ALBANY, NEW YORK

March 14, 1994

3:32 p.m.

REGULAR SESSION

SENATOR NICHOLAS A. SPANO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT SPANO: Senate will come to order.

Please rise for the Pledge of Allegiance to the Flag.

(Whereupon, the Senate joined in the Pledge of Allegiance to the Flag.)

For our prayer today, we have the Executive Director of the United Jewish Organizations of Williamsburg in Brooklyn, Rabbi David Niederman.

RABBI DAVID NIEDERMAN: Distinguished members of the Senate of our great state of New York. The Bible tells us (quoting in Hebrew), which means that the heart of kings and rulers are in the hands of God.

What does it mean?

God gave the ability to a person that he can do whatever he wants; but if the well being of others depends on what you are doing or not doing, then God himself is looking upon you.

And I hope and pray that God

gives you the wisdom and strength to lead this important body for the well being of all of New York State.

Amen.

ACTING PRESIDENT SPANO: Thank you, Rabbi.

Reading of the Journal.

THE SECRETARY: In Senate, Friday, March 11. The Senate met pursuant to adjournment. Senator Bruno in the chair upon designation of the Temporary President. The Journal of Thursday, March 10, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT SPANO: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Communications and reports.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr.

President. On behalf of Senator Velella, on page 9, I offer the following amendments to Calendar 62, Print Number 6398, and I ask that bill retain its place on the Third Reading Calendar.

I don't think my mike is plugged in. Can you hear me?

ACTING PRESIDENT SPANO: We got you, Senator Farley.

SENATOR FARLEY: On behalf of Senator Volker, on page 12, I offer the following amendments to Calendar Number 258, Senate Print 1142, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT SPANO: So ordered.

SENATOR FARLEY: On behalf of Senator Libous, Mr. President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Print Numbers 2344B, 3693, 4001, 4088.

And I -

ACTING PRESIDENT SPANO: So ordered.

Any other motions, resolutions, substitutions?

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. On behalf of Senator Levy, on page 10, Calendar Number 168, Senate Print 5435B, would you place a sponsor star on that, please.

ACTING PRESIDENT SPANO: Star will be placed at the request of the sponsor.

Secretary will read the substitutions.

THE SECRETARY: On page 5, Senator Nozzolio moves to discharge the Committee on Elections from Assembly Bill Number 5631 and substitute it for the identical Calendar Number 340.

Also on page 5, Senator Nozzolio moves to discharge the Committee on Elections from Assembly Bill Number 6312A and substitute it for the identical Calendar Number 341.

On page 9, Senator Stafford moves

to discharge the Committee on Local Government from Assembly Bill Number 4490C and substitute it for the identical Third Reading 134.

ACTING PRESIDENT SPANO: Substitutions ordered.

Senator Johnson, do you wish to -

SENATOR JOHNSON: Mr. President. As long as you called upon me -- I feel honored -- I should respond in kind.

It might be a bit premature, but on page 14, I'd like to place a sponsor star on Calendar Number 285, Print Number 4369A.

ACTING PRESIDENT SPANO: Bill is starred at the request of the sponsor. Nice to hear from you, Senator Johnson.

Senator Present.

SENATOR PRESENT: Mr. President. Would you recognize Senator Daly.

ACTING PRESIDENT SPANO: Senator Daly.

SENATOR DALY: Mr. President. You have a resolution at the desk -

ACTING PRESIDENT SPANO: Yes, we do, Senator Daly.

SENATOR DALY: -- commemorating St. Patrick's Day.

ACTING PRESIDENT SPANO: Secretary will read the title of the resolution.

THE SECRETARY: Legislative Resolution, by Senator Daly and others, honoring St. Patrick and all Irish Americans upon the occasion of the 1994 celebration of St. Patrick's Day.

ACTING PRESIDENT SPANO: Senator Daly.

SENATOR DALY: Mr. President. Since the departure and demise of our great friend, Senator James Donovan, I have been given the opportunity and privilege of presenting this resolution on St. Patrick's Day to my colleagues in the Senate.

And I think that it is appropriate that I was given this opportunity, because I am what my mother would call a narrow back. Now, Mr. President, a narrow back is a

first-generation American, one who is born of immigrant parents from Ireland.

And I'm very, very proud to be able to call myself a narrow back because, Mr. President, when I think about St. Patrick's Day I think about a day when not only do we have the opportunity to celebrate, have some fun, but, more importantly, I consider St. Patrick's Day an atmosphere, an ambiance, a feeling, of commradery and conviviality and friendship, when we can all get together and enjoy each other in a peaceful and fun-loving way.

And I speak not only of the Irish Americans but everyone because, as I said, it is an atmosphere. It is an ambiance in which everyone joins in.

And the fact that we celebrate St. Patrick's Day also must remind us of the many contributions made by those of Irish lineage but, more importantly, the opportunity and freedom that this great nation, which accepted them and millions of other immigrants from other nations -- the freedom and

opportunity to achieve what they achieved.

And, again, I speak from personal experience because, as I said, Mr. President, I am a first-generation American whose parents were born in Ireland, both of whom came out in the 1920s. My father drove a bus for forty years, Fifth Avenue bus, charter member of the Transport Workers Union, six children, five survived, and every one of those had the opportunity to go to college, to proceed beyond college, and I'm very proud to say I have been quite successful in life.

And I always ask myself, Mr. President, where in the world -- where in the world could my parents or other parents or grandparents or great-grandparents of many who are in this chamber -- where could they have gone to receive the opportunities, the acceptance, that this country afforded them.

And so as we celebrate that great feast of St. Patrick, when all of us will join in, hopefully, later on, to recognize that day but, more importantly, to recognize each other

and the friendships that we have, let us also remember what this great nation, which demonstrates through the fact that St. Patrick's Day is celebrated here, has given to so many of us, to so many of our descendants and for so many of those who preceded us.

Thank you, Mr. President.

ACTING PRESIDENT SPANO: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

You know, for a legislative narrow back, I think it's most appropriate that you carry this resolution.

Incidentally, let me define where the word "narrow back" came from. That was the child of an immigrant from Ireland. They weren't going to be using the wheelbarrow and carrying the hod. They were going to be educated and turn out like fine young men like Senator Daly.

But, you know, St. Patrick's Day -- only in the Legislature could we be

celebratifg it on 4he 14th of March and, incidentally, the Irish legislators are having their affair tonight, and you are all welcome, and we hope to see you there. Of course, Thursday is St. Patrick's Day, the 17th, but we're celebrating a little bit early. That's why some of the people forgot to wear their green today.

But let me on behalf of all the Irish Americans not only in the Legislature wish everybody a happy St. Patrick's Week.

ACTING PRESIDENT SPANO: Question on the resolution. All those in favor, signify by saying aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Daly.

SENATOR DALY: Mr. President. Will you keep the resolution open at the desk to any who wishes to join us. We certainly welcome them, and we encourage them to do so.

ACTING PRESIDENT SPANO: We certainly will.

Senator Present.

SENATOR PRESENT: Mr. President. I would like to request unanimous consent that Calendar 329 be advanced from second report to third reading.

ACTING PRESIDENT SPANO: Without objection, so ordered.

Senator Saland.

SENATOR SALAND: Mr. President. I would like to star a bill, my bill, 6338A, Calendar 302.

ACTING PRESIDENT SPANO: Calendar 302 is starred at the request of the sponsor.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President. On behalf of Senator Levy, I would like to star Bill Number 168 -- Calendar Number 168, Bill Number S.5435B.

ACTING PRESIDENT SPANO: That motion was made previously, Senator, but it will be starred.

Senator Present.

SENATOR PRESENT: Mr. President. Let's take up the noncontroversial calendar, please.

ACTING PRESIDENT SPANO: Secretary will read noncontroversial calendar.

THE SECRETARY: On page 9, Calendar Number 13, by Senator Levy, Senate Bill Number 1313, an act to amend the Penal Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 88, by Senator Levy.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT SPANO: Lay it aside for the day.

THE SECRETARY: Calendar Number 134, substituted earlier today, by member of the Assembly Ortloff.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it

aside.

THE SECRETARY: Calendar Number 141, by Senator Stafford, Senate Bill Number 6318.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 143, by Senator Nozzolio, Senate Bill Number 6315B, an act to amend the Election Law, in relation to false registration.

SENATOR GOLD: Lay it aside for Senator Connor, please.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 144, by Senator Nozzolio, Senate Bill Number 6316A, an act to amend the Election Law, in relation to giving consideration for franchise.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 145, by Senator Nozzolio, Senate Bill Number 6332C.

SENATOR GOLD: Please lay it aside for Senator Connor.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 146, by Senator Nozzolio, Senate Bill Number 6336B.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 147, by Senator Nozzolio, Senate Bill Number 6527B, State Board of Elections to conduct a

special study to combat -

SENATOR GOLD: Lay it aside for Senator Connor, please.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 181, by Senator Volker, Senate Bill Number 1424.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 242.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 260, by Senator Farley, Senate Bill Number 1664, Judiciary Law, in relation to the disqualification of jurors.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43. Nays 3. Senators Galiber, Gold and Mendez recorded in the negative.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 261, by Senator Daly, Senate Bill Number 4583B, Real Property Law, in relation to establishing a New York State Real Estate Board.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 265, by Senator Levy.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT SPANO: Lay it aside for the day.

THE SECRETARY: Calendar Number 274, by Senator LaValle, Senate Bill Number

2672, Education Law.

ACTING PRESIDENT SPANO: Local fiscal impact note is at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44. Nays 2. Senators Montgomery and Onorato recorded in the negative.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 276, by Senator Skelos.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT SPANO: Lay it aside for the day.

THE SECRETARY: Calendar Number 279.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT SPANO: Senator Stavisky.

SENATOR STAVISKY: May I be recorded as voting in the negative on Calendar 274.

ACTING PRESIDENT SPANO: 274, without objection.

THE SECRETARY: Calendar Number 280, by Senator Marino.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 281, by Senator -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 293, by Senator Levy.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 295, by Senator Tully, Senate Bill Number 776, an act to amend the Penal Law, in relation to the calculation of terms.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 304, by Senator Goodman, Senate Bill Number 1622B, Social Services Law.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT SPANO: Senator Present that completes the -- I'm sorry, one more.

The bill is passed.

Secretary will read Calendar 329.

THE SECRETARY: On page 8, advanced to third reading earlier today, Calendar Number 329, by Senator LaValle, Senate Bill Number 6806A, an act to amend the Education Law.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present.

SENATOR PRESENT: Controversial calendar, please.

ACTING PRESIDENT SPANO: Secretary will read the controversial calendar.

THE SECRETARY: On page 9,

Calendar Number 13, by Senator Levy.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 134, substituted earlier today, by member of the Assembly Ortloff.

SENATOR GOLD: Lay it aside.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT SPANO: Lay it aside temporarily.

THE SECRETARY: Calendar Number 141, by Senator Stafford.

SENATOR GOLD: Lay it aside.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 143, by Senator Nozzolio, Senate Bill Number 6315B, Election Law, in relation to false

registration.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT SPANO: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

My colleagues. The bill before us is one of a series of five bills, one of which we passed, which came forth as a result of the Senate Elections Committee investigation into voter irregularity, fraud and abuse in New York City.

This measure along with measures that we will also pass today gets to the heart of voter manipulation and voter fraud in an effort to expand our oversight, expand the public's right to know and accountability of candidates and at the same time close some loopholes in the law which exist which allow abuses to be forth in the voter process.

This bill before us amends the Election Law, in relation to false registration; that in our investigations, we found Board of

Elections officials entering into the system thousands of unsigned voter registration cards. That's akin to a bank cashing thousands of unsigned checks. Accountability and responsibility for those actions we believe rests in the hands of those who issued orders to make legal what is illegal, and this measure provides that any election official who engages in such blatantly illegal conduct, blatantly unethical conduct, shall be guilty of a felony.

ACTING PRESIDENT SPANO: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. I see the bill has been amended since it came up in committee. And my concerns in committee were that the prior version said that any employee who accepts a registration was guilty of a felony; and, of course, this would call into question exactly what that meant. Obviously, some clerk at the counter accepts anything in the normal sense of the word. If something is handed in, they take it and they clock it in.

In fact, there are cases that say what constitutes acceptance -- for example, of a petition or whatever. That doesn't mean the person ends up on the rolls.

My objection was that the crime ought to go to placing an invalid registration, registrant upon the rolls of voters.

While I think the language improves or causes to be improved, it is perhaps a little vague. It is really not so bad as the prior language.

The only thing I would point out is, and I invite anyone to read the entire transcript, but I think the events in New York City were pretty well explained as an administrative foul-up. And what I want everyone to be assured of is with the computerized system in New York City, even were by accident, for example, an unsigned buff card to be entered into the computer system, on the output when they print out the rolls for election day that would be caught and picked up and taken off the list, and such a person would

have to -- if they did show up to vote, have to vote on an affidavit ballot, which would provide a signature and would subsequently have to be verified before the vote could be counted.

So while there was certainly an administrative foul-up with respect to processing in the Manhattan office, the fact of the matter is the system would have self-corrected. The system now in place would correct for that and, in fact, that entire mess was cleared up administratively; so that contrary to fears that were raised about massive fraudulent voting, that didn't occur with respect to these buff cards. The Scribe System does catch those things at a later step.

In view of the change in language, the only criticism I have in this bill is it's totally redundant. The conduct it addresses is already illegal under existing law. But if, for press release or any other reasons, the Senate wants to go ahead and pass laws making illegal conduct that's already illegal, I'm not going to waste the taxpayers'

time and money debating about it.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 145, by Senator Nozzolio, Senate Bill Number 6332C, Election Law, in relation to expenditures by political committees.

ACTING PRESIDENT SPANO: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President. This bill eliminates election day slush funds by political committees; that our committee in reviewing elections' practices statewide was also very concerned with the issue that we heard a great deal of publicity about in

our neighboring state of New Jersey.

During the last gubernatorial campaign, a campaign consultant was guilty of foot in mouth disease and discussed what appeared to be some abuses relative to election day voter get out the vote turnout drives.

What we want to do with this measure is eliminate the large sums of cash to be distributed on election day by any political party or any candidate group supporting individual candidates by defining "street money" as money used on the day of election to induce a person to vote in a particular manner, broadening the definition of "political committees" as any persons or organizations which dispense money for election day activities, require financial disclosures to separate sections to those election day expenditures to be specifically itemized, and require that all election day expenditures which exceed $50 to be made by check as opposed to cash.

We think that further

restrictions and confinements in reporting will put an end to the practice of abuse on election day where huge sums of money -- after an entire campaign of accountability, on election day that accountability basically has been thrown away to allow organizations to spend large sums of cash undefined, large sums of money without proper reporting.

Thank you, Mr. President.

ACTING PRESIDENT SPANO: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. Now, this is a perfect example of a bill that addresses a problem that doesn't exist in New York State.

As Senator Nozzolio said, there were some reports, which, if they were true, would have been absolutely outrageous, about conduct by Republican operatives in New Jersey, allegedly.

I haven't heard any problem in New York. Let me explain to you, my colleagues, because this will affect each and every one of

you in campaigns, what present law permits and what present law does not permit.

Present law does not permit any expenditure in excess of $100 without a check by the committee. It used to be $50. In 1974, when the statute was first passed, it was $50. We raised it.

SENATOR NOZZOLIO: Mr. President.

SENATOR CONNOR: No, I won't yield at this present time.

Thank you, Mr. President.

We raised it a few years ago.

I will not yield.

ACTING PRESIDENT SPANO: We have to let him ask it, first.

SENATOR NOZZOLIO: Mr. President. Will the distinguished broad-minded and open-minded Ranking Minority member of the Elections Committee yield?

SENATOR CONNOR: Not at the present time, Mr. President.

ACTING PRESIDENT SPANO: The gentleman refuses to yield.

SENATOR CONNOR: I will be happy to yield at the conclusion of my remarks.

We raised it to $100. Because, you know what? Fifty bucks today isn't what it was in 1974.

Now, what can you do on election day? You can spend amounts of $100 if you pay check for any reason: Hire people, buy literature, buy doughnuts, coffee, whatever.

What's this "street money"? And the bill addresses -- the bill before us says, "Money to attempt to influence a person to vote." I don't think the bill means you can write $50 checks to voters in return for their vote. That is illegal, and it ought to be. It is, and I hope it always will be in this state. So I don't know what it means to say, "Money to influence a people to vote."

What I know so-called street money is used for is to hire workers, to hire people to work at the polls. Do they try to influence voters? Sure. They give out literature. That's what they do. They knock on

doors and remind people to vote. They make phone calls and say, "Come out and vote."

Now, in the pure pristine world, why should you pay people? They ought to volunteer. That sounds great. Go try it, particularly try it in parts of the state where people are unemployed, where people have no other job, where people are happy to work for a day from 6:00 a.m. to 9:00 p.m. handing out literature on a cold November afternoon or a warm September primary day for 60 or 70 or 80 dollars, but they certainly -- it would be an insult to them not to recognize their time is worth something.

Go try it in working neighborhoods with working class people who punch a time clock and who don't get paid if they don't punch in at work. Ask them to give up a day's pay and work election day; and not reimburse them?

That's the genesis of street money. That's where it began, the so-called street money that I say the press and its

accounts often misconstrues, because people in politics haven't educated well enough.

By and large, these election day expenditures are in two categories. They go to reimburse people for things like gas money and transportation. They go to pay workers, and they go to buy pizzas and doughnuts and coffee for election workers.

Now, what Senator Nozzolio's bill is saying is, order out pizzas for all your campaign workers on election day and give the corner pizza guy a check. A check? The printers won't take your uncertified check on election day. Do you think the pizza guy is going to take it, the doughnut man is going to take a check for $120 for doughnuts and coffee on election day? Wake up my colleagues.

This bill addresses a problem that doesn't exist. It doesn't exist. And let me tell you. Go into the cities, villages and towns and pick up the unemployed or the worker who is going to miss a day's pay and hand him a check on election morning. The people who are

taking this work don't have checking accounts, by and large. They can't go off to the bank and cash it. And do you know what? When the banks are closed on general election day, you're going to give them a check and tell them, "Go cash it tomorrow."

Regrettably, regrettably campaigns, particularly losing campaigns, are not the best debtors. It sometimes takes them years to pay their bills.

What are we talking about here? What's the present law? What can you do today? Give out hundreds of dollars in cash? No, it's illegal. Give out money or spend money on election day without reporting it? No. It's illegal under present law.

What you do today -- what you do today if you want to follow the law is you don't pay anyone more than $100. Candidly, the going rate seems to be $75 -- seems to be $75 a day for a worker.

How do you get the money into the workers' hands. It's simple. The committee

takes cash. Very often cashes a check for a thousand or two. It then gives it out in $75 amounts, and the people sign their name and address, date, and so on, as a receipt. The law requires that.

Now, while the law does not require itemization of expenditures under $100 individually nor of contributions $99 or less - and I know people sometimes have $99 fund raisers -- it does require that your treasurer does keep a record in the permanent records of the committee of the names and addresses of every person who got a nickel.

That means if your committee treasurer gives 10 bucks to the doughnut man, you don't have to put the doughnut man's name and address and so on on your report. Some people do it. If you want, you can, but you do have to keep in the permanent records and every treasurer has to keep a book, an account book, the name and address of the doughnut man and the date he got the $10, and the Board of Elections can and does audit those records. You can then

report -- you can then report to the board $190 in unitemized expense for doughnuts, but you have to have a record of every $10 or $15 and every day you spent them for doughnuts and coffee, and you have to have that in your records, and present law requires that.

This bill addresses something that's not a problem. You can't take suitcases of cash and just give them out with no records and no reporting on election day. If you have been doing that, if your committee has been doing that, I could recommend some lawyers because you may need them. It's absolutely not legal today.

Now, the only effect of Senator Nozzolio's bill will be to lower the amount required by check to $50 and require itemization for expenditures in excess of $50 but no itemization below $50. Doesn't make any sense. Why not change the whole statute then to a $50 standard like it used to be 20 years ago.

What's the point of this? I really just think this is an attempt to play to

the press and say, "Oh, we're getting rid of street money."

What is street money? It's lunch money. It's pay for the worker, poor pay for the worker for the hard work, and it's just not realistic to say you can give checks to people on a day when the banks aren't even open and they can't cash them.

You know, historically, street money -- in the old days, it was $20. It goes up as inflation goes up sometimes clubs give $50 or $60 to their captain as lunch money for the workers in their precinct. They can't even cash the check that day. The bank's closed. Holiday. November election.

This is just not a realistic bill. It's a grandstanding, phony bill that addresses something that's just not a problem. Present law requires that you keep an itemized record. Present law requires that you get signed receipts from anyone who gets any amount in cash less than $100. Anybody who is getting more than $100 gets a check, but, you know,

that's not what you're giving -- that's not lunch money any more.

What Senator Nozzolio is proposing is that lunch money has to be by check. It's just not realistic. And it is really subject to such subterfuge. I mean think about what this bill doesn't address. And I see we're on the C print. You know, the B print, as I recollect -- after these very criticisms were made, the B print said, "Anything spent three days before the election up to election day." Now we're back to election day.

Do you want to get around this legally? Do you want to really be beholden to big money? Find somebody in your organization that can afford to show up at headquarters with $5,000 in cash on election morning, in a suitcase, and sit him at a desk out there, and have all the workers who get their $50 checks or $75 checks just see the man up front, endorse them, and get their cash. What purpose?

That would be legal under Senator Nozzolio's bill. What purpose is that, to

suddenly make some guy that has $5,000 in a suitcase who is willing to cash all these checks suddenly a very important person?

Present law says that person with a suitcase full of money has no place in your campaign. That your treasurer gets the cash and gets receipts as they give out the 50 or 60 or 70 or 80 dollars to the people. That's present law.

This law is absolutely phony. There are a million ways around it. And I know Senator Nozzolio will say, of course, a smart lawyer can figure out ways around it.

Well, believe me, smart lawyers aren't half as good as smart candidates and political operatives. The fact of the matter is I don't want that friendly guy who says, "I'll cash all your checks," involved in the campaign.

That is a person who will never be disclosed. There will be no record of such person in the committee's records. The board will never know he existed, yet, $5,000,

$10,000, whatever, that could be a pretty influential person. That's the kind of influence we don't want to have in campaigns. That's the kind of influence that this bill will result in.

This bill is a bad idea. It addresses a problem that doesn't exist. If people follow existing laws, it's all on record. It's all there for the Board of Elections to look at, and if you don't keep the records, you've violated present law, and your treasurer or your committee's in trouble.

I just think this is foolish, and I urge a no vote.

ACTING PRESIDENT SPANO: Read the last section.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: I just really have one question because I think that the -- the surgical job done by Senator Connor was perfect, and I don't want to impose on that. But if

Senator Nozzolio will yield to one question?

ACTING PRESIDENT SPANO: Senator Nozzolio?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GOLD: Yes. Senator, on page 2, line 38, it says, "And in the case of election day expenditures...." Is there any definition in the law of an election day expenditure?

SENATOR NOZZOLIO: This measure adds a definition.

SENATOR GOLD: Well, where is that? Where is the definition of what an election day expenditure is?

SENATOR NOZZOLIO: Are you asking -- I'm sorry, Mr. Gold, I couldn't hear you. Did you say you wanted a definition of street money or election day expenditure?

SENATOR GOLD: No, Mr. Nozzolio, what I'm saying is, is there any definition in the Election Law of what a, quotes, "election day expenditure" is?

SENATOR NOZZOLIO: The counsel advises me that election day expenditure is an expenditure, definitionally, made on election day. There is one election day. You spend money on election day that becomes an election day expenditure.

SENATOR GOLD: Will Senator yield to one question?

SENATOR NOZZOLIO: Certainly.

SENATOR GOLD: In other words, it's an expenditure made on election day -- made on election day. So in other words, when all of the captains come to the club the day before election and they pass out $75,000 of street money or whatever you are saying, that is not an election day expenditure?

SENATOR NOZZOLIO: I will answer that question, Senator, by referring to lines 3, 4, 5 and 6 on page 1 of the bill. "That any payment made by a candidate of political committee to an individual for the purpose of using such money on the day of election to induce a person to vote."

SENATOR GOLD: It is called street money. It's called street money.

SENATOR NOZZOLIO: The purposes of this bill deal with those expenditures.

SENATOR GOLD: Yeah. Well, Senator, if you'll yield to a question. The bill is not that long which gives us the opportunity to read it. Some of them get very boring in their length, but.

It's true that you define street money on page 1. But on page 2 at the end it says, "and in the case of election day expenditures." It doesn't talk about in the case of street money. It talks about, "in the case of election day expenditures." Those are two different phrases aren't they?

SENATOR NOZZOLIO: But show me the inconsistency.

SENATOR GOLD: I just did.

SENATOR NOZZOLIO: If you're trying to raise the question saying there's an inconsistency, Mr. Gold, show me where there is an inconsistency.

SENATOR GOLD: Well, Senator -- I don't want to argue with you. I think I made the point. I don't understand how -

SENATOR NOZZOLIO: I don't think you did make a point. At least it's a point that's certainly very unclear to me.

SENATOR GOLD: That is possible. Senator Connor, was the point clear to you?

SENATOR CONNOR: (Reply inaudible).

SENATOR GOLD: Yeah, I think it's okay. Thank you.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

SENATOR CONNOR: Slow roll call.

ACTING PRESIDENT SPANO: Secretary will call the slow roll call.

THE SECRETARY: Senator Babbush.

SENATOR BABBUSH: No.

THE SECRETARY: Senator Bruno.

(There was no response.)

Senator Connor.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT SPANO: Senator Connor to explain his vote.

SENATOR CONNOR: Thank you. To explain my vote.

My colleagues, I just say to you think about your own campaigns. Think about $50 checks on election morning to get someone to work or to reimburse someone for lunch. Think about $75 checks, think about how that's going to go over. Think about the paying the pizza man with a check when he delivers to one of your offices.

This bill is not practical. It's not necessary. Any possible abuses that have ever been alleged are already illegal under present law. There is plenty we ought to do to make the Election Law better, fairer, to eliminate the influence of big money, to reform financing.

This little bill is not the answer. I vote no.

ACTING PRESIDENT SPANO: Senator Connor in the negative.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator Daly.

SENATOR DALY: Mr. President. Since my pizza man does accept a check, I vote yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Yes.

THE SECRETARY: Senator Dollinger.

(There was no response.)

Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Galiber.

SENATOR GALIBER: No.

THE SECRETARY: Senator Gold.

SENATOR GOLD: Mr. President. To explain my vote.

ACTING PRESIDENT SPANO: Senator Gold to explain his vote.

SENATOR GOLD: Senator Nozzolio, I am voting no because of the wisdom imparted on this body by Senator Connor in a very articulate, well-structured, intellectual manner. But forgetting that for the moment, your bill does do something. And, Senator Connor, be fair. Be fair. Your bill does do something that most bills don't do.

On page 1, as you pointed out, it defines street money; and then for the rest of the bill ignores the term. So while it creates a definition, it is meaningless because nothing in the law applies to that definition; and that, Senator Nozzolio, is new and is unusual.

Now, you do talk about election day expenditures and don't define them. So the bottom line, Senator Nozzolio, is not only do you try to correct a problem that doesn't exist. You don't even correct a problem.

Because you have one part of your bill dealing with something that is undefined and only deals with election day; and as you I pointed out to you, in the real world, most people to go a political club the day before and the night before. And when it comes to street money, aside from giving this Legislature a definition of it, you then do nothing with it.

I vote no.

ACTING PRESIDENT SPANO: Senator Gold in the negative. Continue the roll call.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

SENATOR GOODMAN: Yes.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoffmann.

(There was no response.)

Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Jones.
SENATOR JONES: Yes.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: No.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Yes.
THE SECRETARY: Senator Lack.
(There was no response.)
Senator Larkin.
(There was no response.)
Senator LaValle.
SENATOR LAVALLE: Yes.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: No.
THE SECRETARY: Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.
THE SECRETARY: Senator Marino.
(Indicating aye.)
THE SECRETARY: Aye. Senator Markowitz.
SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: Mr. President.
ACTING PRESIDENT SPANO: Senator Montgomery to explain her vote.
SENATOR MONTGOMERY: Yes, to explain my vote very briefly, Mr. President.
As I read this bill, it says political committee, and I'm not sure if that includes all of the possibilities of people putting money into an election on election day. So that's one thing. So while I certainly understand Senator Nozzolio's intent to try to deal with fraudulent use of money on election

day, this does not cover all of the possibilities to begin with.

And, two, this bill would be very, very bad for my particular district and area, because it is -- the process of expending funds on election day to have people participate, especially, as Senator Connor pointed out, people who are unemployed, people who really look forward to having a little job on election day in relationship to the election, they have no intention of influencing anybody in an underhanded illegal manner. They are just passing out palm cards. They are just running around doing little political activities in relationship to an election on both sides, both candidates or all candidates involved. It is a very open and public kind of activity.

And so I want to vote no, and I want to say to you that I think this is a very bad bill. Because, one, it doesn't cover all the possibilities for expenditures of money; and two, it is going to make it extremely difficult for little people to participate in the

electoral process in districts like mine around the state.

So I vote no.

ACTING PRESIDENT SPANO: Senator Montgomery in the negative. Continue the roll call.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nolan.

(There was no response.)

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President. To explain my vote.

ACTING PRESIDENT SPANO: Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: My colleagues. Let me tell you what this bill is not. This bill does not prevent campaigns to hire the unemployed. This bill does not prevent Senator Connor or anyone else to pay for pizzas by cash or check.

ACTING PRESIDENT SPANO: Excuse

me, Senator Nozzolio.

Can we get some order in the chamber. Please ask the members to take their seats so we can listen to Senator Nozzolio. Staff please take their conversations outside the chamber.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. What this bill does do is shed light on the heretofore dark situations that exist on election day where huge sums of money are spent without accountability to the voters, without so much as an itemization, that there are tremendous potential for abuse of large sums of cash on election day. It's the same type of thing that has been chastised time and again by members of both sides of the aisle. What we're asking you to do is put your rhetoric where your vote is and support a bill that discloses election day expenditures, that sheds light on how cash is distributed on election day. It prevents election day abuses from taking place. That's all this bill does, and we hope that you

will see the light and support it along with us.

ACTING PRESIDENT SPANO: Senator Nozzolio in the affirmative.

Continue the roll call.

THE SECRETARY: Senator Ohrenstein.

(Indicatyng nay.)

THE SECRETARY: No. Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Explain my vote.

ACTING PRESIDENT SPANO: Senator Oppenheimer.

SENATOR OPPENHEIMER: Senator is sort of making it sound like we're doing, you know, horrible things on election day and going against the Election Law, and I sort of resent that. I'm not sure, I don't think on my last election we had what you call street money. We pay people. But I find it, you know, very

distasteful that these charges seem to be made that we're doing something illegal.

And, you know, if I buy flowers or I go to the pastry shop, I can't see giving them a check. So I'm going to vote against this.

ACTING PRESIDENT SPANO: Senator Oppenheimer in the negative.

Continue the roll call.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Pataki.

(There was no response.)

Senator Paterson.

(There was no response.)

Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.
THE SECRETARY: Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Aye.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Solomon.
(There was no response.)
Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: No.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: No.
THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: To explain my vote.

ACTING PRESIDENT SPANO: Senator Waldon.

SENATOR WALDON: Mr. President, my colleagues, very briefly.

In the area of Queens where I live, the street day operation is rather rapid, frenetic, and at times can overwhelm someone who's inexperienced. And to have to voucher every little picayunne expenditure would drive my campaign manager crazy and would thwart the process which allows me to return here to be convivial with my many colleagues.

Based on that simplistic

situation, I will have to vote in the no.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT SPANO: Secretary will call the absentees.

THE SECRETARY: Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. To explain my vote.

ACTING PRESIDENT SPANO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. I'm going to vote in favor of this bill. I'm not so sure that it's a bill in search of a problem to attach itself to, but I would just encourage my colleague, while we continue to walk down the road toward election reform, I regard this as another step in the direction of, hopefully, decreasing the amount of electoral fraud, if it exists, but I still think that there are a number of big issues on

the table that we ought to attack.

We ought to be a part of -- I can rattle them off, simple. Access to the ballot, campaign finance reform, the implementation of the motor voter act, all of these things that we ought to do which would achieve the goal of having more people participate in elections, have greater voter turnout, and hopefully all the people in this chamber could then say that they were elected by the majority of the people in their district and not simply the majority of the people who happened to be registered under our arcane laws.

Mr. President. I'll vote yes for moving in the right direction. We've got further to go.

ACTING PRESIDENT SPANO: Senator Dollinger in the affirmative.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Hoffmann.

(There was no response.)

Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator Nolan.

(There was no response.)

Senator Pataki.

(There was no response.)

Senator Paterson.

(There was no response.)

Senator Solomon.

(There was no response.)

ACTING PRESIDENT SPANO: Announce the results.

THE SECRETARY: Ayes 36. Nays 19.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 146, by Senator Nozzolio, Senate Bill Number 6336B, an act to amend the Election Law, in relation to corrupt use of position or authority.

SENATOR GOLD: Explanation.

ACTING PRESIDENT SPANO: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President. This bill makes it a crime under the Election Law for an officer or employee of an introduction supported in whole or in part by public funds to intimidate, threaten, or coerce or influence patients or clients for the purposes of affecting their vote.

This measure is an attempt to prevent manipulation of those who are the most vulnerable in our society. This does not in any way impinge upon their right to vote but rather tries to prevent, in law, those intimidating factors where individuals working for state institutions were influencing directly at the time of vote a resident casting his or her vote.

That during the last election in New York City, this issue came to light and was publicized greatly. It came before our committee as an issue, and the committee

reviewed this measure. At the suggestion of some members of the committee, the bill was amended, particularly the concerns of Senator Connor, who believed that the influencing factor of an individual in their exercise to vote could be construed as too broad.

That's why this measure was amended, amended to deal with the definition of influencing and limiting the term influencing to the precise time when a resident individual was casting his or her vote. So that the intimidation or influence or coercion, in effect, at the time of casting the vote is the issue not any broader review.

Thank you, Mr. President.

ACTING PRESIDENT SPANO: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I want to applaud Senator Nozzolio, of course, for, as he pointed out, the original print made it a crime for anyone who worked in or supervised a nursing home to

attempt to influence any of the people in how they would vote. And I pointed out to the committee that that would mean if, you know, three months before the election Senator Present, for example, went to a nursing home in his district, and the director said, "Here's Senator Present; he is up for election this year; he has done a fantastic job for senior citizens in our nursing home," that that would be an attempt to influence their vote, obviously, and that would have been a crime. That has now been eliminated from the bill.

I'm not urging anybody to vote against this bill. I just point out a few things. It is presently, thank God, a crime to threaten, intimidate, or coerce voters, whether they be in nursing homes, walking down streets, in schools, or firehouses casting their vote or sitting in their living room. It is illegal, and I want to assure everybody because this bill has a long way to go. Should it pass here it's still got the Assembly and the Governor, and I want to reassure everybody and warn everybody in

this state that even if this bill doesn't become law, it's nonetheless a crime to intimidate threaten or coerce any voter in the exercise of their franchise, and it's not just a crime under the laws of the State of New York. I assure you it is a very, very serious federal crime to do so.

So the point I'm coming to is, there are certain problems with respect to the handling of absentee ballots or potential problems with respect to nursing homes.

I don't think threatening, coercing, and intimidating is necessarily one of them; because if it is, there should already be prosecutions by state and federal authorities.

This is another example of a bill that's not needed. The major thrust of it is not needed. It's already illegal. I would note that the League of Women Voters opposes this bill, and the reason they oppose this bill is because they point out in their memo that with respect to problems in nursing home absentee ballots, Senator Nozzolio already has a bill

that's a better bill. That is S.3083, which does I believe have sponsorship in the Assembly. I mean that could even become law and cure the problem.

I would urge the Senator to heed this. Let's bring out the real bill that deals with the real problem. I'm not suggesting anybody vote against this, because that might be misconstrued. Somebody might say you are in favor of coercing, intimidating or threating, even though it is already illegal.

But there is a little problem in the handling of absentee ballots in some cases. There seems to be. Let's bring out the real bill. And Senator Nozzolio has a bill that deals with that. The League of Women Voters says that is the bill not this bill.

Again, enough said about a bill that I don't think is going anywhere, because it's not needed. I sure would like to see the real bills that really change the Election Law in ways we ought to do it.

ACTING PRESIDENT SPANO: Senator

Smith.

SENATOR SMITH: Thank you, Mr. President. I would just like to briefly clarify the issue which this bill is supposedly written in reference to. I believe that there was some press during the last election about some mentally handicapped people who voted, and who went into a polling site in the East Flatbush, East New York area. Having been called to that school, they were being intimidated and harrassed by off-duty police officers who attempted to have them do something that has been outlawed for many years; and that is, to take a competency test.

So it was not the Board of Elections, and it was not others that were affiliated with the Board of Elections, but outsiders. And as a member of the Elections Committee for the past five years, I don't know of any hearings that were held, and I don't know of any of us who were asked who were there. These are purely conjecture on the part of some people without getting the full information.

Therefore, I feel that this bill is not necessary because there is already sufficient law to provide for the needs of those who are mentally handicapped or in nursing homes.

ACTING PRESIDENT SPANO: Senator Waldon.

SENATOR WALDON: Thank you, Mr. President. Would the learned gentleman submit to a question or two?

ACTING PRESIDENT SPANO: Senator Nozzolio, will you yield to a question?

SENATOR NOZZOLIO: Certainly.

SENATOR WALDON: Senator, can you tell this body the number of people who would be affected by this legislation if it were passed?

SENATOR NOZZOLIO: It would be in the thousands of those who were subject to the legislation, which, Senator, would prohibit anyone who worked at an organization that received public funds from engaging in this type of conduct, so I would leave the number up to you to speculate in terms of the numbers.

Obviously, extensive.

SENATOR WALDON: I'm surprised at your response, Senator.

If I may continue, Mr. President, I'll ask another question.

ACTING PRESIDENT SPANO: Senator Waldon.

SENATOR WALDON: If you make recommendations to us to pass a bill which will be law this state, it would seem that the informational base would be one which at least tells us the number of persons affected.

But to ask my question, if I may, can you tell us the specific event or events which were the causal factor or factors for you to write this bill?

SENATOR NOZZOLIO: Are you asking me, Senator, to list for you a specific example where this intimidation factor existed?

SENATOR WALDON: I did that, Senator, because earlier you had said, at your hearings, information was brought to your attention. So I assume that information

precipitated your sitting down to write the bill.

SENATOR NOZZOLIO: The Brooklyn District Attorney, Charles Hines, has begun an investigation as to why a group of mentally handicapped individuals were brought to the polls during the last mayoral election and told to vote; that the office is reviewing this situation; that the State Office of Mental Retardation and the State Committee on Elections are also looking into specific allegations of voting in PS 93 in Brooklyn. What we heard is that many of the individuals -- reported in the New York Post, November 9, that many individuals were disoriented, didn't seem to know where they were or why they were there. One man said he was going bowling as he entered into a voting booth with a state employee.

The state Election Law prohibits -- excuse me -- allows those with disabilities to vote, but they can't be forced to vote in a particular way. And they must be given an understanding that they are voting and

participating in the voting process. There are also allegations that during this time there were government paid officials who were actually going into the voting booth with those people at mention and were told to pull a particular lever. Now, that type of conduct is the conduct that I'm sure you would not condone or advise, and that's the conduct that we're trying to get at through this measure.

SENATOR WALDON: Mr. President. May I continue one last question?

ACTING PRESIDENT SPANO: Senator Waldon.

SENATOR WALDON: Senator, you are absolutely right in your description of Al Waldon. I would not condone that kind of behavior. I abhor it. And during this past election in the City of New York, when correction officers and police officers from outside the City of New York attempted to intimidate people at the polling station that I as a district leader repaired to, I acted in a manner which you just suggested was appropriate

behavior.

My last question is this to you, sir. As the Chairman of the Elections Committee, you must be aware that you already had on the books laws which would cover this precise situation; and if such is the case, why would you burden this body with a redundant proposal?

SENATOR NOZZOLIO: In my response, Senator, you raise an excellent point. As a former police officer, I'm sure you are well aware that there are loopholes in the law and tools that prosecutors may or may not have with particular statutes. Unfortunately, that's the case here. We're trying to provide stronger statutory language for prosecutors, providing definitions of institutions covered and employees covered and limits relative to the influencing a particular employee can engage on an individual, and it is my belief that through this tool, the conduct can be better prosecuted. Redundancy I believe is too strong a word, Senator. I believe that providing

additional tools is the objective of this bill.

SENATOR WALDON: Thank you very much, Senator.

Mr. President, if I may explain my vote.

ACTING PRESIDENT SPANO: Senator Waldon to explain his vote.

SENATOR WALDON: I'm compelled to vote in the no on this bill, because I do believe it is, in fact, redundant. I do believe we have adequate laws on the book to deal with the situations as attempted by my learned colleague in his explanation, and I do believe that sometimes we overlegislate. We put too many bills in the hopper, and we waste the time of ourselves and the people of the State of New York.

I would encourage my colleagues to also vote in the neg'.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT SPANO: Senator Connor.

SENATOR CONNOR: Yes, would

Senator Nozzolio yield to a question?

ACTING PRESIDENT SPANO: Senator Nozzolio, would you yield to a question of Senator Connor?

SENATOR NOZZOLIO: Is this the same Senator Connor that I asked to yield?

ACTING PRESIDENT SPANO: He's the same person who refused to yield.

SENATOR NOZZOLIO: I don't think I will yield.

SENATOR CONNOR: Okay. Fine. I had offered. On the bill, Mr. President. I had offered to yield.

ACTING PRESIDENT SPANO: Senator Connor, on the bill.

SENATOR CONNOR: I had offered to yield to Senator at the conclusion of my previous remarks and waited and didn't see him jump to his feet to grill me, and I was greatly relieved as I took my seat.

Certainly though, Mr. President, Senator Nozzolio can't for a moment be suggesting that it would be illegal for a

nursing home employee or director to walk into the voting booth with a resident of the nursing home while that resident voted. Can't be. That's not illegal.

Because we better wake up to federal law. Federal law says any voter can take into the booth any person they want except their employer or union representative to assist them in voting.

So what if I see nursing home residents walking into the booth with employees or officers of the nursing home. You can infer no illegality from that. Sure, if you see them twisting an arm of the resident. That intimidation. That illegal now. It's assault.

The fact is -- the fact is this evidence that's pointed out, Oh, people were seen going into the voting booth with employees from the nursing home or the mental health facility or whatever. You can infer nothing from that.

Let me tell you, my colleagues, we better wake up. I was involved in a case a

couple of years ago where a candidate objected that voters were coming in and going into the voting booth with the opposing candidate's poll watcher. The opposing candidate sent poll watchers to the polling place, and voters would come in and go over to the poll watchers and then go into the booth with the poll watchers. Sounds illegal. It used to be in New York.

It's not today. The federal government sent marshalls into that district. The federal government issued a report, saying the attempts by the inspectors of elections to thwart that conduct and to forbid the partisan poll watchers in the polling place from going into the booth with the voters was illegal, illegal on the part of the inspectors of elections. They can't stop that.

Imagine, imagine the future ramifications for someone who wants to commit an illegal vote buying scheme, to have their own partisan workers in the polling place going into the booth. But that's federal law. We can't do anything about that, but follow it. And we can't

carve around the edges of it by saying, "Oh, well, you can't have nursing home employees going into the voting booth with residents."

Of course you can. You have to let them. It would be a violation of federal law and a federal crime to prevent them. That's why this bill is not well thought out, and I vote no, Mr. President.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 146 are Senators Connor, Espada, Galiber, Gold, Kruger, Markowitz, Mendez, Montgomery, Nanula, Ohrenstein, Santiago, Smith and Waldon. Ayes 44. Nays 13.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Leichter.

SENATOR LEICHTER: Mr. President. May I have unanimous consent to be recorded in the negative on Calendar Numbers 260 and 274.

ACTING PRESIDENT SPANO: Without objection.

THE SECRETARY: Calendar Number 147, by Senator Nozzolio, Senate Bill Number 6527B, an act directing the state Board of Elections to conduct a special study to combat voter fraud.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number

181, by Senator Volker, Senate Bill Number 1424A, an act to amend the Penal Law, in relation to increasing criminal penalties for certain crimes.

SENATOR GOLD: Explanation.

ACTING PRESIDENT SPANO: Senator Volker.

SENATOR VOLKER: Mr. President. This is a bill that this house has passed before which deals primarily with the upgrading of the crime of assault. It has been called the Gang Violence Bill.

What it does to start with is it raises all the crimes of assault, assault first, second and third by one degree, and then creates a new section of the law relating to gang assaults, which is a defendant with the intent to cause serious physical injury to another person and aided by two or more people would be guilty of an assault first, which would become a B felony subject to sentencing of up to 25 years in jail. The old assault second statute would become, in effect, the assault first, and so

forth. The lowest crime, which is assault third, would in a gang assault situation go from an A misdemeanor to a D felony.

In addition to that, included in this bill is an upgrade for intentional or reckless damage to any house of worship, cemetery, school or community center or the grounds thereto. Would make it a criminal mischief second, which would be a Class D felony, with a maximum of seven years in jail.

Another provision of this bill relates to juvenile offender statutes. I don't think too many people are aware that there are several crimes right now that are not subject to the normal provisions of juvenile offender status because they are considered to be of such a serious nature that young people from 14 and 15 and up can be criminally charged. We would make assault second -- an aggravated assault upon a police officer or peace officer, which is already in that category, we would add to that these provisions of the gang violence bill, and, therefore, people 14 and 15 could be criminally

prosecuted.

In this bill, we also have limitations on plea bargaining, so similar to other areas of the law where we have the issues of gang violence involved, they could only be pled down generally one degree, so that it would be more difficult for those people that engage in this kind of conduct to be able to plead down.

In addition to, that we set up a provision relating to sentencing that allows and mandates that the judge in the presentence report must investigate prior to sentencing on the issue of any sort of bias related crime involvement, and what that -- those crime involvements could be any identifiable class, in general -- not just in a specific area but any identifiable class. This is a, by the way, sentencing procedure that has basically been fairly recently upheld by the courts, as opposed to some of the so-called bias crime bills that have generally been struck down on a national level that are very shaky on constitutional

grounds. In some cases, worse than shaky, are probably unconstitutional. But the procedure in this bill has been already approved in several cases, and one in the Supreme Court of the United States.

In addition to that, law enforcement agencies, such as police, district attorneys and the courts would be required to collect data on bias-related crimes and submit such data to the DCJS, who shall compile the data and report it to us in the Legislature and the Governor on a quarterly basis.

But the crux of this bill is an issue that I think all of us should realize, that the proliferation of assaults particularly by gangs has become an extremely serious problem in this country. And the undervaluing of assaults is something the district attorneys and all sorts of criminal justice groups have begun to realize is something that we have to deal with, and I think this bill deals with it.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 28. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

ACTING PRESIDENT SPANO: Call the roll.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT SPANO: Senator Leichter to explain his vote.

SENATOR LEICHTER: To explain my vote.

Mr. President. We do have a serious problem in bias-related crime in our society, and I think that issue needs to be treated in a much more effective and, frankly, in a much more candid and direct manner than Senator Volker's bill.

I don't think it's a surprise to anybody here that this is sort of an evasive action so that some people in some classes that we feel need protection in our society, the Republican majority has been unwilling really to

directly come out and say we are going to protect these people. I'm talking about gay people, lesbian people, for one, problem with racial discrimination which ought to be clearly identified and made a more serious crime.

This is sort of an amorphous thing. Senator Volker would protect any class, people with brown eyes, people who are short, people who are tall, classes that really need no protection at all. Makes no sense.

The whole idea of having a statute which says if you commit crimes against certain people that we know have a difficulty, that we know have a problem, that we know need protection, that you are giving a warning that you hopefully are deterring people from committing acts against those groups.

By failing to specify those people who need protection, Senator Volker, you are missing the whole point of what a bill or statute against bias-related crime intends to do.

For this reason, Mr. President, I

vote in the negative.

ACTING PRESIDENT SPANO: Senator Ohrenstein.

SENATOR OHRENSTEIN: Mr. President. I rise to explain my vote.

I think Senator Leichter has already, for the most part, stated what I was going to say. I have no objection to this bill. I think it's basically, in concept, a good bill, but it doesn't relate -- it pretends in some ways to relate to the question of bias crime in our society which just cries out for resolution.

As I've said on this floor many times regarding this bill, this is not a bias crime bill and it should not be denominated such. This is a gang assault bill. I think gang assaults are a problem. And to the extent that this bill addresses the problem, I support it. I think assaults in our society are a problem, and to the degree that this bill addresses the question of aggravated assaults or difficult assaults, I support it because it does

address the problem of violence, but it does not address directly the problem of bias-related violence, whether it's based upon color or race or nationality, ethnic origin, religion. That kind of a crime deserves special treatment. And this bill, other than declaring its intent to be used for that, doesn't do that.

So I am going to support this bill for what it does in terms of gang assaults, assaults in general. But I, once again, ask the majority to take seriously the question of bias assaults in our society. This bill does not address them. As a matter of fact, I am working on a bill which will address both your concerns and the concerns in terms of how it is spelled out in this bill and the concerns which I have articulated here several times and which I am articulating at this time.

This is not a situation where we should have two competing concepts. This is not some situation where we have two conceptualized differences that are so foreign to each other or unrelated to each other that they can not be

married in some way so as to satisfy everyone's concern.

So rather than saying we have a Republican assault bill and we have a Democrat bias-related assault bill, this is not an answer because the answer is neither of these issues will be properly addressed if we continue on in that manner; because, as you know, the Assembly has supported the Governor's bias bill which I am one of the chief sponsors of.

And so we should not be in the situation in this Legislature where you have a bill which, basically, has a lot of support here; Democrats have another bill; the Governor has another bill which comes at this problem from a different point of view with regard to bias violence. We should make every effort at this session to marry these concepts so that all of the issues which you try to address and we are trying to address are going to be addressed.

So I will vote for this bill, but I hope that you will -- particularly Senator

Volker and others here who have expressed an interest in bias violence, I hope that as we talk over the next few weeks we can come up with a compromise bill which will address everybody's concern.

ACTING PRESIDENT SPANO: Senator Ohrenstein in the affirmative.

Senator Dollinger to explain his vote.

SENATOR DOLLINGER: I was just going to ask a point of order. Are we explaining our votes or are we still on debate on the bill?

ACTING PRESIDENT SPANO: The members have been explaining their votes, Senator Dollinger.

SENATOR DOLLINGER: Okay. Mr. President. Just to explain my vote.

I would like to join Senator Ohrenstein in asking this body to go the next step as well.

As I recall it, the bias bill, the bias crimes bill, that was part of the

Governor's package would apply to bias-related crimes that don't necessarily even involve assaults, and I will give you a very simply example.

In Senator Jones' district, which borders mine, there's a place, the Charlotte Beach Bathhouse, named for Roger Robach, former member of the Assembly, an ancient structure built in the early 1920s, a beautiful building, recently renovated by the city of Rochester and the county of Monroe at the cost of many millions of dollars.

In October of 1992, a graffiti artist got into the building and proceeded with a spray can to put on the walls of the beach house just about every offensive term that you can think of, racially offensive, offensive to gays, offensive to religious persons, the whole spectrum. They covered it all.

And when we went there on that afternoon to look at the damage, spray cans on the floor, on the walls, it was tempting to sit down and simply say this is just malicious

damage. This is a graffiti artist at work, but I would suggest to you that no one could walk into that basketball court and look at the walls and conclude that this was just a lonesome graffiti artist.

This was a crime of bias, of bias-related damage to personal property to the property of the county and the city of Rochester, and it seems to me that that is not just simply malicious damage. This is a crime of bias and a crime that needs to be treated differently than simply a graffiti artist who gets loss in his work.

I would submit to you that this bill doesn't go enough. It doesn't attack the problem of bias-related crimes and crimes to property as well. The Governor's bill which includes both crimes to persons and crimes to property would elevate that act that you might look at as simply graffiti and make it a bias related crime of damaging personal property.

That's the step we ought to go. We always take these little tiny steps down the

rod of doing the right thing. Can't we take the giant step and actually do the right thing so that we send a clear message to everybody in this state that bias-related crimes, be they against persons or property, are going to be treated differently than simply those that don't involve bias.

ACTING PRESIDENT SPANO: How do you vote, Senator Dollinger?

SENATOR DOLLINGER: I'll vote in the affirmative on this bill, but it doesn't go far enough.

ACTING PRESIDENT SPANO: Senator Dollinger in the affirmative.

Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: Yes, I'm going to vote in the affirmative, and I think that this does have some relation to a bias crime bill insofar as the nature of the bias or a bias-related event is a factor to be considered by the sentencing judge in sentencing, and I think that's important. That

factor along with any other factor including the nature of the violence, the nature of the act should always be a sentencing factor to be determined by the sentencing judge.

I have a grave problem, however, with going the next step that we hear a lot of people talking about. Crimes are crimes against society. And what we do when we create a bias crime, we create a certain class of individuals no matter who they may be that are treated differently than any other citizens in this community. The assault hurts whether the assault is on a 5'6" Italian or someone of another nationality. The nature of the sentencing should be something to be determined by the judge depending upon all the factors including if that was a bias-related assault against that individual.

I just think we're treading some territory that we shouldn't tread, when we start creating crimes of different categories depending upon who the victims might be. I think that's a dangerous trend. I think our

society is supposed to be a society that treats everyone the same, that includes people who were victims of crime as well as those who are the assailants in crime.

So I guess all I'm saying is that this does create bias-related crimes to a certain extent insofar as it's a factor that the judge considers in sentencing, and that is all it should be. A crime is a crime no matter who it happens to be, and I think that's the way our laws should be written.

ACTING PRESIDENT SPANO: Senator DeFrancisco in the affirmative.

THE SECRETARY: Those in the negative on Calendar Number 181 are Senators DiCarlo, Galiber, Gold, Maltese, Markowitz, Mendez, Sears, Santiago, Senator Connor, and Senator Waldon, also Senator Leichter. Ayes 47. Nays 11.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 242, by Senator Larkin, Senate Bill Number 6 -

SENATOR GOLD: Lay it aside, please.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT SPANO: Lay it aside temporarily.

THE SECRETARY: Calendar Number 261, by Senator Daly, Senate Bill Number 4583B, Real Property Law.

SENATOR GOLD: Senator Daly, could we have one day on this?

SENATOR DALY: Certainly.

ACTING PRESIDENT SPANO: Lay it aside for the day.

SENATOR DALY: I would like to take it tomorrow, just to inform the Minority Leader.

ACTING PRESIDENT SPANO: Lay it aside for a day.

THE SECRETARY: Calendar 279, by Senator Wright.

SENATOR GOLD: Lay it aside please.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT SPANO: Lay it aside, temporarily.

Secretary will call Calendar 279.

THE SECRETARY: Calendar Number 279, by Senator Wright, Senate Bill Number 5944, an act to amend the Real Property Tax Law.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Will the responsor agree to lay this bill over?

SENATOR WRIGHT: For a day?

SENATOR GOLD: So far.

SENATOR WRIGHT: I will agree to lay it over for a day.

SENATOR GOLD: Thank you, Senator.

SENATOR WRIGHT: If you would have your counsel share our concerns please.

SENATOR GOLD: Yes, surely.

SENATOR WRIGHT: Thank you.

ACTING PRESIDENT SPANO: Lay it

aside for a day.

SENATOR PRESENT: Mr. President. May we go back to Calendar 242.

ACTING PRESIDENT SPANO: Secretary will read Calendar 242.

THE SECRETARY: Calendar Number 242, by Senator Larkin, Senate Bill Number 6390, an act to amend the Public Officers Law and the Village Law.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yes, will the sponsor lay the bill over, please?

SENATOR LARKIN: We have been doing it for about three weeks. Is there a question you might want answered?

SENATOR GOLD: Well, Senator, there are questions, and I think the questions that have to be answered have to be answered by counsel to the Majority Leader, and I would like to avoid some public difficulty, and hope that this bill which is a local bill can work its way through the legislative process with other bills

of local nature sponsored by other members, and perhaps this is something that the Majority Leader's counsel will be able to work out within a few days. But until that time, this is now the middle of March, and I think we have to come to grips with one of the problems in the flow of legislation right now.

SENATOR LARKIN: I will lay it over for a day.

SENATOR GOLD: I appreciate it.

ACTING PRESIDENT SPANO: Lay it aside for the day.

SENATOR GOLD: Thank you, Senator.

ACTING PRESIDENT SPANO: Calendar Number 280, by Senator Marino, Senate Bill Number 6602A, authorizing the assessor of the county of Nassau -

SENATOR GOLD: May we lay this aside for a day?

SENATOR PRESENT: (Nodding.)

ACTING PRESIDENT SPANO: Lay it aside for the day.

SENATOR GOLD: Thank you.

THE SECRETARY: Calendar Number 281, by Senator Larkin, Senate Bill Number 6691, establish a public library district in the Town of Esopus, Ulster County.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Senator Larkin, can I have the same courtesy on this one?

SENATOR LARKIN: One day, yes, sir.

SENATOR GOLD: Thank you, sir.

ACTING PRESIDENT SPANO: Lay it aside for the day.

THE SECRETARY: Calendar Number 293, by Senator Levy, Seante Bill Number 184, Criminal Procedure Law.

SENATOR GOLD: Explanation.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 295, by Senator Tully, Senate Bill Number 776,

an act to amend the Penal Law.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Mr. President. This bill, we've had before, and we could have voted on it the first time around, but there were a few members in the negative who weren't here Senator Espada and Galiber and myself, Montgomery, Ohrenstein and Smith, voted in the negative. Last section.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 295 are Senators Galiber, Gold, Kruger, Ohrenstein, and Santiago, also Senator Espada, also Senator Mendez, also Senator Smith, also Senator Montgomery.

Ayes 49. Nays 9.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present.

SENATOR PRESENT: Can we take up Calendar 134.

ACTING PRESIDENT SPANO: Secretary will read Calendar 134.

THE SECRETARY: Calendar Number 134, substituted earlier today, by Member of the Assembly Ortloff, Assembly Bill Number 4490C, an act to amend the County Law in relation to authorizing the county of Franklin to appoint up to three public defenders.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yes. Would Senator Stafford be kind enough to put this over one day, please.

SENATOR STAFFORD: No objection.

SENATOR GOLD: Thank you so much.

SENATOR PRESENT: Calendar 141.

ACTING PRESIDENT SPANO: Calendar 141, the home rule message is at the desk.

THE SECRETARY: Calendar 141, by Senator Stafford.

SENATOR GOLD: Tomorrow, please.

SENATOR STAFFORD: No objection.

ACTING PRESIDENT SPANO: Lay 141 aside.

Senator Present.

SENATOR PRESENT: Any house keeping?

ACTING PRESIDENT SPANO: Any housekeeping?

SENATOR PRESENT: Senator Montgomery, please.

SENATOR MONTGOMERY: Yes. Mr. President. I would like unanimous consent to be recorded in the negative on Calendar 181.

ACTING PRESIDENT SPANO: Without objection.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Mr. President. There being no further business, I move we adjourn until tomorrow at 3:00 p.m.

(Whereupon, at 5:10 p.m., Senate adjourned.)