

CONSTITUTIONAL CONVENTION – WEDNESDAY, JULY 12, 2006

Senate President Robert Travaglini, after entering the House chamber through the center doors, talked on the rostrum with Sen. Murray and Speaker DiMasi and Sen. Havern.

RESUMES: The Constitutional Convention resumed at 1:05 pm, Senate President Robert Travaglini presiding.

PLEDGE: Legislators and guests rose and recited the Pledge of Allegiance.

Sen. Travaglini said I know the chemistry and camaraderie between the branches is at a pitch and that's a good thing. But conversations during deliberations are not helpful. Keep those relationships strong and workable but step out of the chamber for conversations. It is the intent of the chair to address each and every issue on the agenda during this Constitutional Convention. I would like to provide an opportunity for the Speaker to make brief comment. Then I will recognize Sen. Lees to familiarize the body as to where we are in the scheme of things.

Speaker DiMasi welcomed the Senate and asked members to be orderly and to engage in a professional debate. I hope we give great consideration to both proponents and opponents of every issue.

Sen. Lees was recognized and said he would like to start by providing you and my colleagues with procedural points of interest to everyone in the gallery and those watching. This will take a few moments to explain where we are and what's going on today. In general any matter on the calendar can be placed at the end of the calendar with a majority vote. Any member can ask to take a matter out of order and move it to the beginning and this requires unanimous consent so any one member can object and that item will remain in the current place on the calendar. You will hear about a legislative amendment and an initiative petition. A legislative amendment is filed by a legislator to amend the constitution. These matters get placed on the convention calendar. An initiative petition is on the calendar because the general public has gathered signatures and gotten the matter certified. It is placed on the convention calendar. They are subject to be sent to special committees. Sen. Lees listed the items on the calendar. He said the joint session has agreed on the rainy day fund amendment and 101 votes are now required and it cannot be amended. S 4 relative to health insurance is an initiative petition. It was agreed to in the last session and one vote remains to place it on the ballot. Fifty votes are required. It cannot be amended. It can be placed at the end of the calendar or with a special committee. (Sen. Lees went through the remaining items on the calendar and outlined options applicable to each amendment).

At 1:18 pm, Sen. Lees asked Sen. Travaglini to quiet the membership. He banged the gavel and members quieted.

Sen. Lees said H 653 is relative to marriage. It is a legislative amendment is new in this session. On ordering to third reading this can be amended. He said it is similar to the process we embarked on in the last session.

Many have talked about item 20 on page 21, H 4617 relative to marriage. This is an initiative petition defining marriage as a union between one man and one woman. This is a new initiative petition. This can be amended by three fourths of the members in attendance. It must receive 50 votes to pass to the next session. It is subject to placing at the end of the calendar, being sent to special committee and it requires unanimous consent to take out of order.

Rep. Goguen began yelling "so moved."

Sen. Travaglini said we are not yet into the orders of the day and once we are, your point will be well taken.

Sen. Lees said the earliest this can be on the ballot is November 2008 but it can only happen if 50 legislators vote yes in this session and in the next session on this exact matter. The final item on the calendar is number 21 H 4604 a legislative amendment relative to eminent domain.

Sen. Lees said we have a long day ahead of us. I tried my best to lay out the rules of the convention.

Sen. Travaglini said is there any objection to proceeding to matters in the calendar. There was none

Rep. Travis, in his seat, was repeating "Mr. President."

MARRIAGE PETITION MOTION – REP. TRAVIS: Sen. Travaglini said the chair is in receipt of a motion from Rep. Travis. The clerk said Mr. Travis moves that item 20 be placed as the first order of business.

There were multiple objections from legislators.

Rep. Goguen said he moved for a roll call. Sen. Travaglini moved to the next issue.

RAINY DAY FUND: Question came on S 6 legislative amendment creating a permanent rainy day fund to provide stable revenues for the Commonwealth.

Rep. Smizik moved to place the issue at the end of the calendar. Motion adopted.

HEALTH INSURANCE: Question came on H 4444 relative to health insurance.

Sen. Moore said let me provide some history on this amendment. In 2004, I offered an amendment to have some further clarification to how a health care amendment would take effect. The amendment says upon ratification of the amendment, it would be the obligation and duty of the state to enact laws subject to approval by voters in a statewide election to ensure that no residents lacks health insurance coverage. The phrase added by amendment in 2004 was subject to the approval by voters in a statewide election. That phrase has raised some concern by health care advocates in the state as to exactly

what that might preclude or require to go to a vote. It was not my intention or the convention's attention to require every change in health care law to be subjected to a referendum. Something as significant as we passed in Chapter 58 might be of the magnitude that might be subject to voter review. The intention was that a major reform of the likes of 1988 or 1996 would require a vote of the people but not everything. The concern was that we not require something that provided so much money that it pushed against local aid or took precedent over so many things we want to do unless it was something that the people wanted us to make a priority. The concern is that on July 14, 2004, I don't think anyone in this chamber knew we would in this session actually enact a very comprehensive effort to reform our health insurance program and expand access to quality health care. I am proud to say it was you Mr. President who initiated that discussion in December 2004 by suggesting we set as a priority that health care and access to care ought to be a priority. You were quickly joined by a colleague, the Speaker of the House and then the governor wrote an op-ed in the Globe to establish his credentials as a reformer. There were times during discussions and in conference deliberations that Rep. Walrath and I chaired when we said it would have been nice to have this amendment in place. The existence of the amendment and a potential ballot question on a legislative proposal, the folks who advocated those two initiatives, HCFA and GBIO, should be very proud of the fact that their efforts underscored the need that the people wanted us to act. We have done that and I think you and the Speaker deserve a great deal of credit. The Connector Authority is appointed and under way and regulations are being written. We have set the tone and set the agenda and completed a major step in health care reform. The question is changing the constitution or giving Chapter 58 an opportunity to play itself out and work and to then determine whether we need to change the constitution. This matter does require further deliberation. I move to refer it to a special committee of the convention to further act on this matter.

Sen. Travaglini said the motion is debatable.

Sen. Tolman of Brighton said it's July. We are finishing our session. We have accomplished a great deal. Sen. Moore has done a wonderful job. We have much to be proud of in our health care legislation. I ask you to think about what are they talking about that they accomplished. They are talking about providing health care for every citizen. Look at the amendment before us today because the petition basically puts it before the public to instruct the Legislature and Executive Branch to do just what the gentleman who preceded me said we are attempting to do. We are attempting to provide everybody health care. We don't need to study it anymore. This was a great attempt and a good first step. I know over time we are going to reach the goal but to take an opportunity like we have today and most importantly to address an amendment, which would be part of our constitution and would say everybody is entitled to equitably financed and affordable health care, that's what we should be doing today. We should not move it to a study. MLK said of all forms of inequality, think of this injustice in health care as the most shocking and the most inhumane. That's what we have before us. We will have questions about can we afford it. This amendment does not ask us to do anything that we don't believe in our hearts that we are already doing. If you put it into a study, it kills the bill. This is an initiative petition. We are going to start over here. The inequality will go on if we turn our heads. Some statistics will put the problem in perspective. Affordability of health insurance is the number one worry. Nearly 72,000 voters sent us this amendment requiring us to adopt fundamental reforms and almost 80 percent of voters believe everybody should get the same high quality health care when they need it regardless of ability to pay. One third of doctors are considering leaving our

state. If you doubt the statistics, talk to your constituents. Many people file for bankruptcy after serious illnesses. Small businesses find the increased cost of group insurance to be the most difficult. We have to change the current system. That's what this amendment would force us to do. There can be no doubt that the current system is broken. Last year we spent \$51 billion on health care in Massachusetts and yet 750,000 in Massachusetts were still without health care in 2004. By 2015 the number of uninsured will rise to 20 percent and nearly one million people. This is unacceptable. We passed health care reform, a great bill and an important first step but it failed because the branches did not agree on systematic reform of health care for all residents. One third of health care dollars annually are spent on administrative costs. That is \$17 billion. Seventeen billion dollars. We can save millions of dollars with administrative reforms like uniform billing, which was not included in our bill. It was the most important reform. It is incumbent upon us to find a comprehensive solution to a complicated crisis. This amendment is the solution and would require the Legislature to put forth a plan to take care of all of our citizens. This is the right approach. We must pass this amendment. It's been more than 50 years since Harry Truman said quality health care is a right for all Americans and not a privilege for only those who can afford it. Someone said if a criminal has a right to a lawyer, a working man and woman should have a right to a doctor. That is what this amendment would do. I hope the amendment passes. If we have to raise taxes, I hope we work toward it.

There was no objection to Sen. Moore's motion to withdraw his motion.

Rep. Balsler said she supports the amendment. I stand with citizens who collected signatures so the constitution, the oldest in the world, will include the right to adequate and quality health care for all. The United States stands alone among industrial nations in that we do not provide universal health care to all our people. We are the only democracy where not everyone has health care. I am proud that many citizens want to play their part in fixing that problem. It has not been a lack of will on the part of people in our country. President Truman led the way in 1948. Even President Nixon spoke about universal health care. To date, we have not gotten there and have not figured out how to make sure all Americans have access to quality health care. We in the Legislature stepped up to the plate this year and raised the bar across the country. We passed historic reform that will take us a long way. This amendment does not undermine our support for that accomplishment. It amplifies it and makes clear our commitment to get to a place where everyone has this fundamental right to health care. I argue that there was a time in history when not everyone assumed education was a right of all people. Now universal compulsory education is something we take for granted. It was the states that led. So too today let's in Massachusetts continue to lead. Let us lead by including in our constitution that everyone in Massachusetts has a right to health care. It would be my hope that other states will follow until we get to the day when the United States will embrace what every other democracy has embraced. I hope we support and take this step to make health care a constitutionally protected right for all.

Sen. Montigny said I intended to respectfully disagree with the motion made but he had decided to withdraw the motion. I think it is the most important matter facing this Constitutional Convention. I hope we do vote on it and with the majority in the affirmative.

Sen. Montigny said we spend more than any other country and have thousands of our own uninsured. I have been at this health care game a long time. I commend you for a fine job on the legislation. Supporting this and forcing a debate in every household that will vote on whether we have the moral obligation to provide proper health care is worth taking. It affects every citizen. That is why I suggest it is more important than other issues that receive more attention. As a longtime proponent of universal health care there is nothing we can do that is more important. We are here as the proxy in the Senate for 160,000 citizens. I chaired the Health Care Committee in 1996 and I remember the same debate about how we all want to do it but let's study it and do incremental change. We determined it was immoral for children not to have health care. The governor at the time vetoed the bill over the cigarette tax. Saving lives and losing lives is not political and I was disgusted. The veto was overridden in bipartisan fashion. In the ensuing ten years we didn't have that fiscal commitment or a ballot question with the public demanding that you find universal health care. We diminished the numbers but they bubbled right back up. And we spend more money than anyone in the world. The current system is inefficient and is driven by the debate around health care financing and not around the debate on patient care and universal health care. We satisfy one interest group after another and at the end of the day, the ranks of the uninsured and underinsured grow. We have an opportunity, without diminishing the work done . . .

Rep. Peterson doubted the presence of a quorum at 2:01 pm.

Sen. Travaglini asked the clerk to determine the presence of a quorum and instructed the court officers to close the doors.

The four divisions were reviewed, showing 15, 36, 13, and 14 members present.

Sen. Travaglini said a quorum is not present and ordered a quorum roll call.

A ROLL CALL VOTE REVEALED 155 HOUSE MEMBERS PRESENT.

Sen. Travaglini asked for subdued conversations and members to take a seat.

Sen. Montigny said, I see you've had a successful quorum call, and I feel compelled to start over. Actually, if I could remember where I left off, I'll try to do that. If I could say this by way of conclusion over the next several minutes.

The chair said, The chair has asked for your cooperation and respect for those who go to the microphone. Even as I'm asking, you're still talking. Amazing.

The chair then waited for the talking to die down, which it did.

Sen. Montigny said, I was attempting to answer the question why do we need to debate this, why do we need to place it on the ballot, to vote on an issue that many people think has been solved. It has not been solved. You can celebrate the recent expansion, but no one with a straight face can suggest that we have near universal health care and no one with anyone they love without health insurance can ever suggest we shouldn't have universal health insurance. I simply want to debate everyone having health care. If we do nothing, the natural position – and I've seen it as both a health care chair and a Ways and Means chair – if you do nothing, you slip back. We do nothing if we do not

continuously monitor. And I would suggest we will be here forever if we keep doing these marginal expansions. The debate will be forthcoming I assume about affordability and taxes. Perhaps this is a sign I've been in the building too long, I've seen times at budget or revenue crisis and there's a legitimate debate on better solutions. What is striking to me is that some in this building that stood tallest during tough times to say what we could and could not afford, did nothing to rein in the special interests in health care. The pharmaceutical industry is the best in the country at basically stealing from taxpayers. They are paid too much for their product because they do such a good job manipulating and corrupting the public policy process. In Washington they have almost double the number of lobbyists as members of Congress.

Sen. Montigny said, We are still having a debate about what this basic health insurance package will have, and how much it will cost. We've basically said, when the question was asked, how many will be covered, the answer has been done, we just don't know yet. Let us implement it. This is a simple question and I implore members to vote for it.

Rep. Walrath said, The gentleman from Uxbridge has asked to put this before a group of members of the Convention to look at this language further. There is nothing simple about understanding all of the things that go into the coverage of health care. We did pass a bill and within three years we will have universal coverage. Real coverage for people. We will subsidize the cost of health insurance for those people who cannot afford health insurance. We also revise and rehab the operation of the uncompensated care pool so that those people that really do not have health insurance – undocumented people and maybe some that can't afford to co-pays – can go to the pool. For most people, we won't have that anymore. There will be health care on a routine basis. We are improving the system and improving the medical rates. The things that go into a federal waiver would have to go into the mix before we figure the cost. Not only billing but everything else is exceedingly complex and to rush any of the changes, you can make some errors that would actually cause us more problems. I am really concerned about the provision that talks about the fact that after the Legislature and officials enact and implement such laws, that it would be subject to approval by voters in a statewide election. That concerns me. I am going to support the gentleman from Uxbridge that we look at further language subject to this amendment.

Rep. Walrath said, There is a substantial number of employers and employees in the Commonwealth who are receiving coverage through self-insured plans. For those reasons and others as well, I think this complex issue needs more review and I would support the motion.

The chair recognized Rep. Smizik.

Rep. Hynes said, Point of parliamentary inquiry. The previous speaker spoke to sending this to a special study. Is the motion made by the gentleman from Uxbridge still before this body?

The chair said, The motion has been withdrawn.

Rep. Hynes said, Point of parliamentary inquiry. In light of that response, what then is the motion before this body?

The chair said, Again, agreeing to this amendment.

Rep. Smizik said, Both houses have achieved a remarkable feat this year of bold, innovative plans of providing thousands with needed health care. The work was unbelievably difficult and the Legislature passed the very best bill that was possible. The only problem is that was not enough. Certain parts of the bill still need to be implemented. First we have to make sure the bill is being implemented. This amendment would be both the impetus and the model for future health care plans that will evolve. This merely reiterates what our legislative responsibilities are and requires us to keep working on those responsibilities. Citizens shall have affordable care and the necessary preventive care for chronic health care needs, mental health care and prescription drugs. This amendment gives us the impetus to do that. It has been said many times that we have the most expensive health system in the world. I personally have someone in my family who had a stroke. She was hospitalized and needed rehabilitation services. She will spend the rest of her life in a nursing home because she didn't receive the medical care that she needed at the right time. This should not happen in any society. We know that many who need prescription drugs do not receive them. We as legislators must work for a solution. We have the framework and we must go forward.

Rep. Blumer said, I rise in support of this amendment. Health care is a right. Just as much a human right as our right to breathe. Just as much a right as any other right that we have. In western nations, in eastern nations, southern and northern, their governments have seen fit to make sure there was access for all of their residents. This amendment falls right in line and puts Massachusetts clearly in a leadership position in this country. We've done a unique thing this year. We have indeed taken the steps to write into the law all of the fine print that is necessary to make health care a basic right in this Commonwealth. When we go back to John Adams of the word cherish when it comes to education, that really is a word that we should apply here. Every morning when we wake up and see members of our families, out in our communities when we talk to people, we need to know that people's needs are cared for and that they do have the access to the kind of care that you and I can get.

Rep. Blumer said, We are among the most wealthy states. We can if we choose to do so make health care a true right and tangible for everybody in our state. For my infant granddaughter who was born seven weeks premature and is now as robust as any other, but had she not had access to neonatal care, we may not have been able to see her smile. If we believe in the law and humanity, then we will go forward.

Rep. Wolf said, This constitutional amendment in no way undermines the work we have done. It enforces it. It says the bill that we have passed is going in the right direction. As it goes in the right direction, we must maintain that direction. There was a previous vote in 1988 and the people who voted on it meant it very seriously, but over a time when the economy tanks and the funds weren't so available, the support for that legislation eroded, and eventually it disappeared. We could not afford for this to happen. We know that health care even more than in 1988 has become a very major issue. More people are uninsured. Health care is very expensive and increasingly expensive. The cost of prescription drugs rise every year and many members of our community will have to make a decision whether they will eat or take their medicine. At least, I think the people of the Commonwealth will be happy to debate that. There has been strong public support for this amendment. Over 75 percent of Massachusetts residents favor a health care amendment to the Constitution that is general and says that all of us in this

Commonwealth have a right to the health care we need. It is not only humane but is necessary.

Rep. Eldridge said, I have a couple reasons for supporting this. This amendment would essentially establish health care as a right and I've given a little thought to what does that mean, what does a right mean. I view health care as being a right as a public good. Something that everybody needs. I would submit that health care clearly is the public good, much like education as a public good. I can't imagine providing education to the children with every individual parent having to make the decision about sending their children to private schools, instead of public schools. The other example is marriage, is that individuals having established their relationships with individual contracts. We have the provision for every couple about how to get married.

Rep. Eldridge said, I was very pleased with the health care bill we passed. I also feel the health care bill didn't go far enough and it didn't establish health care as a right. We need the Massachusetts Constitution behind us, perhaps pushing us a bit. Providing health care as a right is necessary and it's time. Massachusetts spends the highest number of dollars on health care per capita. The way to move back is to take the first step with the bill we passed, but I do think it is time for this state to adopt health care as a right.

Sen. Moore said, I will now renew my motion for a special committee of the House and Senate to review this matter.

The chair said there would be 10-minute limit to the debate, three minutes per member.

The chair recognized Sen. Montigny.

Rep. Peterson said, Point of parliamentary inquiry.

The chair said Sen. Montigny had been recognized.

Sen. Montigny asked for a call of the yeas and nays when action on the matter is taken.

During the counting, Sen. Travaglini said, Emile, where'd you go to school?

There was support for a roll call, with 4 in the first division, 13 in the second, 4 in the third, and 19 in the fourth.

Rep. Mariano said, I arise in favor of the senator's motion to refer this matter to a study. We have put forth a very extensive. It is a piece of legislation a lot of us feel very strongly about. We do feel it is funded equitably. It has taken an awful lot of effort to bring all parties to the table to come up with this plan. We have asked employers to participate. We have asked individuals to take responsibility. When you begin to codify, you're dealing with a rigidity, an inflexibility that makes implementation very, very difficult. My real concern is with the rigidity of a constitutional amendment, you lose the ability. You no longer can deal with the problems that come up with implementation in a swift and efficient manner. We've heard everyone talk about the need and desire to make sure everyone is covered. I think we all agree in the purpose of what we're trying to do.

The chair said the gentleman's time had expired.

Sen. Pacheco was recognized.

Rep. Peterson said, Point of order. Does this motion constitute final action as defined under Article 48.

The chair said, It will be designated to a special committee. The recommendations and the actions are hard for me to predict the outcome, so it is difficult for the chair to predict the outcome.

Rep. Hynes said, Point of parliamentary inquiry. Is the matter before us to commit the matter to the Joint Committee on Health Care Finance, could there be an amendment for the committee to report back to this convention on November 9 its findings?

The chair said the motion was not amendable.

Rep. Travis said, If that commission does not report before the end of the year it will never come before this Constitutional Convention. Is that correct?

The chair said, That is correct.

Rep. Hynes said, You said it could be part of this committee to report back at a time certain, how does one suggest to the committee it should report back?

Pres. Travaglini said, The speaker and I have talents that manifest themselves occasionally over some of these chairs, and rest assured that'll be the case.

Sen. Jehlen said, If this is not going on in this Constitutional Convention or before the November election, when if ever it would go to the ballot? Would it be dead forever.

The chair said, The short answer is the campaign would have to start all over again. If this study is ordered, this ballot question is dead? That's correct. So a vote for this study is a vote against the ballot question.

The chair said any action taken up until the end of this calendar year will allow it to be on the ballot the next cycle. I think the statement the lady is making is not accurate. The chair said, It would all depend on the response on the Secretary of State, so it is not definitively deceased.

There was laughter.

Sen. Pacheco said, Mr. President, thank you for that clarification. The motion that is before us is to essentially place this very, very important issue into a study. There's no timetable on the study. There's nothing that requires the study to come back by the end of the year. If you care about this issue, that we would make sure as part of our Constitution that the people will have a right to vote on this, we should reject this study. And we should adopt the underlying amendment.

Sen. Pacheco then read the amendment, then said, We have no guarantee. All of us that have worked on health care for years, we have no guarantee that it will be eventually implemented the way we all hope it will be. This is the guarantee, this

language that will be part of the Constitution if the people so choose to agree with us. I ask you to reject the amendment and send what the people have sent to us back to them.

The chair said the remaining three minutes of debate would go to Sen. Spilka.

Sen. Spilka said, I think that this is something that we as a legislature ought to be and are proud of this accomplishment and that is why I urge members to vote in favor of this study. I am in favor of this amendment, the language basically, but I feel it's very important that we see how this reform plays out.

Sen. Spilka read from the amendment.

Sen. Spilka said, This is obviously the same language. Our health care reform takes this into account in a much more specific way. I urge the members to give it time. For the study to take place would be very important. I know a lot in the gallery think it's dead in the study on arrival. I have faith in the president's and the speaker's talents. I urge the body at this point, let's see how the reform that's very detailed, let's let the committee look at this and come back with recommendations as how to proceed. The reform that we did will ensure that no resident goes without health care, now we should be focusing our attention on overall costs. We as a state need to be doing more. The standardized coding bill I have would overall lower the cost and raise the standard.

The chair said, Time for debate had expired.

The clerk began to call the roll, the question being on sending the amendment to a special study.

23 SENATORS VOTED IN THE AFFIRMATIVE, 16 IN THE NEGATIVE.
95 HOUSE MEMBERS VOTED IN THE AFFIRMATIVE, 60 IN THE NEGATIVE.

BY A ROLL CALL VOTE OF 118-76, THE MATTER WAS DESIGNATED TO THE JOINT COMMITTEE ON HEALTH CARE AND FINANCE. Time was 3:21 pm.