]

Senator P.F.C. Ozouf:

I withdraw any allegations of aspersions but I will make a statement of fact, if I may?

The Greffier of the States (in the Chair):

Okay.

Senator P.F.C. Ozouf:

So frankly, it is not correct to say that the United Kingdom is like Jersey, an equal possession of the Crown. It is just simply not a factual statement. It is not the case to say that Jersey's democracy is the same thing as the United Kingdom. It is simply not correct to say that and I will circulate the speech to which I am referring to. I am not casting aspersions, I will simply make a statement of fact in relation to what I believe to be capable of being interpreted as making a comment which is, I think, a political comment. I hope that does not stray into anything that is problematic.

The Greffier of the States (in the Chair):

I think the problem is that because you have not set out who said what and it is not clear whether the matter is in the public domain or not ...

Senator P.F.C. Ozouf:

It is on the website.

The Greffier of the States (in the Chair):

Right, but I think if you are going to be critical of a Crown officer there are ways of doing that and that is by means of a proposition of censure.

Senator P.F.C. Ozouf:

Fine. I do not wish to censure, I just wish to make the point.

The Greffier of the States (in the Chair):

Well, I think you have made the point so move on.

Senator P.F.C. Ozouf:

Right, so I have made the point but effectively issues of democracy and politics should be left to politics and judges should be effectively dealing with judicial matters. Now, the referendum issue is the one that has caused immense concern among Members and I understand that. I would say that the referendum, as now being approved by Senator Bailhache ... now requires us to have a referendum. I think the real question that Members need to think about is when is the right time to have that referendum? Is the next election the right time to have that referendum where effectively the issue of the Presiding Officer, which is effectively to many people's mind and eye a subsidiary and relatively important, but in the issues that we have to deal with in politics, not an issue which is actually the dominating issue. Is it the right time to have that referendum? I am pleased that Senator Bailhache did not describe and say in his proposition when that referendum should happen. I am pleased he did that because that gives me some comfort to be able to vote in favour. If we are to have a referendum on the issue of the Presiding Officer then let us have one but then let us also, perhaps after the next election, also consider the remaining issues about the constitution and the composition of this Assembly which is going to have to be dealt with whether or not we like it or not.

[10:00]

I suspect the election observers that will be here ... and I really do hope that we can stop any more suggestions of a "them and us" culture and a suggestion that Jersey is effectively becoming increasingly anglicised. I can speak in this Assembly in French. Not many people, sir, I know you can, would be able to understand it. I am a proud Jersey man. I am a proud British person. It is not the case, if I may say to Senator Ferguson, to say that the United Kingdom has been re-labelled in Great Britain. Great Britain is different from the United Kingdom. The British Isles is different from the United Kingdom. The United Kingdom is the unification of the Crowns of England, Ireland and Northern Ireland and Wales and Scotland. It is the union mainly of England and

Scotland. We have never been part of the United Kingdom. I do not want to be part of the United Kingdom but I want to be linked in with Great Britain. I have said before that I think that Jersey, in our small way, puts in recognition of our current monarch puts the E.R. into greater. We make Britain greater by our contribution and long may that continue, it has been a partnership of hundreds of years. There has always been a struggle of the Anglophiles versus the Francophiles, that is the reason why Jersey French has always been the bridesmaid and never the bride or the groom and has always been effectively the third language. There are many issues. There is a struggle between the town and country that has been an issue but let us not please inflame, let us please not infer improper motives to those people who seek to look at international precedents and suggest that there be changes because of a particular penchant of English or Anglicisation. It is simply not right and not correct. There has been an increasing occurrence of these mentions and these comments in recent weeks which I think we as an Assembly and as an Island community which represents people from all sorts of different parts of the British Isles, all parts of the European Union, all parts of the world, have been a harmonious community. So let us not in this Assembly use effectively accusations of Anglicisation and motives of that nature in these debates. I believe, in summary, that there is an important evolution to our constitution that must happen. If we need to go to a referendum and seek proper explanation as to why this evolution is necessary ... we have not always done it with constitutional issues but if we are to do it, let us do it properly. Let us not confuse it with the other issues that are probably more urgent in terms of dealing with issues of the ageing society, with taxation, with the hospital, with tax and spending and other issues in the next election. Let us take time in order to articulate a proper campaign of information and knowledge. Let us also try perhaps and also deal with the composition of the States. So I say yes to this proposition in all its parts including a referendum but I do not support and give notice now that any proposal to bring a referendum at the next election would be the wrong decision. It would be quite wrong to try and dominate an election on the issue of the Presiding Officer when there are so many other important political issues to be dealt with. In the full knowledge that despite people's view that a referendum is not going to be required to deal with the composition of the States, we simply could not have a change to the composition of the States if we did not have a referendum. One minute we are saying we are having a referendum on the composition of the States with 3 options and then we are going to make the decision. We throw that out and then we are going to make it ourselves on a completely different basis. Of course, a referendum is going to be required on the composition of the States. It is at that time that Senator Bailhache's proposition should be part of a referendum concerning the issue of the Presiding Officer. I thank the Chief Minister for his work, for his commitment to and for also bearing the arrows and the insults that have been thrown at him for doing what he believes. I think that nobody could question the motives of our Chief Minister in terms of doing the right thing and standing by his principles. Also, making decisions without fear or favour; he is to be congratulated for that and I will be supporting his proposition. I urge those Members who made their support for this proposition, who said in debates earlier: "I do not think the facts have changed ..." they said earlier that if a referendum was to happen then they would vote in favour of the proposition. Let them stand by, please, what their remarks were. Let us vote in favour of this proposition and make an orderly and proper assessment of when the referendum can happen and also when these ... we are clearly not going to have an elected Speaker after the next election anyway. Clearly there is work to be done in the legislation et cetera. So it would be almost ... if one really thinks about it ... I was not in favour of a referendum; if we are having one I will respect it and I will respect the outcome of that referendum but in view of the fact that P.P.C. (Privileges and Procedures Committee) have said they are not going to be ready before the next election then there is clearly a case to be made to making sure that everything is in place so that the referendum can be taken with the full knowledge of the implications and of the laws et cetera. The arguments of Brexit were that effectively it was a vote in the unknown. Well, let us have a referendum that is a known known and not a distraction to

the other massively important issues. The public are sick and tired of us talking about ourselves and I suspect the next election is going to be the worst time in order to have a conversation of talking about ourselves. So, let us do the work and carry on but do it in a methodical and proper way and at the right time. I urge Members, despite their jaundiced and down-hearted feeling that the referendum was accepted, let us embrace it. When a problem happens, you do not give up you just carry on and you make the arguments and you make them properly. I do not want to have to make those arguments alongside the rest of an election in which there are other issues. Let us have a proper stand-alone referendum where we can argue these issues for and against without the pollution of the other important political issues. So, let us vote in favour of the Chief Minister's proposition. Everybody has said in favour of referendum that they will vote in favour of the proposition; to me it is just the timing of when this happens and it is certainly not the General Election knowing what I know now. I thank Members for their attention.

1.1.4 Connétable L. Norman of St. Clement:

So, Senator Ozouf wants to kick this issue into the long grass. I agree with him totally but I do not agree with his method. What really inspired me to talk this morning was the contribution of the Constable of St. John and Senator Ferguson because I had always had the impression, or have got the impression over the last few days, that both of these Members are opposed to having an elected Speaker in this place but they say they are going to support the proposition. Now, could I remind them and other Members who might be thinking the same way what the proposition says. One, to agree the States Assembly should select its Speaker either from among the elected Members of the Assembly or by appointing a person who is not a Member of the Assembly but who will be eligible for election to the Assembly. That is what we will be supporting if we vote in favour of this proposition even as amended. If we vote in favour, anyone who votes in favour of this proposition when the referendum comes should be canvassing in favour of that. If any Member votes for this proposition they are voting for an elected Speaker. Now, if Members want to be honest with the electorate, those who are opposed to the Bailiff being removed from this place must vote against this proposition. We should only have a referendum if a majority of Members in this Assembly approve the move for an elected Speaker because, as I said, when Members vote for this proposition ... paragraph 1, elected Speaker. So, if you are supporting that you are supporting the removal of the Bailiff from this place and should be supporting that in any referendum which comes next year or 5 years down the line if Senator Ozouf gets his way.

1.1.5 Connétable S.A. Le Sueur-Rennard of St. Saviour:

I am going to change the track just a little bit. I need some information. I need to know that if there is a Speaker and it is coming from the House, do they put that in their manifesto that they are going to? Although they are standing in a certain Parish, they are also going to be putting their name down as Speaker. I think that should up in the bits and pieces. Also, if there is a Speaker and we have been told if we are not happy with the Speaker they can be removed, if the Speaker is being elected by Parishioners what happens? Does the Speaker come back and sit in the Assembly or does the Speaker ... because you see, the people are nodding but if we did not want him or her as the Speaker, why do we have to have them back in the Assembly? There is a lot of questions that I ... because people were ringing me up last night and saying they were pleased we were going to have the vote but what would happen if it does not go through. So, I said: "To be honest with you, I have not got a clue." I said ... no, no, because how many of you do? How many of you can put your hands up here and know that if the ... if we do have a Speaker, are you going to put that down on your manifestos when you are going through and doing the hustings? Because if you are, how many Parishioners are going to vote for you when you are not going to be able to do anything for them to vote because you are going to be sitting in that chair? There is a lot to think about with this. At this moment in time, your Parish can put you in and your Parish can ... you can represent

your Parish but if you are going to be the Speaker you cannot represent your Parish. So what Parish is going to vote for a States Member to sit in there when they are of no use to them at all? We are supposed to be helping people. So, I think there are a lot of questions that need to be asked and I think that the public need to know. I certainly think that if you are going to stand in your Parish for whatever position you want, you have to say at the end of the day: "I am thinking of being the Speaker." Then the electorate can decide for themselves whether they want you as a Speaker or whether they want you to represent them. Once you are sitting in that chair you do not have a vote. No, well, how many Speakers vote? Deputy Norton is shaking his head but a Speaker cannot vote. So are you going to put that in your manifesto or are you going to say: "Oh, forget that. Once I am in and I get the money I might stand for Speaker." But then you have let your Parish down or you have let the parishioners, the people that are voting for you. So please think very, very hard about this. The way we are at the moment it is not making everybody happy. It is making me thrilled; I love the Bailiff sitting up there and I love the Mace coming in. I love tradition but I also love working for my Parish and this is why I want, as Constable, to be able to work for the people. I think those of you ... if you are going to stand again you have to be honest with the electorate and say: "I am standing again but I am going to stand for Speaker."

1.1.6 Connétable J. Gallichan of St. Mary

The Chief Minister said in his opening remarks that modern democratic standards are clear. Well, they may be clear to most of us certainly but in my experience the public at large they largely remain unconvinced of the need to proceed with the move to an elected appointed Speaker as a priority at this time. Of course, the argument can, and has, been made that it is an elected Member's responsibility to lead and that we are elected to make the difficult decisions from a position of informed understanding which may not of course always be easily accessible to the public. It is not that the public are not capable of understanding, I am not denigrating the public at all, it is simply that many of them have not had the facts presented to them and they have not given it much consideration. So many Members have said in their speeches over the last couple of days that the public have not been beating down their doors about this. However, there is something ... even though we are leaders of our society in many ways, when something that so fundamentally touches the heart of the population, we owe it to the population to ensure that they are fully informed and that they can come to understand, if not embrace, the difficult choice that we will be making on their behalf.

[10:15]

If we do not take the public with us on this and similar changes then we run the risk of increasing still further the gulf which exists between our people and our Government. Now, I spoke and I voted against the referendum. I am not going to repeat my misgivings about that now except to say that I broadly support the views already expressed by the Constable of St. Helier. My own position on the matter in hand is not set in stone. I can see that over time the situation may evolve, the question is how far do I think we should move now and in which direction. I have really given that an enormous amount of thought. The Chief Minister said that there was a need to set out detailed proposals and we have seen how many parts there are to the proposition. In fact, what we have before us is so broad that I cannot be sure in supporting the proposition that I would be setting myself on a pathway to what I feel would be an acceptable and a necessary change. I cannot see that this gives me what I need. Now, I am sure that a lot of people are in ... a lot of Members are in the same situation. In fact, recently we have met together in small groups, had chats about these proposals and it was only really at that very late stage that I, sort of, had some crystallisation of exactly what my own position and what my concerns are. It was very interesting. I was in one group of 3 or 4 people and 2 Members who might be generally called moderate came at the proposition from completely different ends. One of them said: "I could support this if I was

guaranteed that it would be a Speaker elected from among the Assembly,” and the other one said: “Well I could support this if I could be guaranteed that it was an appointed Speaker from outside the Assembly.” Both those people had legitimate views. It seems to me that there are a lot of variables in this proposition. If there was ever a situation where we should have had an in-depth in-committee debate to find out exactly what our Members understood they might get as a result of this because how on earth we can persuade the public of what we will get as a result when already among ourselves we are seeing so many different questions and so many different variables. I mean, I mentioned to Members over the last few days while we have been in the coffee room that from my point of view, there is perhaps an evolutionary step. I do not believe, and having spoken to my constituents largely about this over the last few days particularly, much has been said about how this could start to rebuild the trust of the public in the Assembly. Well, Members, please listen, the public generally are not distrustful of the position of the president or Speaker of the Assembly. What they are concerned about is the actions of the Members and particularly the Government I have to say but that is the nature of the business. How on earth electing one of us to be Speaker when it is us that the public have lost faith in, how that strengthens the position is beyond me and is beyond most of the public that I have spoken to. My own feeling on this is that an office of Speaker should be created perhaps but that is not in the proposition. I came to that realisation, as I say, only as a result of the discussions that I have been having with Members recently and too late. I hold my hands up; I was ineffective, too late to do anything. I think the amendment might have been too broad for this but there are lots of possibilities. We could move forward with creating an office of Speaker because how on earth would we manage with just one Speaker? The Deputy Speaker has drawn from the electorate, from the elected Members in his proposition so that means that sometimes that person would be sitting on this side of the Assembly with a vote, with political views. It could be at any time the Speaker could be taken ill over lunch in the middle of a debate, we do not know. They could then be moved into a different role. Surely, we must have a way of ensuring that there is cover, that there is more than one person who is unattached politically who can fill that role. We could even do that now, we could make the Speaker an appointed position and we could tomorrow say that any category of Member or any category of person including perhaps the Bailiff could be elected ... to be appointed rather into that situation. So it could be an evolutionary process. It could be done. The possibilities of doing it in such a way that the public can have trust in us and can support us in the difficult decision because I have no wish to throw the tradition out with the bath-water either. Possibilities exist but we have not explored them and if I support this proposition, even with a referendum which I did not support ... but we are democratic about that. Even with a referendum, if I support this proposition I cannot be sure that the outcome gives this Assembly the best way forward. So in trying to give us the detail, in fact, we have not got any detail at all. We need surely, Members, to sort out what we believe is workable and practical and then bring the proposition and take it ... if Members then still feel they need to take it to a referendum. The more I think about a referendum the more I see it as the sort of security blanket for the Members who really could not make the decision on their own. My decision on this is clear I think. My position will change; my position actually had changed. I was pretty much certain that an elected Speaker was the way forward until I really knuckled down and started to think about how it would affect my parishioners, the Islanders, how it would affect the credibility of this Assembly. Much as I believe the Chief Minister has done his best to try and take something forward that could garner support, I cannot support it because I do not know by supporting this proposition what we will end up with. I am fairly sure having now laid my cards on the table in that I believe the Speaker should be appointed from outside the ranks of this Assembly for lots of the reasons that the Constable of St. Saviour had but also practicality. It is not a 5-minute job to train a Speaker. It is not cheap to train a Speaker; why would we do that every 4 years potentially? Why when we could build a knowledge of procedures into an office of people that would be appointed that we could draw on? Why would we not consider that? So I find it

really hard. I wanted to move forward on this but actually no, I believe fundamentally that this proposition is the wrong way to go. No amount of dressing it up for the public will help that because what will the question be? How will we get a simple question to the public for a referendum when the proposition leaves so many variations possible and when we as an Assembly do not really appreciate perhaps what we are doing? Because I have heard time after time ... in every speech I think that has been made the words “elected Speaker”. Nobody seems ... apart from me and at the end of the day I will probably be in a minority of one but nobody is considering appointing a Speaker. Now, is that shorthand, is that just being brief, we are just talking about that or is that because people have already made their minds up? Because the proposition does not say that. The proposition says that we will be electing a Speaker as the first business for the duration of a term but already in discussions it has become patently obvious that the best time to elect a Speaker is probably mid-term. Because we do not know the characteristics necessarily of the Members of our Assembly when we are sitting down with a new Assembly, we have not heard a good percentage of those Members even speak. We do not know their history, we do not know their background; how can we really legitimately choose a Speaker on that first day? It is almost as bizarre as choosing a Chief Minister but there we go. There are so many reasons why I cannot commit to this even if I fundamentally believed there might be a reason to consider a change. The answer to me is and I am sorry that we all are always incapable of making decisions but the answer to me is that I am not changing for the sake of change. I am changing for the sake of making things better. I am changing for the sake of making things better for the Island and for our Islanders. This proposition, I regret, does not do it. The referendum, as I say, is a security blanket for Members who could not make their minds up and be honest about whether they could support it or not. That gives them some kind of get-out clause as it were and I do not support that. I was put here to make a decision and I am given the right proposition and I am given the tools to do the job I will make that decision and I will make sure that my electorate know the reasons why I make that decision. So, now I think I have spoken quite enough to make it quite clear that I will not be supporting this proposition in its amended form and that regretfully, Chief Minister, although the referendum was the last straw for me, on calm reflection ... and I did urge the Chief Minister to consider perhaps delaying the proposition for a couple of weeks so that I could crystallise my thoughts and bring them forward. Not because I think I have got the right answer for everything but simply because I think things that I have thought about need to be aired. I think we all need to owe ourselves ... before we press that button today we all need to think: “Have I understood categorically what the result of this proposition would be and have I made that clear to my electorate?” The answer for me is no and so for me I am afraid I am voting against the substantive proposition.

1.1.7 Deputy T.A. Vallois of St. John:

I just want to seek some clarification from the Attorney General in regard to paragraph 1(a) of the proposition. It states that: “The States Assembly should select its Speaker either from among the elected Members of the Assembly or by appointing a person who is not a Member of the Assembly but who would be eligible for election to the Assembly.” So my question is, is the Bailiff ... or what law does the Bailiff’s role come under that he is not eligible for election to the States Assembly? If he is, does that mean that the States Assembly could select him to be their Speaker?

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

Sir, might I look at the States of Jersey law and revert in a moment when I have done so and respond to that question.

The Greffier of the States (in the Chair):

It is quite a hard question. Are we okay to move on to the next Speaker, Deputy Martin?

1.1.8 Deputy J.A. Martin of St. Helier

That is a very interesting question from the Deputy of St. John. Yesterday, I was going through both the main proposition ... the proposition from Senator Bailhache and obviously I have been involved with comments from P.P.C. What I was going to say yesterday, to me, has gone and I say this and it absolutely does follow on from what the Constable of St. Clement said and expands on I think what the Constable of St. Mary was saying. The people out there do not hold us in very high regard at the moment. The comments, even just on Radio Jersey today there is probably a lot more on Facebook, about the sarcasm of why not give it to a referendum? Of course, they will respect our wishes. Then I get worried when I think back to what the Constable of St. Clement has just said. We had 25 people support referenda yesterday on the position of the Speaker of this Assembly. Majority of those who did support also said it was ... we were interfering with hundreds of hundreds of year's tradition and they knew that the public did not want to change. Now, my worry is, do we really know? Did Prime Minister Cameron know when he went to Brexit, did he actually see the outcome? He said he would absolutely uphold the result and it did not go the way they thought it was going to go. Now, hand on heart, everyone who voted yesterday for the proposition for a referendum, are you willing if that comes back ... and it could do with just St. Helier vote alone. If there was a good campaign and the St. Helier people could vote, and they may and they will, that is their furthest worry about ... So a good person who is ... on the reverse of this who is persuasive and says: "Yes, I am this and that but oh, yes, well, we think the bailiff does a great job as a chief judge and he does a great job as civic head but should not really be in our Assembly."

[10:30]

We convince enough people so on 16th May or whenever it will be, the vote comes back that we ... and we do not know the make-up and that is another moot for me. We do not know the make-up of this Assembly but we are saying hand on heart, we respect the wishes of the public that is why we are going to a referendum. I do not believe it. I wish I did. The only thing that I am ... I really do not know which way to go now. Am I 100 per cent convinced it is the way forward? I had a lot of arguments for maybe having an elected Speaker but if we go to referendum and we do not ... if it does not go the way ... and I say that because a majority of the Speakers who did vote for the referendum again, I will repeat, stood up and said they absolutely did not want any change. So then will they come back hand on heart and implement the referendum if it does not go their way? The public have little faith in us at the moment but put another ... which is a really, really great tool of testing public opinion to them and do not implement it if it does not go your way. You are really playing very dangerous games here today. If you believe there should not be an elected Speaker of this house and everything is fine, do not vote for this proposition. Do not. Stop the games now. Do not do a Cameron; do not say hand on heart and ... you know: "I have got to do this because I said I would" and the result comes back not the way you want and then you say: "Well, cannot do it." So, as I say, it is not the speech I wanted to make, I just really think there is much more at stake at the moment. I do not want to put something to the public that I really feel ... I mean, obviously, you cannot prove a negative if the public come back and say: "Keep it as it is." If I am in the Assembly after 16th May it just carries on the same. But think about the reverse and just think about St. Helier, you get enough people out ... they have seen Senators out that are doing well, third and 4th. When St. Helier comes in your ... well, it used to be 7th or eighth but now it is ninth or tenth and it is not a great place to be. So really, that is all I have got to say. Just do not use a referendum again to canvass public opinion if your hand on your heart says you do not want to see the result through. That result may not go your way. If we all know what the public thought ...

1.1.9 Deputy S.Y. Mézec of St. Helier:

It is always disheartening to speak in a debate when you know the best speech of the debate has already been given. For me that was the Constable of St. Mary who even though I might not

personally agree with everything she said, I think she adumbrated a lot of the difficulties and the conflicts that there are in this situation given that many of us come from very different angles on this. I think that it would really be a terrible thing to put the public through a referendum exercise that 95 per cent of them do not want to spend taxpayer's money which could otherwise be better spent on having a referendum. Worst of all, to detract from an election campaign when we should be debating much more important things like housing, population, education. Then at the end of it to have nothing, for things to be exactly the same, for me, I think that would be not be just a pointless exercise but I think a damaging exercise which would further damage faith in our democratic institutions from the public. So, whatever side of the debate Members may end up on, the question is what will we have gained by doing that? If the answer is nothing then surely for this proposition we should be voting against having a referendum. If Members disagree with that perspective and they do want a referendum and there is a majority in this Assembly that thinks that way then, of course, there should be one. But I think we have to think incredibly hard about how the referendum is carried out, how to make the most out of it to make sure it is not a pointless exercise. I have a few ideas on how a referendum could be held to attempt to make it meaningful. The first of those is to not hold it on election day. I know there is arguments about getting a higher turnout or reducing costs; no, it will seriously detract from more important things. We should be aiming to get the public out to vote because they want to exercise judgment on policies to do with housing, education the rest of it. That I think will motivate people to come out, it is what people are interested ... we are talking about. So I think the first thing to say is do not have the referendum on election day. It may require more publicity, it may require manning the polling stations extra but to debate this in isolation I think is a much better way than debating it alongside much more important issues because I think it would focus the mind, focus the debate and that would be a much more positive way of doing it. The other thing though is that if we are to expect the public to come out and take part in a referendum, they have to feel like their vote matters. In 2013, I think several mistakes were made and when the States then did not implement the referendum result, we, I think, damaged politics as a whole for the public who felt like they had taken part in an exercise that was never meaningful from the start that did not have the safeguards put in place. So, I know that it is legally very, very tricky for Jersey to have binding referendums given the way our constitution works so I am not suggesting we have a binding referendum. I think there is things that can be done to make the public feel more safe that the result would be respected. I think the first thing to do is to pass the legislation to hold a referendum before the election. So, okay, we are not passing the referendum for election date, pass it for end of September, October or something like that next year but let this Assembly pass the legislation to have a referendum so the next Assembly cannot cancel it. So, they will not be able to cancel the referendum, it will be happening. So, what we will have on the doorstep when we go around asking voters to come out and support is, they will perhaps ask what our position is but they will also ask: "Will you respect the result of the referendum?" You will have to say yes; there will be nothing else you can say because you know that when you are elected you will not have an opportunity to cancel the referendum. So you will not have what happened in 2013 which is that there were some Members who in the run up to the 2013 referendum, voted against having the referendum in the first place. Then when the vote came on implementing the result they were able to stand up and say: "Oh, well, see I voted against having the referendum in the first place so I am allowed to vote against implementing the result." If we pass the legislation in this Assembly, those Members will not have that excuse and I think that will be incredibly important for the public knowing that their vote matters. The other thing that I think is incredibly important is that, and this can either be this Assembly or the next Assembly, is that the legislation that governs how the role of an elected Speaker or appointed Speaker would work should be passed before the referendum. The only thing that should happen after the referendum is pass the Appointed Day Act that kicks the legislation into force. That way, when we go to the polling station to vote in that referendum, there will be no

argument about the format of the legislation, it will have already passed. So, arguments about what is ... you know, will the Speaker be able to vote or will they not be able to vote, you know, will it be elected, will it be appointed, that can be 100 per cent settled before the vote happens so there is a clear proposition and: "The referendum is this legislation that has already been passed, do you want it enacted or not?" There is no other debate then. There can be much less fear-mongering, you know: "Oh, if you vote for this you will end up with X, Y and Z." You will not get that that way. So that, I think, is incredibly important. If the Assembly is to vote to have a referendum, I sincerely hope that that is the road that we go down, otherwise, I think we are setting ourselves up for a disaster. That being said, I am not going to vote to support this proposition because I stood up in this Assembly yesterday and I gave all my reasons why I think we should not have a referendum on this subject in any event and it would make me hypocritical to now, having slept on it, change my mind and say: "All those things I said yesterday about why a referendum on this would be a bad idea; no, I did not mean a word of it I am going to vote for this proposition now." I voted against the amendment, I have to vote against this proposition on the basis of the argument that I made yesterday. I said that I do not think it is right for referendums to be used to infringe upon the rights of minorities or to justify bad democratic process. It is my view and not all Members of the Assembly will agree that if we vote to maintain the dual role of the Bailiff, in my view that would be justifying bad democratic process and I cannot reconcile that with my position as a democrat. I used the example yesterday of a hypothetical referendum on disenfranchising left-handed people from being able to vote. If a majority of right-handed people came out and voted to support that I still would not support that result because it would have infringed upon the rights of minorities and it would have justified bad democratic process. I think this is no different. I think that the separation of powers is fundamental to being a democracy and I think a referendum result endorsing the current situation does not mean that Jersey will no longer have a problem with separation of powers, that would continue. As someone who supports the separation of powers I could never support that. So, I will not be supporting having a referendum on this. There is only one final point I want to make and it is relevant to the proposition for the simple reason that other Members have brought it up. I am going to end on a negative note I am afraid. It has been brought up by several people this argument about the dual role of the Bailiff that it is the creeping Anglicisation of our Island. I just want to address this point. I was born and raised in Jersey. This is my Island, this is my home, I care about this place deeply. Both of my parents were born and raised in Jersey. I have the stamp in my passport; I am as Jersey as it gets. I think that England is a wonderful country and I am proud that Jersey is associated with it. I resent very much those people who stand in this Assembly and outside this Assembly and talk about the Anglicisation of Jersey and how that is a bad thing for 2 reasons. Firstly, it is not happening, it is not true. This Island is not being anglicised. It is fear-mongering and this debate in particular is not about adopting an English principle, it is about adopting a democratic principle which exists in non-English speaking countries all over the world France, Spain loads of them. It is nothing to do with being like England. The second point is, so what if it was being like England? England is a brilliant country. I lived there for 4 years, it is a fantastic place. Amazing culture, all sorts of weird and wacky traditions that are interesting and, of course, the finest rock and roll music on the planet. **[Laughter]** It is a great country and there is nothing wrong with Jersey being like it. I really resent that argument because what it does is it insinuates that Jersey wants to be insular, it wants to ignore the rest of the world and it wants to look upon others who are not from here with suspicion. I think Jersey is much, much better than that. We are an open Island, outward looking. We want the best talents, the best ideas ought to be happening in this Island and if they happen to have originated from other places well, good on us for having the foresight to adopt them to make this a better Island. That was the last point I want to make. Let us keep away from this divisive and I think xenophobic language in future. This is a great Island. England and the U.K. as a whole is a fantastic country and it really, really does us no favours to try and divide people in this way. This

is an argument about democracy so let us keep it on those terms rather than I think end up in the gutter with that sort of argument. Thank you.

1.1.10 Deputy J.A.N. Le Fondré of St. Lawrence:

Merci, Monsieur. Juste pour satisfaire nos collègues de la partie politique de Reform: je vais commencer à parler en Français, parce-que, seulement pour un instant, après je vais revenir en Anglais. Nous aussi, surtout pour nous faire se souvenir qu'on a le droit, la possibilité des fois, de considérer les autres pays, les autres systems juridiques, aussitôt que celles de la Royaume Uni. That will be it for the moment. What I want to say is that I start off with the principle that I find it very odd that people who have been citing democracy for so long do not want to take this story now to the public. I think that it is slightly odd that those who have been pushing for change are suddenly starting to get cold feet. Now, what I am going to say is there is no question that the proposition as has been lodged by the Chief Minister has got a load of flaws in it, I do pick up the points from the Connétable of St. Mary. I am very clear for the starting point. I made the commitment yesterday that if the referendum was approved, I would support the main proposition. I cannot change that stance because that would be breaking my word. Equally, I am taking the view and I do have a slight difference to the Connétable of St. Clement that this proposition does have to go to P.P.C. to put flesh on the bones. So, I am treating this as a framework and I am expecting that when that process goes through, that P.P.C. will identify some of these issues.

[10:45]

Because for example, I agree entirely with what Connétable of St. Saviour said and I agree entirely with what the Connétable of St. Mary said about the Deputy Speaker. I do not see why the Deputy Speaker for example, cannot ... should not be as impartial as the main Speaker and that instance starts raising some questions. I would expect P.P.C. to be starting to flesh those issues out. It is on that basis I am treating this as a framework. I am treating that then that legislation would come back and we then have to sort that out. If that then does go to a Scrutiny process then that is separate as well. But the huge caveat on that whole principle is that we have agreed that part 3 of this proposition is now what Senator Bailhache has put in place and that a referendum should be held. If that referendum supports the retention of the Bailiff then this will not go forward. On that basis, I am prepared to put my faith in the electorate and yes, to Deputy Martin I may not get the result I hope. Guess what, folks, that is democracy. At the very least we have taken it to the wider population and we are not making that decision ourselves. I find it amazing that suddenly all these people who have been wanting the change it is like: "Oh, no, no, we want to make the decision. It is down to us and how dare we even take it to the population, to the electorate." I think that is appalling. I have listened to 2 speeches that said: "Oh, but it is far too complicated or it is ..." I am not too sure. It is either far too complicated to do on the same day as elections or it does not matter and should not interfere with everything that is happening on the elections. Have we not learned from the previous referendums that we have held? Have we not learned that if you do not do a referendum on election day, the turnout goes flat? If you are going to do a referendum you do it on election day; that has got to be in the message we have had. Interestingly enough, that is inferred in the proposition we have adopted because that is what is stating the financial and manpower implications of that proposition. So for some people to suddenly start putting ... you know, that is what has been signed up to and that is the decision that this Assembly made yesterday. I think that is probably enough on that particular subject. What I did want to address as well is going ... there has been some issues raised around, for example, separation of powers and all this sort of stuff. Now, what I have understood is that the separation of powers is the 3 branches of government; it is the legislature, the executive and the judiciary. If there is a breach, and what we have been talking about it is pretty minor, the biggest breach of powers as I have understood it is in the legislature with having Ministers ... and being Deputies and Senators approving legislation they have

instructed. So, in other words, if you want a true separation of powers you go to the U.S. (United States) system; you do not have the Executive in the Assembly. People do not clock that. That is the biggest breach, that is your biggest issue around, you know, holding everybody to account. Have we not learnt ... Chief Minister is not going to like me in saying this but we do have to address it as the elephant in the room to an extent. One of the justifications for this whole debate today has been the Care Inquiry. The biggest failure within the Care Inquiry is the failure in our systems of government, it is not who sits in the Bailiff's chair. Within all that, that goes down to even in the last couple of years. Senator Ferguson's case the - I will call it the Alwitry case which has been bounced backwards and forwards because there has been no - every time a complaint comes back: "Oh, no, the complaints panel misunderstood the paperwork." The Minister for Education is not here but there was a complaints panel that came from there where it turned out that Education had not been even following their own rules. Organisational culture; how long have we known about the problems in organisational culture? So, the biggest problems around that area are within the operational side of government and the executive side. Yet I do not see somebody removing the post of Chief Minister because of the breaches and the problems that have been occurring. No, no, that is the post not the individual because if the system is so bad ... but we should be having a system that removes the Chief Minister as a post because that is what we have been saying here because of this technical issue, this theoretical issue about the separation of powers. Now, that is complete nonsense and I hope that takes my position on the position of the Bailiff in here. I am going to cite from a very old speech if I can find it which is where this all came from. It comes from a gentleman called Montesquieu I understand it. Apparently, he so admired the British constitution in the 18th century, which is how long this argument has been going on for, what he liked was the division of government power between the legislature, the executive and the judiciary which he thought was the foundation of liberty. So, it was the power of the judiciary to keep the executive in check. But he understood very well and interestingly enough that comes out of the Latimer principles as well that there is some overlap between those divisions which existed in Britain. So it is not a clear and absolute 100 per cent divide. Latimer House principles which have been cited all over the place say that: "No system can operate with total and absolute separation of governmental authority in which the branches of government function in total isolation with one another." In fact, they state: "The separation of powers doctrine is less a feature of the Westminster style system than that of a Washington style presidential system. To ensure the balance of power is maintained, each branch must keep a check on the others to prevent abuses and/or efforts to influence others." Now, I would suggest and I think this point has been made a number of times that we have a different system but we do have those checks and balances. I am pausing because that is the trouble when you dig out long speeches ... old speeches, you do not want to try and go off to wherever ... a previous thing one has said. I have said it yesterday, people did talk about a Speaker. I agree with Senator Ferguson on this. I did not think it was a Speaker, it is the President of the Assembly we deal with. As I said yesterday, the United States Speaker and House of Representatives is apparently second in line, must be after the vice president, for the presidency of the United States. As I said yesterday, he or she can appoint committee chairs and committee membership. That is not an impartial position I would have thought that just politicises the whole thing. What I think also ... now Senator Ferguson went on quite a lot about McGonnell so I am not going to refer to it but I am going to refer and remind people of the comments of the Attorney General in 2014 and I think he repeated them in 2016 as well on Carswell. What the then Attorney General, I cannot remember if it was the present one or not, stated around Carswell he said that: "English counsel", presumably in relation to Carswell: "also did not mention that the European Court has consistently held that constitutional theories are not relevant to determining judicial independence." In other words, and they were very, very, very clear and in the very front of their opinion; in summary: "The opinion of law officers is the role of the Bailiff is currently human rights compliant and has no judicial authority to suggest that the

position is likely to change within the time or horizon suggested by Lord Carswell or at all.” That was in 2014, we are now in 2017. I am skipping down because I do not want to ... we have been in here a long time so far and we have got a lot of business ahead of us. The argument around the ministerial side is that Ministers wear at least 2 hats in this Assembly. They are here as an executive, here as Ministers and they are also Members of the legislature and yet they do not see any conflict in that role that the whole of the executive sits in the Assembly. As we know, that gives an advantage to them on any vote and that is why the Troy rule is so important. I would also take great issue with the comments that are made at varying points that the Bailiff makes law. In my view, the Bailiff does not make law. The Bailiff sits there in terms of his role as President of this Assembly, looks at Standing Orders and determines. I cannot remember which standing order it is but it is very clear and in fact it was referred to in a letter he sent around very recently as to what the position is of the person approving items to come to this Assembly. It is an interpretation of the Standing Orders. If they comply it comes through, it does not matter. If they do not comply he sends it back or he can give some advice. It is down to us, we set the rules. If we want to change Standing Orders we could always do so if that has caused the problem. That is not law making in my view; that is just a consideration as to whether something complies with our own rules. I think in that instance, having someone with legal training is incredibly important. I think probably, I am going to cover most of that. I think we have talked about the history of this Assembly and the fact of the Mace. I do not know if I can find it but it is worth looking at the issue of the Mace and what it says. In fact, think about it, every time we come into this Assembly we are touched by history. We have plaques up there to Sir Walter Raleigh. We come in and past the board ... it starts I think in 1277 with Philip Leveque. Now, the Royal Mace we know the history of, why it was granted to us. What it says on it is: “Not all doth he deem worthy of such a reward. Charles II, King of Great Britain, et cetera, as a proof that his royal affection towards the Isle of Jersey has ruled that this Royal Mace should be consecrated for posterity and is ordered hereafter it shall be carried before the Bailiffs [we know it is the Bailiff’s mace] in perpetual remembrance of the fidelity.” Then it keeps going on and on and on. Now, it is a symbol of Jersey’s ancient links to the crown. The special state of the Island is something which bridges the gap between one of the most turbulent and significant eras of British history and the present day. So that is why one of the reasons I have always stood by the principles that this is important to people. It is part of our cultural identity and to change that cultural identity it needs to go to a referendum in my view. I take the view that a lot of what is stated is theoretical, does not deal with the practical considerations of what we have of a system that works. Yes, systems can be changed but I am not in favour of the wholesale changes that were approved. However, I have said let us trust the electorate to make that decision. We have time to make the case on both sides. If we make that ... we should make that decision and it should be held on election day next time around, otherwise, this will keep coming back. I am very disappointed in those who are trying to say it is not a matter for the electorate. I used the expression you do not erase 800 ... 700 years of history. I do consider that a major change in how we are constituted and the protections that go around guarding our constitution. I think that is why the people have a right to say it. I believe the system works well. I know there are individuals who seem to have personal issues with different incumbents in the seat. I think the position works well and has served the Island exceptionally well in the years gone by. I think if provided one makes the case it can continue to serve us in the future because I believe we have an independent and impartial person sitting in that seat; both now and in the days we have had at the beginning of this week. I do not therefore see, how having a politician in there as the Connétable of St. Saviour referred to, having a potentially conflicted Deputy Speaker or even worse in somebody from outside, is going to improve matters from what we have got. If it is a perception issue we deal with that perception. But on that basis, I think it is better to go to a referendum to support this proposition and let the people decide in May next year.

The Greffier of the States (in the Chair):

Attorney General, are you in a position to answer the question from the Deputy of St. John?

The Attorney General:

Yes, Sir. The answer to the question is yes, but I shall remind Members of what the question was [Laughter] and how I reached that conclusion. The question arises from paragraph 1 of the proposition and the Deputy asked ... bearing in mind that says: "The States Assembly should select its Speaker either from the elected Members of the Assembly or by appointing a person who is not a Member of the Assembly but would be eligible for election to the Assembly." The question was, might the Bailiff be eligible in those circumstances; is he or is he not eligible for election to the Assembly? Well, as things currently stand, of course there is no provision in this respect as of course that is probably axiomatic as President of the States, the Bailiff cannot simultaneously be eligible for election. But on the footing that he ceased to be a Member of the Assembly, would he be eligible for election to it and therefore eligible to be selected as Speaker? Well, perhaps surprisingly he would. Under the States of Jersey Law 2005, persons who are disqualified from election as Senator, Deputy or Constable are those who are a paid officer in the service of the States.

[11:00]

Well, of course the Bailiff is a Crown appointment. Or the administration of the States; again, he is a Crown appointment. Or excluded or permitted by the employment of States of Jersey Employees (Jersey) Law 2005 to stand for election as Senator, Deputy or Constable. When we look at the 2005 law, that has a schedule of politically ineligible States employees including chief officers, head teachers, prison governor and so on but does not extend to the Bailiff. Indeed, he is excluded from the definition of States employees under Article 2 of the law as a Crown appointment. So, the answer to the question the Deputy asked me if I recall the question correctly is, yes, he would be eligible in those circumstances.

Deputy A.D. Lewis of St. Helier:

Can I just ask a quick question of the Attorney?

The Greffier of the States (in the Chair):

Yes, Deputy Lewis.

Deputy A.D. Lewis:

If this was to occur, in the unlikely event it was to occur, would the Bailiff then have to ask permission of the Crown to put themselves forward?

The Attorney General:

Yes, it is possible that he would. It is certainly a matter which ... yes, it is highly theoretical but yes, perhaps he would.

The Greffier of the States (in the Chair):

The next Speaker is Deputy Andrew Lewis.

1.1.11 Deputy A.D. Lewis:

I cannot claim that my French is as good as Deputy Le Fondré's but I am going to have a go. Charles-Louis de Secondat, Baron de La Brède et de Montesquieu. [Laughter] That is terrible, is it not?

The Greffier of the States (in the Chair):

Can you go back to English, Deputy Lewis? [Laughter]

Deputy A.D. Lewis:

It is a long name of a quite an important person in political history. A major contributor to political theory was mentioned in Senator Bailhache's proposition on the amendment. Now, he made an interesting observation. He looked at the English system and the U.K. system many years ago and of course we had the Lord Chancellor all powerful in those days and the House of Lords. He made the comment that it was the power of the judiciary to keep the executive in check that appealed to him. It appeals to me as well because that is kind of what happens albeit in a very unpolitical way. I think we should be proud of that because it does work and I would not like to see it go. I was also intrigued by what the Constable of St. Clement said in that those that opposed the change should oppose this proposition. There is no point voting for it now and then having a referendum and going through all that pain if you believe today this is not the right thing to do at this present time then you should, as I believe, as the Constable of St. Clement said, vote against it. The last time we had a vote on this which is not very long ago, I believe it was November last year, the vote was fairly clear; 31 against the change and only 13 for it. Interestingly, Senator Gorst and Senator Bailhache were not present which I thought was quite interesting. Nevertheless, it showed then that we thought then we had put it to bed for another parliament, for another Assembly because this is not a good time to have this type of debate. Far from me to suggest that anybody is posturing before an election but it is an issue that may well come up. So it is not a good time to have this debate. But when is a good time? Probably never a perfect time and it is a debate that should be had and we have had it now twice within 12 months. I do not think the public are particularly interested in us having it again in the near future. So I would urge Members to vote against this as we did in November for all the reasons that I am not going to repeat that many have very well-articulated today. Further, there are a couple of observations I would like to make. Some suggest that the Bailiff's role is somewhat secret or lacking in transparency. I am sorry, I do not agree with that at all. It is a very public role, there is nothing secret about it at all and it has, I believe, full transparency. The role of civic head is supported by the Presidency of the States. I do not believe it would survive if the 2 were separated and I think that would be a sad thing for Jersey. Of course, there are arguments in favour of an elected Speaker but we do not have a Speaker now, we have a referee, a President of the States that referees how we behave. He interprets Standing Orders. We set Standing Orders, if they are not working, P.P.C. regularly bring amendments forward on Standing Orders and we generally vote them through. So, we set the rules, all the referee does is then interpret them. I do not believe that that role is political. There is no casting vote anymore. The Bailiff, for the large part, I have not observed any major breaks in protocol here, does not make political statements. Some may disagree with that but sometimes there is a fine line. Politics goes through all walks of life. We talk about it over breakfast without even realising we are talking politics so it would be highly surprising if a fellow human being, even the position of Bailiff, was occasionally to say something that some could jump on and say was political. He interprets Standing Orders, he acts as referee, he is independent. A couple of days ago, we had a bit of a complex difficult situation and a matter of interpretation. The Deputy Bailiff, very sharp, very quickly interpreted ... with a bit of help from the Greffier I must add. I would like to challenge any Member of this Assembly to sit there but in a few weeks of being elected to that chair and do the same. It would be very difficult. A number of statements have been made in correspondence and propositions and amendments we have had that suggest that the Bailiff is over-qualified for the job. I say fantastic. How good a referee is that? An over-qualified referee, I do not think that is a bad thing. We benefit from that and I believe our democracy benefits from that. It keeps us apart. When I have travelled around the world as I have been fortunate enough to do and when I have been wearing a political hat on occasions attending C.P.A. (Commonwealth Parliamentary Association) functions and other similar events, nobody has ever said to me: "Is it not outrageous that you have this not clear separation of powers in your Assembly?" Never. What they have said though, and they cannot understand this and it takes you about half an hour to explain it, is our

political system and the lack of party politics albeit I accept we have but a few that use that phrase. That is what intrigues them and they do not understand how it could possibly work. Because we do not have party politics, that independent chair becomes even more important. That is my belief. We have attempted unsuccessfully for many years now to reform this Assembly. I brought a proposition to this Assembly very recently on the back of a referendum. Some may argue that there was a minor change that I made to it, nevertheless, it was generally what the people had said they wanted. We ignored it twice. So I have no faith that the referendum will do us any justice at all. It is highly likely or highly conceivable that we could ignore it. What I believe is more fundamental is some significant change to this Assembly first. That is the burning issue among the public; that is the burning issue whenever I go to any conference about how this whole Assembly is constituted. The Chief Minister talks about lack of democracy, our representation in this Assembly, the lack of compliance with the Venice Convention, that is far more obvious to those that follow politics not just here but around the world. Yes, we have not fixed that bit yet so to go to this ... and we have already had the debate less than 12 months ago and on previous occasions and it has been unanimously defeated on all those occasions. To have the debate now, again ... and I know what has prompted it and I am not going to make comment about that but there was a prompt. It has been well explained as to ... or rather Senator Bailhache has made his comments about that and I shall not repeat them. So I do not believe now is the time. I accept there are pros and cons and arguments for and against but right now I think the argument against change, against that one very respected office in this Assembly, far more respected by the public than perhaps many of the other seats are at this moment in time, why would you change that? If there was huge pressure from the outside and lots of evidence that suggested it was not working and it was somehow corrupt or causing issues that were not compliant with normal justice, I would be standing here having a different say about the matter but I do not see that. So, I would urge Members that when considering this proposition today, vote against it. That is what the proposition is there today to vote yes for it or no against it. If you do not believe that now is the time to change that role, now is the time to say it. Again, as you did in November last year because I do not have faith in this Assembly's ability to interpret a referendum in the correct way in the future. Channel Islanders know why their Bailiff presides over their legislature. Channel Islanders know that in Jersey and Guernsey. I do not think we need to explain it again and again, they know. That is the one consistent in our Assembly that has not changed for hundreds of years and I do not think it should change just now. So I would urge Members to vote against this proposition. That is what the public are telling me in the main and I believe other Members have said the same. So I would urge Members to just remember what Montesquieu said, the office of the Bailiff, is the judiciary keeping the executive in check, I think that is a strength and not a weakness. Thank you.

1.1.12 Senator P.M. Bailhache:

I want to urge Members who supported my amendment to support the Chief Minister's amended proposition. I acknowledge that this is going to be very difficult for some. It is counter-intuitive because I am asking such Members to vote for a change which they do not want to achieve but the reason is very simple and the reason is this. The time has come in my view for a decision. If the majority of people in the Island want change then so be it. Unlike Members of the Reform Party I am not frightened of change. If the majority of people do not want change then let us at least for a period put this debate to bed. I think that the Constable of St. Clement was wrong to suggest that support for the Chief Minister necessarily involves support for change. I shall support the Chief Minister but I shall be supporting an amended proposition and the amended proposition is different. The amended proposition allows the people to have their say on whether or not the Bailiff's role should change. It proposes an elected Speaker, this is the amended proposition. It proposes an elected Speaker provided that the change is in terms supported by the people of Jersey. The amendment has changed the nature of the Chief Minister's proposition and I find no contradiction

in supporting the amended proposition and later on campaigning in the referendum against change. Those who do not want to ... I am sorry, those who want change but do not want to risk knowing what the people think and shame on them, if I may say so, will no doubt change sides.

[11:15]

The Members of the Reform Party have already indicated that they are going to do that. By a majority, this Assembly decided that there should be a referendum and Members should accept that democratic decision and move on. Some will not and I regret that but if the proposition fails then there will be no referendum and the issue will drag on unresolved. That is damaging to our democracy, damaging to the Bailiff's office and damaging to this Assembly. I said yesterday that the constant chipping away at the Bailiff's office risked damaging that institution. I was, for many years, an associate Member of the Commonwealth Speakers and Presiding Officers Association. Senator Ferguson will be pleased to note the title of that association. No one during those 15 years expressed any doubt about my right to attend that association. They accepted that different countries have different traditions. But if Members complain about their own system when at Commonwealth meetings then of course they will get a sympathetic ear from people whose own experience is different. Members should support their country when they are abroad **[Approbation]** but that is perhaps another issue. Deputy Labey used a number of adjectives but one of them stuck particularly in my mind and it was the adjective embarrassed. He was "embarrassed" he said that we did not have an elected Speaker and the Reform Party has used similar epithets. Different Bailiffs have lived for decades with the knowledge that one day the dual role might change but the noise has magnified and Deputy Labey's speech was only one example of it. I ask Members who supported my amendment to put themselves in the Bailiff's chair and to ask themselves how they would feel to know that Members were embarrassed that they were presiding. I am sure that the Bailiff and Deputy Bailiff are robust individuals used to all kinds of criticism but nonetheless, this is not very nice. A very human reaction would be to say: "A plague on all your houses." That is why I say that the time has come for a decision by the public. If the vote goes against so be it, that is democracy and I repeat to the Reform Party that unlike them I am not frightened of democracy. But if the vote is for the Bailiff remaining then the Crown officers will at least know that they enjoy the support of the public whatever some Members of this Assembly might think and say. Senator Ozouf made a number of points demonstrating that the bees in his bonnet are still alive this morning. He has, I am afraid, lost his balance on this issue. One of the issues that he raised was the timing of the referendum. I hope that the Privileges and Procedures Committee will take no notice of his remarks and the remarks that may be made by others in this debate. The time for a referendum, the obvious time for a referendum is the General Election. Otherwise, we will have a constitutional referendum mid-term and the result will be predictable. Constitutional issues ... and I agree with those Members who have said this on both sides of the argument, constitutional issues are not familiar to members of the public and the turnout is likely to be very low. What will be the result of that? Members will be encouraged once again to say: "Oh, only 24 per cent of people bothered to turn out to decide whether or not the Bailiff should remain in the States and therefore we can take no notice of it because 75 per cent obviously had the views which we share." That would be a shame. That would be more than a shame, it would be a tragedy for democracy in this Island if as a result of a pathetic turnout, Members were able to ignore once again the decision of the people in a referendum. I want to make the point too while I am on my feet that the Privileges and Procedures Committee should not tamper with the referendum question. In broad terms that has been accepted, settled by the adoption of the amendment which set out in broad terms the question for the public. Of course, the process is set out in the new referendum law and that must be followed but in broad terms, the question has been settled. We can have an argument of course, there will be amendment to it if necessary and the argument will have to be had again. But so far as the duties of the P.P.C. are

concerned, they are absolutely clear. I found Deputy Mézec's speech tortuous, confusing and very difficult to follow but the thrust was clear. He wants change and he will do anything to achieve change even if the will of the people has to be ignored. The Reform Party is completely amoral in its approach to this issue. But they should be amoral but they should be careful what they wish for. At the moment, we do have an independent presiding officer. If the States elect a Speaker, who will have the majority in electing that Speaker? It will be the Government party or what some people like to call the establishment. In other words, those Members who are about to elect the new Chief Minister. What will be the consequence of that. The new Speaker may be independent, I am not saying that he would necessarily be biased but he is likely to be of the same way of thinking as the Chief Minister otherwise the Chief Minister would not have proposed him. He is hardly likely to propose somebody who is completely antipathetic to his own way of thinking. I have at home a press cutting which I cut out many years ago from the *Gibraltar Chronicle* when the leader of the opposition complained following the resignation of the Speaker after a dispute with the then Chief Minister. That the Chief Minister had announced the new Speaker of the Gibraltar Assembly without any consultation with the leader of the opposition. He was able to do that of course because he had an absolute majority and he was able to put forward the man whom he thought was most suitable to succeed; the Speaker with whom he had disagreed. Be careful what you wish for. I want to say just a few words on the doctrine of the separation of powers. The purpose of the doctrine is very simple and it is to prevent one of the 3 estates: legislature, executive and judiciary from becoming all powerful and dominating public life. In contemporary terms, and this is true of every democracy, the single estate which has the most power is the executive. The importance of the doctrine of separation of powers is to ensure that the judiciary is independent and can overrule the executive when it becomes necessary because the executive is acting unlawfully. That is the purpose of the doctrine. So the relevant question for us is whether the Bailiff's position as President of the States Assembly prevents the Royal Court from quashing wrong decisions of the executive. If one looks at the decisions of the Royal Court when matters of judicial review come before them it is absolutely plain that the Royal Court is not influenced in the slightest by the Bailiff's dual role. The frequency with which the Royal Court quashes the decisions of government by judicial review and by way of appeal makes it clear that the Royal Court is indeed independent. Deputy Wickenden is leaving the Assembly but I have one recommendation for him before he does so. That is that he should go to the House of Commons library and look at a very interesting work on the separation of powers which is in that library. There is a very useful analysis in it and it concludes that the United Kingdom system and I quote: "Resembles a balance of powers more than a formal separation of the 3 branches." It is a balance of powers that is important and there is absolutely nothing wrong with our current system. **[Approbation]** I urge Members to support the Chief Minister's amended proposition. We have agreed by a majority to have a referendum. We will only have that referendum if we adopt the Chief Minister's amended proposition. We should do that and I will vote in favour of it.

Deputy M.R. Higgins:

Just a point of clarification. Could the previous Speaker tell us the paper that he said he read in the House of Commons library? When was it published because obviously there has been tremendous change in the U.K.? We now have a Supreme Court rather than the Law Lords. The Lord Chancellor is no longer acting in the judiciary, he is now with the executive as it was. What is the source of the information and what date? Thank you.

Senator P.M. Bailhache:

I cannot give it to the Deputy at this moment but I certainly will give him the reference so that he can track it down.

Deputy M. Tadier:

May I have a point of clarification? Would the previous Speaker mind correcting our party name which is Reform Jersey because that is the name that the electorate will need to look for appearing on the ballot paper for our candidates?

Senator P.M. Bailhache:

I do apologise to the Deputy and I am very happy to make that correction.

1.1.13 Deputy K.L. Moore of St. Peter:

It is a matter of some personal regret that elements of this past 2 days have been rather discordant among the Assembly and its Members and I just ask people ... the Assembly if I may to cast their minds back to Sunday. It is a rather unusual tack for me to take but many of us were in our Parishes or indeed at the cenotaph for the remembrance services. There was a particular reading during the service in St. Helier at the cenotaph from Romans that really struck me and I thought it especially relevant to the debate that we had ahead of us this week. It is slightly unusual of me to quote the Bible but I thought if Members would bear with me that this particularly had some relevance. It simply said: "Give thought to do what is honourable in the sight of all." That, I thought, is exceptionally poignant this week as we are debating once again a matter that has been before us for a number of years. It is a matter that a number of different groups of people, eminent people have asked us to consider over those years, those eminent people are often being supported by Islanders who have contributed to their discussions and their thoughts.

[11:30]

So we should take very seriously the words and the recommendations that come from them. It is of course, following yesterday's debate, now in the hands of the public and it is the will of the Assembly for us to go to the public in the form of a referendum and I would urge Members to do that. A lot of what we do and a lot of the time, the commitment, the energy that we all put into our work here to serve the Assembly and the public is about hope and our hope to change, to enhance what we do as an Island for our own community and for future generations. Of course, the role of the Bailiff has been with us for very many years but there is also always our role and responsibility to ensure that we are reflective of those roles and maintain a modern democracy and look forward as well as respecting our past and our heritage. So, I would urge Members to think about the reading that I mentioned and to support the Chief Minister today.

1.1.14 Deputy R.G. Bryans of St. Helier

Yesterday, for the first time in quite a while, I was completely engaged with what the Assembly was doing and what we were discussing. The steam seems to have gone out of everything today, it seems a lot flatter here in this Assembly and I can understand why. But what really engaged me was that wherever I went, whether it was sitting here in the Assembly and the kind of speeches that were being made or it was leaking into the coffee room, was how much passion and spirit I saw in everybody talking about the very issues that do affect us as politicians. In particular, I was struck by a discussion by both Members who are not here at the moment but Deputy Wickenden and the Deputy of St. John who were very passionate and very articulate about what they thought should happen and unfortunately for them did not transpire yesterday. But I just want to take issue with a couple of things that the Constable of St. Mary has said. My voting today will be ... well, yesterday it was for the referendum but today it will be to support the proposition. The reason I did that was similar to Deputy Le Fondré in that I wanted the public involved in this. I wanted students in particular, the youth of this Island to have something to say about what happens to the future of the politics of this Island. As I have been going around as an Minister for Education and for the past few years I have seen politics raising its head in schools for all sorts of reasons. Obviously, higher education funding is one of them. The Minister for Treasury and Resources and I have been working hard to resolve that issue but I also saw a youth parliament arriving with the girls at J.C.G.

(Jersey College for Girls) and then further we have now got some work happening with the youth workers at the youth service and creating a brand new voice for those people. I think it is a rare opportunity for us to engage back with the public again. I think reference was made by the Constable of St. Mary, this was a way of rebuilding trust and to get our arguments and to get the understanding that we have about how we operate back into the public domain. One of the reasons is that we will be having an election in May of next year and then for some reason ... well, it is always the way, we tend to disengage. This is how the public see it, how it is being related to me for I think the next term of office will be for 4 years We tend to disengage and I heard ... I remember as I was canvassing and I am sure other Members have heard this as well: "It is the first time I have seen you in 3 years." Or: "It is the first time" as will happen next time: "I will have seen you in 4 years." I disagree with Senator Bailhache in that I think we ... I supported his amendment for a referendum but I think we should have the referendum not at the next election because I think the issues that have already been discussed are paramount. We should be talking about health, we should be talking about education and all the things that really matter but then we should come back to the public and reengage with the public and reinforce what it is we are trying to do and so get those arguments on the table. One of the things I have seen, particularly when we were putting the new curriculum together was how much we wanted to embed politics into that curriculum. It was being asked by Deputy Maçon and various other Members that we were not getting the information out there. One of the reasons is, again, we tend to really sit and look about what our roles are whether it is as Ministers or back-benchers operating on scrutiny and we seem to be divorced from the public. I do not want that, I want to get out there again and get on the stump just as the Deputy of St. John said, reengage with the youth of this Island and begin to open up those discussions so they fully understand and appreciate what we have to offer on this Island. Back in 2008, I remember how desperate it felt to walk around this town of St. Helier. The shops were shutting, unemployment was rising, money seemed to be really scarce and I was reminded by Deputy Doublet of something I said to her some time ago that if you really want to have a litmus test of how this community is working, get out in the street and have a look. We know that crime is dropping, we know that the education is getting better, we are building schools, we have got a new hospital on our agenda. We are moving into a more prosperous situation whatever your political view is or background and you may have disagreements about that and the way we operate as a government. We are moving into better times and what we need to do is to get that discussion back on the table. So I am going to support the Chief Minister's proposition because I do believe in time the role of the Bailiff, particularly as Speaker of this house, will change. I think I want to do that with the voice of the people. I want to do that on an engagement. So I am going to vote for this proposition. I will, as Deputy Le Fondré says, use this proposition as a vehicle. I think it is something we can work with P.P.C. on and begin to get the public more engaged with the kind of politics that matter to them. Thank you, sir.

Deputy M. Tadier of St. Brelade:

Sir, I have got a point of clarification. It may be for the Chair that the ... if we vote for this proposition today there will be a referendum and it will be held on the date of the election, is that not the case?

The Greffier of the States (in the Chair):

No, if the Assembly votes for the proposition there is an instruction to P.P.C. and the Chief Minister's Department to do the relevant work necessary to bring forward legislation and bring forward obviously a referendum act to the Assembly. Working through the Referendum Commission which is a new bit of machinery but this Assembly will have the decision in time as to what the question is and what the date is of the referendum in the normal way. Attorney General?

The Attorney General:

I am grateful, Sir. I would like to say something in addition to what I said in answer to Deputy Vallois moments ago. I said my answer was surprising; surprising because it was incorrect in that I gave it without reference to Article 8 of the 1965 Department of the Judiciary and Legislature law which indicates that: "Certain officers including the office of Bailiff cannot with or without Jersey occupy any other paid employment or any public or parochial office." In those circumstances, the Bailiff without amendment to that law would not be eligible to be selected as Speaker pursuant to paragraph 1 of the proposition.

1.1.15 Senator L.J. Farnham:

It has been a very interesting debate, certainly enlightening and I think we have all learned a lot about our constitution. I just want to comment on something that Deputy of St. Peter said. She is also leaving the Assembly, I do not know if it is because I have stood up to speak but I always used to ... I enjoy listening to her and I always used to enjoy watching her on report at 6 or whatever it was called back in the day when she was a news anchor. She is a good orator. She commented that it is the duty of us in here to do the right thing but this debate is not about doing the wrong thing. None of these opportunities or these positions that we are discussing about the Speaker is particularly wrong. They are ... both are credible; having an elected Speaker is not wrong, having the Bailiff I do not believe is wrong. That is why I think it is a good debate and it is an important debate and it is a debate and debates are won and lost on the strength of arguments made. I am pleased to say that most of my speech has been already mentioned by Members so I am not going to speak for long. Senator Bailhache covered most of what I wanted to say, especially in relation to the separation of powers which in our case is more of a balance of powers. We have heard how the executive is held to account by the courts and the courts are held to account by the Assembly and the Assembly is accountable to the people and that works extremely well. But what I did want to go on record to say is that I have never been embarrassed by being a Member of this Assembly in any circumstance. Even when I have been talking to other politicians from other countries, either in their own countries or here, and discussing with them for want of a better word some of the quirks of our special system, I've never been embarrassed. I have only ever been proud, sir, thank you. I have not been ashamed either. If Deputy Tadier does feel shame at being a Member of this Assembly then he should think very carefully about his future in the Assembly because this is not a place to be ashamed in. This is a place for pride and determination and the place to put the interest of Islanders before our own interests. Thank you.

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

I am not quite sure how I am going to vote on the main proposition. I was going to support it but I explained my reasons yesterday for not wanting a referendum, for not believing that the public want a referendum. So I am reluctant to support the proposition with the referendum attached. What I do want to do is go back to the issues at the heart of this debate and to explain my stance to my constituents, to the public and what I think about what the issues are. When I am trying to make decisions about things in this Chamber I often try and drill down to the values that underlie them and then weigh up the values to see which is the more important. I have been trying to understand what exactly it is we are debating, what values we are debating. I think essentially this is a debate about what's more important. Is tradition more important or is democracy more important? But those are not the values themselves, those are the issues I think. When I thought about tradition, when I tried to drill down to think about what values underlie tradition, I do think tradition is very, very important. I think traditions give us a sense of national identity, it brings our community together, it gives people self-esteem, it creates a sense of cohesion. When we come together in this Assembly and we have these traditions and ways of doing things, it helps to unify us and it helps us to identify as Jersey people and Members of the States of Jersey Assembly. That is all really important. When I think about the issue at hand of whether we have an elected

Speaker, a democratically elected Speaker or someone who is there by virtue of tradition, the other issue is democracy which is a word that has been used a lot over the last couple of days. Being someone who did not have a political background ... I was a teacher, I came into politics not as a politician really but as a teacher with the values that go with being a teacher. So, my sense of what democracy is has evolved since becoming a Member of this Assembly. The way that I understand it is that the value underlying democracy is who holds the power within the community. If we have a democratic system, what we are saying is that the power is in the hands of the people. That is the system that we have, that we aim to have, the best kind of democracy that we can where the power lies with the people of Jersey. I do not think anybody in this Assembly would disagree with that. The people of Jersey, they choose how to use that power. Their power is their vote. They transfer their power to the elected Members at election time, sometimes just for a brief time, 3, 4 years maybe more. So we then have those decision-making powers but only by virtue of the public giving it to us. Of course, that power can be taken away from us at election time by the people; the people retain that power even though we are exercising it on their behalf. How do we exercise that power? The main way that we exercise that power is by making legislation in this Chamber. We come in here and we either propose legislation ourselves or we listen to another Member doing so and then we talk about it. We speak, we have debates, we try to persuade each other. This speaking, debating and persuading, hopefully we all listen as well as much as we can, once that process has taken place we then vote.

[11:45]

That is the process by which democratic power is exercised in our community. So going to the issue of the Speaker, if we have a man or woman presiding over us who is able to silence that speaking, debating, to stop us listening to people speaking because for whatever reason they do not like something that is being said ... perhaps they consider something that has been said that is offensive by their own judgment, then that individual has the power to stop us speaking. They are able to turn off our microphones and to tell us to stop and to make us leave the Chamber. If that does happen, who has the power then? Is the power with the people i.e. through us who the people have elected or is the power at that point if or when that situation comes about the power is not with the people of Jersey then, the power is then with one person. At the moment, we have a situation where that can happen and the person who then retains that power at that time is an unelected person. Now, that to me, when I think that issue through and think about the values and weigh it up with the importance of tradition and national identity and social cohesion, to me the issues I have just explained about the people having the power, that weighs far more heavily than the importance of tradition. I cannot avoid that. That is my moral compass telling me that is the right thing to do to have an elected Speaker so that the people have a system whereby that elected Speaker can be removed if necessary, where the people have a say in who ultimately has that power. I do not know how to hold the current President of the Assembly, whoever has it in the future the current system we have I do not know the accountability systems behind that. I do not know how I would hold that person accountable for something I disagreed with. I do not know how a Member of the public, if they disagreed with something, with a decision, would be able to do that. There is no accountability there. So I do think it is about power versus the social cohesion that comes from tradition. So that was the reason why I wholeheartedly supported the original proposition but given my reasons yesterday for not supporting a referendum I am not quite sure how I am going to vote. I will listen to other speakers and I want to listen to the Chief Minister when he sums up. I do at this point want to make it very clear that I think the power belongs in the hands of the people of Jersey and the system we have at the moment there is a loophole in that system that means one person can take that power away from the people of Jersey and I do not think that is right and I think it needs to be changed.

1.1.17 Connétable D.W. Mezbourian of St. Lawrence:

I do not want to take up too much time with my speech but I want to just touch on something that I feel personally about with regard to this. I have been a Member of this Assembly since December 2005 and during that time I have taken part of course in many debates and they have covered wide-ranging topics. Many of them have been emotive topics as this has proved to be. Earlier this year, there was a meeting at St. John's Parish Hall, I think it was called by the Corporate Services Scrutiny Panel and it was to discuss the constitution of this Assembly. The elected representatives who attended that meeting were invited to address the meeting and give their view on the make-up of this Assembly, et cetera. When I did so, I touched on the matter of the Bailiff as president and I said that in my opinion, I did not have a problem with that position and I supported it. Clearly, some members of the public who were there agreed with my view and others did not. The point I am coming to is that following the close of the meeting, one of the people who opposed my view, and it was a man, marched up towards me, stood right in front of me and spoke directly into my face and disagreed vehemently with my view. I felt physically threatened by his attitude and it has never happened to me over any other matter that I have been involved with since I became a Member of the States. It has remained with me because my personal space was violated. Now, I do not know whether he would have taken the same attitude if it had been a man who had made the comments that I did but I was ... I was shaking. We adjourned afterwards to the pub in St. John as we do. As we do. It had been a good meeting apart from that and I was chatting to other Members and others who had gone across there and explaining what had happened and everybody was surprised by it. But as I say, I have never felt physically threatened prior to that point because of a comment that I had made as a Member of this Assembly. So, I think that having suffered that action by this member of the public and having listened to the debate over the past 2 days, I concur with what the Chief Minister said when he opened the proposition yesterday when he told us that he acknowledges that there are strongly held views in and out of the Assembly on this matter across our entire community. I think that experience is one of the reasons that I voted to support the amendment by Senator Bailhache to hold the referendum so that those people who do have views, be they strongly held or otherwise, are given the opportunity to tell us as their elected representatives what those views are. I do think that some Members paid a disservice to those members of the public who they said would not or do not understand the issues that we have been discussing. Of course, as Senator Bailhache said in his summing up yesterday, a referendum would require those on both sides of the divide to express their views and to make it clear to the public what they needed to consider. So that is one thing that we have not heard about, physical threats from any other Members and I am pleased to recognise that. The other thing I wanted to just touch on was something that Deputy Southern said yesterday when he mentioned that we have heard 3 or 4 legal opinions in the Assembly. In my view, what we have heard over the past 2 days have been only opinions because every comment that has been made has been the opinion of the Member that has made that. If I can use that word again, in my opinion, I think that until the dual role is challenged within a court of law it remains an opinion as to whether or not it is acceptable. So far that challenge has not been made in Jersey. I am being told by my colleague on the left that it has done so in Guernsey. I must admit, I was not aware of that but until a challenge is made within the appropriate court, the comments that are made are opinions only. Even mine. Just a couple of other things. I was pleased when Senator Bailhache spoke earlier and said: "Do not be embarrassed. Do not be embarrassed that we have a unique identity when you speak to people in other jurisdictions, when you speak to elected Members in other jurisdictions." I agree with that. Talk us up. Do not go there with a down on Jersey and the way that we are here, talk us up. Explain that our unique identity has evolved over the centuries. I have found it interesting one of the comments that Senator Bailhache put in his report about the fact that ... I think what he was saying was if we were starting out as a democracy now potentially coming out from a dictatorship or something like that, maybe we would not end up with the system that we have. But our system is the result of a traditional long-held, long-standing democracy; it makes us unique. We talk all

the time about our unique identity and this is part of it. So, let us embrace and emphasise that unique identity. Having said that, my view is that the public should be entitled to give their opinion on this and so therefore, tempting as it was when the Constable of St. Clement spoke earlier, I was tempted to vote against the main proposition. However, I will be supporting it and I urge others to do the same. Thank you.

1.1.18 Deputy D. Johnson of St. Mary:

I am pleased to follow the Constable of St. Lawrence and my own views very much echo hers. I came to the Assembly this morning almost with a firm conviction as to where I was going to vote which followed on from my statement yesterday in response to challenge of the Chief Minister asking that those who voted for a referendum to suddenly vote for the proposition. I went away believing that is exactly what I would do. I genuinely believe that this is a situation where the public need to have their say and be given the opportunity to have their say and for us to vote against the main proposition now is to deny them that say. Who are we to say that they should not have a voice in this? I began to waver at certain stages during the course of the morning when various speeches gave rise to some confusion in my mind but I am pleased that through here the views of this the Deputy of St. Lawrence, Deputy Le Fondré confirmed by Senator Bailhache that my original view was very much ... should very much be firmed up. So that is how I shall vote. I think I would like to say one further thing about the doctrine of the separate of powers. Many of us attended the presentation given by the Secretary General of the Commonwealth Parliamentary Association when he was over here recently and a quick slideshow, one of which was a doctrine of separation of powers. I think it was Senator Routier who queried why this should appear given that as far as he was aware, Jersey was one of the only 2 jurisdictions which had this problem. To which the Secretary General replied, diplomat as he is, that the doctrine of separation of powers covered other things. Indeed, it does. We are in continuous breach of that doctrine by passing laws. Even now we are passing laws which give quasi-judicial decisions to Ministers with, in effect, no right of appeal other than through the Royal Court. I say other than the Royal Court, of course it is there but in practical terms it would not be followed because of the cumbersomeness and the cost associated with it.

[12:00]

I believe that these are the aspects which the Care Inquiry directed us to address by referring us to the Carswell report and Clothier of course. These are items which have been picked up by the Law Commission in their paper on the redress in Jersey. I believe that those items are ones which we should be focusing on far more than this debate we are having today. I do urge whatever the result of this debate that we revert to that so that we are giving substance to the recommendations of the Care Inquiry and also the Law Commission. Thank you.

1.1.19 Deputy S.M. Brée of St. Clement:

I came into the Assembly this morning without any prepared speech, because I wanted to ensure that I listened to all the arguments being put forward by the various Speakers. I was interested with the speech made by Deputy Doublet, where she raised the very interesting question of power versus tradition, effectively, if I may sum up. Now, I think, if I have understood Deputy Doublet correctly, she suggests that the power lies in the person, i.e., the person who is President of the States, at the moment, and that removes, somehow the power of the people to have their voice. I would like to suggest that the power always lies with the States Assembly, the elected Members of this Assembly, because it is actually, through Standing Orders, that we conduct ourselves, and that we operate as an effective Assembly. Now, it is this Assembly that actually writes, debates, approves and amends Standing Orders. So, the actual question, perhaps, is more, is the interpretation of those Standing Orders, by the sitting President, or should we have an elected

Speaker, where the problem lies. Well, I would suggest, that that problem of interpretation of Standing Orders would exist, whether the Bailiff remains as President of the States, or we have an elected Speaker. It is a question of interpretation. We, this Assembly, approve, debate, amend Standing Orders. Now, I am sure, that the Chief Minister will probably raise the question of those people who voted for Senator Bailhache's amendment, and yet, vote against the amended proposition as being, why? Why did you do that? Well, I spoke, and voted in favour of the amendment, for a very, very simple reason, because what was being proposed represents a constitutional change. It does not matter to me the subject matter of that constitutional change. What matters to me is that, when that happens, the public have the right to have their voice heard, through the democratic process of a referendum, and that is the only reason that I voted for the referendum, and I think it is very, very important that we do have a referendum, on anything that is constitutional change. To Deputy Martin, hand on heart, yes, I will respect the outcome of such a referendum, as long as the referendum itself is properly formed, which I am sure it will be, with the work of P.P.C. and the Reform Commission, and remember, that Reform say, how can it be ... Reform Jersey, my apologies. Reform Jersey say: "Well, how can it be?" Well, the referendum will come back to this Assembly for approval, before we have that referendum. I am fundamentally opposed to the principle of removing the Bailiff as the President of the States Assembly. I do not think that comes as a surprise to anybody, but I do not intend to go into detail, on all the reasons why, but I would like to just draw Members' attention to 2 areas that I think are quite important here. One, the Independent Care Inquiry, which, as far as I can see, was one of the partial triggers for the Chief Minister in bringing this, and I would just like to remind Members of what the finding of the Independent Jersey Care Inquiry, as it is called, is actually at Recommendation 7, 13.19. Now, this 13.19 Recommendation starts talk about this perception of the Jersey way, which I do not intend to go into at all, but it says, at the end of it: "While constitutional matters are outwith our terms of reference, we are of the opinion that this matter cannot be addressed without further consideration of the recommendations made in the Clothier and Carswell reports." I totally agree. This, however, proposition is not further consideration. What is happening is that this proposition is using that comment as justification for removing the Bailiff as the President of the States Assembly. As far as I can see, it is just going, we should accept the Clothier and Carswell reports full stop, move on. I do not agree with that. I think there should be a lot more debate, and looking at, in a modern context, the Clothier and Carswell reports. Now, the other point that I would like to just raise, if I may, is we have heard from quite a number of Speakers, this somewhat plaintive argument, we need to conform to international standards. Well, Jersey has always been different. We have always been unique. We have always been independent. There is nothing wrong with being different. There is nothing wrong with being unique, and there is absolutely nothing wrong with being independent, and to decide our own future, based on what we believe is best for the Island, and this is not being insular, it is most certainly not being xenophobic, as suggested by Deputy Mézec, but why should I not seek to protect, and maintain, our traditions, our customs, our practices, and our constitution? Unlike some, I am not embarrassed to go out there, and tell people about the wonderful island I live in. I am not embarrassed to tell people how unique we are. I am not embarrassed to talk about our history, and how our history, and our customs, and our practices form a foundation of what I believe to be a very, very coherent way of governing. Now, many will disagree with that, and that is the point of having a democratic process of debate, but I am proud to be a Jerseyman, and everything that that entails. "Vive la difference", say I. Now, while Senator Bailhache has put forward a very good argument, to support the amended proposition, I am afraid, Sir, I cannot vote for something I do not believe in. So, I will vote against this proposition, as a matter of principle. If, like myself, other Members fundamentally oppose this proposition, to remove the Bailiff as President of the States, then I urge them to vote for what they believe in, to vote according to their conscience, and to reject this proposition in its entirety.

Deputy L.M.C. Doublet:

Sir, can I just clarify something the previous Speaker said? Despite an admirable attempt to mansplain my own speech to me, I think the Speaker may have misunderstood, the point that I was making was that, yes, the Presiding Officer does interpret Standing Orders, which we have put in place, but is the previous Speaker aware of any democratic method for holding the current Presiding Officer to account, if a Member, or Members, disagree with the current Presiding Officer's interpretation of Standing Orders?

Deputy S.M. Brée:

My apologies, Sir, was that a point of clarification, or a question?

The Greffier of the States (in the Chair):

Well, it was not really a point of clarification. I think it was a clarification of your attempt to clarify what the Deputy said in the first place. It is up to you whether or not you wish to answer the question.

Deputy S.M. Brée:

Fine.

1.1.20 Deputy E.J. Noel of St. Lawrence:

We made a mistake, when we made changes to the senatorial benches, in my first term of office, without first seeking the views of Islanders in a referendum, and I often wish that we could wind back the clock, to having 12 Senators, on 6-year terms, voted in every 3 years, 2 blocks of 6. Fortunately we did the right thing when we lanced the issue, regarding Constables, and their automatic right to be in this Assembly, by listening to what the public had to say in the referendum. The right thing, regarding our Presiding Officer should also be dealt with in a similar vein, and therefore, I will be supporting this proposition so we can finally, hopefully, lance this particular issue.

1.1.21 Deputy M. Tadier:

When I last spoke on this, in 2014, we did not have video cameras in the Assembly, which was unfortunate, because I tried to recreate a scene from one of my favourite stand-up comedians at the time, probably still, Stuart Lee. His acerbic wit has a way of getting, really, to the nub of the issue, and because I have not got it up on my iPad yet, I am not going to recreate all of that, although I do warn Members it will be a fairly lengthy speech. So, you may need to stop me, Sir, at lunchtime, so we can all get our feed, and come back afterwards. And the gist of it was, basically: "Oh, do you remember how credit was, in the good old days, when we were all amoeba, or protozoa, do you remember how good it was, when we were all living in the primordial soup, before there was any evolution", and then, I said, and I got away with it, at the time, I said: "Those bastard fish came out, onto the land", and they were bastards, because they did not have any mothers or fathers.

The Greffier of the States (in the Chair):

I think that should be withdrawn, Deputy.

Deputy M. Tadier:

They did not have any mothers or fathers, Sir, so ...

The Greffier of the States (in the Chair):

I think that should be withdrawn, Deputy.

Deputy M. Tadier:

I will withdraw that, Sir.

The Greffier of the States (in the Chair):

Yes, I am asking you to withdraw it.

Deputy M. Tadier:

I will withdraw that, Sir.

The Greffier of the States (in the Chair):

Thank you very much.

Deputy M. Tadier:

The Bailiff, at the time, obviously missed that, but it is good to know that somebody who is not the Bailiff can exercise more rigour, when it comes to defending, pulling up unparliamentary language. And the gist of it is, you are always going to get people who are traditionalists, and who are nostalgic. I mean, what was there before we evolved into human beings? And I appreciate that, of course, I suspect that most people in this Assembly probably do not believe in evolution, given the fact that they still probably believe in divine right of kings, because we are a monarchy, and have effectively have a monarch who presides in this Assembly, not by my words, but by the Bailiff's own submissions that he has made, he makes himself, and akins himself, to a king, even though we do not have a monarch per se, we have a Duke of Normandy, that presides over Jersey, and we are also proud of that, of course. I would like to address this issue that has come up, about when we travel, we should be proud of Jersey, and we should not be embarrassed. I am not embarrassed. I learnt from a young age you take pride in the things that you have done yourself, and that you have achieved, not in things over which you have no control. Our nationality, of course, is an accident of birth, we did not choose to be British, we did not choose to be born in Jersey, that is why I have campaigned to allow people who are not British nationals, who were not born in Jersey, to be able to stand for our States after a certain period of time, because they are the true nationals, they are the true patriots. They have chosen to come to Jersey, they have chosen to pay their taxes in Jersey, to raise families in Jersey. I am just here because of an accident of birth. So, at least they have shown a commitment to Jersey, and when we go on these conferences, and when we do these benchmarking exercises, it is to learn from each other.

[12:15]

We appreciate, and celebrate, that in the Commonwealth family, there are differences and there are similarities, but we all espouse basic principles of democracy. Now, there is an argument for another day, perhaps, because there are severe cracks appearing in the Commonwealth family, in terms of practice, and in terms of the core values, and where we do not share core values, that is the risk, and so, of course, when I go abroad, I say: "This is our Island, this is what we do well, these are the things that we are working on, we would like to hear how you do these things", and you exchange that information. So, when I sit in a small committee meeting, a workshop, to do with best practice, and to do with benchmarking, I say: "Well, I appreciate we all come from different backgrounds", and how we have been discussing women's equality for many days in these forums, it is a perennial issue, that comes up at the C.W.P. (Commonwealth Women Parliamentarians). It is not something that any establishment really wants to deal with, because they like the cosy old boys club, and they like the conservative values that they aspire, and they want to hold power generally, and of course, women's rights is, of course, about human rights, and about representation, and about fighting austerity. Again, arguments for another day, but insofar as the argument that we are talking about relates to who chairs this Assembly, the good thing, in other parliaments and other assemblies, is that there is a good chance that whoever chairs their assembly will be a woman, and that is because they choose their Speaker, normally, from within the membership, and where they

do not, it is still the membership who choose their Speaker, and they choose it from who they think is best suited within the community to do that, and chances are, it should be 50/50, whether it is going to be a woman. If you come up those stairs, and look at the board, there, how many women are there on that board? There are not any women on there. There does not seem any possibility that there is a likelihood of a woman being elected Bailiff any time in the future. That is just the way it works, strange. We did have a Solicitor General, I remember, a while ago, who was female, but the rest of them have been male. So, when it comes to the Committee of Inquiry making the recommendation, how do we tackle the perception of the "Jersey Way"? This allegation that there is a corrupt, old boys' network that runs the Island, whether it is in here, or out there, or in the smoky back rooms, how do we counter that, when we have to say that, actually, we want to quote, we have got a system which only, in its entire history, has allowed males, and well-placed, and well-landed males, no doubt, to take that role. How can we say that meets gender equality, which is something that we are aspiring to? It simply does not, and as I have said, there is no Bailiff on the horizon, that I can see, who will soon be female. Now, that becomes less of a problem, of course, if it is just the Judiciary and the Civic Head role which only attracts males, but certainly when it comes to a democratically elected assembly, it is strange to be presided over entirely by only one gender in perpetuity, and that is an argument which is not often put forward for the separation of the roles, but I think it is a compelling one, and one that should not be forgotten by the 50 per cent of woman in this Island, unfortunately not in this Assembly. So, when I go abroad, I do say: "We want to espouse best practice, how can we learn from you, these are the things we do well, those are the things you do well, and by the way, we have got lovely cows, lovely beaches, and it is worth coming to see us." Now, there has also been this idea put forward, that the Bailiff is independent, and always impartial. Now, it is true that, whoever ends up acting as President, Speaker, Chair of this Assembly, can and will make mistakes, and the reason he will always do that is because - or possibly she, in the future, if it is an elected Speaker - is because they will be human, and we all make wrong judgment calls, and there is always give and take, and of course, I make mistakes, as well, as much as anyone else, and I am not putting myself forward for the position of Speaker, were it to become available at this point. So, I think that needs to be taken into account, but there is an idea that, over and above that, there is an automatic conflict, and that is what was put in some of the submissions to Carswell, saying that you cannot be impartial when, and the argument has been made that not only are there 2 roles when it comes to Bailiff, that of being a Judge, and that of being the Speaker of this Assembly, there is a third more important role, which is the Civic Headship/Guardian of the Constitution, and you cannot be a Guardian of the Constitution without having being inculcated in all that deep blue tradition that goes with it. The fact, you know, that the Speaker, the Guardian of the Constitution will necessarily be staunchly monarchist, he will necessarily be deeply religious, and be linked, if not officially, but invariably always with the established Church of England, and we have seen great interest in that, and it is very difficult for somebody in that position to actually preside over an elected body, with diverse views, representing the people, but who are not appointed there from outside by, effectively, a monarch. And when people say that the Bailiff has never been anything other than impartial, that is not true. Can we scotch that argument, for once? The personal is political, and I would like to read out an excerpt from recent history, which demonstrates that, not only can people make mistakes, we all make mistakes, but the Bailiff has allowed his judgment to be fogged, or blurred, by his otherwise religious views, which are an integral part of his Guardianship of the Constitution, and I will contextualise what I am saying. This comes from the business case. It was an amendment that I put to the business plan, when I wanted to increase the headline rate of tax, from 20 per cent upwards, so we would have more money to spend on public services, so that people in our community would not have to suffer the cuts that are being put forward, but they could actually benefit from a bigger pool, to support them, and that was the context. So, obviously, using rhetorical devices, we will start somewhere in the middle, and I was talking about the difficulty that

people have accessing dental healthcare in the Island, and I said: “Well, you know, I cannot really deal with having £500 of debt hanging over me, even if I am paying £3 a day, or £21 a week back to Social Security for a loan that I have received. That is my cereal, that is my milk, my bread. I think I will just do without my teeth, because I am a poor person, my social status, and the economics that go with that, means that I am going to die early anyway.” As we were reminded yesterday, again quoting by Senator Cameron, who was in the Assembly at the time: “They will just go away, and that is the kind of society we have”, my words: “It is the kind of what would Jesus do society, because of course he would be there at the Tory conference, sitting with the Institute of Directors, in the middle table ...” I did not finish my sentence there. What I was going to say, of course, Jesus would not have been sitting with the Institute of Directors, he would not have been at the Tory conference, because during his time, he was very much considered a dissident. He was somebody who spoke out on social issues, and where there was legitimate ... he was political, in a sense, the Pharisees at the time were the establishment of the day, and if you did not agree with it, and if you thought what they were standing up for, he would stand up against the Pharisees, the Sadducees, the establishment of the day, but I could not finish my sentence there, because the Bailiff intervened, and said: “Deputy, I think, if I may say so, this is offensive to all those who have a belief in Jesus Christ, to attribute political views to Jesus, that he would be at the Tory party conference. That would be offensive to some, and you should withdraw it, please.” I said: “Sir, I will not withdraw that, at all, because the point is, it is a point I believe. Jesus was a historical figure, and the point I am making is that he would not have been at the Tory conference, he would not have been at the I.o.D. (Institute of Directors) dinner, obviously, because the historical context did not allow for that”, but interrupted again., It is entirely irrelevant, because when we have people standing up in this Assembly saying the Bailiff has never intervened, and made a wrong decision, let alone made a wrong decision by virtue of the fact that he is Bailiff, and that is not true, in my opinion, and I have been elected here to give my opinion, the personal is political, I can only speak as I find, Senator.

The Greffier of the States (in the Chair):

Deputy, I am just going to intervene at this point. It is in the Standing Orders that it is out of order to refer to the conduct of, among other people, any Member of the States, unless the debate is on a proposition, the purposes of which is to discuss such conduct. Now, I have let you run along there, because you have read out the record of a well-known incident, but you are starting to edge into basically saying: “The Bailiff made mistakes, got it wrong”, and so on. That is fine, if you are bringing a proposition to that effect, but to bring something up, and to start saying, when obviously the Bailiff is not even in a position to respond, is running quite close to the Standing Order. So, I would like to remind you of that, and to suggest that you do not dwell, too much, on effectively trying to suggest that, in his conduct, he made mistakes. He has got to rule under the Standing Orders, as have I in this situation, to make judgments about what is in order, and what is out of order, and it is not necessarily in order to then use that as a basis for criticism in a later speech, without notice.

Deputy M. Tadier:

Sir, I take that on board. I think it is relevant to this debate, because we are debating the ability of any Bailiff to be able to act impartially, given the fact that they have 3 roles, one of which is the Guardian of the Constitution, and my point is that the Bailiff can, and does, shut down people’s microphones, expel them from the Chamber, not just the Bailiff in this part, who I have not mentioned by name, by previous Bailiffs also, and it is my finding that that is inherently linked to the role of Bailiff.

The Greffier of the States (in the Chair):

And if I can help, that is in order, that is fine, it is obviously the case that the Bailiff has certain powers, and the argument has been made about the accountability of the Bailiff, in relation to those powers. What I am saying is that to focus on specific incidences, and to then start making specific comments about those incidences, runs quite close to the rules, where you are not allowed to do that. So, I am not saying you cannot make a more general argument, because of course, the proposition is not about the current incumbent, it is about the general office.

Deputy M. Tadier:

Exactly, Sir. Thank you, and I always do try and sail close to the wind, but never capsize my boat, by sailing on the other side of it, and the point is, it comes back to the Tony Benn quote. He had so many good quotes did Tony, and he said, and it is something he used to tell students, people anywhere, when he used to go giving talks or lectures: “If one meets a powerful person, ask them 5 questions: “What power have you got? Where did you get it from? In whose interest do you exercise it? To whom are you accountable, and how can we get rid of you?” And then, he said: “If you cannot get rid of the people who govern you, you do not live in a democratic system.” Now, let us look at those, and put them into the context of this debate. So, what power have you got? Well, I think we know what power the Bailiff has got, that is still up for debate. Some people say: “Well, he has not really got any power in this place.” I disagree, I think the fact that there are so many different hats, and roles, that the Bailiff has, some of which are not obvious, either, he is a very powerful, the post-holder, the post is a very powerful position, and we have seen to what lengths the current holder, previous holders, and politicians who have been Bailiff, as well, will go not to give up that power. One thing we know about power is that it does not give itself up easily, and what we are seeing here is the counter-revolution, I would suggest. We will go into that in a moment. Where did they get the power from? Well, we know they are appointed, it is not by us, it is not by anything to do with the Island, they are crown appointments, although there may be some input from the Island. To whom are they accountable? That is not easy to say. We have got this sense that, not particularly tangible, that they are guardians of the constitution, that they are answerable to Jersey, to the people of Jersey, but then it goes back to the question, who chose to have a Bailiff in the first place? Were the public ever consulted, some time in the Medieval times, did somebody come round the fields, with a clipboard, speaking possibly in Norman, or it would have been pre-Norman, possibly, saying: “By the way, we are just going to set up the role of Bailiff for King John, or whoever it was before, who said that he wants to send some wardens over to Jersey. Are you happy with that? What do you think about that? We would like to consult you with that, because of course, it is an important role.” No, I do not think that ever happened, and who is he accountable to in this Assembly? So, if somebody has got an issue with something that the Speaker does, or says, in any normal Assembly, there is a way to deal with that. You can make a complaint, you can put a censure in, you can have a vote of no confidence, as the nuclear option, and that can, and does happen, and it is not nuclear in the sense in other places, because in doing that you simply, if you are successful with the vote of no confidence, you just elect a new Speaker, you carry on, and nothing fundamentally changes.

[12:30]

But to do it in Jersey, you would actually be going up against the quasi-monarch, who would be saying: “I do not agree with that”, and what I would have liked to have said, if I had continued the rest of the transcript, I will spare Members of it, is that there were a few people, including the Chief Minister, who stood up and said, they were brave enough, and showed enough solidarity, across the political divide, to say: “Sir, I think you might have got it wrong here, and Deputy Tadier was clearly just making a political point, it was targeted at me, he is saying that you are a Christian, you should be doing better than this, you should be looking after the people you purport to, Sir, but actually your policies are making it worse. He is not abusing his position at all”, and other

Members, in solidarity, walked out, but the general thing was one of silence in here, and if that happened in any other Assembly, there would be outrage that somebody is being interrupted, for saying what is just normal, run of the mill, everyday rhetoric, but in here, because of the personage of the Bailiff, or rather the system, and the eminence of the role of the Bailiff, and the person who is chairing, nobody is going to speak up against that. And I was even told afterwards, I will not mention the person, but he said to me: "I think you got that wrong, I think you should have just sat down, and apologised." And I said: "Well, no, I could not do that, this is a point of principle, we are here to make these arguments", and that is exactly part of the problem, and that is why, and the Deputy of St. Mary's has alluded to it, you cannot separate out this debate from the argument of the Jersey way. Now, if you have not gathered it yet, although I think strongly that we need to separate the powers, we need to elect our own Speaker, I am not one of those people who is going to come up to the Constable of St. Lawrence, in her face, and say: "You must do this, you must do it now." No, if the Assembly is not ready to, do not do it. It is as simple as that. If this Assembly does not think there is any need to elect the Speaker, do not do it. If the future Assembly wants to do it, let them do it. It has been clearly established, yesterday, that there is no appetite, in this Assembly, to change. That is fine, I am fine with that, I am a democrat, but do not go on top of that, and say: "Well, actually, we need to put a referendum to the public, on something we do not want to do." It is interesting, and fully expected as part of the usual political rough and tumble that Senator Bailhache will target Reform Jersey, we have got a clear position on this. Our position is that Jersey should have an elected Speaker, there should be one type of States Member, that we need to get rid of the over-representation of the country, and have fair electoral systems, but unfortunately, putting it to a referendum is not going to solve the issue, especially when the Assembly does not want to do it, and there was no criticism made of the Constable of St. Clement, who I think made the most logical and correct speech, early on in this, is that, if you do not want to do it, do not put it to a referendum. We know what happened in the U.K. If you put questions to a referendum on government policy, which does not exist, or which is the opposite of government policy, you get stung. Some people know about the idea of Pascal's Wager. I am sure that the Dean will. Pascal's Wager is, basically, a religious concept, it is very unsophisticated, it has to be said, about whether or not somebody believes in God, and the risk, and the payback, that is involved in that, and that argument goes that, if you are not sure whether God exists, you might as well be pious, you might as well believe, and go to church, and say your prayers, just in case He does, because if He does exist, then Hell exists, then even if there is an infinitesimally small chance of Him existing, and Hell existing, and you going to Hell because you do not believe in God, then that is, you have got to think seriously about that. Now, we are not going to get into a theological argument, about the validity of that principle, but if we apply that to this debate that we are talking about today, what is the payback for you, on either side? If you think that, actually, the Bailiff should remain, the system is fine: "If it ain't broke don't fix it", and we heard those speeches, we heard some very good, and very staunch, speeches, from the likes of the Constable of Trinity, and he has got absolutely no problem with the system, as it currently stands. Others have a problem with the system as it stands. That is fine, that is usual policy. Why would you take the risk of putting it to the public, even if there is only a 25 per cent chance of you losing? I mean, what if Deputy Mézec, and others, had a really good online campaign, and managed to engage the public, as he is already doing, on his various - and the party is doing - to engage the public. What if we see an extra, you know, 25 per cent come out to vote, not just in the referendum, but in the election, and they all say: "Well, look, we all think this is great, so we are not only going to come out to vote in the referendum, we are also going to vote for the Reform Party", or Reform Jersey, as they know it is really called, and they will say: "And it is easy for us, because we do not know all these names. We see all these names on the paper, but they have got this clever trick, they stick their name, the party name, next to the candidates on the ballot paper, so we know who to vote for automatically, and by the way, they are all talking sense, and we think that they should also ... so, we are going to

vote in the referendum, you know, for the first time, we think it is great, we can vote from 16, and it is clear to us that the States should be able to elect their own Speaker, it goes against all of these well-established principles, and it just does not feel right, and we are modernists, and we want to move on.” And of course, people in the finance industry will know, but they cannot expect people from Jersey Finance, or those representing the industry abroad, to have this Mickey Mouse system, as they might call it, of governance. You see it in the “Paradise Papers”, the questions are being asked. Is Jersey a democratic place? Well, it is a semi-democratic place. Does it have a credible opposition party? It is not obvious why they might be asking that. I think they want to know that Jersey is a stable, modern democracy, and that we do things properly, but how much more so for our own people, not just because we have an international industry that is hosted in the Island. So, why would you take a risk, if you do not think there is any need for change? If this Assembly does not want the change, why would you put it out to the people? It simply does not make sense. The argument is about whether we want this. I do not think the majority of Members do want this. Luckily, there are still people with principles, who will go with their gut, rather than trying to park the issue for another few years, and it will not park the issue, Senator Bailhache. What it will do is that there will be some more demands, there will be more inventive propositions that come forward, not only looking at the Speaker of this Assembly, but calling for a Crown Prosecution Service, calling for a panel to appoint the Crown officers, to appoint the judiciary, to look at the way that the Jurats were appointed, because clearly, and we have got a very small amendment coming up soon, about the poor law being removed from the Jurats law, but the way that we elect Jurats is completely unfit for purpose. States Members, elected politicians, should not have any role in appointing members of the court. I would dare say that the advocates in the Island should also have no role in appointing members of the court, or the Jurats themselves. I mean, that is a completely ... if you had to design a system, you could not want anything which was more perverse than that, and surely that needs to be the next thing that is looked at. So, simply by having a referendum, it is not going to park the issue, and the bottom line is that you cannot put human rights issues to the public, because our human rights obligations supersede any democratic considerations that might be put forward. Let us take the example of what is happening in the U.K., with smacking children. A very controversial issue, because they want to remove, I think it is the justification clause, in law, about proportionality, and whether you are right to use reasonable force with a child. Now, that does not have universal public support. In fact, what it does not have is, the majority of people think that the Government is wrong, they think that the Commissioners for Children, all 4 of whom have said that the law should be changed, they said that smacking should be banned, and when we have a Commissioner for Jersey, we have been told that the Chief Minister will be asking him, or her, to review that particular issue, and they will come back, and they will say the law needs to be changed in Jersey, and we could say: “Well, look, this is a really important matter, it is a matter which goes into the home, it deals with about how you bring your child up”, and ultimately, I suspect it will be for us to have some kind of input into that. Now, would we put that to a referendum? Would you say that, because we know that if it went to a referendum, there would not be ... it would be difficult to get a rational argument on it, and I suspect it would be kicked out, but that is not the right thing to do. If you put an undemocratic question to the public, and they come back with an answer, that does not make the principle democratic, all of a sudden. If you have put a human rights issues to the public, and they say: “Yes, we are quite happy not to abide by the human rights”, it does not make it legal under our international obligations. And as I said yesterday, it is not the public who are going to end up in the European Court of Human Rights, it is not even Jersey, or a Jersey Minister, that is going to end up in the Court of Human Rights, it will be the U.K., and they know that. They are looking over our shoulder, and they do not want to be ending up in the European Court of Human Rights for something that a small Crown dependency on their doorstep, which is becoming increasingly unpopular with many of their electorate, because it is being involved in these alleged Paradise Papers, and tax avoidance, and aggressive tax

avoidance at that, they do not have much sympathy for what goes on in our Island, and if you are a true Jersey patriot, is it better that we make our own decisions in this Assembly, or is it time for the U.K. to step in, as they did after 1769, because Jersey cannot run its affairs competently? I would suggest that what we should be doing is recognising that there is a problem here, and acting upon it. The Constable of St. Lawrence was quite right to say that it is important to recognise that there are different opinions in our society, and I do not know if everybody could see that photo, that is basically an image there, it is called an optical illusion, it is a type of optical illusion, and it is the classic one of the old lady, or the young lady, and some people will look at that, and they will say: "That is a young lady wearing a bonnet", in fact both of them are wearing bonnets: "And that is her ear, that is her nose, and then, that is her neck there." Other people will look at it, and say: "No, no, it is clearly an old woman, she has got a big nose there, she has got the mouth there, she has still got the bonnet on, that is her eye, and that is her hair hanging down there", and they will argue about it, they will be fighting each other for it, saying: "No", but once you have seen both, you cannot go back, once you have seen the old woman, which you did not see before, you can no longer un-see the old woman. And there is also the argument that I have used in the past, the very simple, mathematical problem, called the Monty Hall device service...

The Greffier of the States (in the Chair):

I am struggling to relate this to the comments of the Constable of St. Lawrence, which is what you were introducing here, Deputy.

Deputy M. Tadier:

So, I will relate that to the Constable of St. Lawrence.

The Greffier of the States (in the Chair):

Well, you started off by saying you were going to refer to what she had said, you have shown us a picture, we...

Deputy M. Tadier:

The point is that some people, it is always important to see the other side of the argument, that is the first thing, and I think what we have done in this assembly, by having this debate, is that we have started to do that, but there are clearly people who cannot do it. There are clearly people who say: "No, this is the only way it can be, there is nothing wrong with it", but what they cannot do is say: "Well, actually, I agree that there is nothing wrong with the current system, but I also think there is nothing wrong with having a Speaker." No one has used that argument, really. No one has said: "Okay, look, just for peace sake, we are never going to agree on this, therefore, I will make a concession", and that is what anyone has to do in a relationship, you have to make compromises. The only compromise that can ever be made, we know, is to have an elected Speaker, because it does not affect the role of the Civic Head of the Bailiff, it is the only way you keep the democrats, if we can call ourselves that, or the purists, if you like, who want that separation, happy, or not. It is a bit like the toilet seat argument, isn't it? If you are in a heterosexual relationship, do you put the toilet seat up, or toilet seat down? Now, I always argue that it should be 50/50, because actually, I say, when I go to the toilet ..."

The Greffier of the States (in the Chair):

All right, Deputy, you know you are stretching it now. I think you are delivering on your promise, to do a very long speech, and I wonder how long you have got to go, because we are about a minute from the lunch adjournment, but I do think it needs to be a bit more related to the actual content of the proposition, than it has been, the last 2 or 3 minutes.

Deputy M. Tadier:

I am relating the psychology of it. I mean, if people want these kinds of speeches in 12 Parishes, during the referendum campaign, I am quite happy to recreate them in anyone's Parish Hall, as they want.

The Greffier of the States (in the Chair):

It is a tempting offer, but you have not answered the question I asked, which is how long you propose to speak for, because we are quite close to the lunch adjournment.

Deputy M. Tadier:

I have still got a significant part of my speech, and I am getting a very dry mouth.

LUNCHEON ADJOURNMENT PROPOSED

The Greffier of the States (in the Chair):

The adjournment has been proposed. I think the Assembly is happy to sign off there, until 2.15 p.m.

[12:44]

LUNCHEON ADJOURNMENT

[14:17]

The Greffier of the States (in the Chair):

We are not quorate at the moment. I would ask Members outside to come in, otherwise we will call the roll. In that case, I think we should call the roll. Do the electronic roll. If I can ask the Greffier to open the voting on a roll call. I think Members had the opportunity to cast a vote, so I ask the Greffier to close the voting. Too late, Deputy Truscott. 27 votes, so we are again quorate.

Senator P.F. Routier:

Sir, I would like to give notice that I would like to call the guillotine motion, to give half an hour's notice.

The Greffier of the States (in the Chair):

Thank you very much. That is a 30-minute notice. I am prepared to accept the proposal to close the debate when it is at 30 minutes, or more, from now. Deputy Tadier?

Deputy M. Tadier:

I knew that the Bailiff was controversial, but I did not expect to see a guillotine appear today. If we do not have evolution, then maybe we will one day have revolution. So, all I was going to say, before the lunch break, is that compromise is always needed, if you are going to overcome what would otherwise be an impasse in a relationship. Sometimes, in fact, it is the person who is in the right, or who feels in the right, who needs to make the compromise, in order to make any peace. The problem with dealing with traditionalists, from my experience - and when it comes to traditionalists and progressives - is that the traditionalists never compromise. There is no compromise if you are a traditionalist, they are die hard. That is fair enough, but that is, unfortunately, just the way it is. So, it is always the progressives that need to make the compromise. We have seen this in terms of electoral reform, people have said: "We do not want any change, whatsoever, at all", just because they are traditionalists and, of course, some of them couch that by saying: "Oh, we do want change, we just want change that we do not know about, that has not appeared yet." So, it is left to the others to make compromise, and what we have seen is that the Chief Minister has had an evolution in his thinking. Lots of senior States Members, who have been here for years, have moved from the position where they once said there is no problem

with the system, but actually, we need to change it. Some of them have done that for reasons of ideology, because they have been convinced by the arguments, they have been won over. For others, it may be pragmatism, the fact that it does not look right, in the modern world. It did work, in the past, but it does not work now and on the balance of things, we need to change for pragmatics. For some, it is going to be a combination of the 2 of those and, similarly, we see that in the proposition that has been put forward by the Chief Minister, because he has put in provisions, which say, later on, that the Bailiff can come into the Assembly, he can be invited here, we are not severing tradition. That would be one option and we could say, simply: "No longer fit to ... it is no longer acceptable for the Judiciary to be in this place and we will have a complete severance of the 2", but what the Chief Minister, in fact, what I sought to do previously, was say: "Well, let us recognise that tradition. What is it that people like about the role of the Bailiff?" Some of that and it was reflected in some of the submissions to Carswell, was the pomp and ceremony and some submissions, quite simply, said something which you could criticise as being naïve, but it is nonetheless what some people think, said: "I like the Bailiff's red robes, I like the fact that we have got a mace in here, it is a link to the monarchy, it is a link to tradition and, therefore, it would be a shame to lose that", and I think that is where a lot of people are coming from. They are not thinking about it ideologically, in terms of democratic norms, best practice, good practice, in terms of jurisprudence, they are thinking about: "Oh, well, I quite like, on Liberation Day, seeing the First Citizen of the Island making a speech, coming into the States, where he is presiding, listening to somebody stand up, who is a senior States Member, making a speech, looking back, during the Liberation and speaking, in wholesome terms, of motherhood and apple pie." Those are good, great occasions, where politics is not normally involved. Similarly, with the Christmas speech, politics is not normally involved with the Christmas speech. Sometimes it is and we know what happens when you try and mix politics with Christmas, it does not always work out too well. So, I think, and that is going back to the referendum. So, what we are debating here is not the Chief Minister's proposition, which is quite straightforward and it is a shame, because there are certain parts which do need discussing. For example, it has been suggested that we do not need to create a new department for the Bailiff, for the Speaker, because we already have, effectively, a Speaker's Office. That function is already discharged, very ably, it has to be said, by the Greffier, they assist the Bailiff currently, in his role as Speaker. So, do we need to have an office of Speaker? This is something that is going to be rolled out, of course, by the anti-campaign, if we do ever get to the referendum. They are going to say it is going to cost a lot more money and, in fact, that is an argument that I have already heard in the country Parishes, about 6 weeks ago. I may have said it before. I was approached by somebody who is normally a wily, slightly older, Jersey person, who does not particularly like the Government, who said: "Well, actually, I am not sure about this whole separation thing. I think, if we got rid of the ..." - and she is not a particular supporter of the Bailiff, incidentally - but she said: "Is it not going to cost more money, if we get rid of the Bailiff?" and those kind of arguments, the arguments that we used in the U.K. referendum, which were, effectively, lies, and which we talked about yesterday, there were lies, which could be used on both sides, well how on earth is it going to cost more money? And if we want to have a proper debate about this in public, we will need to talk about the nuts and bolts of it, we will need to talk about occasions like I have raised in this Assembly, where I think Bailiffs have overstepped the mark and they have done that by virtue of being the Bailiff, not just by making mistakes. That is going to come out in the public debate. The fact that, listening to the radio yesterday, I think it was the radio, it could have been the T.V. (television) on in the background, they said: "Jersey has appointed its most highly paid civil servant, the new Chief Executive Officer, who gets paid £250,000 a year, something like that and the pension pot that goes with it, of course." Hopefully, he will stay around and he will not be given a golden handshake before he finishes his term. But then, I thought, I guess he is the highest paid civil servant in Jersey, but then, of course, the Bailiff is much more highly paid than the chief executive officer, but technically, he is not a civil servant,

he is a public servant, but he is still, nonetheless, paid from the tax payer and, presumably, has some kind of interaction with the States Employment Board and, presumably, his department's budget could be cut, as well. Now, what we know is that the Bailiff currently, with increments, gets paid about £360,000 a year, give or take. There is, obviously, a sizeable pension pot to do that and the argument would be made, well, of course, if he is remaining in the States for part of his time and doing some of his work in the Judiciary and it is obviously not just the 2, he has other functions, there will be a call, of course, that there is a pro rata that goes on. So, whenever the Bailiff is in this side, he should be paid a States Member's wage, the same as the rest of us, it should not be the £360,000 pro rata, it should be the £46,000, roughly, that we would pay somebody to chair this Assembly. He should also not get a pension for the time that he is sitting in this Assembly, or when he is working on matters to do with this Assembly, because, currently, States Members do not get a pension, et cetera, and he will clearly have administrative support, as it continues. So, the question about the creation of a new office is a moot one, but have no doubt that there will be the metaphorical, if not physical, bus going round touring, with the big letters written on it: "If you vote for the States to be able to elect their own Speaker, you will be able to save £300,000 a year, plus the pension pot that the current Bailiff is getting." And, of course, if he is in the other house only, he can concentrate on his judicial affairs, we will not have to get Commissioners in from that terrible place, the U.K. Because we have been told that we do not want to become like the U.K., why do we have English Commissioners coming to Jersey, to preside in our court, on Jersey laws, not English laws, when we have a perfectly good Deputy Bailiff and Bailiff to do the job, because that is one of the contradictions that we do not like to think about, because the Judge, that is his primary role, the Bailiff came out of the court, it was not the other way around. The evolution was not, humans did not change into monkeys and then become fish and then become protozoa, they did it the other way around and, similarly, with the role of Bailiff, that grew out of the court, because the States Assembly did not exist at the time, then the States Assembly split, but the Bailiff remained as an anachronistic legacy of that history and that is why we are in the current position that we are in today. Now, when I held up the image of the lady, the 2-faced lady and said: "Well, once you have seen it, you cannot un-see it", I was going to say that certain things in life are like that, there is always 2 sides to a lot of arguments, but there are other things which I wanted to say, that once you have seen them, you cannot un-see them. So, when you have got that magic eye, which I think we all know, probably, when we were younger, they look like a blur, it is a pretty pattern, you can stare at it for ages and ages and just by staring at it, you will not see what is behind there, the real image. You have to change the way you look at it, in order to see what is truly there and you do that, I do not know how you do it, actually, it is by focusing in a certain way. I am sure there are eye specialists out there who could tell me what the physics of it are. I think you essentially go cross-eyed, because you are looking at a different focal point and you see a hidden image, which is a 3D image, which is hidden within inside the picture and once you have seen that, you can no longer un-see it and I think it is the same for me and for those of us who, fundamentally, understand the nature of the conflict which Montesquieu was talking about, over 250 years ago. It is not, simply, some intangible idea, to say that these should, if possible, be kept separate and there should be a balance, but as long as you just about do it all right, as long as there is no actual, real conflict, then that does not matter, because what he said was, actually, that nobody should exercise an office in the Judiciary and also exercise political office at the same time. So, that brings us to the question: is the Bailiff political? Did somebody say that there had never been intervention that they could remember, where the Bailiff had been political? Did I remember someone saying that? I am sure someone said something to that effect, during this last few hours and I think that the issue is, we know that a Bailiff who is currently, a former Bailiff, who is currently in this Assembly, said that he made a grave political error, when he said, as Bailiff, on Liberation Day, that the real scandal was the unjustified and remorseless, denigration of Jersey and her people, when the allegations of child abuse surfaced.

[14:30]

So, I do not bring that up ... I only bring that up to make a point, because the Senator has apologised for that and that is good, but his words are that he made a grave political error. He did not say: "I made just a mistake."

Senator P.M. Bailhache:

Sir, will the Deputy give way? I was about to say that, as a matter of fact, those were the words of the Committee of Inquiry.

Deputy M. Tadier:

Okay, well I do change that, then, that the Senator said he did not say that. So, I think the point to be made is that the Committee of Inquiry has then said that he made a grave political error and I apologise to the Senator, I was just quoting from the *J.E.P. (Jersey Evening Post)*, which was in inverted commas, which one does at one's peril. But they have judged that a former Bailiff did make a grave political error and I think that most people realised that, when that speech was given, it was a political speech. I mean, that is subjective, but I think that it was widely accepted that it was a political speech and that is why it was controversial. It was not so much the fact that people agreed, or disagreed, because, of course, there would have been lots of people in the Island who would have agreed with what the Bailiff, at the time, was saying, when he said it could have been phrased better, but we think that Jersey is being misrepresented in the international media and, of course, it is very difficult for any Bailiff, when he sees an assault from the international media, when he sees headlines, which he thinks are completely unfair on the Island, to stay silent on that. That is because he is the guardian of the constitution and you could argue that there is nothing wrong with the Bailiff making that kind of comment, even on Liberation Day, if he wants to, because he is defending the rights and auspices of the Island. Now, you can have a debate about what the correct wording should be and whether it was well-advised, but it becomes more difficult when that person is also the Chair of this Assembly, because he, effectively, will be seen as a politician and the arguments will be: "Well, he is making political statements again, how on earth can he be apolitical, in the States Assembly, especially when there are issues that are being dealt with, the Committee of Inquiry", et cetera. We are supposed to be in here to represent the public and I have been asked, by a member of the public, what was meant during the in camera debate, when the Bailiff intervened, at the end of a speech by the Minister for Homer Affairs, Deputy Andrew Lewis, where he was explaining about the report, which had come out. He said, I think, to paraphrase, he said: "If this is what the interim report says, God only knows what the main report will say" and, at that point, the Bailiff intervened, and said: "Please Deputy, do not go down this road" and he has asked me: "what kind of intervention is that, from the Bailiff? Why would the Bailiff intervene, in that context, to tell a Minister that he should not be going down a certain political line of enquiry?" So, I am just putting that out there, from the member of the public who has asked me to put that. He sees that as another example of a Bailiff, as Presiding Officer, being inherently political. But let us get back to the amended proposition, because we are talking about having a referendum here. Now, we cannot even decide on the matter of the Bailiff. We have not even got to that point, where we are looking at the magic eye and we can see what the problem is. So, we cannot decide it among ourselves, why on earth would we put that matter to the public, if we do not even think it is the right course of action? I am concerned that we have not learnt anything recently. We are still speaking with an ultra-nationalist language. We have had people standing up today, saying: "We do not care what others think, I am a proud Jerseyman, I am not ashamed when I go abroad, I do not talk the Island down" and I am sure the Saudi princes that we do business with are not ashamed of some of the human rights atrocities and abuses that are carried out in the name of their countries, because they adopt, like apparently some of our members do, my country, right or wrong. I have never agreed with that statement. I think we should be much more

circumspect and I am not comparing, for one moment, Jersey to Saudi Arabia, incidentally, but we still need to look at what things we do. Just for the Dean, I am reminded of the words: "Woe unto you, scribes and Pharisees, hypocrites, for you make the clean outside of the cup and of the platter, but within they are full of extortion and excess. Now blind Pharisee, cleanse first that which is within the cup and platter and then the outside may also be clean." And I say that in the context of being more concerned about our reputation and perception, as to, when it comes down to it, what we are talking about. And it has to always come back to the Committee of Inquiry, I am afraid. It has to come back to the recommendations that were made in there, that this Island needs to have a proper discussion about the Jersey way and what that means and the old boys' network and that is what we are going to be discussing if we have a referendum. As I said, the Deputy of St. Mary has already said that, we need to look into those issues. I often ask myself the question: how was Jimmy Savile allowed to abuse people, so many vulnerable, young people, vulnerable adults, under our very noses? One of the reasons was because he was well connected and he was too powerful to touch and no doubt he was part of networks, which were also too powerful to touch. Why was child abuse allowed to go on in Jersey for so long?

The Greffier of the States (in the Chair):

Deputy, I understand the connection between the report of the Care Inquiry, and this debate, but there is a risk here that you are connecting up the activities of people like Jimmy Savile with the role of the Bailiff and I think that sounds quite unfortunate, to my ear. **[Approbation]**

Deputy M. Tadier:

I knew that was a risk and that is why I was being very careful in wording my phrase, which is down here. The whole thing, everything is inter-connected, is what I am saying. I refer it earlier to the point that, when there is blind deference and when there is blind tradition and when people just cannot see a problem with a system, then that is when it becomes risky. When we concentrate too much power in one office, or in one hand, then it becomes risky and the point I was going to make - I have lost my thread slightly, from that intervention - 3 years ago, when I was making the same speech in this Assembly, I referred to one of my favourite comedians, Stewart Lee, and - oh sorry, was that a rhetorical device by the Constable? - so, I was talking about child abuse and we were told that one of the reasons this is being brought forward and not just by me, but by the Chief Minister, is because we have to have a conversation about the perception of the Jersey way and we were told, by the Committee of Inquiry, to refer back to Clothier and to Carswell and to give them greater reconsideration. Now, they would not have said that, they did not say that in a vacuum. They said that because we have just been through a very dark period in our Island, where we have discovered decades of child abuse and we are trying to understand. We are not unique in that respect, trying to understand how it could have happened in our community and I am trying to explain why it is important to have rigour in our institutions and in our processes, as well as a separation of power and I think one of the reasons was because there were power structures in place, not just in Jersey, which did not allow for children to be believed, which said the adult must always be right and that reputations trump the rights of children to be looked after properly. And that is why I quoted the "woe to the Pharisees". It is important to have the processes, because while it is true that the current Bailiff is a good and honourable man, it may not always be the case and history has shown - and Deputy Mézec has made the points in the past - that that is not always the case and we are only as good as the processes and systems that we have in place. Power in the wrong hands corrupts and absolute power corrupts absolutely. You also need somebody to serve at the leisure of the Assembly. Now, let us get back down to some of the key arguments that are being put forward and that the public will have as concerns during the referendum and one key issue that keeps coming up, time and time again, which the Constable of St. Saviour raised, is that they are worried about a particular district, or Parish, losing a representative, if that person becomes

the Speaker of the Assembly. So, in that case, the Deputy or Constable might become Speaker. What I would say is that we should remember 2 things. First of all, all constituents in Jersey are represented by at least 2 Parish representatives; they have a Constable and at least one Deputy and if you are represented in a small Parish, where you only have one Deputy, it is the same constituency.

The Connétable of St. Saviour:

Could I ask you just to give way, because I would just like to clarify, just a little bit, to say that I was ... if one of them was elected as the Speaker, I would want it on their manifesto to say that: "We are standing in your Parish, but we are going to be standing for the Chair." I do not mind who gets the job, which definitely will not be a Constable, because we are far too busy.

Deputy M. Tadier:

I think that is a good point. Ultimately, that brings out another problem, that is, we could have the same requirement for anybody who wants to stand for any position. To do that, it was suggested, in the past, that the Chief Minister should declare, before he or she even gets into the States. Now that could, of course, be seen as presumptuous. So, if somebody says: "I am standing for election and I want to be Chief Minister", well: "Hang on mate, you have not even been elected yet, and should you not see who you are working with, before you make that kind of statement?" And I think that is the risk, that somebody might say: "I want to be Speaker" and you would get that, incidentally, once the system has become embedded, because it would become, probably, the Speaker seeking re-election, as happens elsewhere and, strangely enough, the public seem to like that. Once a constituency has a Speaker in its Parliament, or Assembly, they tend to elect them automatically and they are not opposed by other parties, because they are seen to be doing a very important job, but the same argument about the lack of representation can be made when somebody becomes a Minister, or an Assistant Minister. So, there is a sense in which, when your Deputy, or Senator, as it has always been, becomes Chief Minister, he can no longer speak out in the same way, but he could, if he was not a Minister, or backbencher, because he can no longer criticise Government. Similarly, if you are an Assistant Minister, a constituent will still lose some of the access that they have, there is always going to be a trade-off. So, if your Minister - and I will give you an example - is the Minister for Social Security, it is quite likely that she is not going to be able to take up any social security casework on your behalf, for obvious reasons, now she may, depending on what her *modus operandi* is, have a system to deal with that. She may say: "Well, I am going to designate a particular member of staff to deal with that issue" or she may not. It may well be that it falls to the other Deputy of the Parish to pick up the social security casework, and deal with it in the same way. It may also be the same if there is an Assistant Minister in the department, who says: "I am afraid I cannot deal with that, because I am too close to it" and certainly, as I have said, the Social Security Minister, as your Deputy, is not going to stand up and fight austerity, when that said austerity is coming from the Social Security Department. So, you have to go to other Members and that is the nature of an Assembly, there are many different roles that are functions of the Assembly and the role of the Speaker is simply a function of the Assembly and I have addressed this with other elected Speakers. I have asked them and I have said to them: "Well, how do you deal with that, in your system?" and they say: "Well, there are ways, because we have an office, which is set up for us and when a constituent comes to me and says: "Look, I have got this issue, can you raise it for me", he or she will say: "Well, clearly I cannot raise it on the floor, but what I can do is that I can speak to one of my colleagues, they can raise the issue on the floor, I can write a letter, an email, to the Minister in charge" and they tend to get expedited responses. So, when you are a Speaker, you get treated with a great deal of care, of course, by Ministers and by others in the Assembly, because they know the fact that you have a very difficult job to do and so you can still represent your constituents from that. There are also 8 Senators. We talk about the Senators quite a lot, saying

that they are such an important, traditional role, that we should have had a referendum, that it is such a mistake to reduce their numbers, from 12 to 8. Well, if you cannot get hold of your Deputy, or your Constable, call all the Senators, that is what I say and there are 8 of them and I am sure they would be happy to come and represent you at Social Security tribunals, at the Planning Applications Panel, all of those kind of things, they can do that. But, tongue in cheek, I have not been gratuitously offensive enough, in the last few paragraphs, but, tongue in cheek, why would somebody in St. Ouen, or Trinity, be worried about losing their voice in the States Assembly, for example, if their Constable became the Speaker, in the future, of course, when 11 out of 12 Constables were elected unopposed, anyway and when they seldom say anything anyway?

[14:45]

I mean, Constables are the ideal people to chair really, because they often have not expressed an opinion on anything, either at election time, because they have not needed to write a manifesto and some of them seldom engage in debate, they are just, as some would say, voting fodder to prop up the ultra-Conservative policies in our gerrymandered system. And is it not ironic that the Council of Ministers, or the leading rump, if you like, of the Council of Ministers, in Senator Gorst and Senator Ozouf, were so keen, in the last election, to keep the 12 Constables in this Assembly automatically, without them being voted in separately, because they thought: "Well, we can rely on their votes, we need to get their votes through." But what we have seen recently is a complete split in the Council of Ministers and I think this leads me towards the end of my speech - just in time, hopefully, for Deputy Southern, or somebody else, to continue - is that what is ... if not what is the intention behind this referendum, because I do not want to steer too close to the wind, in saying that there is a hidden agenda here. What I will say, is what is the ... what will be the unintentional consequence, or the reality, coming from this referendum? Why on earth would somebody, who does not want any change, put a question to the electorate, saying that we do not think the electorate want change either, unless it is just going to be one big waste of time, or to park the issue, because the Senator, who brought the amendment, knows that this is not going to park the issue. Now, what we do know is that there is an election coming up in May 2018. What we can surmise is that there are 2 frontrunners for the position of Chief Minister and from where I can see, they are sitting very close together, one is the current Chief Minister and one is the one sitting next to him. Those are going to be the frontrunners for Chief Minister.

Deputy G.P. Southern:

Do not get carried away, Paul!

Deputy M. Tadier:

And the record will note that Senator Routier, the Father of the House, of the Assembly, is saying: "It is not me", he is gesticulating. So, it will be one of those 2 and what I am saying is, I am trying to convince the Council of Ministers, in particular, the Chief Minister, I should say, because there is no Council of Ministers anymore, there are 2 Council of Ministers, being led by 2 different people and I am trying to aim these arguments as to why the Chief Minister and all of his supporters that he is able to whip, if he is still, indeed, able to whip anybody into voting his way, like Senator Bailhache clearly is, when he stands up, saying: "I want you to support this, because of these reasons", why the Chief Minister should change his view. He can sum up afterwards and if he thinks he can change our position, then he is at liberty to do so and that is because I see the Chief Minister losing out on all of this. The Chief Minister is going to have to go to the public, the election campaign is going to be starting tomorrow, effectively. Once we pass the referendum, there will be a referendum campaign starting and all the usual, typical, sentimental, nostalgic, half-hearted, or not factual, necessarily, arguments will be coming forward and they will be designed to pull at the heartstrings of traditional Jersey, as was exactly the case in 2014. We are just repeating

history again and this is what is so frustrating for somebody who - I might not, necessarily, like tradition, but I certainly like history - and I have been looking back at that and it is so obvious what happened during the 2014 election. We should have been discussing the main issues, again; the same issues that we are still going to be discussing, or should be discussing, at the next election, of which progress has been glacially slow on and, again, we are not going to be able to discuss these issues, because it is going to be taken over by one single, niche, issue, to do with tradition and the Bailiff and that is going to be a “get out of jail free” card for the pretender to the Chief Minister.

Senator P.F. Routier:

Half an hour ago, I asked if we could have the guillotine motion. I notice half an hour has gone by and I would like to ask if we could agree that.

The Greffier of the States (in the Chair):

The proposal to close the debate was under Standing Order 84. Thirty minutes has elapsed. I can allow the proposal, if it is not, in my view, an abuse of procedure, or an infringement of the rights of the minority. I think everyone has had their chance to speak, over the last day and a half, so I do not think it falls into either of those categories and, therefore, I am prepared to accept it and the proposition is put immediately to the vote, without debate. Deputy Labey?

Deputy R. Labey of St. Helier:

Well, I was, I am sure unintentionally, misrepresented by Senator Bailhache, earlier in this debate. I have not had a chance to set the record straight and I would like the ability to be able to do that.

The Greffier of the States (in the Chair):

I am afraid that I have accepted the proposal, so I am not going to allow the continuation of the debate, unless the Assembly votes to continue the debate. It is a decision of the Assembly. Is this a point of order?

Deputy M.R. Higgins:

Well, I could say a point of order. I have a speech written, which I obviously want to bring and which I think is important information for Members and I would like the opportunity to do it and I think, how many Speakers are left, Sir, to speak, on your list?

The Greffier of the States (in the Chair):

Three Speakers. There are 3 Speakers on my list, at the moment.

Deputy M.R. Higgins:

Shall we allow the 3 to speak and then ...

The Greffier of the States (in the Chair):

No, I have explained the situation, the proposal has been made, within the rules of the Assembly. It is now up to the Assembly to decide whether, or not, to continue the debate. There will be a vote at this point. If the Assembly votes to continue, it continues. If the Assembly votes not to continue, we hear from the Chief Minister and that is the end.

Deputy M.R. Higgins:

Okay, can I speak to the proposition then?

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

No, it is without debate, I am afraid. I assume the appel is called for on this. Therefore, if the proposal is to close the debate, so if you are in favour of closing the debate, you vote pour. Contre is to vote against. I ask the Greffier to open the voting.

POUR: 28		CONTRE: 16		ABSTAIN: 1
Senator P.F. Routier		Connétable of St. Helier		Senator I.J. Gorst
Senator P.F.C. Ozouf		Connétable of St. Lawrence		
Senator P.M. Bailhache		Deputy J.A. Martin (H)		
Senator A.K.F. Green		Deputy G.P. Southern (H)		
Senator S.C. Ferguson		Deputy of Grouville		
Connétable of St. Clement		Deputy K.C. Lewis (S)		
Connétable of St. Peter		Deputy M. Tadier (B)		
Connétable of St. Mary		Deputy of St. John		
Connétable of St. Ouen		Deputy M.R. Higgins (H)		
Connétable of St. Brelade		Deputy S.Y. Mézec (H)		
Connétable of St. Martin		Deputy of St. Ouen		
Connétable of St. Saviour		Deputy L.M.C. Doublet (S)		
Connétable of Grouville		Deputy R. Labey (H)		
Connétable of St. John		Deputy S.M. Wickenden (H)		
Connétable of Trinity		Deputy T.A. McDonald (S)		
Deputy J.A. Hilton (H)		Deputy P.D. McLinton (S)		
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy E.J. Noel (L)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy A.D. Lewis (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

The Greffier of the States (in the Chair):

That brings the debate to the end, and I call the Chief Minister.

1.1.22 Senator I.J. Gorst:

I wonder if I could seek your advice, before I start to speak. I am not sure whether the word: “nonsense” is Parliamentary.

The Greffier of the States (in the Chair):

It depends on the context, Chief Minister.

Senator I.J. Gorst:

It is not a word I often use, but I thought I might try it, at some point. It is, and every time I come into this Assembly I feel that it is a privilege to be sitting here, listening to my colleagues, in a debate like the one that we have had over the last number of hours and I think we have all felt - as we often feel, on the big issues, either of the day, or issues of history, like this one - the highs and lows of debate and vote in this Assembly. The uncertainty, when we divide into those who, perhaps, want to see some quiet reform, or even drastic reform and those for whom the weight of tradition upon their shoulders is so strong that they find it difficult to move towards a change and the ebb and flow of discussion, of argument and the result of a vote and those who were on the losing side, how they can leave this place and go to their home, feeling dispirited. Will anything ever change? And those for whom the vote has gone with them, feeling, on the one hand, delighted that the vote has gone with them, but in my experience, even when one is on the winning side of a vote, tinged with doubt, wondering whether we have made the right decision, whether now was not quite the time to make that step of change and, in the past, I have said small steps and the Constable of St. Helier said he hoped, from his Chief Minister, something greater than small steps, but that was a different debate and we have really, I think, had, as I have said, the highs and lows, certainly the best, unfortunately, sometimes, the worst of debate, but I do not want to dwell on that, because I do not think that will bring value to our deliberation, as we come towards a vote. I asked you about the word: “nonsense”, because, for my part, as I have said, there have been some excellent contributions and I am going to come on to them, but there has also been a good dollop of nonsense spoken and I think that that nonsense has been spoken around 2 particular areas: about whether we are becoming Anglicised and we are just importing everything from the U.K., and we must be against that absolutely; and also those who travel out of the Island and whether they are ashamed, or proud, of our democracy and Jersey. And I think there has been nonsense spoken in those 2 particular areas, because the reason for this change...

Deputy R. Labey:

Would the Chief Minister gave way, momentarily? Thank you. I was woken up, by myself, on the radio, this morning. It was a clip from yesterday’s debate and my exact words were that I have enormous respect and affection for our Bailiff. I have never, in any of these debates, ever shown any disrespect towards the Deputy Bailiff, or the Bailiff. This time, a month ago, I was standing on the floor of the New South Wales Parliament, I was asked to give the summation speech to our conference and I think Members would have been proud of the way I bigged up our Island, our system and everything and I understand that tales of it reached Bangalore and the next CPA conference. I have always been at pains to take personalities out of my debate on this issue, I have always, from an early age, since Clothier, I have written articles in the *J.E.P.*, I have stated my position on the separation of powers. I believe our current situation drives a coach and horses through the separation of powers. As far as embarrassment with the Bailiff is concerned, I think the only time I risked that was when I enticed him, with the Deputy of Grouville, over to another establishment in the Royal Court, in the Royal Square, to take of a small libation, in which I gushed so badly about his brilliance at chairing these Assemblies, that I was embarrassed. I just want to make it absolutely plain that I have never voiced embarrassment for this Island, anywhere outside of this Island, or the Bailiff, or the Deputy Bailiff.

The Greffier of the States (in the Chair):

Thank you very much. I know you wanted to get that on the record. Chief Minister.

Senator I.J. Gorst:

Thank you and I thank the Deputy, because he has just explained why I think a number of Members' comments have really been taken out of context and used in an inappropriate way, in this debate. **[Approbation]** I often say, because I believe it is true, that when we are here, in what I think is one of the most beautiful places on God's earth, we criticise each other, we complain about how we can do things better, but by the time we have taken our first step up the steps to the aeroplane, or by the time we have - with the ferry it is certainly getting off at the other end, not getting on, because we find plenty to complain about when we are getting on it - by the time we have made those first steps, we are absolutely and we absolutely do, staunchly defend our Island, our history, and our traditions. For me, sometimes, when I am overseas, I have no greater pleasure than talking about our constitutional history and I see people's faces light up with joy and sometimes with a little bit of envy that we trace our history back so far, that we have such a strong connection with the British Crown. I do not think any one of us talks about areas where we would like to see change and where there are - what might be, compared to international standards - deficiencies. Very occasionally, we may get asked about it, particularly if we are at something like a Commonwealth Parliamentary Association, or the French equivalent. Very occasionally, when we have visitors to our community, we get asked about it. We explain it, but I think that every Member in this Assembly explains it in the way that I do.

[15:00]

It works. It may not meet those international standards, but it works and, by the way, the democratically elected Assembly continues to keep it under review. I say that, because I think that highlights whichever way we vote today, the fact that we have had the debate, the fact that we have spent a long time, intelligently considering it, again is to our credit and it shows that we recognise that international standards - how we think about them, how we respond to them and how we deliver change to comply with them - is extremely important. In the last speech, we heard all sorts of points made. Overnight I have been told - and I think it was a sly way of telling me to book my holidays on 17th May - that I was not right wing enough for the country Parishes, that I was too right wing for the town electorate, that I should resign, because this Assembly has voted for a referendum. That may be the case, but I approach this job, as I believe everyone in this Assembly does, to do what I think is best and right for this community and I am not going to step back from that, because the day that I do, is the day I should stop coming into this building and being interested, with the authority to make decisions and I hope that every Member of this Assembly does absolutely the same. I said I would not focus on those speeches that I felt were, in some parts, unfortunate. I did want to focus on one speech, that while I disagreed with the, I will not say content, but with the ultimate conclusion, I am very respectful of that individual and that was the Constable of Trinity. He said and I am grateful to this, that he has supported me, as I say, through thick and thin and even being criticised for it but, today, he was not going to and I respect that, because, quite clearly, yesterday he said he would vote for a referendum, but he would not be voting for the main proposition. He was clear, he was open, he was not playing politics, he was saying it as he saw it and I know that a number of other Members, who did not speak in the early amendment, felt exactly the same. That is the approach that we should take: being open, being clear, once we have reached our decision and not playing politics, or thinking about what is most politically, or electorally, expedient. Every one of us is bigger than that and our community expects better of us than that. So, here we are, we have got an amended proposition before us. Some are saying very amended; even the mover of the proposition said it was very different from the original proposition that I put forward. Some have said it is right that the public have their say, others have said it is such a complicated issue, how are we going to get that message across, in

order to inform the public, so they can make their decision? Equally, I do not think politicians should be afraid of public opinion. We should not be afraid of what the public think. We are here at their pleasure. We should have conversations with them, we need to communicate better, I absolutely accept that, but asking them to decide should not be something that we are afraid of, whatever the decision. There is a risk, on both sides of this debate, in going for a referendum, but we will be handing that question over to our community and I, for my part, although I may not have wished to be here, where we are, I do not think that we should back away from asking them that question. So, one person, overnight, has already said to me that they are quite happy, ready, eager and raring to run a campaign and that would be a campaign to support the separation of powers. I am sure there are many others, on the other side of what that debate will be, who are, themselves, only too eager to do so, as well. The mover of the amendment suggested that the referendum question is largely settled by the amendment. As much as I like my colleague here, I think he knows he was trying to push his luck a little bit there, as well. It may be the base of a referendum question, but I do not think any of us can say it is largely settled. That would be the work for P.P.C. and the Electoral Commission and, ultimately, for this Assembly. The other point he made, which ran counter to a number of points that other Members had made and that was that we should have the referendum in May of next year, at the General Election, which I must say struck me as slightly odd, because most Members who spoke in favour of a referendum, at the same time said there were lots of questions that they did not feel were currently answered and I think that, if we are to have referendum which is meaningful and we ought to, we owe that to the community, there is quite a bit more work, which my officials, together with P.P.C., together with the Electoral Commission, I think that is - Referendum Commission, sorry - we will need to do. And some of that piece of work will need to come back, I think, to this Assembly, before we can finally agree a question and before we can finally agree a timeline, because, let us not forget, this is not the only change in reform that needs to be made. There are quite a number of others that need to be made. We know that, at the election, the electoral observers, we have no doubt whatsoever, will suggest changes to the composition of this Assembly. If we go back to the Care Inquiry recommendation, it said we should review Carswell and Clothier. This is only one element of that. The other major element is electoral reform. We go back to how we deal with complaints, as well, Public Sector Ombudsman. There are a number of other areas of piece of work, some that would fit into the constitutional bracket, bearing in mind the advice that the Attorney General gave us yesterday, so a number that would fit into the constitutional bracket. So, I think we must be realistic about when a referendum could be undertaken and when that question could be put to the public. I think, perhaps, one of the big issues, that certainly my proposal did not focus on, was this idea of the Bailiff as the Guardian of the Constitution and there were questions right around the Assembly, about how that would need to be dealt with and the effects there. Those questions, rightly, need to have answers, before we go to the public. So, those Members that want to ask the public, I hope that they will vote for this, in principle, decision. Those Members who do not want to ask the public and think that we should simply make the decision in this Assembly, I hope they will think very carefully. Is it really a defence, to say: "I am in favour of the separation of powers, for all of the reasons we have been debating, but I do not want to trust you, the public, in helping us make that decision." I do not think, as democrats, any of us can say that. We may not have wished to be here, we had our debate, we had our opportunity, those who did not want a referendum, we lost that vote. I teach my children that when you lose something, you do not wallow in that loss, you do not resign, just because you have taken a hit, if that is the right term - probably not Parliamentary either - you pick yourself back up and you carry on doing what you think is right and, in this instance, what you think is right for our wider community. So, for my part, I will revert back to value 1.3 of the Bangalore Principle, which states that a judge shall not only be free from inappropriate connection with, and influence by, the executive, and legislative branches of Government, but must also appear, to a reasonable observer, to be free therefrom. Many Members have quoted and said -

they have quoted a writer from 250 years ago - that says, one of the reasons he liked the United Kingdom system was because the Judiciary could keep in check the executive. Yes, of course and that is our system. The judiciary keeps in check the executive by the courts, not be sitting in the Legislative Assembly, be that as President, or Speaker. It is not difficult, it is quite straightforward. Other Speakers have suggested they like the American system, Presidential system, where not only do you have the separation of judiciary and legislature, but you also have a separation, too, of the executive. We do not have that system. We, in our system, glory in somewhat of a hybrid, largely mirroring the Westminster model, but drawing on some of the French system model, as well. If we were to go to the American system, that really would be a coach and horses through our tradition and our history. So, I will finish there. I thank Members for contributing. I think it has largely been a good and productive debate. I ask those who voted for the referendum to carry on and accept the principle and do not fear trusting the public with these big questions. That would be, I think, the right thing to do. Thank you.

[15:15]

Deputy M. Tadier:

May I ask a question of the Attorney General? It arises from something the Chief Minister said in his speech, and I did not want to interrupt. The Chief Minister raised the very important question about the nature of the content of the question that will eventually be put to the public and I noticed that there was disagreement between Senator Gorst and Senator Bailhache, who was shaking his head. So, the question to the Attorney General is: is the eventual question that will be put to the public, is that dictated to by this proposition, in terms of its wording and, if so, how?

The Attorney General:

No, ultimately the question will be a matter for the Assembly. I do not have it in front of me but, as I recall it, Article 6 of the Referendum Law advises that the Assembly must, not less than 3 months before a referendum, approve an act, to which will be attached the draft question.

The Greffier of the States (in the Chair):

I can probably assist, as well, in that the Referendum Commission, which is in the process of being set up - I believe the interviews are taking place later this month - one of its specific roles is to advise the States on the question and the content of the question and it will be expected to go through a process, in accordance with best practice elsewhere, to test out different formulations of questions on the public, which is very much what P.P.C. did last time, I believe, but it formalises that and it ensures that there cannot be a question put to the States, unless that advice is alongside it. Right, so if we can move to the vote. May I remind Members that, in accordance with Standing Order 89A, a proposition to alter the Membership of the States - this falls into that category - requires a decision of the majority of Members. So, 25 votes are needed for the proposition, as amended, to be adopted. The appel has been called for. Members are in their seats, so I would like to ask the Greffier to open the voting.

POUR: 25		CONTRE: 21		ABSTAIN: 0
Senator P.F. Routier		Connétable of St. Helier		
Senator P.F.C. Ozouf		Connétable of St. Clement		
Senator A.J.H. Maclean		Connétable of St. Peter		
Senator I.J. Gorst		Connétable of St. Mary		
Senator L.J. Farnham		Connétable of St. Ouen		
Senator P.M. Bailhache		Connétable of St. Saviour		

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

2. Draft Road Works and Events (Jersey) Law 2016 (Appointed Day) (No. 2) Act 201-(P.85/2017)

The Greffier of the States (in the Chair):

So, we now move on to the Draft Road Works and Events Jersey Law 2016 (Appointed Day) (No. 2) Act and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

Draft Road Works and Events Jersey Law 2016 (Appointed Day) (No. 2) Act 201-. The States, in pursuance of Article 71 of the Road Works and Events Jersey Law 2016 have made the following Act.

2.1 Deputy E.J. Noel (The Minister for Infrastructure):

Hopefully, after the last, extended, debate, this will be a short one and I say that because this is an Appointed Day Act. Firstly, I would like to remind Members that the Road Works and Event Law has been prepared with the input and support of all the Parishes and, I am pleased to say, was unanimously adopted by the States on 20th January 2016. This is a significant piece of legislation for the Island and its 13 highway authorities, creating, for the first time, a comprehensive framework for controlling road works on our roads. This is the second, final, Appointed Day Act and it will bring into force the remaining provisions relating to road works on 1st January 2018, subject to this Assembly's approval. The initial Appointed Day Act commenced provisions related to the holdings of events in, or near, roads and that commenced on 1st January of this year. This second Act is needed, in order to allow sufficient time - before bringing the full law into force - for

the preparation of 2 regulations, which are due to be debated immediately after this proposition. They are P.86, the Draft Road Works (Embargo Periods and Protected Roads) (Jersey) Regulations, and P.87, the Draft Road Works and Events (Consequential Provisions) (Jersey) Regulations. Subject to the Appointed Day Act going through, I will be speaking to those shortly, in short order. The Road Works and Events Law gives the Department for Infrastructure and the Parishes the proper legal basis for the work they do in managing road works, on all of our behalf. For example, it will underpin the road work permit regime, which has been in operation, on a goodwill basis, since 2011, but it will also provide stronger measures, to protect the public investment in the roads and our public realm. More generally, it provides powers to reduce the negative impact of road works and to improve safety, such as stronger inspection and enforcement and the creation of a framework for common working standards and codes of practice. Preparation works for the law commenced not too long ago, in 2008. So, this has been some 9 years in gestation. However, it has been, throughout, a very mindful piece of work, working in partnership with the Parishes, as our fellow highway authorities, and also with the utility companies and those that seek access to our roads. I think it is a good point for me to thank, at this stage, my staff and, in particular, one senior engineer for transport policy, who has carried out this piece of work, the liaison and the consultation and the development of the law, right back from the start, in 2008, to where we get to today; so I thank that individual. That just really leaves me to propose this Appointed Act and I hope that Members will be able to support it.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition? If not, I will ask those in favour of the proposition can kindly show. Those against?. The proposition is adopted.

3. Draft Road Works (Embargo Periods and Protected Roads) (Jersey) Regulations 201-(P.86/2017)

The Greffier of the States (in the Chair):

We now move on to the Draft Road Works (Embargo Periods and Protected Roads) (Jersey) Regulations. I ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Road Works (Embargo Periods and Protected Roads) (Jersey) Regulations 201-. The States, in pursuance of Articles 28, 29 and 68 of the Road Works and Events (Jersey) Law 2016, have made the following Regulations.

3.1 Deputy E.J. Noel (The Minister for Infrastructure):

As I just mentioned, in the previous debate, these draft Regulations were prepared in accordance with Part 6 of the law and give highway authorities the ability to place certain restrictions on road works, if they involve breaking up, or excavation, of a road. This is termed the “undertaker works” in law and, forgive the term, but that is just the term that was given in the law. This work is, of course, essential to our modern way of life. However, it is important that this statutory power to be balanced against the good of the public. There is a justifiable expectation for a road to be well maintained, for the service life of that road, for as long as possible. We need to prevent repeated, or avoidable, traffic disruption, in the same location, again and again. We need to protect those meeting places, at the heart of our community, our historic squares, our pedestrian spaces that we invest in and give extra consideration to the quality of the materials and the finish. And this is why Article 9 of the law places a duty on the Department for Infrastructure and, indeed, the Parishes, as the 13 highway authorities, to manage undertaker works, having particular regard to the need to protect our roads and public spaces. While the law, as a whole, deals with this challenge, in a

number of important ways, Part 6 of the law and these draft Regulations, deal with 2 issues. The second regulation specifies the period, termed the embargo periods, during which undertaker works may not take place immediately after highway authority works have taken place, such as a road reconstruction, or resurfacing, except in very limited circumstances. And the second regulation is that certain roads, termed protected roads, or sections of roads for which there is a presumption against undertaker works taking place, except to inspect, maintain, adjust or repair, et cetera, apparatus that is already in the road and this right is not affected. The presumption being against the use of a road, route, is entirely new to the utilities services and the list is set out in the regulations and, therefore, I maintain the proposition.

The Greffier of the States (in the Chair):

Are the principles seconded? **[Seconded]** Does anyone wish to speak on the principles? If not, all those in favour of the principles kindly show. Those against. The principles are adopted. Deputy of St. Mary, it falls under your Scrutiny Panel. How do you wish to propose the regulations, Minister?

Deputy E.J. Noel:

As I have already, in my opening speech, covered the regulations, I think that suffices and I am just happy to take questions from Members, if they have any.

The Greffier of the States (in the Chair):

Regulations are taken '*en bloc*'. Are they seconded? **[Seconded]** Good. Does any Member wish to speak on the Regulations? In that case, those Members who are in favour of adopting the Regulations, kindly show. Those against? Regulations are adopted. Do you wish to propose the Regulations in Third Reading?

3.2 Deputy E.J. Noel:

I do.

The Greffier of the States (in the Chair):

Seconded? **[Seconded]** Does any Member wish to speak on the Third Reading?

3.2.1 The Connétable of St. Mary:

Hopefully, this will be allowed. It is just the report to the proposition mentioned the disruption, et cetera, to the Island life, by road works and I just hope that the Minister will, in future, give due care and attention to the signage and the way installations around road works are set up, to ensure that what we have had recently, on these roads, has been very dangerous signage left out, when the road works were not actually in place and I would just like to bring his attention to that and hope that he can deal with that later.

3.2.2 Deputy E.J. Noel:

As always, I am grateful to the Constable of St. Mary for picking out a very good example of why these Regulations are absolutely needed and, again, I thank the 12 Parishes, as the 12 other road authorities, for working with my department and, in particular, with the individual I have already mentioned. It has been a long process, but very much a worthwhile process and I maintain the proposition in the third reading.

The Greffier of the States (in the Chair):

Those Members who are in favour of adopting the regulations in third reading? The appel has been called for. Members are invited to return to their seats and I ask the Greffier to open the voting.

POUR: 31		CONTRE: 0		ABSTAIN: 0
Senator A.J.H. Maclean				
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. 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 of St. John				
Deputy J.M. Maçon (S)				
Deputy of St. Peter				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

Senator S.C. Ferguson:

I must apologise, I pressed the wrong ...I pressed my own button, but I have also pressed Senator Farnham's **[Laughter]** and he is not here.

The Greffier of the States (in the Chair):

I will ask the Greffier to remove Senator Farnham from this vote.

4. Draft Road Works and Events (Consequential Provisions) (Jersey) Regulations 201-(P.87/2017)

The Greffier of the States (in the Chair):

We now move on to the Draft Road Works and Events (Consequential Provisions) (Jersey) Regulations. I ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Road Works and Events (Consequential Provisions) (Jersey) Regulations 201-. The States, in pursuance of Article 69(4) of the Road Works and Events (Jersey) Law 2016, have made the following Regulations.

4.1 Deputy E.J. Noel (The Minister for Infrastructure):

I will be brief, as this is just a consequential provision. As with P.86, which we have just debated, it is linked through to the Appointed Day Act, we have just approved and these Regulations deal with a consequential matter, in the interaction of the Law, being that it is necessary to make an amendment to Article 48(2) of the Air and Sea Ports Incorporation (Jersey) Law 2015. For the words: “Public Utilities Road Works Jersey Law 1963” - which was a particularly good year - a law that will be repealed and the words substituted: “Road Works and Events (Jersey) Law 2016”.

The Greffier of the States (in the Chair):

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles?

4.1.1 The Deputy St. John:

I speak on this particular area, because in the report on the proposition, it refers to the issue of a permit being required from the relevant highway authority and I know the Minister kindly provided a briefing to Members, which I attended, and explained that particular issue and I am aware of the issue, when we debated the primary law, but I would like it set in stone, in the public domain, in an open and transparent way, about how the department will be the regulator of the law, but also how they will regulate themselves, in terms of their delivery of road works in the Island, just to ensure that that is absolutely clear from the Minister’s view.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the Principles? Minister.

4.1.2 Deputy E.J. Noel:

I am very happy to confirm that, but it does not actually form part of this consequential law.

[15:30]

It is in the preamble to all 3 of the pieces of legislation that we have just been processing, but, as I said, I am happy to give that undertaking, as we did confirm that, in the States Members’ briefing, which the Deputy attended.

The Deputy St. John:

I am sorry, I am going to challenge the Minister on this. I would like him to explain it in an open, public forum, in this Assembly, where we are here to debate legislation. I would like him to explain his role as Minister and the department. He has made the point, in the report to the

proposition, about permits. I would like it explained, in an open, public forum, not by email, and not behind closed doors. Thank you.

Deputy E.J. Noel:

If I understand the Deputy’s point, to explain it: my department, as far as I believe, will not be treated differently, we will have to comply with elements of this legislation, when we are not actually ... there are some works that are exempt, when we are constructing, or re-constructing road works, but we are not treated any differently to any other body carrying out road works under this law.

The Greffier of the States (in the Chair):

I will not make myself popular with the Minister, but this sounds fertile ground for written questions, for example, Deputy? I will just leave that out there. Those Members who are in favour of the principles kindly show. The appel has been called for on the principles of these Regulations. Members are invited to return to their seats. I ask the Greffier to open the voting.

POUR: 29		CONTRE: 0		ABSTAIN: 0
Senator A.J.H. Maclean				
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. Martin				
Connétable of Grouville				
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 of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Peter				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				

Deputy S.M. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Greffier of the States (in the Chair):

Deputy of St. Mary, this again is for your panel. Minister, how do you propose the Regulations?

Deputy E.J. Noel:

En bloc.

The Greffier of the States (in the Chair):

Are the Regulations seconded? **[Seconded]** Does any Member wish to speak on the Regulations? Those Members in favour of adopting the Regulations, kindly show. Those against? The Regulations are adopted. Do you wish to propose the matter in Third Reading, Minister?

Deputy E.J. Noel:

I do.

The Greffier of the States (in the Chair):

Seconded? **[Seconded]** Thank you. Does any Member wish to speak in the Third Reading? In which case, those Members in favour of adopting the Regulations in Third Reading, kindly show. Those against? The Regulations are adopted in the Third Reading.

5. Draft Maintenance Orders (Amendment No. 3) (Jersey) Law 201- (P.89/2017)

The Greffier of the States (in the Chair):

We now come to the Draft Maintenance Orders (Amendment No. 3) (Jersey) Law. I ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Maintenance Orders (Enforcement) (Amendment No. 3) (Jersey) Law 201-. A law to amend the Maintenance Orders (Enforcement) Jersey Law 1999. The States, subject to the sanction of Her Most Excellent Majesty in Council have adopted the following law.

5.1 Senator P.M. Bailhache (The Minister for External Relations - rapporteur):

This draft law represents a small, but significant, change, which will ensure greater protection for spouses, or civil partners, who are in receipt of maintenance orders. As is outlined in the report to the proposition, the amendment relates to a recommendation of the Jersey Law Commission, made in a 2008 report, regarding security on immovable property. The Law Commission report contained several recommendations and I will indeed very shortly be bringing forward another proposed law change to extend the period for renewing traditional hypothecs and to allow for shared equity schemes, both of which were also suggested in the Law Commission's report. Some of the recommendations in the 2008 report of the Law Commission have already been implemented, but there are some outstanding and this is one of them. The amendment would empower the Royal Court, or the Petty Debts Court, to direct the registration of maintenance orders in the public registry and to provide that any such order will take effect as a judicial hypothec on the property of a person subject to the order and this would give the recipient of a maintenance

order security over the immovable property of the payer for ongoing payments under such orders. As is outlined in the report, this would apply to payments ordered to be paid under any provision of the Matrimonial Causes Law and the Children (Jersey) Law 2002 and the Civil Partnership (Jersey) Law 2012. Members will note that the Law Commission did not generally favour allowing periodic payments to be secured by judicial hypothec, but made an exception for the orders mentioned in the aforementioned legislation. This is to ensure that any recipient of a maintenance order made by the courts has security from the date of registration of the order and thus ranks above any creditor who might, subsequently, register claims against the payer's property. At present, the recipient of a maintenance order might be liable to lose out on subsequent claims where creditors can obtain a hypothec that gives them priority over the claims of the former spouse, or civil partner, in any bankruptcy proceedings. I move the principles of the Bill.

The Greffier of the States (in the Chair):

Eagle-eyed Members will have noticed that the Chief Minister is not here, although this proposition is lodged in the name of the Chief Minister. This is the first run-out of Standing Order 68A, where any proposition lodged by the Chief Minister may be proposed by any other Minister. Normally, in the past, the Chief Minister would have had to be here to do it. So, if anyone was wondering, that is the reason. Are the Regulations seconded? The law Seconded, sorry. **[Seconded]** Does any Member wish to speak on the principles?

5.1.1 Deputy J.A. Martin:

Yes, it might be a little bit outside of this, but it is about maintenance orders. The money from the spouse that is not around and I just wondered if there has been any progress in talking to Social Security, who are paying out monies for absent spouses where the money is not coming back to the - well, to stop the tax payer paying money – and, as I said I, do not think it really is outside, I just think it is one of those things that I need to ask this question at this time, because it seems very silent on that part of the law.

5.1.2 Deputy R.J. Renouf of St. Ouen:

I would like to draw Members' attention to the fact that the point raised just now by Deputy Martin was considered by the Health and Social Security scrutiny panel and it our report: "Living on a low income", we made a recommendation that the Minister for Social Security, through her department, should assist maintenance recipients by giving facilities for the co-operation and the enforcement of maintenance orders. Social Security, of course, know where the absent payer, the absent parent, is working, provided that absent parent is in the Island. Very often, the difficulties in claiming maintenance arise because the recipient does not know where the absent parent is working and if the absent parent is intent on avoiding his obligations, he will not be telling the custodial parent where he is working. But Social Security have that information, so we made that recommendation that that assistance should be given. Unfortunately, it was a recommendation that was refused by the department, principally it seems, on the basis that they did not have the resources to do it. Our panel felt that applying those resources would mean that more income would be flowing to single parent families and there would be less reliance on Income Support, but that is the position that I understand we are in at the moment.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the principles? If not, I call on Senator Bailhache.

5.1.3 Senator P.M. Bailhache:

Well, I thank both of those contributors. Neither of the contributions, I think, has anything to do with the principles of the Bill before the Assembly at the moment. But Deputy Martin is quite right, the liable partner, or spouse, who does a runner does cause some considerable problems. I

think that the Deputy of St. Ouen is also right - was also right to raise with the Minister for Social Security the possibility of the department using the information, which it has, if the defaulting payer is resident in the Island. I was not aware that that exchange had taken place and I certainly would undertake to discuss it with the Minister, to see whether there is some way around the problem that the Deputy has identified and that the Deputy of St. Ouen has suggested the solution for. In the meantime, I renew the principles of the bill.

The Greffier of the States (in the Chair):

Those Members in favour of the principles, kindly show. Those against? The principles are adopted. Deputy Le Fondré, this falls within your Scrutiny Panel's remit, do you wish to ...?

Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):

No, thank you.

The Greffier of the States (in the Chair):

Thank you very much. How would you like to propose the Articles, Senator?

5.2 Senator P.M. Bailhache:

If I may, I will move the regulations under the Articles of the Bill *en bloc*. Article 1 makes the amendment to the 1999 Maintenance Orders (Enforcement) Law, to provide for the registration of a maintenance order made by either the Royal Court, or the Petty Debts Court and directing that it will take effect, if registered, as a judicial hypothec under the 1880 law. Article 2 deletes an otiose provision in the Civil Partnership Law and Article 3 does the same for the Matrimonial Causes Law and Article 4 is the usual article of citation. So, I move the Articles of the Bill.

The Greffier of the States (in the Chair):

Are the Articles seconded? **[Seconded]** Does any Member wish to speak on the Articles? If not, those Members in favour of adopting the Articles, kindly show. Those against? The Articles are adopted. Do you wish to propose the matter in the Third Reading?

Senator P.M. Bailhache:

I move the Bill in Third Reading.

The Greffier of the States (in the Chair):

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Members who are in favour of adopting the law in the Third Reading, kindly show. Those against? The law is adopted in Third Reading.

6. Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017)

The Greffier of the States (in the Chair):

We now come to the Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law and I ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201-. A law to amend the Marriage and Civil Status (Jersey) Law 2001 to permit the solemnisation of marriages between persons of the same sex and to permit the solemnisation of marriages by conversion of civil partnerships, amend the formalities of marriages and amend the registration of requirements of births and deaths for the list of purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council have adopted the following law.

6.1 Senator A.K.F. Green (The Minister for Health and Social Services - rapporteur):

In July 2015, this Assembly agreed, in principle, that open air marriages should be permitted in Jersey and in September 2017 we also agreed that same sex marriage should be introduced - introduced subject to appropriate measures to protect the rights of religious organisations and officials who do not wish to solemnise same sex marriage. These proposed amendments to the Marriage and Civil Status Law deliver both same sex marriage and open air marriage, but they go further than that. They work to ensure that we have a marriage law that is fit for purpose. A marriage law that makes it easier for people to book their weddings and register their marriage, but provides couples with more choice over who marries them and over the content of their wedding ceremony and importantly we will have a law that provides better safeguards against sham and forced marriages. I will describe these changes, but in doing so I will say little about same sex marriage. There is no need to, other than to describe the protections provided to religious organisations and officials, as agreed by this Assembly. This Assembly has already agreed that same sex couples, living in our community, should be able to express their love and commitment to each other through marriage. I welcome that as I know many others do in this Assembly. This Assembly, acknowledging that same sex marriage is contrary to some people's religious beliefs, stipulated that no religious organisation, or official, should be forced to solemnise same sex marriage. The amended law is very clear. There can be no compulsion, by any means to consent to any matters relating to same sex marriage, whether that be consenting to the marriage, running the service of a same sex marriage to take place in a religious worship being used for same sex marriage, to be present, or participating in, or applying for, or certifying any matter relating to same sex marriage.

[15:45]

Even where the religious organisation consents, their officials cannot be compelled to. And set out in the additional amendments there is no means by which a person can be forced to refrain from withdrawing consent previously given. Additional protections are also provided in relation to Anglican marriage -when you practise it, it sounds fine until you have - the common law duty of the Anglican clergy to officiate at marriages does not extend to same sex couples. The common law right of a person to have their marriage solemnised by Anglican Church clergy does not extend to the same sex couples. And the place of the Anglican worship cannot be authorised for same sex marriage. This is an extra protection, intended to protect against potential conflict in canon law in a jurisdiction where churches do not belong to the Church of England. These protections accord with those in U.K. legislation, where they are commonly referred to as the quadruple lock and it is important to note, however, that none of these protections prevent religious organisations and officials officiating at same sex marriages, if they want to. The Discrimination Law 2013 is amended so that religious organisations, or officials, do not commit an act of discrimination by refusing to participate in same sex marriage but, to be clear, this exemption is not extended to all people of faith. I am sure Members have heard it and I have heard it: there are some, in our community, calling for conscience clause. A clause that allows those with deeply held religious beliefs to say no to providing a service. This is distinct from the Church of England. To say no to providing a service to same sex couples getting married. The example that we always hear about is whether that be baking a cake, or a photographer at a wedding. Conscience clauses are not straightforward. Can the baker refuse then to only bake a wedding cake, or can they, on a year by year basis, refuse to bake the anniversary cake, or any other cake, for someone whose husband, or wife, is the same gender. If the baker says no, how do you determine whether their refusal arises from religious beliefs, or, to be perfectly straight, homophobic views. How do we make judgments about the baker's personal motives and motivations and who is going to make those judgments and on what evidence? We would not let a baker refuse to bake a cake for an interfaith couple, or an interracial couple, regardless of that baker's deeply held religious beliefs. Nurses do have a

conscience clause, or conscientious objection, to the termination of pregnancy. By law they can decline, but their objection may, or may not, be based on religious belief, but it is a determination of their motivation - the determination of their motivation is an objection that applies to all women, whose lives are not at risk, not just certain women. The amended law does not include a conscience clause, but be clear: it does not prevent people from, within our community, expressing their personal beliefs. The baker can legitimately, publicly, state that they believe same sex marriage is wrong, but they cannot subject people to discrimination and they must treat all couples equally. There are clauses in the U.K. and elsewhere of people, who express their personal beliefs, that have been wrongly dismissed from their jobs, or marginalised in other ways. That is because the law has been poorly interpreted, or misunderstood, not because the law is wrong in protecting all of us from discrimination. Today, in Jersey, it is possible for a person to organise a marriage, without the knowledge, or consent, of their partner. A partner may know nothing about it until the very point at which they are standing in front of the civil marriage celebrant and asked to make legally binding vows. A surprise wedding can be a joyous matter, but it can be highly - sorry, I cannot say that word - coercive, thank you. A woman, or a man, forced into marriage, because they feel unable to say no in front of family, or friends, at a wedding ceremony they knew nothing about. Such weddings will not be allowed to take place under the amended law, which introduces a range of safeguards against sham and forced marriages. Unlike the current 2001 law, both parties to the marriage will have to give notice. They will both have to sign the declaration, stating they are free to marry. Both will need to present themselves to the superintendent registrar and complete a signature verifier form. That form, which, as an added safeguard will include a photograph, will be issued by the superintendent registrar to the marriage celebrant. That celebrant can then confirm that the 2 people standing in front of them are the same 2 people that have been given permission to marry by the registrar. This is a significant improvement at the moment, because it is simply not known if the couples presenting themselves at the wedding ceremony are the same 2 people whose passports, or visas, or supporting identity documents were inspected by the superintendent registrar. Under the amended law, any non-resident getting married in Jersey will need to provide a certificate of no impediment, or equivalent. This confirms to our superintendent registrar that the marriage authority, in the jurisdiction of the residence, knows no reason why the person cannot get married and that there is no other spouse tucked away at home and nor is this their third marriage in 2 years. No one will be able to give notice to get married in Jersey, unless the superintendent registrar knows that and if they require a visa and that the visa is in place. Once a notice is given, it must be in the public domain, which will include publication online for at least 25 clear days before the date of marriage, providing greater opportunities to identify potential sham marriages. Enhanced safeguards include moving from handwritten to printed certificates and documents. I know a lot of us get pleasure out of seeing very nicely handwritten certificates, but, regrettably, they are easily doctored. It takes little ink, for example, to turn a 3 into an 8. Marriage authorities in other jurisdictions regularly query the validity of handwritten forms. I appreciate that some Parish registrar will miss being called on to handwrite marriage certificates. That is a cause for regret. However, we must take such steps as necessary to safeguard such important legal documents. The amended law makes it easier for couples to give notice to get married and to have their married registered. Couples can apply and give notice online and are only required to visit the office of the superintendent registrar once before the big day. Existing requirements for both couples and the marriage celebrant to visit and collect documents from the Parish registrar is removed. Some couples evidently enjoy the process of engaging with Parish registrars, but customer feedback shows that others do not. Not because of the warmth of welcome provided, but simply because they are busy people that get busier by wedding planning, especially for non-Jersey residents. And, regrettably, there are also inherent risks involved when an unknown individual visits a Parish registrar in their own home. In consultation with the Constables, we have brought forward new provisions in relation to the recruitment of registrars and each Constable will have the

flexibility to decide what is right for their Parish with regard to the appointment of their Parish registrar. And I know that some members of this Assembly would want to join me in recognising the contribution that has been made by Parish registrars. Their role is changing, but they still remain custodians of our Parish registers and embody the spirit of this Island. **[Approbation]** This amended law makes provisions for marriage in emergency, or special, circumstances. Such emergency is where there is a risk of death, where a person is housebound, or where a person may need urgent medical treatment. The superintendent registrar can forego the usual checks and balances so that the couple may marry as soon as possible, or in a place that is not ordinarily approved for marriage. Emergency marriage is currently only possible by special permission of the Dean, which currently excludes same sex couples and those who do not wish to marry under the Church of England. Provision is also made for those who, through illness, or disability, cannot sign their name, or make their mark. We do not want to create unnecessary hurdles for people who have the capacity - and that is the important thing, who are deemed to have the capacity - to decide to get married. On the flip side, the amended law provides the superintendent registrar the right to refuse to issue a marriage schedule, permitting marriage, if satisfied that a person is not capable of consenting to marriage, for whatever reason. It is the reality of the job that, on a regular basis, the superintendent registrar has to make challenging decisions about whether a person is capable of consenting to marriage. Whether they have the mental capacity to do so or, dare I say it, sometimes whether they are sober enough to do so. The restrictions on marriage, set out in the 2001 law, are largely unchanged, except to reflect the introduction of same sex marriage. For example, an uncle will still be prohibited from marrying his sister's children. The United Nations Committee on the rights of the child has stated that all signatories should introduce a minimum age of 18, to protect child brides. We have not done that, because we need to consult our community, but we have allowed a power to increase the age of marriage by regulation. I think we all acknowledge that we must protect young people, but in doing so we must also recognise that marriage at 16 mirrors the age of sexual consent. Taking away the right of a 16, or 17 year old, who is sexually active to marry, with parental consent, including, possibly, if the girl is pregnant, needs much further consultation. The amended law allows for open air marriage at any location deemed solemn and dignified by the Constable of the relevant Parish. Couples will be able to marry on beaches, headlands, in woods *et cetera*. That is good for a lot of couples, I know that is what they want to do, but I would suggest it is also good for our tourism. The Minister will provide for an approval process, by order, but it will broadly reflect the current processes familiar to Constables. Where there is an open air location, that is in private ownership, the process of booking a wedding is straightforward. Where the location is public, such as a beach, the process may be more complex, where multiple permissions may be required. For example, permission from the Minister for Economic Development, Tourism, Sport and Culture under the Policing of Beaches law and we recognise this complexity and officers are tasked with working together to find a long-term solution. Open air marriage does, however, bring a degree buyer beware. If it rains, it is obvious that the couple will get wet, but the law does not allow them to move their wedding from one location to another. A marriage must be solemnised in the location named on the notice to the marriage and that is so that any objectors may attend. Notices do not allow for 2 locations to be listed, because of the associated logistics and increased risk that if a marriage is not taking place in accordance with the law, it would hence be void. One practical level, if it rains, is that the couple could step through the legal parts of the service, in the named location, at the correct time, relocating to the warmth later. These legalities take 5 minutes and the whole service could be repeated, elsewhere, afterwards. But the location approved for marriage, for any civil marriage, is automatically approved for same sex marriage and opposite sex marriage. A place of public religious worship, approved for religious marriage, is only approved for same sex marriage if the consent of the religious authority is provided.

[16:00]

Religious marriages can take place in locations approved for civil marriage, for example, a Methodist minister can marry a couple on the beach, provided that the minister agrees to do so. Under the 2001 law, civil marriages are carried out by the superintendent registrar, or deputies. Under the amended law civil marriages are carried out by civil celebrants, individuals authorised by the superintendent registrar. A couple will be able to choose who that is, who marries them. A person has to be a civil celebrant, obviously, but they can choose from those who marries them. They can meet that person in advance. They can work together to plan their dream ceremony. This is in contrast to the current law, where couples are simply allocated someone for the day and there is no opportunity, therefore, to build up that relationship. Humanist celebrants will be able to have their marriage carried out in Jersey. They must be authorised to do so, thus ensuring they access the information and support necessary to marry people in accordance with Jersey law, as distinct from U.K. law. These authorisation processes will apply to everybody, except Church of England officials, who marry in Jersey, including other religious officials. The authorisation processes will be prescribed by Order and they will include appropriate appeals procedures. Couples will also have a greater choice over the content of their civil wedding ceremonies. They may include the use of candles and other such decorations, as well as sing hymns, or have readings from religious books. This accords with the decision taken by the Assembly in 2001, which was poorly reflected in the current marriage law and has subsequently been interpreted as a restriction on religious music and readings, as opposed to permitting religious music and readings. It is important to note, however, that while religious music and readings can be included, the marriage celebrant is required to ensure that the content performed at the ceremony does not replicate an act of religious worship. There can be no prayers, no religious rituals and no religious service. In accordance with this Assembly's, in principle, decision, the amended law provides for couples, who are in civil partnerships, to convert that civil partnership into a marriage. Where they do so, that marriage will have subsisted since the day the civil partnership was formed, not the date that it was converted. Conversion can be quick. The administrative processes, which involve signing forms - but it could be, if people wanted it, if the couple wanted it, a full blown wedding ceremony. It is up to people to make that choice. Our legal provisions will broadly reflect the same as U.K. law. Unfortunately, there are some inherent limitations with this. That is, in some jurisdictions, most notably France, they do not recognise marriages formed by a conversion of a civil partnership. A loophole that we cannot fix. It is a matter for the other jurisdictions. It is acknowledged that, in allowing for equal marriage, we have created inequality in civil partnerships and this will continue to be the case as only same sex couples can enter into a civil partnership. Over the coming months we will bring forward proposed changes to the civil partnership legislation, so that processes for booking and registering civil partnerships are the same as processes for marriage, but those changes will neither extend civil partnerships to opposite sex couples, nor will they abolish civil partnerships altogether. In February this year the U.K. Court of Appeal rejected, albeit on the narrowest of margins, a claim from an opposite sex couple that they should be allowed to enter into civil partnership. The grounds for rejection were not based on the discrimination face, but on it being determined that the government needed more time to consider the future of civil partnerships vis-à-vis the comparative uptake of same sex marriage. The couple have now been granted the right to appeal to the Supreme Court and we await the ruling of that order, before we take any further action. When this Assembly debated the principles of same sex marriage they also agreed that our divorce legislation should be reviewed and amended. This has not yet been done. We need more time to consider the options, to consult with key stakeholders. In the meantime, we did not wish to hold up same sex marriage any longer. It has been argued that we cannot introduce same sex marriage, without amending adultery as the grounds for divorce, but this is not the case. Adultery currently is defined as an act between a man and a woman. It cannot be cited in divorce proceedings, for example, where a man, who is married to a man, has an affair with another man. This conundrum already exists. Adultery cannot be cited if a man, who is married to a woman, has an affair with a man, or if the man has an affair

with a woman, without full sexual intercourse. In these circumstances the grounds for divorce would simply be unreasonable behaviour, as opposed to adultery and this will apply where same sex spouse have extra-marital affairs. While we have not yet amended our divorce law we are committed to doing so. Officers have been instructed to commit this work as soon as possible after changes to our marriage legislation come in force. Approximately 2 weeks ago members will know that we lodged a range of additional amendments, the greater majority of which were corrections to language or were clarifications relating to transitional arrangements and the proposed effect on the law as distinct from changing or amending the effect of the law. Such corrections and clarifications are required because in the push to lodge in early October in order that this law could come into place at Easter we, as I say, got a few little things around clarifications and around language that needed to be corrected. This does not mean that the basic law drafting process was rushed or that the underpinning policies were poorly considered. They have not been and are not. It simply means that the process of final checks and clarity for language and other associated matters were curtailed. On the additional amendments lodged, including the changes of the appointment of the registrars, only one is significant and that is again the Gender Recognition (Jersey) Law 2010. I think I've covered most of it, probably gone into more detail than members would like but I make the principles.

The Greffier of the States (in the Chair):

Are the principles seconded? [**Seconded**] Does any Member wish to speak?

6.1.1 Senator P.F.C. Ozouf:

I should declare that I am, I think the only individual in this Assembly who might be subject to the opportunity of a conversion because I am happily civilly partnershiped and I thank all Members for the kindness they have shown me in what is sometimes a difficult situation for people to be in because there is still, I am afraid to say, an air sometimes - we had in the previous debate comments about Anglicisation which I do not think were meant but there are still those in society who do not understand that some people are born in the way that I was and that is in wanting to have a same sex relationship. But I know that the majority of Members, and it was indeed on 22nd September 2015 when this Assembly overwhelming voted in favour of this legislation. While I congratulate and thank the Chief Minister who is back in the assembly and also the Deputy Chief Minister who has been rapporteuring this item and indeed lodged it, there is one issue which is of concern. The issue is that this issue has been awaited for a long period of time. Part (e) of the proposition that was passed in 2015 mandated and requested that the legislation be brought forward in January 2017. It's now November 2017 and I hear there is going to be a call into Scrutiny. I have never seen such a number letters opposing a piece of legislation as I have this in the last few days and I have wondered what is going on. I've wondered what is going on in relation to the petitions that are being made about this piece of legislation and I can only view some of these as falling within that potential characteristic of people that simply will never accept the fact that same sex marriage is going to happen and the Deputy Chief Minister has explained the conscience clause and I must say to the Scrutiny panel and to the correspondence, these must be a conscience clause for the Anglican Church and for religious organisation is absolutely proper and correct, but a conscience clause which allows people to opt out of or reject a baking of a cake or some other service, and I am not talking about the religious service or the celebration, must be resisted because it will send out the message of intolerance, of actually people turning their head and their face against people that are engaged in same sex relationships. Discrimination has no place in society. It has no place in Jersey and despite the fact that sometimes one still receives these issues and sometimes it is rarer and rarer, but it is still there and the worse form of it is when it is covert and it is hidden. Now, I very much hope that the Scrutiny panel will attend upon their functions of scrutinising this legislation, will not be taken in by some of the representations that has been made and curiously

circulated, as no other piece of legislation has been by some what I describe as extremist groups and I express the hope, the expectation. There are people who have booked their civil marriages - their marriages in Jersey and there is an expectation that they are going to be able to undertake their marriage, their same sex marriage, whether they be 2 males or 2 females and I am afraid to say the delays that may occur may prevent them from doing so and I urge the Scrutiny panel to get on with the work that they're doing quickly and decisively and bring this legislation back for full debate and so that it can receive Royal Assent and we can be catching up with the rest of the world. Is it not a bit of an embarrassment that the Isle of Man, Guernsey and Alderney have beaten us to it? Civil marriages are lawful in these jurisdictions as well as in the United Kingdom and we must allow them to be lawful here too. We must not let down, there may only be a few but we must not let down those individuals who had a legitimate expectation for their civil marriages to be conducted within the next few months. We are already late. I understand the pressures on the law draftsmen and I understand and make no criticism of them but nevertheless we are where we are. But there must be no further delay, please. We are letting people down. We are letting the reputation of Jersey down as a fair, balanced, equal and non-discriminatory island. I thank the Deputy Chief Minister for his fulsome explanation and work that has been carried out and I wish the Scrutiny panel every best wish in scrutinising the legislation in accordance with those wishes that have been expressed in the States and that they will take the representations in the context in which they are made. I urge members to vote in favour of the preamble and for us to look forward quickly, decisively, within a matter of weeks for the legislation to be brought back. Thank you.

6.1.2 The Very Reverend M.R. Keirle, B.A., Dean of Jersey:

Thank you very much. I too would urge the Scrutiny Panel to do their work swiftly and quickly. I would like to speak with regard to the conscience clause because I think it has been an unhelpful phrase but one that nevertheless I think draws us into an avenue of this debate that has wider repercussions. As a representative of faith groups in Jersey and in conversation with many of them leading up to this debate I have not actually heard a single person say to me that they want to block this legislation. Not one. It is right and proper that the state provides a mechanism for same sex couples to be married in the eyes of the law, if those who create the law seek to redefine marriage in a way that is different from a traditional understanding. What I find slightly puzzling is that in the 123 pages of P.91 there is no definition of what marriage is.

[16:15]

I find that rather odd, that we are all debating this subject without defining it. I do not say that in opposition to the legislation, I simply state it that we may be very clear about what it is we are talking about. However, that aside, it is generally acknowledged that in a free society, containing people of all faiths and none, that rights are there to protect our differences and to ensure equity between those who have diverse views. Therefore, when we redefine something as fundamental as marriage, an institution that has been around for a long time, and I have married a lot of people over the years, and there are going to be people who, out of long held religious beliefs or conscience, will find that a difficult thing to accept and in a free and fair society that we all seek they have as much right to protection of their views as those who seek to change them, but I am very grateful to the Minister for his comment with regard to baking cakes that while someone may be required to bake the cake they are, at the same time, allowed to express their view whether they are happy to bake it or not. I think that it is important that there is freedom of speech, of religious liberty and I welcome those distinctions. But I have concerns that human nature being what it is, will seek to silence those voices. We are predisposed to think that the language of rights and equality is synonymous with the language of justice and decency. There is an excellent Green Paper out by Dr. James Orr who is the Professor of Theology, Ethics and Public Life at Christ Church, Oxford, and he has noted that on the mainland there has been a distinct and pronounced inversion with the

right to religious liberty and the treatment of religious groups in recent years and in our desire to see the rights of one group brought to the fore through this piece of legislation for those of the same sex, it is important in a free and fair society that we do not do it at the expense of another. I believe Jersey would be a lesser place if we go down that road of persecuting religious individuals and groups for what is seen as a traditional view and make the distinction here between action and words. Dr. James Orr goes on to say that where once rights were used to defend difference and to ensure society's plurality and diversity now they are used to erode difference and enforce a uniform and unwelcome conformity on society in general and on religious groups in particular. He has obviously speaking of the mainland here. Where a liberal and free society has transformed into a likely liberalism that insists that all share its world view or suffer the consequences. I think an excellent example of that is a student who expressed the traditional view of marriage on social media and was expelled from this university course in Sheffield as a result, despite the fact that his comments were not made with any regard to the university whatsoever. Now, I know that some of my colleagues have been pushing for a conscience clause. I am extremely cautious of the implications of a conscience clause. I think it can be a 2-edged sword and if you excuse the mixed metaphor it can be used as a stick to beat those over the head who have sought it. However, Dr. James Orr does speak of reasonable accommodation. Now, I do not quite know what that means at the moment and I know that other jurisdictions have failed to come up with a workable conscience clause but I would urge the States to ensure that religious liberty to express a view which is held by deeply held religious convictions, that that is protected. I am not talking about discrimination; I am talking about a view. So that we do not fall into the trap of creating a new group whose rights have not been recognised and who are dismissed because of their disposition. I ask the States to consider carefully that in this process that the rights of religious minorities are protected. **[Approbation]**

6.1.3 Deputy S.Y. Mézec:

I am glad to follow the Dean whose contributions I look forward to over the coming years. I hope they are thought provoking and make us think very deeply about things from an issue of conscience so I do appreciate the opportunity to follow him. This law, I think, is fundamentally a good thing and I for one am incredibly proud at the role I played in helping get this on the agenda in 2014 when I brought that proposition forward and the reason I brought that proposition forward was because, and I am sure many Members of this Assembly will have the same view, but for my generation this is actually largely a non-issue. The vast majority of people my age view our gay friends as being exactly the same as the rest of us and we value their happiness and their relationships exactly the same that we would our heterosexual friends. And that really gets to the point of why marriage equality is so important and I have had suggested to me from some people, you know: "Surely civil partnerships should be enough", and I say: "No, they're not enough", because they rely on a presumption that there's something different in the nature of the relationship between a gay couple and a heterosexual couple and that is the point, is that the nature of the relationship is the same. We know that there are all sorts of different types of love. So the way that you may love your parents will be different to the way that you love your partner or your husband or your wife. The way that I love the music of Led Zeppelin is not the same way that I would love my friends or my family. So, there are different types of love but the way that a gay couple love each other is the same and so I think for the law to reflect that I think is thoroughly a good thing and I am incredibly pleased that Jersey is catching up to the rest of the British Isles on this. What I did in the run up to this debate is I did make the effort, once I was invited, to speak to people in my constituency who have concerns, and I am sure they're concerns that the Dean would have had spoken to him from some people because I do think that it is important in the interest of having a cohesive and tolerant society that we should be open to listening, over a cup of tea, with people who have got different perspectives and to see what common ground we can find and make sure that this does stay a respectful debate in which all sides make sure that homophobia is not able to

seep through into it. And to those that I spoke to who have strong views on this, whatever differences in opinion I may have on this particular issue I have immense respect for them as people and I have immense respect for the Church in our society. I say that as a half-Anglican, half-Catholic atheist. I think that the role that the Churches play, especially in my constituency, who offer services like food banks, like free debt management services, who go out of their way to help the poor and vulnerable is something that I admire greatly and wish to see continue for many years. That is why I was disappointed a couple of weeks ago when I received a copy of some of the literature that is going around that has been, I believe, distributed to the Scrutiny Panel which I had sent to me by several people including a constituent who has contacted me before on this same issue and who I try to engage with constructively on it. The piece of literature came from an organisation called the Christian Legal Centre. The Christian Legal Centre is affiliated to an organisation called Christian Concern and what they do is they provide free legal representation in the U.K. to people who end up in legal disputes where they believe there is an issue of Christian conscience behind it and they state that one of their aims is to see Christian values implemented in the law. I think that is a key point there. Christian values, or what they call Christian values, implemented in the law. So I looked into this organisation to find out a little bit more about them. And I found examples of cases that they have taken on where they have provided free legal representation to people. There was a case in the employment appeal tribunal in the U.K., a woman called Victoria Westerny who was appealing because she was sacked from her job because she had been accused of bullying a Muslim colleague of hers. I think she works for the N.H.S. (National Health Service). Another person, Graham Cogman, who was sacked. He worked for the police service. He was sacked after bullying a gay colleague and sending him abusive emails which recommended that he goes to seek a cure for his affliction as he would have put it. There was another example. Duke Amattree who was sacked while ... he was sacked because they were giving religious lectures to homeless clients when they were meant to be offering them practical advice about how they could get a roof above their heads. What I could not find were any examples of this organisation seeking to help people who had been unfairly treated while they were going about charitable actions, volunteering or helping the poor. What I could only find were examples of bullies being defended who wanted to treat their Muslim colleagues, their gay colleagues as inferior and that frustrated me very much because that to me does not represent the values of the countless good Christian constituents who I have met throughout my line of work as a States Member who are incredibly generous, incredible tolerant and who go out of their way to help those in need and so I was very suspicious of this organisation and I would urge Scrutiny, if they are to look at this, to certainly take what this group said with a pinch of salt because I do not think they speak on behalf of the people that they claim to speak on behalf of. There is, of course, the triple lock in this law which exempts the Church from having to have to carry out same sex marriages against their will and I think that is entirely proper in the context we are in and I support that but I am sad about it. I am sad that it is considered necessary because what I have witnessed in communications I have received, and I will say that the Dean did use this phrase in his remarks, they spoke about "traditional marriage". I am sorry to break it to some people there is no such thing as "traditional marriage". The definition of marriage has changed many, many times over history. It is not uniquely a Christian institution and the evidence actually, you may want to look at historic evidence of how

The Dean of Jersey:

May I be allowed to speak? May I just define traditional marriage as that stated in Canon B30 in the Canons of the Church of England? That is what I was referring to. That is law both here in Jersey and the United Kingdom. I meant nothing more than that.

Deputy S.Y. Mézec:

I am grateful for his clarification and I am sure there may well be other people who have a different source from which they would root their view of traditional marriage. I spoke to some constituents who said that they were very keen to see the traditional biblical teachings of marriage incorporated into law. I had to ask them what they meant there. According to Kings 11:3 and 4, King Solomon had 700 wives and 300 concubines. He was clearly a very busy person. That is something I am sure would not fit into most people's definitions of traditional marriage. In fact, there are further verses. Exodus 21:10 and Deuteronomy 21:15-17 actually give you very specific instructions about how you should behave in polygamous marriages. Something I do not think many people would consider traditional. Leviticus 20: God very clearly instructs Moses that the punishment for adultery is to be put to death, we have moved on, thankfully from that position and I am very glad about that. And lastly Deuteronomy 22, 28 and 29 states that a man who rapes a woman must marry her afterwards and I believe pay her husband as well to compensate him. I think that society has moved on a huge amount since then and I do not think it is right to use phrases like "traditional marriage" in this context because many of those who do so do it to exclude same sex couples from it and that is simply not the way that our society is going and I think it unnecessarily slows us down when this journey we are going towards with full equality for gay people in our society is a positive way forward and I do not think it is helpful to dwell on these outdated and often inaccurate definitions. I will say I did look up those verses in the Bible when I was speaking to constituents to ask them how these biblical teachings featured into their view of traditional marriage and, of course, they had no response.

[16:30]

How could anyone have a response when there is clearly such a contradiction there? But for me, the main thing that I get of my reading of the stories in the Bible is the central message about loving thy neighbour. It did not come with a clause that said, except your gay neighbours. It said all of your neighbours. Love them as you would love yourself and I think that is a message that would really help the world if a lot more people bore it in mind when acting both in politics, in business and everywhere else and that is why I completely reject the calls that some have made for a conscience clause. I know others addressed this point so I will not try to repeat all of the points they have made there but there is something sinister about it. This idea that if you are out there at work within what the law currently states, you have to serve everybody in the way your contract dictates and the way the law dictates unless they are gay and you are a Christian. Seems a bit weird to me I am afraid. I happen to know somebody who is a perfectly decent person, who I enjoy talking to, but he has a very strongly held view that he believes the minimum wage is bad for poor people. He has this *laissez faire* free market economic point of view. He believes that the minimum wage has limited job opportunities for poor people and that if you abolished it, it would provide them with more opportunities and ultimately better ways for them to improve their own life circumstances. I strongly disagree with his point of view but he holds that view very genuinely and sincerely. Should he, then, be allowed to not pay people minimum wage in his business? Well, of course he should not because when you get in business you sign up to what the law says and as well as having to take those obligations what you get in return for it is you get access to a court system and the backing of contract law to help your business when you are wronged by another party. So I think to be able to say to businesses that you must abide by our discrimination laws except when it applies to gay people I think that makes no sense and it goes against what I think our entire legal system is meant to stand for. And if that is not a good enough argument for opposing a conscience clause I just ask members to imagine what it would feel like for couples in those situations. So take a situation where a newly married same sex couple go into their bank because they want to get a mortgage on their first home together. They sit behind that desk with the bank manager on the other side and explain their situations and the bank manager says: "I am sorry, I am going to have to get somebody else to come and serve you because for conscience reasons I cannot continue with

this.” How is that going to make them feel? They have done absolutely nothing wrong, just trying to live their lives like the rest of us, to go into a situation where they expect to be treated like everybody else and they will come away from it I presume feeling upset but they will feel discriminated against and there will be nothing that will console them in that. I doubt they will go out and say: “That is okay, it is a sincerely held view.” No, I think they will feel incredibly bad about the fact that they were denied a service that everybody else would be entitled to. The last point I want to make, and it is similar to the point that Senator Ozouf made in his speech, was about how long it has taken us to get to this point and the only reason that I raise this point is because it is something that I feel was alluded to in the Care Inquiry report where it spoke about how quickly Jersey is able to pass complex and important pieces of legislation when it is to do with the finance industry but it is not able to do so on social pieces of legislation. Now, I happen to think it is incredibly important that we treat our obligations internationally as a finance centre to be able to make sure that our regulations on finance are as up to date and robust as possible and to be able to do it quickly if necessary if situations change and something needs to be dealt with. I happen to think that is right that we are able to deal with that relatively quickly but it saddens me that we were first Crown Dependency to start this journey towards marriage equality and will be the last one to finish it. Guernsey started and finished it quicker than we did, the Isle of Man as well and even little Alderney managed to do it too. In fact, I will even say that Pitcairn Islands has same sex marriage legislation. There are only 60 people who live in Pitcairn Islands and as far as they know none of them are in same sex relationships. They did it on a point of principle anyway. I think this raises serious questions about how we deal with social legislation in the island entirely. Whether that has been the incredibly slow progress on family friendly legislation, on maternity leave, on discrimination law where even though we have made progress recently we have been decades behind the U.K. in other ways. This has taken us over 3 years to get to this point. There have been constant delays. I think that is something we should be asking questions about and I would like to see a much greater focus on our ability to get social legislation passed because this is the sort of thing, that at its most basic, makes people happy and should not this assembly actually be doing a lot more to try and make the people, the lives of the people we represent more happy once and a while. So, I will be delighted to vote in support of this legislation. I hope Scrutiny will ignore what I think were the nasty undertones of this information from the Christian Legal Centre and I look forward to inevitably seeing that focus in the media when the first couples will benefit from this law and will become happy. That will be a proud day for Jersey and I think we should be looking to improve our social legislation in all sorts of other areas as well. So I hope members will support this legislation.

6.1.4 Deputy J.M. Maçon of St. Saviour:

It was only a few days ago that we learned of the result of the Australian referendum, voluntary referendum. It certainly lit up my Facebook and my twitter feed. It was covered in pictures of people celebrating the fact that after a particularly nasty and divisive referendum in that country, overwhelmingly in every territory, in every state that country, by majority, supported the introduction of same sex marriage or equal marriage. Anyway, I think that again, it would be wonderful if Jersey today could join in those celebrations in supporting the principles of this legislation. I also just want to, on a note, thank the group Liberate. They are an honorary group that have come together to support the development of this legislation. They are not necessarily professionals, they obviously have an interest and they have come forward, organised themselves in order to support the development of this legislation. I think it is wonderful to see groups getting organised and contributing to the legislative process and I think that needs to be said. I did also want to thank Deputy Mézec who’s already spoken and covered many points because he did start the ball rolling and that should be remembered and acknowledged when we talk about this. I would also like to thank those at the time who came out and marched on behalf of the introduction of same

sex marriage and how they wanted to show their support for it within Jersey and then obviously since then we have seen the Jersey and Channel Islands Prides take part since. Why is that important? Why is it important that we support this legislation? We know that for L.G.B.T. (Lesbian, gay, bisexual, and transgender) people, we know that they have higher rates of issues of mental health, we know that they have higher rates of self-harm and suicide, particularly the transgender individuals and the way that the state adopts these types of changes, the way of demonstrating to those individuals in our community, within our community how valued and accepted that they are and so that is again another reason why we should support this. When we talked about the principles of this legislation, in principle decision of this legislation, of course, I talked about how marriage depending on when and where you were was available to same sex couples and if you see it through the lens of restoring rights to people who have not had them for a very, very long time you have to change your perspective on this debate. Finally, I also want to talk about the conscience clause. I had several constituents on this island contact me when they read about this in the paper. They were very upset, distraught about how it might affect them. About how after the passing of the discrimination legislation, how they welcomed that, how it felt that there was an attempt to kind of rein back on these rights to decrease their rights under the law. And it is an interesting thing, because looking at the conscience clause there are issues. For example, we have talked about religious individuals, but let us take them out of the equation, so priests for example, which we know are already kind of protected under this law. We know, for example, in America where, again, the state has accepted and brought into law same sex unions - marriage, even. But we know, for example, civil servants have refused to issue the marriage licences based on their religious beliefs. Now, it is incredibly difficult to say to these couples you pay your taxes in order to pay for these individuals to have their jobs in order to pay for the services they deliver but, of course, there is an excuse of not having to deliver that service under their religious beliefs. So, I think it is not something which we should accept and I say this in evidence because I am sure this Scrutiny panel take the States debate as evidence during their review to look at how these things provide a counter-argument, how these things should be looked at. But also, would we accept it if we flipped it the other way around. So, for example, if you have a nurse who was gay saying: "Oh, I am very sorry. I am not going to treat you as a Christian because it then infringes on my beliefs against my conscience." We wouldn't even want to go there. We should not even be setting up people against each other like that. It is just not right, and I just wanted to put that so it was on the record for Scrutiny to consider. Like many others, I accept the role that Scrutiny have in this process and I accept that they do have a role to play. I echo all the calls that we hope that this can be done swiftly and as quickly as possible because, again, people's happiness and people's lives are riding on this legislation and that is not just same sex couples, that is couples looking forward to open air marriages, et cetera, something which, of course, I think all of us would want to welcome and encourage as swiftly as possible but I do accept that there is a legislative process which has to be gone through and if I can do anything to help speed up that process then, of course, I am more than willing to do so. So, finally, I am happy to support the principles of this legislation. I think for the members of our community in endorsing it it will help tackle homophobic views within the island demonstrating to those communities - to those L.G.B.T. people within our community that again they are accepted, they are equal, they are valued and therefore it is something we should be doing.

6.1.5 The Deputy of St. Ouen:

When this matter was debated in principle over 2 years ago now I could not support the redefinition of marriage as a union between 2 people of the same sex. That is absolutely not to say that I object to same sex relationships and I would always want couples in whatever relationship to have the same rights and privileges and to enjoy their relationship. It was a question of the definition of marriage for me. But I recognise that a decision was taken by this Assembly and I will fully accept

that and I am not aware of any group in the Island that is currently wanting to reverse that or where there will now but it means that I must abstain, I feel, from voting on the principles here but I am not going to oppose those principles any longer as I must accept the democratic decision of this Assembly. And I otherwise give support to the comprehensive nature of the draft and all its other principles and what it seeks to do surrounding the laws of marriage. Though I am aware there are those issues around a conscience clause and I do not think they are sinister in any way. I think they are properly raised. They are difficult issues which we should acknowledge and should face squarely. I do not think it was simply a question of baking a cake or not. I think the issue was the words that the customers wished to be iced on the cake which were capable of causing offence to a person who held sincere and deeply held religious views and it is that question. It is about respect and tolerance and it is not right if we establish a legislative regime which can be used by one particular group to disrespect and be intolerant towards another.

[16:45]

I am sure this Assembly and all proper legislatures would want all groups within society to show proper respect and tolerance for each other and our laws must seek to uphold that. Now, insofar as there is a risk that somebody holding sincere religious beliefs might be discriminated against by somebody using laws then we must try and take steps to prevent that happening and therefore it is not unreasonable to consider whether it is possible to achieve that protection by the insertion of a conscience clause of some nature. And I think the Green Paper the Dean has referred to must be worthy of some consideration and I will try and read it. Thank you, Dean. I think this is probably not a matter for this marriage law. It goes beyond marriage. It is a question of the discrimination law and therefore it might not be an issue which the Scrutiny Panel, at the present moment, needs to get bogged down in though it might wish to receive submissions and point the way towards some work that we could usefully do. And I support this matter being referred to Scrutiny as I believe that is what the chairman of the panel wishes to request. If Senator Ozouf were here, I would wish to point out, in reference to his speech, that if it has taken more than 2 years for us to receive this proposition then it cannot be a concern that this matter be passed to Scrutiny for just a few weeks and that is a proper legislative process. We should always be prepared for legislation to be scrutinised, that is a safeguard and that is an assurance that the legislation coming before us is the best it can be. I think that is all wish to say.

6.1.6 Deputy M. Tadier:

It will be shorter than earlier. Now, I thought Solomon was supposed to be famed for his wisdom but if you have got 300 concubines and 700 wives then you must have also have 700 mothers-in-law. It does not sound like a great idea to me. Now, I would like to try and convince the deputy of St. Ouen from abstaining because I think this is something that everybody in this Assembly can get wholeheartedly behind in principle even if there are certain comments and even votes against on some of the articles. I think the principle of same sex marriage has to be right and I will tell him why that is. This obviously should not be quoted out of context and it no doubt will be, but I would like to put on record that I am not in favour of same sex marriage either, personally, that is because I am not in favour of marriage. I do not agree with marriage at all. I think it is a strange concept. I do not see why people get married. I do not see the need for it. But then this is not about me. This is not about my opinions being imposed on others because as an Assembly we have to legislate for everybody and I know that some of my friends and family they do feel that marriage is really important to them for whatever reasons and those reasons are valid for them. So, I cannot impose it. I mean, if I was a despot would it be right for me to ban marriage altogether? Clearly not because it is not about me. We live in a plural society and as legislators we have to legislate for everybody not just for our own beliefs. Nobody is going to be forcing anyone to get married, nobody is going to be forcing anyone to perform marriages if they do not want to and I think that's

the key thing, there are safeguards that are built in already. And I would say good luck to people who want to get married wholeheartedly. Now, let us look at the cake issue because it often gets quoted and what happened in Northern Ireland is sometimes misunderstood. I do not know how you can get a gay cake. I do not know if they taste any different to ordinary cakes but what actually happened in the Northern Ireland situation, the thing that was so offensive, allegedly, as the previous Speaker says to someone's Christian beliefs was simply the slogan: "Support gay marriage." Now, it is sad that we live in a world where those simple words can create such offence that somebody would turn away business and then subsequently there would be a whole court case about it which went against the people who refused to serve the cake in the first place. What kind of religion is it that stops somebody from making a cake with those words written on it and also the cake was being made to celebrate and promote an event to do with fighting hatred when it comes to, in particular, the gay community. So, it is strange that a certain religious group could not get behind that and that is what I have an issue with. But the problem is, even if we accept that there is a fundamental issue there between the tensions of one group's right to believe something and another's to access the service. This is not the right law to discuss it. Tony Bellows, a constituent of mine, I hope he does not mind being named, Tony the Prof, he is a blogger, so he is out there in the blogosphere and he would not mind being named. He wrote a very good blog on it recently saying - explaining exactly, in detail, about the whole cake issue and the fact that it is okay, you can say that you are not going to bake a cake if you want to but the ruling was that you can make a blanket rule saying: "We do not bake cakes with political slogans on them." A lot of organisations out there do that. A lot of organisations will not get involved politically. They could have done that and that would be a catchall but you cannot show favouritism and discriminate against different groupings. And it is a slippery slope. So, when we get that email that was circulated from a certain, let us call them probably an extreme element of the evangelical church in Jersey which I do not think is representative of most Christians. You have to ask where does it end. Because if it is okay to discriminate on religious grounds because you hold a particular belief then why is it not okay to discriminate on other grounds. I mean, I may not like homosexuality, not because of religious reasons but because of political reasons. The reason I might not like homosexuality could be because I am a neo-Nazi and under my twisted and warped ideology I do not agree with it. Yet, we are quite happy to say: "That is terrible, you are a bigot, you are an extremist", but if you believe something which is equally the same just because of a religious belief that is somehow okay. I am not sure how that works and how we legislate for that. It is clearly a minefield when we start going down that route. I did not reply to the email. I was tempted to send an email very quickly back I think you do not send emails in the haste of the moment saying: "Well, how would you feel if somebody ... you went to a cake baker which said 'Support Christianity', or Jesus loves you', and the cake maker said: 'I am sorry, I cannot make that cake because I am an atheist. I am an agnostic. I am afraid you're going to have to go down the road'." I suspect an atheist or agnostic probably would not do that. If they were in the cake making business they would probably presume, well, to be honest I am quite happy to make that cake, I just want the money from that. They might say, if it was a cake that said "Support Hitler" or "Neo-Nazism", let us not make that cake, so clearly there is something that needs to be put - and that is why it is put in the discrimination law and that we have to protect minorities. The difference is, of course, people do not choose to be gay. People do choose what their religious beliefs are to certain extent. They can choose what they believe and they can change what they believe but gay people cannot change the way they are born and I think that is the fundamentally different issue. I do have a slight problem, though, and I might part company with the Dean here, with the Church of England and I would like clarification from the Deputy Chief Minister when he sums up. I am pleased to see in the report, if I read it correctly, that there is nothing stopping churches under Church of England from performing marriage ceremonies for same sex couples if and when they change their own practices and law to be able to do that. I would like clarification from that because that is not what I

understood in the past. I thought that the triple lock - and when we had same sex marriage that they were specifically prohibited from performing same sex marriages even if they wanted to. I am happy to give way now for the Minister but he can clarify that at the end. The reason I say that is if that is the case it is complete folly because any denomination that wants to perform a full, equal marriage for same sex couples should be allowed to do it. So, if a Quaker congregation wish to not only perform a blessing or a civil partnership they want to actually perform a marriage ceremony for a same sex couple they should be able to do it. It will be complete folly to tell a religious group that they cannot perform something.

The Dean of Jersey:

Would the Speaker give way? I can think I can give some clarity on that. Currently, the Canons of the Church of England prohibit Anglican clergy from conducting same sex marriages because the definition of marriage within the Canon B30 states that a marriage is between a man and a woman. So, it is actually a matter of law. That does not preclude other denominations from opting in. The whole point of the quadruple lock is that it is in opt-in clause. So if a minister from another denomination seeks to marry a same sex couple they can opt-in and therefore they are able to take full service of same sex couples if the denomination chooses to opt-in.

Deputy M. Tadier:

I appreciate the clarification and I am sure that will be followed up again by the rapporteur when he sums up. Of course, we know and Deputy Mézec said it that marriage has not always been... marriage is not just between man and a woman, marriage can be between one man and 700 women. So, the definition does change indeed. So, the problem I have is the Church of England is not like any other church out there. They are not a free denomination. They are actually part of the State and when we have a law of discrimination which applies to the State, we are saying the State cannot discriminate and if the Church of England wishes to remain part of the State then it should not be able to discriminate either. So, if you are a member of the Church of England and you happen to find yourself in a same sex relationship and you are a member of the congregation it is completely wrong that you should be turned away from a church that you regularly attend simply because of your sexuality and the fact that you want to marry somebody of the same sex and so I put that out as food for thought.

The Greffier of the States (in the Chair):

I am sorry, Deputy, but we seem to have lost the quorum. I would ask Members who are outside in the coffee room to come in so we can resume our debate. Thank you very much. Deputy Tadier.

Deputy M. Tadier:

So, we talk about our traditions and we say that our traditions are important and that the Church is intrinsically linked to the State but we know, of course, that in Jersey the Church of England does not have the monopoly on faith or denomination, that there are lots of people in our community who are Catholics, who are Evangelicals, who are from the Charismatic tradition which can also exist in the Church of England and from no faith and from other faiths. But, so I simply put that out as a challenge to the Church itself and also to us because we, I seem to remember, had to pass Canon law and we have got a duty in this assembly to ratify Canon law as well. The Church of England should not be able to discriminate against a gay couple when they come and ask for marriage. The only option is if the Church is no longer happy with that they can disentangle themselves from the State. We can then talk about the disestablishment of the Church of England in Jersey and I think that is the only 2 ways we can do it. If we want to be fair handed about this the Church wants to remain part of the State it should abide by the same laws that the State puts upon itself. If it does not want to abide by those laws it should just, as I said, disestablish itself from that. Otherwise, the principle of same sex marriage has clearly been won a long time ago and

I will be looking carefully, as I am sure others will, at the individual articles and we know this will be referred to Scrutiny. What I would ask, and we have had this comment earlier, we always hope that when things are pulled in it is for the right reasons but it does not help when you get comments put out there which are spurious about this cake and people know does not come under this law, that is a matter for discrimination law and that should have been brought up in the past and if people are not happy about the relevant safeguards for conscience clauses that is a matter for discrimination law and bring an amendment to the discrimination law. Do not muddy the waters when it comes to this very simple debate which we should all be supporting today.

6.1.7 Deputy J.A.N. Le Fondré:

I think just wanted to confirm that we will be calling in this legislation when we get to that appropriate stage but I do want to make some points now just to give some background if it helps Members.

[17:00]

Although I will turn around and say, actually this is turning into quite a useful understanding of various issues from all sides. When we call it in, I want to make it absolutely clear, so there is no room for any misunderstanding, as far as the panel is concerned the States has already agreed to introduce same sex marriage and our review does not seek to reopen that debate. Let us make that very clear from point one. The legislative scrutiny they are carrying out is to ensure the law is fit for purpose and it effectively implements the decisions made by the Assembly. Now, members hopefully will be aware that the opposed changes, as outlined by the Deputy Chief Minister, extend much further than only same sex marriages because it covers open air marriage, fundamental changes to obtaining a licence to marry and also the role of Parish registrar, additional protections against sham and forced marriages and the ability of the States in the future to increase the age of marriage by regulation, i.e. without changing the law itself. That comes under the, I think it is the U.N. (United Nations) rights of the child. So, the point is, this is a major change to legislation covering a whole gamut of issues. There are actually consequential changes to 31 other laws and I think some of them have been referred to today. So, some of these are purely to change references to husband and wife to spouse but many are more complicated. Just by way of process and we are, obviously, where we are but again I make the point that the panel was not offered a briefing on the draft law prior to it being lodged, neither was the draft law formally including on a Council of Ministers agenda prior to lodging. If it had been this would have given the panel the opportunity to request the Council of Ministers' paper in advance of lodging. Essentially, I think we first had notice of it at a quarterly hearing in September but basically the panel gave advance notice to the Chief Minister that we wished to review the draft law in a letter date 25th September. Now, as it is been alluded to, the States Assembly gave in principle approval in September 2015 for same sex marriage to be introduced, i.e. over 2 years ago. The proposition requires, as we have heard, the Chief Minister to bring forward draft legislation by January 2017 at the latest and I absolutely agree with the comments by Senator Ozouf about expectations but we are 10 months later and so a 60-page piece of legislation is going to take time to review. So, we are going to do this work as quickly as we can, I'll touch on it in a second, but we will need to do it under the normal Scrutiny rules. And also, I would note that the Chief Minister announced on 9th September that the draft law was delayed. But it then appears that there has been a directive, a follow-up, to lodge the draft law in time for it to be debated and in place for basically spring next year which lead to the law being lodged on 3rd October if one takes the hard copy. 3rd October is the minimum amount of time to for it to be debated on 14th November. The hard copies actually came to us a day or 2 later. So, the point I really, really want to make that Ministers and officials should be well aware of the process for legislative scrutiny set out in Standing Orders and shall therefore build an appropriate time in the law making process. This can sometimes be achieved through active engagement with

the Scrutiny panel prior to lodging or by allowing for the call-in process after lodging. As I said, we had no offer of any briefings and no notice essentially. So, with such a significant amount of changes to the law which in substance amounts to a total rewrite, it could be expected, we think, that the Chief Minister would appeal some time for the scrutiny process of the draft legislation set out in standing orders and it would appear this is not the case. In a public hearing, I would say, on 15th September, so that's just before we - that was our point, I suppose, it first came on the public radar, the panel was informed by the Chief Minister that it was likely that consultation would still be taking place after the law was lodged and it was likely that some amendments would need to be lodged. And as we know, 2 weeks ago roughly, an amendment was lodged in the minimum lodging period and a corrigendum actually to the draft law has also been issued. What we were not expecting was that the amendments would run to 8 pages and 23 individual amendments. So, I am afraid, from our perspective it seems the process to the draft law being lodged on 3rd October was unduly rushed. It would appear that officers were not allowed adequate time to complete the law drafting process prior to lodging and this led us to an important draft law being lodged which needed to be corrected and amended only 2 weeks before the debate. This is no criticism, I absolutely stress, of the officers involved because it is very clear that they have been working very hard and extremely long hours in getting the draft law lodged in the timescale suddenly given to them. Now, where we are at the moment, following the lodging of the draft law the panel has received 3 briefings from officers on the draft law. It is a complicated matter and we commenced a detailed and line by line scrutiny with the draft law which is taking time. I would point out, in one of those briefings we did identify an error in the draft law whereby a wrong article had been referenced in the law and this is one of the changes, the corrections that have been lodged in the amendments so you can say we have added value already. But I do not overplay it. It was an obvious typing error when we went through it but it did actually mean that what was lodged...that particular area didn't make sense. As members are aware we issued a call for evidence. We have received 50 submissions thus far, although the call for evidence officially finished on 3rd November. A number of the submissions do include comments on specific articles contained in the law and we will be reviewing each of those as part of our scrutiny of the law but obviously take account of some of the comments or all of the comments that have been made today. So, in view of the fundamental changes to Jersey marriage law in our view it is important that the panel is given adequate time to carefully examine the detail of the proposals. So we will do it...we are doing it as quickly as we can but it is likely that we will need the full time as provided under Standing Orders. We would stress legislative scrutiny is a standard part of the parliamentary process. It is essential to ensure that good law is passed and that any inaccuracies and potential problems are picked up prior to the law coming into force. At the extreme end of the argument, if something is wrong and a marriage that takes place or a ceremony takes place could be null and void. Hopefully that is not the instance we are facing but I do make that point. I think on that point, we have spent time on this review and we are doing it in conjunction with obviously we have got the future hospital proposals coming down the line and the budget and we are obviously on Brexit as well. So, we are doing it, we are doing it as thoroughly as we can and we have got it in hand. And when we get to that point we will be calling it.

6.1.8 Connétable M.P.S. Le Troquer of St. Martin:

I accept this is the first reading, the preamble if you like of the amendments that have been brought forward today. I did not really wish to speak today. I spoke in the 2014 debate and again in the 2015 debate. Some Members told me in 2015 speak at the end because people will attack you. They did not. Possibly the hardest speech I had to give in this Assembly and the respect shown to me, by even those people who opposed me was so kind. People came to me immediately after the debate. I can remember one Member, a Deputy walking in front of me from that side, we had to break at lunch time. The Deputy Bailiff in the seat, the Member came up to me and said it was the

best speech he ever heard, he had not been in the Assembly long. The best speech he heard but he was going oppose. The Chief Minister came over to me and also said similar things. So, yes, it was very, very difficult and I recall that day very much. I am not going to go over that again. The Senator this afternoon has said he wants it rushed through. This is going to happen. We know this is going to happen. There might be a delay. Senator Ozouf does not want it delayed. It is going to be passed. I am quite sure it will go to Scrutiny, come back and it will happen. Thankfully, the Chief Minister's Department, because they have explained things right the way through and I have had meetings with them as other Members have, I am quite sure, and they have given a lot of time. And the 2015 debate that I spoke in was not about partnerships and I know we are not going there today, but it was about marriage and it was my view on marriage and the many thousands of people who have similar and they have still got those views today. And I know that life is changing and people have got different views but there are still those people out there today. So, what I was just going to ask briefly again today although I have given a very short speech was that we take part one article 2 to be taken separately by the appel. Members could say to me it has been agreed in principle so we should vote for it. Although we do not always do that but if you have opposed something, okay, you could accept the decision has been made, but you have still got those same views and you are still representing those people who might have those views. It is not just a personal view of mine and that is why I am speaking today. It is not a one vote. I am voting, I will be voting on behalf of those other people and I think Deputy Tadier this afternoon said everyone has got opinions, he said that in his speech and I have got those opinions and I have got mine. So, that is how I would vote today. And I would say to the Deputy of St. Ouen not to abstain. Maybe he would like to do like I will do and vote against that article but I just wanted to say those few words before we come up to the vote. Thank you.

Deputy M. Tadier:

I do want to ask a point of order just following on from that speech. If this goes to Scrutiny is it a case that the principles and Articles then come back in a few weeks? So, the Constable does not need to worry about asking for the Articles to be taken separately?

The Greffier of the States (in the Chair):

No, the principles will be decided today and if the Assembly adopts them I understand they will be called in to Scrutiny and the Articles will be discussed probably in 4 meetings' time; that is for the Assembly to decide. Does any other Member wish to speak?

The Connétable of St. Martin:

Sir, it is just a clarification. Would I then be voting against everything?

The Greffier of the States (in the Chair):

I cannot tell you how to vote. The vote on the principle is on the whole lot, the whole package.

The Connétable of St. Martin:

I do not wish to vote against the whole package.

The Greffier of the States (in the Chair):

I think that is why the Deputy of St. Ouen said he wished to abstain because there is a lot of stuff in there. That is a matter for you. Does any other Member wish to speak on the principles? Deputy Doublet.

6.1.9 Deputy L.M.C. Doublet:

Thank you, I will be brief. I do agree totally with the principles of this legislation and I want to thank the Ministers for including humanist marriage within this because I know that was opposed

originally when I brought the proposition in. I think it was 2015. And so I was over the moon really to see that the interests of non-religious Islanders, those of non-religious beliefs such as Humanism will be represented in this legislation and obviously the most important part of this legislation is extending marriage to same sex couples, that will always be the most important part of this legislation but there are many, many other parts to this legislation. So, I for one I support Scrutiny calling this in. I think scrutinising this legislation is very important because it is so far reaching and I know that the panel will do an objective and thorough job. I have, together with my colleagues and friends at Humanists U.K., and the Channel Islands' Humanists, made a submission to the Scrutiny panel and I just wanted to inform members very briefly about the general gist of that. So, when I first looked at the legislation I guess because I am a positive person I looked at it and I thought: "Wow, that is great, humanist marriage is in there. It looks like it is on an equal footing. Fantastic." But as I have been looking more at the detail it is becoming apparent that there are some tweaks that might need to be added and it is really simply to do with where the definition of humanist marriage lies. So, it has actually been put in with civil marriage which is not the case in any of the other jurisdictions that have humanist marriage. Humanist marriage is actually more in line with religious marriage, believe it or not because it involves beliefs rather than an absence of belief which is what a civil marriage might be. So, looking closer at that and really thinking about safeguards; with the religious marriages, the religious celebrant or priest or that individual has to be authorised by that particular religious group so that the priest ... you will know that they have been trained by that religious organisation and they are legitimately from that religious organisation but there is nothing in the legislation at the moment that says the humanist celebrant should be authorised by an official humanist body. And I believe that there should be that extra layer of safeguards in the legislation there and I do think that the best way to do that is by adding a third category of marriage and having belief marriages in there. Now, I do not think this is going to be a big change to make and I am assured of this by Humanists U.K. who incidentally played quite a large part in some work the U.K. on same sex marriages. There were one of only 2 organisations that were thanked in Parliament for their contributions. They have lots of experience in contributing to these types of legislation. So I do not think it will delay things unnecessarily. I do think it will add an extra layer of safeguard there and I hope that perhaps the Ministers might see that submission and make the change themselves or Scrutiny make the change themselves.

[17:15]

I do hope it can be put in there to add that extra layer of safe guard and just to make sure that legislation that we are passing in this chamber is going to be 100 per cent what it should be and we are not leaving any details left to chance. So, just to make Members aware of that but I fully support the principles and I will be voting in favour of this today.

6.1.10 The Connétable of St. John:

I will be brief but I just feel I would just like to put on record some of my feelings. Not everyone is comfortable with this but I think we all agree that it should and must go ahead. The point I would like to make is probably in some respects expressed by Newton's law of forces. To every force there is an equal and opposite force. To every right that is an equal and opposite responsibility and that responsibility is respect. Not everybody is comfortable but those who are not, we do need to respect their opinions and they in turn need to respect back that not everybody thinks and feels the way they do. Society in general, whatever it is, whether it is this topic or other topics we need to bear in mind that everybody has their own opinions, everybody has their own feelings, everybody has different upbringings and we must respect people for whatever their beliefs, whatever their upbringings, whatever their religions, whatever their race, colour or any other belief and so my plea is that we must somehow include a tolerance and I know it has been referred to as a 'conscience clause' but I think it is important that there is something. Not wanting to be too artificial, but if one

takes the case, the famous case that was in the press of the cake in Northern Ireland: same sex couple come into the shop and say: "We would like a wedding cake." The baker says: "Yes, no worries. How would you like it decorated?" "Well, lots of icing, some flowers and a same sex couple on the top." And the shopkeeper goes: "Oh, hold on, I find that offensive." If the bride and groom, the same sex couple say: "Okay, fine. Can you at least bake the cake and we will finish it off?" The whole matter, by respect to each other's belief would have resulted in a positive way forward. That really is my plea. Let this not be a force for confrontation but somehow include a degree of respect for other people. Thank you.

The Greffier of the States (in the Chair):

Does anybody else wish to speak on the principles? If not, I ask the Minister to reply.

Senator A.K.F. Green:

I will try and deal with the points raised. I thank everyone that spoke and I particularly thank the Dean because unless I was out of the Assembly previous times that was your maiden speech, Dean. I thank the Dean also for answering the question in relation that Deputy Tadier answered in relation as to who can marry of religious orders and who cannot carry out the ceremony and the Dean had it absolutely right. So, the Dean asked - or observed I think is probably a better term - that we had no definition of marriage in this legislation. Well, that is because we are purely changing legislation but also we have heard today that the definition of marriage is very complicated and everybody, or not everybody, but lots of people have different views. For me, it is when one person expresses publicly or openly their love for another person regardless of gender and promises to remain faithful and live with them for the rest of their lives. That is marriage for me. It may be different for other people but it is a love for one person for another regardless of gender. So, picking up, not necessarily in order, I absolutely respect the need for Scrutiny to look at this but I think they have got the message while we want them to do a good job we do not want them to take too long doing a good job and I think they understand that and I understand that they need the appropriate time to do the job because I spoke to the - I did not arrange to meet her, but I met, accidentally in St. Ouen and in fact Deputy Le Fondré of St. Lawrence was there as well, the superintendent registrar in St. Ouen last Saturday and she was saying the host of people, not just same sex couples but couples that want to get married on beaches, couples that want to get married in woods, there are a host of couples wishing to make all their arrangements, put down the very hefty deposits that they have to and get it all cleared with her but they will not do that until we have sorted that out. So, I absolutely respect Scrutiny's right to do this and, in fact, such important legislation it would be wrong if they did not do it, to be honest. Now, I think Deputy Maçon made a ... sorry, I will deal with Deputy Doublet first on the humanist celebrants. We do not have a definition of what a humanist celebrant is but we do say that humanist celebrants will be able to carry out marriage ceremonies in Jersey. I do not know, to be honest with you, if there is a definition of such a person somewhere else. Maybe that is a matter that you could discuss with Scrutiny and I will be happy to talk to you afterwards. We want to get this right. We want to be able to allow those ceremonies to take place. Deputy Maçon made reference to, not negatively, but made reference to something that I did not really talk about when I was going through my notes, in relation to gender change and it is worth me just pointing out and reminding Members if they have not looked at the whole of the Articles but our gender recognition law is also amended to make it easier so that the Royal Court can determine the evidence it will accept in relation to gender change. So, in other words our law will no longer require a full U.K. gender recognition certificate. And that does a couple of things: it makes it simpler for people living in Jersey but it also bypasses the potential that exists in the U.K. law for a spouse, a previous spouse to veto the gender change. So that is another part of tidying up this law. Some references were made to how long it has taken to do this law or to get this law to this stage and it has taken far too long. First one to admit that. That said, when I spoke to

colleagues in Guernsey they wish they had taken a little bit longer and not just bolted same sex law onto the existing law. They wished that they had changed their marriage law along the lines that we have changed our marriage laws to have a modern marriage law not just one with same sex marriage bolted on the side. We have taken too long, we could have done it quicker but we are going to have a really good marriage law as a result of the work that we have done. The work that people like Deputy Mézec have done and Liberate and also the work that the Scrutiny Panel are going to do as well. There has been lots of talk about conscience clause and I do not think we will ever really come to a satisfactory conclusion for everybody on this one. But the fact is, truly, conscience clauses do not work, they do not work properly, fairly in a modern society. If you had a conscience clause I could decide that, if I was somebody that could officiate at weddings, I could decide then I do not really want to marry disabled people, I do not want to marry couples of opposite...of different races. It is just not right. It just does not work and all the experience of other places is that it is fraught with problems so why put something in that you know is not going to work and that is why we do not have a conscience clause although I look forward, if Scrutiny go down the road of looking at that, I look forward to seeing their work. So, I think I have covered everything. We had some really good speeches. I dread to think what 700 mothers-in-law must be like. I have been house training one for 44 years but anyway. That is another thing. So, with that I make the principles.

The Greffier of the States (in the Chair):

The appel been called for. Members are invited to return to their seats. I ask the Greffier to open the voting.

POUR: 33		CONTRE: 1		ABSTAIN: 2
Senator P.F. Routier		Connétable of St. Martin		Connétable of Trinity
Senator L.J. Farnham				Deputy of St. Ouen
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
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 M. Tadier (B)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy R.G. Bryans (H)				
Deputy S.Y. Mézec (H)				
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)				

The Greffier of the States (in the Chair):

Deputy Le Fondré? What is your proposal for the return date to the Assembly?

Deputy J.A.N. Le Fondré:

It is the full period allowed under Standing Orders, so, it is the fourth sitting.

The Greffier of the States (in the Chair):

Which I think is 30th January.

Deputy J.A.N. Le Fondré:

Yes, Sir.

The Greffier of the States (in the Chair):

Right. Thank you. Those in favour of a return on 30th January, kindly show. Thank you very much.

7. Jersey Appointments Commission: re-appointment of Commissioner (P.92/2017)

The Greffier of the States (in the Chair):

The last item of business is an appointment to the Jersey Appointments Commission. I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of the opinion to reappoint Professor Edward Sallis O.B.E. (Order of the British Empire) as a Commissioner of the Jersey Appointments Commission in accordance with Article 18 of the Employment of States of Jersey Employees (Jersey) Law 2005, until 31st October 2019.

7.1 Senator A.K.F. Green (Chairman, States Employment Board):

This does what it says on the label. This is to appoint Professor Ed Sallis as a member of the Appointments Commission. He has been a member now for 4 years, 9 months. We want to extend that appointment by another 2 years and that would then allow for rotation of different Commissioners finishing at different times. It will allow for a rotation. So, we keep experience because new rules prevent Commissioners for staying for more than 9 years but we keep experience on the panel as people retire and new people come in. So, 2-year appointment, for Professor Sallis.

The Greffier of the States (in the Chair):

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? If not, if all those in favour of the proposition kindly show. Those against? The proposition is adopted. That brings us to the arrangements of future public business.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

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

As per the Consolidated Order Paper working from 30th January back. On 30 January P.91/2017 that we have just debated in First Reading and the Second Reading will take place on 30th January. On 16th January there is the addition of Projet 113, the Health and Social Security Scrutiny Panel's proposition, and Projet 96 in the name of Senator Ferguson which was deferred from today. The next sitting is the Budget debate. There have been a number of additional amendments, lodged by Senator Ozouf. Most of those were lodged yesterday and one today. Clearly they will not be lodged long enough by the time the Assembly starts public business on the 28th and either will need to have the lodging period reduced if they are to be debated or unless the debate goes on to the Wednesday and the Thursday. That is the proposition, and I would remind Members that the next sitting will start at 2.45 p.m. on Monday, 27th for questions and any statements. That is the proposition.

The Greffier of the States (in the Chair):

Does anybody wish to speak on that proposition or is that agreed to? I will take it to be adopted. In that case the Assembly has concluded its business and will now adjourn to Monday, 27th November at 2.45 pm.

ADJOURNMENT

[17:29]