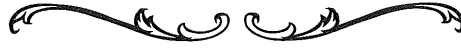




The Assembly
State of New York
Albany



THE HONORABLE CARL E. HEASTIE, SPEAKER
PRESIDING

RECORD OF PROCEEDINGS



TUESDAY, MAY 22, 2018

3:12 P.M.

JOINT SESSION

PRESIDING OFFICER DANDLES: This Joint Session of the New York State Legislature will be in order.

Visitors may join us in reciting the Pledge of Allegiance.

(Whereupon, Presiding Officer Dandles led visitors and members in the Pledge of Allegiance.)

Ladies and gentlemen, the Acting Clerk will call the roll of the members of the Legislature.

(Whereupon, the Acting Clerk called the roll.)

The Acting Clerk has informed me that there are 170 members present and there is a quorum.

Pursuant to Section 41 of the Public Officers Law, the Senate and the Assembly are meeting in Joint Session for the purpose of appointing by Joint Ballot an Attorney General of the State of New York.

Nomination for Presiding Officer of the Joint Session of the Legislature are now in order.

Mr. Morelle.

MR. MORELLE: Thank you. Thank you Presiding Officer. I should know what to call you, I'm sorry, Madam Presiding Officer.

(Laughter)

It gives me a great deal of pleasure to nominate an extraordinary New Yorker, a distinguished member of the Legislature and a great friend. I nominate Carl Heastie of the Bronx.

THE CLERK: Are there any other nominations for Presiding Officer?

All in favor of the nomination signify by saying aye; opposed, nay.

Mr. Heastie is hereby declared Presiding Officer of this Joint Session.

(Applause)

SPEAKER HEASTIE: The Chair recognizes Assemblyman Morelle for the purpose of offering a resolution.

MR. MORELLE: Mr. Chairman, I offer the following resolution and move its adoption.

SPEAKER HEASTIE: The Clerk will read.

THE CLERK: Joint Resolution No. 3. Resolution of the members of the Legislature meeting on May 22nd, 2018 for the purpose of filling the vacancy in the Office of Attorney General, providing for the procedures to be observed at such meeting.

SPEAKER HEASTIE: On the resolution, all those in favor signify by saying aye; opposed, nay. The resolution is adopted.

Mr. Flanagan for an opening statement.

SPEAKER HEASTIE: John, we wanted to welcome you back.

(Laughter)

MR. FLANAGAN: Thank you very much. Thank you to the Speaker, to all of my colleagues and, fundamentally, I'm in awe coming back for a lot of reasons, a lot of reasons, and I want to start by saying thank you to all of you and I recognize, now completing my 32nd year in the Legislature, 16 years in the Assembly, 16 years in the Senate, one thing has remained constant: Wayne Jackson still looks like he's 25 years old.

(Applause)

So I'm going to follow his lead and I'm going to eat 50 bags of M&Ms every day and I'll be just fine.

(Laughter)

But when we get -- let's -- let's focus on what's real, what's important and what's practical. We are here doing the People's business. And I'm going to repeat, we're here doing the People's

business. And I'm going to digress for a second, because I get to say this in the Senate, but I'm going to say it now in a Joint Session, because we don't get together that frequently as a Joint Session. Everyone in this room should be proud of who they are, proud of the fact that you're an elected official, proud of the fact that you're a public servant, whether you're a Democrat or a Republican, or you serve in the Assembly or the New York State Senate, because this is what it's all about. And now we can't overlook the fact, nor should we, that we're here under unusual circumstances, and that's why we have a Constitution, that's why we abide by the rule of law and that's why we're transacting the People's business here again today.

To my colleague and my friend, the Speaker of the New York State Assembly, Carl Heastie. Carl, I want to thank you for your leadership. I want to thank you for not only acknowledging, but adhering to the rule of law. And people should understand, outside of these walls there's a process. You get together, you figure out how to do it. You look at the Constitution, you look at the New York State statutes, then you get a good team of smart people together and you make sure that it's done in a right way so at the end of this Session today we will not only have appointed an -- excuse me, Interim Attorney General, but will have done so in a way that people can be proud of.

So the process involved a number of our colleagues, and the four colleagues who served from our Majority in the Senate, Senator LaValle, Senator Little, Senator Murphy, Senator Gallivan. I

want to thank them. And they came back and reported that the process worked very well. We had stellar candidates, it was open to the public and everyone had a chance to see. But for us in the Senate Majority, we had a couple of very basic things. Number one, we wanted to have a good quality, talented and competent person serving as Interim AG. Number two, equally if not more important than number one, whomever that person may be, we wanted to make sure that they were not running for this office in November. That was a very important threshold test for us because we, and I think like many people in this room believe, that the public should make that decision.

So, we have followed, again, the rule of law, but we're giving the public, our constituents, our residents, our taxpayers a chance to make the real decision when it comes to November. And all of us know over the next couple of days both the Republicans and Democrats have their Convention where they will deliberate and we will both come up with candidates.

Now, as to our nominee for today, I had a chance to speak with Ms. Underwood on the phone and a chance to talk to her in person. She's competent. She's capable. She has a stellar record and she will be a terrific Interim Attorney General. And we're lucky in that respect. So as we move forward, not only do I wish her Godspeed, but I hope that she understands what the role of the Attorney General is and what the role of that Office is, and that we, meaning the Assembly and the Senate, that we enact the laws. And they administer the law. They want to make the law, they should be

coming to us. So, again, I would repeat, we are the ones that enact the law and we want professionals serving in that capacity to make sure that the will of the people as represented through the Assembly and the Senate gets properly implemented.

So I want to, again, compliment the Speaker. I want to thank all of my colleagues and I want to wish Ms. Underwood not only congratulations, but good luck, because good luck is never out of order.

Mr. Speaker, thank you very much.

SPEAKER HEASTIE: Thank you very much, John.

(Applause)

Nominations to fill the vacancy in the Office of Attorney General are now in order.

The Chair recognizes Mr. Lentol.

MR. LENTOL: Thank you, Mr. Speaker, and colleagues. As Senator Flanagan pointed out, the Constitution is very clear. And it gives the Legislature the power, the authority and the task of filling a vacancy in the Office of Attorney General. It is an important task, one Speaker Heastie and the Legislature takes very seriously. We had many outstanding applicants, two from this Chamber who demonstrated their interest in serving New Yorkers as the People's lawyer. And we also had a wonderful panel on our Committee from both the Assembly and the Senate. And I was proud to serve with Senator Ken LaValle and the members of the Senate, both Democrat and Republican, who took their job very seriously in

finding the best applicant. But I was most proud, I have to admit, of my Assembly colleagues, Mrs. Peoples-Stokes, Assemblywoman Peoples-Stokes, Assemblymember Dinowitz, Assemblymember Titone and Assemblymembers Curran and Mr. Barclay who served very well and offered a great deal of advice during this process.

It was not an easy choice to make, ladies and gentlemen, but after last week's hearings and our own internal discussions, we have made a decision and I'm pleased today to nominate Barbara Underwood as New York's Attorney General. Ms. Underwood has demonstrated she holds the knowledge, the experience and the skills needed to win our support for the nomination as New York State's next Attorney General.

Ms. Underwood finished first in her class at Georgetown University, moving on to hold two important Clerkships, one with the Chief Judge of the United States Court of Appeals and the other with Supreme Court Justice Thurgood Marshall. Barbara held executive positions in Queens and Brooklyn District Attorney's Offices and served as a trial attorney at the Manhattan District Attorney's Office. She served in the United States Attorney's Office as well, and was appointed New York's Solicitor General by former Attorney General Cuomo in 2007, an office she still holds today. Most importantly though, ladies and gentlemen, she was the first woman appointed United States Solicitor General by President Bill Clinton. When we approve her today, she will be the first woman New York State Attorney General.

(Applause)

I have -- I have more, Mr. Speaker, but I'll suffice it to end with those applause and say that Barbara Underwood will make an outstanding Attorney General for New York State and I am honored to officially nominate her for that position.

SPEAKER HEASTIE: Thank you.

For the purposes of seconding the nomination of Barbara Underwood, the Chair recognizes Mr. LaValle.

MR. LAVALLE: Thank you, Mr. Speaker. It is with great pleasure to second this nomination. It started, and as Assemblyman Lentol talked about, this is a legislative process that leads to our appointing a (sic) Interim Attorney General. As everyone knows all too painfully, the Office became open under very unusual circumstances. And so, both Assemblyman Lentol and I Chaired a group of our colleagues. In the Senate we had Senators Little, Murphy, Gallivan, Hoylman and Dilan who sat and asked questions of all of the nominees. There were, I believe, 13, all-in-all, and a lot of great questions were asked and people answered them in a very astute way and all -- everyone had incredible credentials coming before the Committee.

Most everyone realized that the Office became open under very painful circumstances. And so, having an individual who could have continuity, knew the Office and the personnel was a very important criteria. As a matter of fact, as people came forward to testify, they all spoke incredibly high on Barbara Underwood.

Everyone said, *You know, if Barbara Underwood doesn't get this, then maybe you should consider myself.* And they -- they did defer to her. And one of the nominees, one of the last, said, *You know, these are very unusual circumstances* and spoke very openly and candidly about why the Office was open.

And so, Barbara Underwood has great, great credentials. Also, has been there and can lead the Office to a place for an elected Attorney General, and that will be taking place very shortly, the process. So, it's my pleasure to second this nomination of Barbara Underwood.

SPEAKER HEASTIE: Thank you, Mr. LaValle.

For the purpose of the second seconding of the nomination of Ms. Underwood, the Chair recognizes Ms. Stewart-Cousins.

MS. STEWART-COUSINS: Thank you, Mr. Speaker. And I rise to second the nomination of Barbara Underwood. I also want to thank my colleagues for doing what the Constitution told us to do. I want to thank everyone who put themselves in the process and, certainly, my colleagues who were wishing to be considered because of their capabilities. But I think we got it right. I know we got it right.

When I spoke with Ms. Underwood and she reached out before sitting for the hearings, she wanted to tell me and all of us that she loves what she does. And she's done it for more than a decade, and that every day is an important day where she understands

and considers the rule of law first and how to best serve New Yorkers. That's who she is. She talked about the need for continuity, which we all know is so important, and she talked about the fact that she wasn't looking for more than to just serve during this critical period. She's broken glass ceilings before and under these very difficult circumstances, I'm certainly happy that she will be breaking yet another glass ceiling. Yes.

The other thing that I wanted to say is not only was I impressed when I spoke with her, but the people who have worked with her are incredibly impressed by what she represents and how she does her job. In speaking with people, who will remain nameless, I said, *Tell me what you really think, because you know I really want to know what you really think.* And the only adjectives were, "wonderful", "competent" and somebody who understood that what you do today has ramifications not just for today, not just for the week, but for possibly generations to come.

In short, Barbara Underwood knows that it matters. What we do here every day matters. But what we are doing today will make a huge, huge difference. Not only are we breaking a glass ceiling, but we are setting our standards high. I second the nomination.

SPEAKER HEASTIE: Thank you, Ms. Stewart-Cousins.

For the purpose of the third seconding of the nomination of Ms. Underwood, the Chair recognizes Mrs.

Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. What an honor and a pleasure to serve in this capacity. To select our next Attorney General was an honor to serve with Mr. Lentol, certainly, and certainly Mr. LaValle, as well, and my other colleagues. But to use Barbara Lifton's I guess, idea, about who we should be looking for, I went into this thinking that we should select a woman, but Barbara says, *No, we shouldn't just select a woman. We should select the most qualified candidate.* And, Mr. Speaker, I believe we have done that by selecting Barbara Underwood.

Many people know she took this job under a lot of strange circumstances, but since she's been there, she already has 11 women that are in her senior membership of her staff of 1,800, which I think speaks volumes to when you give women an opportunity, they share that opportunity with other women. It's exciting to know that Barbara not only has a lot of qualifications from her previous careers, but she has stellar qualifications from her career as Solicitor General.

So, Mr. Speaker, it is my honor and my pleasure to be at this moment in history when most people would have never thought that this would happen. Our State has been around a long time, over 200 years. For us to be here and have this opportunity to second this nomination for this phenomenally-skilled woman, it is my honor and my pleasure to second the nomination for Barbara Underwood for New York State Attorney General.

SPEAKER HEASTIE: Thank you, Mrs.

Peoples-Stokes.

For the purpose of the fourth seconding of the nomination of Ms. Underwood, the Chair recognizes Mr. Kavanagh.

MR. KAVANAGH: Thank you, Mr. Speaker. I'm very proud to rise to join those seconding the nomination of Barbara Underwood, the Acting Attorney General as the Interim Attorney General not just because she's a -- not just because she's a resident of the 26th Senate District, which I represent, but also because of her extraordinary qualifications for this position.

In the weeks since Ms. Underwood became Acting Attorney General, she's shown dedication, grace and courage in what is undoubtedly one of the most challenging professional situations anybody could find themselves in. But I think I and many of our colleagues here today are not surprised, because Barbara Underwood did not just fall into the role of Acting Attorney General, she earned it, and she's earned the right to be named Interim Attorney General.

Some of my colleagues have spoken already of her -- of her resume, of her extraordinary career in law. She graduated first in her class at Georgetown Law school. She Clerked for Chief Judge David Bazelon of the United States Court of Appeals for the D.C. Circuit, and for U.S. Supreme Court Justice Thurgood Marshall. She held leadership roles in the Queens and Kings County District Attorney's offices. She was Counsel and Chief Assistance to the U.S. Attorney for the Eastern District of New York. She served as Acting Attorney General -- sorry, acting Solicitor General and Principal

Deputy Solicitor General for the United States from 1998 to 2001 and most recently, of course, has served as New York State Solicitor General for the last 11 years.

And more than just her resume, although I think we can all agree it's quite a resume, Barbara Underwood provides something that no other Interim Attorney General could provide, and that is the stability and the trust of the extraordinary men and women who work every day in the Attorney General's Office to bring justice and the rule of law to this State. She's been closely involved in the work of the Attorney General's Office. She knows the staff, the cases, the body of work from the last 11 years. She -- I know that she can be trusted by the members of both Houses of this Legislature and by the people doing the work day in and day out to continue that work.

So, it's not just her demonstrated life-long commitment to the People's work. It's not just her brilliant mind. It's also the calming force, the continuity and the leadership that she brings to that Office. And I know that although we're going to have a very important election to choose somebody to serve in this role for the next four years and that's no doubt going to be a competitive one and everyone in this State is going to have an opportunity to participate in that, I know that we need not just stability and continuity, but leadership in that role right now given the extraordinary work that that Office has to do day in and day out. So, I'm very proud to join those seconding the nomination of Barbara Underwood. Thank you.

SPEAKER HEASTIE: Thank you, Mr. Kavanagh.

For the purposes of the fifth and final seconding of the nomination of Barbara Underwood, the Chair recognizes Ms. Simon.

MS. SIMON: Thank you, Mr. Chair. It is my great honor and privilege to second the nomination of Barbara Underwood to be the Attorney General of the State of New York. From just a brief glimpse at Barbara Underwood's resume, you know that she is truly exceptional. She is exceptional in the law, in protecting the civil rights and liberties of New Yorkers and all Americans, in her leadership that places great value in developing and promoting talented attorneys. Under her leadership, she has given real substantive opportunities to women and people of color.

She is exceptional in her profession. Barbara Underwood is one of the finest attorneys in our country, arguing before the U.S. Supreme Court 20 times, including one of my favorite cases interpreting and upholding the Americans with Disabilities Act, *the PGA Tour v. Casey Martin* case confirmed that talent and ability does not negate the protections afforded to people with disabilities for them to achieve at the highest levels of their ability. At the Brooklyn District Attorney's Office, Ms. Underwood made the Appeals Bureau truly outstanding. She was beloved and inspired the ADAs and staff alike.

In 2012, the American Inns of Court honored her with its esteemed Professionalism Award for the Second Circuit. It is

important for New Yorkers to know what a big deal that is. In honoring her, they described the award as one that honors a quintessential mentor. The honoree is a senior lawyer who has for a generation or more has taught, supervised and mentored developing practitioners in government, private practice or public service by word and by example. He or she is a lawyer's lawyer, a master of the craft whose life and work reflects civility, competence and ethical behavior, and whose recognition by peers in the legal profession is overdue.

A long-term Brooklyn resident, I am so honored to represent her in the New York State Assembly. I believe I speak for all New Yorkers in saying how very fortunate we are to have someone so worthy of our trust to break this glass ceiling and be our Attorney General.

SPEAKER HEASTIE: Thank you, Ms. Simon.

Are there any other nominations?

There being none, the nominations are concluded.

The Clerk will call the roll.

(The Clerk called the roll.)

Mr. Barron to explain his vote.

MR. BARRON: I thought long and hard on this one. There's no question in my mind that Barbara Underwood is impeccably qualified. For the record, I have not supported Andrew Cuomo when he was the Attorney General, nor Eric Schneiderman when he was the Attorney General. What's needed most out of the Attorney General's Office to me is independence; independence,

boldness, courage to even litigate and prosecute cases for those who help to get you there and they may not want you to, but you have to still stand strong and do that.

So, I was observing this whole process; there's no question, we're doing the Constitutional obligation that's called upon us. But I knew from the very beginning that it would conclude like this because I also knew as we go through a public process, there is a private process between the powers that be in the Democratic party, the Governor and the powers that be in the Democratic party. I knew this was going to be Barbara Underwood and I knew that leading candidate in the beginning was going to be told to wait until the convention. And everybody was going to get around that candidate, and I would predict that that would be Tish James. I despise processes that have a very Democratic public face and a very private backdoor deal made by those in power. Any time you got Al Sharpton, Cardinal Nolan -- Dolan and Governor Cuomo supporting somebody, you better think twice.

SPEAKER HEASTIE: Mr. Barron, how do you vote?

MR. BARRON: I'm not finished.

SPEAKER HEASTIE: Your time's up.

MR. BARRON: So I just think that the process is flawed.

SPEAKER HEASTIE: Mr. Barron, how do you vote?

MR. BARRON: I vote no and I think we should reconsider the process and have independent people in these -- (inaudible/mic was shut off.)

(The Clerk called the roll.)

SPEAKER HEASTIE: Mr. Griffo to explain his vote.

MR. GRIFFO: Speaker, thank you for your hospitality today. This is the third time that the Legislature has convened in accordance with the Constitution to fill a vacancy in Statewide office. It's really under a 90-year component of the State Constitution. I think it is incumbent upon us to revisit and to reconsider that element of the Constitution. We are fortunate today to have a highly qualified individual willing to serve in an interim capacity with an election just six months away. We need to follow that prototype, though, for the future, so I'm hopeful that we will consider a Constitutional change now as we look at doing this type of activity in accordance with the existing Constitution. Accordingly, today, I vote for Barbara Underwood.

(The Clerk called the roll.)

SPEAKER HEASTIE: Mr. Lentol to explain his vote.

MR. LENTOL: Thank you, Mr. Speaker. I didn't intend to do this, but with all due respect to my colleague from Brooklyn, I want to thank you, Mr. Speaker, for making this a real open process and a Democratic one, otherwise I would not have

agreed to serve as the Chairman of this Panel in order to select the most qualified candidate. So, certainly, we have done our job and we have found that most qualified candidate and I proudly vote for Ms. Underwood.

(The Clerk called the roll.)

SPEAKER HEASTIE: Ms. Malliotakis to explain her vote.

MS. MALLIOTAKIS: Thank you, Mr. Speaker. I also want to rise and thank you for the process that you have conducted here. You know that on this side of the aisle, we are often critical of the process as it takes place, but when there was speculation and rumors that this was going to be a backroom deal to give one particular candidate an advantage in the November election, I expressed my outrage, as did others. But the Speaker made sure that we were going to keep in tact the Acting Attorney General to allow her to complete the term, because she is very capable to do so, and allow the process which will begin tomorrow with our nominations in our respective parties, and of course ending with the people deciding in November who the next Attorney General is. And for that, I want to say thank you to the Speaker, thank you to the legislative leaders who came together to make sure that it's the people and not those in this room who decide who our next Attorney General is.

Thank you so much, and I also agree that we need to look at this further and look at changing the Constitution, changing the Public Officers Law, to ensure that in a vacancy again, because

we've already had one Comptroller vacancy, we've had now an Attorney General vacancy, that it goes straight to the people in a special election or in the General Election of that year. Thank you.

(The Clerk called the roll.)

SPEAKER HEASTIE: Mr. Rivera to explain his vote.

MR. RIVERA: Thank you. This is the second time I go through this process. So, the recent experience gave us this opportunity. So, I -- I -- I'm going to be fair and I'll try to be as quickly as possible. Senator Flanagan, I congratulate you. My Speaker, I congratulate you, but I -- I have to share with all of you that I thought that I was going to be part of a process where I can, like the previous process, the Governor at that time tried to intimidate us into accepting his selection for the Comptroller. We did not allow him to do that. He tried to intimidate us, but I got to congratulate my Governor, Andrew Cuomo. You know how to use media and to -- getting us into what we're doing today in a way, but you did it differently. You did not try to intimidate us. I'm going to confess that I reached out to at least one person - at the risk of getting in trouble with anybody - I reached out to Gianaris. I said, *Are you going to run?* And he said, *I'm very loyal. I'm a loyal soldier. Let's see -- let's see the process play itself out.*

Here we are -- are we going to select? Are we going to select? I was going to boycott this until the General Election. I was going to boycott this 'til the General Election, but in all fairness, it's

still a process. It's not perfect, like some of our colleagues have indicated, and we got to continue to make it more perfect, more Democratic. In view that we have to do this and in view that I have heard not only here, but throughout this whole process about the qualification of Ms. Underwood, that I feel I join all of you in voting yes for Ms. Underwood. Thank you, Mr. Speaker.

SPEAKER HEASTIE: Thank you.

(The Clerk called the roll.)

Before -- before I announce the results, I just want to say a couple of things. One, I'd like to thank Senator Flanagan here to my right, Senator Stewart-Cousins and Assemblyman Kolb, who was here. For when this did happen, I did reach out to the other three Leaders to say that I think it was important for the Legislature, since the Constitution had given us this task, as it said, "We shall", not may, that we shall, that it was our responsibility to do this task. And as I said two weeks ago, I'll say it every single day, do not believe what you read in the newspapers. There was no deal, there was no agreement. This was an open process. Anyone who wanted to apply was free to do that. And as they say, the cream rises to the top and to you, Ms. Underwood, thank you for wanting to do this. Thank you for wanting to serve.

And with that being said, the Chair announces that Barbara D. Underwood has received 190 votes, a sufficient number for appointment as Attorney General of the State of New York. A quorum of all members of the New York State Legislature being

present and voting by Joint Ballot and Barbara D. Underwood having received the majority of the votes of the whole number of such members, the Chair declares that Barbara D. Underwood has been duly appointed Attorney General of the State of New York for a term to expire on December 31st, 2018.

Congratulations, Ms. Underwood.

(Applause)

Mr. Morelle.

MR. MORELLE: Mr. Chairman, I move that this Joint Session of the Legislature adjourn *sine die*.

SPEAKER HEASTIE: Upon the motion of Mr. Morelle, this Joint Session of the New York State Legislature is adjourned *sine die*.

(Whereupon, at 4:13 p.m., the Joint Session of the New York State Legislature was adjourned *sine die*.)