

DAILY NEWS

Daily News Blog, May 29, 2008

Silver The Tie-Breaker?

By Elizabeth Benjamin

If nothing else, this morning's Rockefeller Institute forum on succession and the powers of the lieutenant governor in New York, while fascinating (in a wonky sort of way) raised more questions than answers.

Among other topics was the discussion of whether Senate Majority Leader Joe Bruno, as acting LG now that David Paterson has ascended to replace Eliot Spitzer, now has, as he asserts, two votes.

"In these times, with the Senate majority at 32, with a one-vote majority, that is very compelling, Bruno said. "Because if you think about it, the most important vote in the Legislature, in either house, is the vote that elects the leader."

"Constitutionally, the lieutenant governor in the Senate has the deciding vote," Bruno continued. "So, with the scholars who study the Constitution, they say, as the majority leader, you have a vote. And, as acting lieutenant governor, in certain ties, you have a vote. Do you have two votes?"

I think the Constitution is very clear, it would be lovely if you would verify it, the answer is 'yes.'"

Bruno didn't stick around for the rest of the discussion, which is probably all well and good, because he didn't get to hear Canisius College Political Science Prof. Peter Galie argue that the fact the majority leader seems to have two votes is "a good reason why we need to change the Constitution."

Galie said that by his reading of the Constitution, Bruno only gets two votes in votes on proce-

dures, not policy. But the leadership vote is a procedural vote, and, as Bruno said, it's really the only one that matters.

Galie also brought up this question: If the Senate is tied at 31-31 after the fall elections — a distinct possibility — and the majority leader's post disappeared "like a Cheshire cat," who is the tie-breaker?

"Now comes time to elect a new majority leader," Galie said. "There is none. If there is none, then there is no lieutenant governor and there is no way of remedying (a tie). Does that mean Shelly Silver walks over to cast a vote in the Senate and then walks back?"

Answer, according to Galie: It's possible.

The Senate Democrats have [threatened to sue if Bruno](#) ever tries to exercise his two-vote power (that would, of course, presume he's running for re-election and wins).

In the meantime, [Assemblyman Robin Schimminger](#), a Buffalo-area Democrat, has proposed a constitutional amendment to address the succession problem. It would allow an LG who moves into the governor's spot to appoint his own replacement in the No. 2 post, subject to confirmation by the full Legislature.

The measure has been approved by the Assembly, but never saw daylight in the Senate. That's not going to happen anytime soon, either, as Bruno, who controls the movement of bills to the floor, smilingly told Schimminger:

"I'm being a prophet and will suggest that legislation will not pass in the Senate."

You can listen to the forum, which lasted about three hours, [here](#). In the interest of full disclosure, my father, Prof. Gerald Benjamin, who is an expert on state government, also participated.